STUDY

Requested by the LIBE committee

European Parliament

Conversion Practices on LGBT+ People

Policy Department for Citizens' Rights and Constitutional Affairs
Directorate-General for Internal Policies
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Conversion Practices on LGBT+ People

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines "conversion practices" (also called "conversion therapies") aimed at changing, repressing or suppressing the sexual orientation, gender identity or expression of LGBT+ persons. Such practices, due to their discriminatory, degrading, harmful and fraudulent nature, are being banned in a growing number of States, including EU Member States. The study analyses and compares selected national legislations before examining the possibilities to counter such practices at EU level, and makes recommendations.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LIST OF ABBREVIATIONS

ACCR	Christian Assembly of the Risen Christ
CFP	Council Framework Decision
CFP	Federal Council of Psychology (*Conselho federal de psicologia*) [Brazil]
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CP	Conversion Practices
CT	Conversion Therapies
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EPA	European Psychiatric Association
EU	European Union
FED	Framework Equality Directive (78/2000)
FRA	Fundamental Rights Agency
ILGA	International Lesbian and Gay Association
LGBT+	Lesbian, Gay, Bisexual, Transsexual (and Other Sexualities and Gender Identities)
LGBTI	Lesbian, Gay, Bisexual, Transgender, Intersex
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex ,Queer
LSVD	Lesbian and Gay Federation in Germany (*Der Lesben- und Schwulenverband in Deutschland*)
MEP	Member of European Parliament

NGO	Non-Governmental Organisation
SOGICE	Sexual orientation and gender identity-expression change efforts
SOGIE	Sexual orientation, gender identity and gender expression
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
WHO	World Health Organization

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EXECUTIVE SUMMARY

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines "**conversion practices**" (also called "conversion therapies", or "reparative" therapies or practices), which are interventions aimed at **changing, repressing or suppressing the sexual orientation, gender identity and/or gender expression (SOGIE) of LGBT+ persons.** Such practices, due to their **discriminatory, degrading, harmful and fraudulent** nature, are being banned in a growing number of States, including EU Member States, notably when the victims are **minors**. This study **analyses and compares** a number of national legislations before examining the **legal possibilities to counter and ban such practices at EU level** and making **recommendations.**

1. Conversion practices

Conversion practices involve **three main types of interventions,** related to specific beliefs and settings:

- **psychotherapeutic interventions**, including behavioural and cognitive therapy and aversion-based practices (electro-shocks, nausea-inducing drugs, etc.), based on the belief that the sexual orientation, gender identity and gender expression of LGBT+ persons are a mental or psychological illness, disorder, deviance, abnormality, that results from psychologic trauma or past negative experiences;

- medical interventions, including pharmaceutical approaches, such as the administration of hormones or steroids (and in the past, even lobotomy and castration), based on the belief that the sexual orientation, gender identity and gender expression of LGBT+ persons are a physical or biological illness, disease or disorder;

- interventions based on religion, faith or spirituality, often involving the guidance from a spiritual councillor or leader (and that in extreme cases can involve subjection to punishments and even exorcism), and based on the belief that sexual orientation, gender identity and gender expression of LGBT+ persons are the result of evil, a sin to be punished, expiated and prayed away.

These interventions are based on the view that SOGIE **can and should be changed, repressed or suppressed**.

However, conversion practices have proven to be substantially **fraudulent,** as there is no scientific evidence of their alleged effectiveness. Furthermore, they run counter the international trend of **depathologisation** of homosexuality, gender identity and gender expression, as recognised by the **World Health Organization** (WHO) and by medical professional **associations** in Europe and beyond, which have also condemned CP as medically unjustified, unethical and harmful.

Scientific evidence proves that such practices are **harmful**, as they cause profound psychological damage, such as depression, anxiety, shame, self-harm, suicidal thoughts, suicide attempts, post-traumatic stress disorder, as well as physical damage. They are particularly harmful to **LGBT+ minors**, who require special protection due to their vulnerability and dependent status.

Conversion practices are **discriminatory, degrading and dehumanising**, often based on **homophobia**, as their perpetrators consider that people who are LGBT+ are "wrong" and have less dignity compared to others. From a human rights perspective, such practices clearly interfere with and **violate several fundamental rights of LGBT+ persons, notably the right to dignity, integrity of the person, privacy (which covers physical or psychological integrity and personal autonomy),**

expression, equality and non-discrimination, health (including sexual and reproductive health), the rights of the child, and often involve practices that amount to **cruel, inhuman and degrading treatment or punishment**, as well as **torture**. According to the Council of Europe Commissioner for Human Rights "these practices are irreconcilable with several guarantees under the European Convention on Human Rights (ECHR)."

For these reasons, CP have been **banned** in a growing number of States, including EU Member States, and **criticised** by international bodies at the UN, Council of Europe and EU level. The United Nations Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity, Victor Madrigal-Borloz, and the CoE Commissioner issued reports calling for the introduction of bans on CP. At **European Union** level, the **European Parliament** called on Member States to ban CP in 2018 and 2021 resolutions; the **European Commission** has acknowledged in the 2020 LGBTIQ Equality Strategy that such practices as harmful to LGBTI people's bodily and mental health and engaged to foster the exchange of good practices among Member States; **Council** Presidency conclusions on the safety of LGBTI persons in the European Union adopted in June 2023 called on Member States to protect LGBTI persons from acts of violence and harmful practices, including being subjected to 'conversion practices.'

2. Bans on CP at national level

After examining the main features of CPs, this study **analyses and compares** the growing number of **national legislations and policies aimed at banning or countering conversion practices**, both in **EU Member States and in non-EU States**.

The analysis reveals that States mainly counter CT either by relying on specialised (medical, psychiatrist or psychological) **professional associations**, which are charged with taking self-regulatory measures against those members administering conversion practices, including by withdrawing their professional licenses (Brazil, Albania, Israel); or by directly enacting **legal bans** prohibiting such practices, imposing sanctions such as imprisonment and fines (Ecuador, Canada, several States in the US, New Zealand, Iceland, France, Germany, Greece, Malta, Spain, Cyprus). The latter path is the one most followed, as shown by the **growing trend towards the adoption of such legislative bans**: **Draft laws** banning CT have been tabled and are being discussed in many States, including EU Member States such as Belgium, Portugal, Austria, Ireland, the Netherlands; and non-EU States such as Norway, the UK and Switzerland.

This is also true for **EU Member States**, as a growing number of them have adopted **laws banning CP**, notably **France, Germany, Greece, Malta, Spain and Cyprus.** Their laws differ in several ways. For instance, in terms of the material scope of application, Greece applies the ban on practicing CT only to **medical professionals**, while other States do not make distinctions (France, Germany, Malta, Spain). The personal scope of application also varies, with some States applying the ban only to **minors and vulnerable adults** (Germany, Greece, Malta) and others applying it to also to **adults**, regardless of consent (France, Spain, Cyprus). **Advertising** CP is prohibited in all States. **Aggravating circumstances** are foreseen in the majority of States (France, Malta, Spain, and Cyprus). **Sentences** are foreseen in all examined States and include imprisonment (France, Germany, Greece, Malta, Cyprus - but not Spain) and fines (in all the examined Member States). Concerning **imprisonment**, the maximum sentence foreseen in France and in Cyprus is two years, while in Germany and Malta is one year, with Greece leaving the matter to the judges' decision. Concerning **fines**, the highest maximum fine is foreseen in Spain (150.000 Euros), followed by France and Germany (30.000 Euros), with the other Member States having lower maximum fines (10.000 in Malta, 5.000 in Cyprus) and Greece, leaving it to the judges' decision.

3. Legal framework and possibilities at European level

Against this background, the study then explores **whether and how action to counter or ban CPs could be taken at EU level**, and notably which are the available **options and possibilities**, the legal basis and the procedures involved (including whether simple majority or unanimity is required for their adoption, major precedents, and possible obstacles). The areas examined notably anti-discrimination law (Article 19 TEU), European criminal law (Articles 82 and 83 TFEU), health law and policies, free movement of services (Article 59 TFEU) and the internal market (Articles 114 and 115), among others. The analysis reveals that while a number of legal bases are available for EU institutions to take measures against CP, they often require unanimous agreement in the Council, as well as strong political will. In parallel with legislative measures, action to counter CP could be taken by the Commission through a recommendation and by the EP through a resolution.

4. Recommendations

Having analysed conversion practices, the recommendations by the UN Independent Expert and the CoE Commissioner for HR calling for the introduction of bans on CP, national legislations on conversion practices of EU Member States and of non-EU States, as well as the EU legal framework and the possible avenues that could be followed to counter and ban conversion practices at EU level, the study proposes a number of final **recommendations**.

The study also includes a number of **figures and tables** summarising information or comparing laws and policies on conversion practices.

1. CONVERSION PRACTICES

KEY FINDINGS

- Conversion practices on LGBT+ people are based on the erroneous premise that sexual orientation and gender identity are necessarily a **choice**, the result of some esoteric **evil power** over human will, or a **disease**, and that they can be **changed or cured.**
- Such conversion practices are sometimes referred to as "therapies", especially when provided under the guise of seemingly professional counselling by psychologists or psychiatrists. However, this phenomenon also covers wider practices, including **religious or spiritual, psychoanalytic, and cognitive-behavioural frameworks**.
- Studies reveal that efforts to change sexual orientation and gender identity are **ineffective**, they **violate fundamental rights of LGBT+ people** (whom they further stigmatize) and foster **anxiety, depression, suicide, and other mental health problems**.
- **The UN Independent Expert, the Yogyakarta Principles, ILGA, the EP and the CoE HR Commissioner** converge in considering that conversion practices may constitute forms of torture and cruel, inhuman or degrading treatment or punishment having serious bodily and mental health harmful repercussions, which **call for a ban.**

1.1. Context and aim of the study

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, examines "**conversion practices**" (CP) (also called "conversion therapies" (CT), or "reparative" therapies or practices), which are interventions aimed at **changing, repressing or suppressing the sexual orientation, gender identity and/or gender expression (SOGIE) of LGBT+ persons.** Such practices, due to their **discriminatory, degrading, harmful and fraudulent** nature, are being banned in a growing number of States, including EU Member States, notably when the victims are **minors**. The study **analyses and compares** a number of national legislations before examining the **legal possibilities to counter and ban such practices at EU level** and making **recommendations.**

Conversion practices are based on the **false premise** that the sexual orientation, gender identity and expression of LGBT+ individuals **can be altered**. Health professionals, academics, civil society, and legislators in several EU and non-EU States have largely **condemned** such practices, as these activities are demonstrably harmful to the physical and mental health of LGBT+ persons. At EU level, the European Parliament has taken a strong stance against conversion practices and called for their ban, while the European Commission has acknowledged the harmful nature of conversion practices in its LGBTIQ Strategy and affirmed it would take action through the exchange of best practices to counter this phenomenon.

The present study notably looks into ***how* and *upon which legal basis* the EU could act to ban or to otherwise counteract such harmful practices, based on comparative legal experience**. For these ends, the study:

- describes **conversion practices** (how they unfold, who offers them, what they address and whom they target);

- examines **national laws and policies** that counter or ban conversion practices in EU Member States (and in several non-EU States which are relevant as country studies for this research, This is done on the basis of existing data provided, *inter alia*, by the UN Special Rapporteur, previous materials of the European Parliament and other European institutions, civil society organisations (such as ILGA), academic studies and other sources;

- analyses these laws and policies from a **comparative** viewpoint, highlighting their similarities and differences in relation to various aspects, such as: the legal basis for their adoption (in criminal law, health law and policies, anti-discrimination law, self-regulation and medical codes), the material and personal scope of their application, as well as the sanctions invoked against providers of conversion practices;

- examines the different **options** available for the EU to counter or ban conversion practices from a legal and procedural point of view (including whether simple majority or unanimity is required for their adoption, major precedents, and possible obstacles). Notable avenues include the areas of anti-discrimination law (Article 19 TEU), European criminal law (Articles 82 and 83 TFEU), health law and policies, services and the internal market, and other options;

- concludes with **recommendations** addressed to EU institutions and bodies (European Parliament, Commission, Council), as well as to Member States, considering the various legislation in this area.

Methodologically, the study explores the existing data, studies and analyses pertaining to various sources and documents from, *inter alia*, academic scholars, medical associations, research institutes, NGOs, and relevant agencies of selected Member States. Furthermore, it analyses the latest legislative developments and policy documents to deduce common problems and best practices in this area. The study takes into consideration relevant European Parliament reports, resolutions and briefings, revisiting them in light of further considerations from national law. Finally, the study includes a number of figures and **tables** to assist readers in identifying similarities and differences amongst major laws and policies which ban or counter conversion practices.

1.2. Conversion practices

Conversion practices on LGBT+ people are comprised of a diverse group of mental and physical manipulations, psycho-hypnotic indoctrinations (usually presented to public as "therapies"), medical and homeopathic interventions, exorcism and other treatments enacted with the aim of altering SOGIE. Such practices are based on two **erroneous premises:** first, that sexual orientation and gender identity is necessarily a choice, the result of some esoteric evil power over a human will, or an outright disease, and second, that it **can be suppressed, changed or cured**. Both academic literature and policy documents of international organisations[1] often refer to such conversion practices as "**conversion therapies**" or sometimes "**reparative therapies**", especially when under the disguise of seemingly

[1] Including also some studies in the context of the European Union. For a recent comparative study in this area, see the briefing authored by David de Groot, *Bans on Conversion "Therapies" – The Situation in Selected Member States*, European Parliamentary Research Service, PE 733.521, 7 June 2022. See also, HRC Foundation, "The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity", Human Rights Campaign Foundation, 2022, available at: https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy.

professional counselling by psychologists or psychiatrists. However, this phenomenon also covers wider practices, including ***religious or spiritual***, ***psychoanalytic*** **and** ***cognitive-behavioural*** **frameworks**, which explains the preference for the broader term of "conversion practices" within the present study. Such practices are sometimes referred to in literature under the **umbrella term of "sexual orientation and gender identity-expression change efforts" (SOGEICE)**. This is also the term recently used by the Human Rights Commissioner at the Council of Europe, Dunja Mijatović, who characterised them as follows: "SOGIE conversion practices (also known as so-called "conversion therapies") purport to change, or suppress, a person's sexual orientation, gender identity or expression when it does not conform to the perceived dominant norm."[2]

According to the **Report on conversion therapy by the United Nations independent expert on protection against violence and discrimination based on sexual orientation and gender identity** (2020), conversion practices constitute "deeply harmful interventions that rely on the medically false idea that LGBT and other gender diverse people are sick, inflicting severe pain and suffering, and resulting in long-lasting psychological and physical damage".[3] According to a **UK study** on conversion therapy titled "An Evidence Assessment and Qualitative Study", contemporary forms of conversion therapy stem from a belief that homosexuality and transgender identities constitute developmental disorders caused by childhood trauma, addictions, or spiritual problems caused by sin or demonic forces.[4] Forms of CT involve spiritual methods, such as prayer healing, and psychological methods, including foremost "talking therapy", and a combination of religious and psychological approaches used in a pseudo-scientific manner.[5]

The methods adopted by **religious or spiritual** frameworks for such practices usually attribute the "healing" component to confession and repentance, faith declarations, fasting, pilgrimages, reading of sacred texts, and attending of spiritual retreats, courses and festivals. Some of these include deeply concerning degrading treatment of the victims who undergo experiences of exorcism, shaming and pressure, which may cause suicide attempts.[6]Techniques within the **psychoanalytic** framework include identifying "causes" through a discussion of childhood traumas, emotional-release work, "father-son style holding", altering gender-role behaviour during individual or group counselling, coaching or retreats.[7] The **cognitive-behavioural framework**, in contrast, is based on reframing

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2 Dunja Mijatović, "Nothing to Cure: Putting an End to So-Called "Conversion Therapies" for LGBTI People", Council of Europe – Commissioner for Human Rights: Human Rights Comment, 16 February 2023, available at: https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people.

3 See, United Nations, *Report on Conversion Therapy*, Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity, A/HRC/44/53/, 1 May 2020, available at https://www.ohchr.org/en/calls-for-input/report-conversion-therapy.

4 Government Equalities Office, *UK Conversion Therapy: An Evidence Assessment and Qualitative Study* (2021), UK Government, 29 October 2021 p. 3, available at https://www.gov.uk/government/publications/conversion-therapy-an-evidence-assessment-and-qualitative-study/conversion-therapy-an-evidence-assessment-and-qualitative-study (hereinafter "UK Conversion Therapy"). For the studies in the UK, see also Expert Advisory Group on Ending Conversion Practices Report and Recommendations, Scottish Government, October 2022, available at: https://www.gov.scot/publications/expert-advisory-group-ending-conversion-practices-report-recommendations/.

5 Ibid, pp. 12-14.

6 For an account of such practices in Cyprus, for example, see: Agence France-Press, *Cyprus Push to Ban Gay Conversion Therapy amid Exorcism Claim*, inquirer.net, 6 April 2022, available at: https://newsinfo.inquirer.net/1579111/cyprus-push-to-ban-gay-conversion-therapy-amid-exorcism-claim. See also *UK Conversion Therapy,* (n 3), p. 53. For an account of particularly cruel practices beyond Europe (including collective rape by fellow "patients"), see Anastasia Moloney, *Gays in Ecuador* Raped *and Beaten in Rehab Clinics to "Cure" Them*, Thomson Reuters Foundation, 8 February 2018, available at https://www.reuters.com/article/ecuador-lgbt-rights-idUSL8N1P03QO.

7 Government Equalities Office, *UK Conversion Therapy: An Evidence Assessment and Qualitative Study (2021),* UK Government, 29 October 2021, p. 22.

desires, redirecting thoughts, avoiding "triggers", abstaining or reconditioning masturbatory practices(often with the assistance of an accountability group), behaviour modelling, and covert aversive methods. During such practices, individuals are sometimes provided with heterosexual erotic material and instructed to engage in sexual practices in attempt to refocus on heterosexual fantasies.[8] While most CT targets same-sex attractions, some instances include conversion practices administered on transgender and non-binary persons.

Studies reveal that efforts to change sexual orientation and gender identity are ineffective, they contradict human dignity and equality of LGBT+ people (whom they further stigmatize) and may even foster anxiety, depression, suicide, and other mental health problems.[9]

It is consequently surprising to see that some States still officially sponsor it as a "treatment" to "cure" LGBT+ persons: for instance, the recent anti-LGBT+ bill in Ghana prescribes up to five years in prison for LGBT+ persons, or the requirement to undergo a form of "conversion therapy". Recently, media reported that **Russia might consider to officially introduce conversion practices for LGBT+ persons**.[10]

The **European Commission** referred to conversion practices in section 2.4. ("Protecting and promoting LGBTIQ people's bodily and mental health") of its **LGBTIQ Equality Strategy 2020–2025**, and affirmed that:

> Harmful practices such as non-vital surgery and medical intervention on intersex infants and adolescents without their personal and fully informed consent (intersex genital mutilation), forced medicalisation of trans people and **conversion practices targeting LGBTIQ people may have serious bodily and mental health repercussions. The Commission will foster Member States' exchange of good practice on ending these practices.**

Though there is the absence of any complete data sets measuring the use of such practices in the EU (especially since such practices are usually conducted under disguise or secrecy), it is **estimated that approximately 5% of LGBT+ people have been offered, and that 2% have undergone, such practices**, though actual figures may be much higher.[11]

Neither homosexuality (since 1990) nor transsexuality (since 2019) are treated as pathologies by the World Health Organization (WHO). Furthermore, the **European Psychiatric Association (EPA) explicitly condemned conversion "treatments" in 2021 and encouraged the introduction of legislation banning such practices**.[12] In this regard, it is easier to challenge psychoanalytic and cognitive-behavioural frameworks of conversion practices due to the prevalent consensus amongst psychiatrists and other professional organisations and scholars about the medical sanity and

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8 Ibid, p. 17.

9 Hilary Daniel and Renee Butkus, 'Lesbian, Gay, Bisexual, and Transgender Health Disparities: Executive Summary of a Policy Position Paper from the American College of Physicians', *Annals of Internal Medicine*, Vol. 163(2), 21 July 2015, pp. 135-137.

10 See, Arthur Musah, *Criminalizing Compassion: I Don't Recognize My Own Country Any More in Ghana's New Anti-Gay Bill*, Quartz Africa, 18 October 2021, available at https://qz.com/africa/2075209/what-does-ghanas-anti-gay-bill-mean-for-lgbtqi-and-allies/. For the overview of the text of this homophobic bill, see Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021, available at https://cdn.modernghana.com/files/722202192224-0h830n4ayt-lgbt-bill.pdf. For Russia, see Kseniya Morozova, Konversionnaya terapiya: kak luydey pytayut'sia otuchit' byt' gomoseksualami" (Конверсионная терапия: как людей пытаются отучить быть гомосексуалами), Afisha-Daily, 23 June 2023, available at: https://daily.afisha.ru/context/25758-konversionnaya-terapiya-kak-lyudey-pytayutsya-otuchit-byt-gomoseksualami/).

11 European Parliament, European Parliament Research Service, *Bans on Conversion "Therapies" – The Situation in Selected Member States*, PE 733.521, 7 June 2022.

12 Ibid.

"normality" of same-sex attraction.[13] It is more complicated to counter CT enacted in religious settings, due to the resistance of fundamentalist religious movements, which administer CT in secret and lobby against anti-CT laws. At the same time, **a large number of religious leaders have openly called for a ban of CT**.[14]

The aforementioned **report by the UN independent expert** on protection against violence and discrimination based on sexual orientation and gender identity recommended that **States should ban the practice of "conversion therapy"**, by:

> (i) Clearly establishing, through appropriate legal or administrative means, a **definition** of prohibited practices of "conversion therapy", and ensuring that **public funds** are not used, directly or indirectly, to support them;
>
> (ii) **Banning** practices of "conversion therapy" from being **advertised** and **carried out** in health-care, religious, education, community, commercial or any other settings, public or private;
>
> (iii) Establishing a system of **sanctions** for non-compliance with the ban on practices of "conversion therapy", commensurate with their gravity, including in particular, that claims should be promptly investigated and, if relevant, prosecuted and punished, under the parameters established under the international human rights obligations pertaining to the prohibition of **torture and cruel, inhuman or degrading treatment or punishment**.[15]

Likewise, the so-called "**Yogyakarta Principles**", a set of non-binding but highly influential legal standards, adopted by international human rights experts with regard to sexual orientation and gender identity in 2006 specifically set out freedom from torture and from cruel, inhuman or degrading treatment.[16] In 2017, these principles were further extended with a specific **ban** on CT, stipulating that States shall:

> **[p]rohibit** any practice, and repeal any laws and policies, allowing intrusive and irreversible treatments on the basis of sexual orientation, gender identity, gender expressions or sex characteristics, including forced genital-normalising surgery, involuntary sterilization, unethical experimentation, medical display, **"reparative" or "conversion" therapies**, when enforced or administered without the free, prior and informed consent of the person concerned.[17]

Similarly, the **International Lesbian and Gay Association (ILGA)** carried out research on CP at the global level and subsequently issued a **report** in February 2020 entitled "Curbing Deception".[18]

In February 2023, Dunja Mijatović, the **Human Rights Commissioner of the Council of Europe**, issued the document "**Nothing to cure: putting an end to so-called "conversion therapies" for LGBTI people**". The Commissioner called for a comprehensive and human rights-based approach to eliminating SOGIE conversion practices, unequivocally stating that these practices are "irreconcilable

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[13] Dinesh Bhugra et al., 'IRP Commission: Sexual Minorities and Mental Health: Global Perspectives', *International Review of Psychiatry*, vol. 34(3-4), 2022, pp. 171-199.

[14] See the BBC News on thedeclaration signed by 370 religious leaders, https://www.bbc.com/news/uk-55326461.

[15] United Nations, *Report on Conversion Therapy*, Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity.

[16] Yogyakarta Principles, *Principle 10 in the Yogyakarta Principles*, 2006-2017, available at https://yogyakartaprinciples.org.

[17] Ibid.

[18] ILGA World, *Curbing Deception: Conversion Therapy Report*, ILGA, February 2020, available at https://ilga.org/Conversion-therapy-report-ILGA-World-Curbing-Deception (authored by Lucas Ramón Mendos).

with several guarantees under the European Convention on Human Rights". Member States of the Council of Europe were **urged to ban** them for both adults and minors, based on the positive obligations of the Member States under the Convention, as well as highlight participation, support, and rehabilitation for victims, along with promotion of delegitimising of conversion practices in society. [19]

The UN expert report, the Yogyakarta Principles, the ILGA report, the EP resolutions and the CoE HR Commissioner converge in considering that conversion practices constitute forms of torture and cruel, inhuman or degrading treatment or punishment having serious bodily and mental health harmful repercussions which **calls for a ban**. The final **recommendations of this study** consolidate the main contents that such bans should have according to the UN Independent expert and the CoE HR Commissioner recommendations.

The call for banning CP has been heard by a **growing number of States**, which have adopted such laws, including in the EU, as examined in the next chapter.

[19] Dunja Mijatović, "Nothing to Cure: Putting an End to So-Called "Conversion Therapies" for LGBTI People", Council of Europe – Commissioner for Human Rights: Human Rights Comment, 16 February 2023, available at: https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people

2. COUNTERING CONVERSION PRACTICES: A COMPARATIVE PERSPECTIVE

KEY FINDINGS

- The comparative analysis at global level shows that States mainly counter conversion practices either by relying on specialised (medical, psychiatrist or psychological) **professional associations**, which are charged with taking self-regulatory measures against those members administering conversion practices, including by withdrawing their professional licenses (Brazil, Albania, Israel); or by directly enacting **legal bans** prohibiting such practices, imposing sanctions such as imprisonment and fines (Ecuador, Canada, New Zealand, Iceland, France, Germany, Greece, Malta, Spain, Cyprus). In recent years, a **growing number of States have adopted laws banning CP**.
- The laws of the **EU Member States** that have adopted a ban – **France, Germany, Greece, Malta, Spain and Cyprus** – differ in terms of the material scope of application, with one of them applying the ban on practicing CT only to medical professionals (Greece) and others applying it to anybody (France, Germany, Malta, Spain).
- The personal scope of application also varies, with some States applying the ban only to **minors and vulnerable adults** (Germany, Greece, Malta) and others applying it to also to **adults**, regardless of consent (France, Spain, Cyprus).
- **Advertising** CP is prohibited in all five States. **Aggravating circumstances** are foreseen in a majority of States (France, Malta, Spain, Cyprus).
- **Sentences** include imprisonment (France, Germany, Greece, Malta, Cyprus - but not Spain) and fines in all examined States. Concerning **imprisonment**, the highest maximum sentence is foreseen in France and in Cyprus (2 years) and the lowest in Germany and Malta (1 year), with Greece leaving the matter to the judges' decision. Concerning **fines**, the highest maximum fine is foreseen in Spain (150.000 Euros), followed by France and Germany (30.000 Euros), with the other Member States having lower maximum fines (10.000 in Malta, 5.000 in Cyprus) and Greece leaving it to the judges' decision.
- Furthermore, **draft laws** banning CT have been tabled and are being discussed in many States, including EU Member States like Belgium, Portugal, Austria, Ireland, the Netherlands, and non-EU States like Norway, the UK and Switzerland.

This chapter presents and analyses the **legal and policy regulations** of conversion practices in a selection of States from a **comparative** perspective. In the first part of this Chapter, the study focuses on **non-EU countries** which have adopted regulations countering CT, either in the form of a fully-fledged legislative ban (Ecuador, Canada, a number of States in the US, New Zealand, Iceland, the Swiss canton of Neuchâtel), or as other forms of regulations (Albania, Israel, Taiwan, and some States in the US). The second part of this chapter provides a detailed outlook on the five **EU countries that have introduced a ban** on CT, namely: Malta (2016), Germany (2020), France (2022), Greece (2022) and Spain (2023), along with a brief general analysis of several relevant legislative developments in other EU countries (e.g. Belgium, Ireland, Netherlands, Poland, Portugal, Cyprus). Additionally, **comparative tables** of the legislation adopted in the EU Member States and in non-EU States can be found in the annexes II–IV to the present study, along with a table summarising regional legislation in Spain.

2.1. Countering conversion practices outside of the EU

Brazil was selected for the purpose of detailed country analysis due its status as the **first State to impose national restrictions on CT**,[20] thus making it an interesting case study for research on this subject. The second part of this section reviews several **other regulations introduced by non-EU States**.

2.1.1. Brazil: pioneering regulation

2.1.1.1. Socio-legal background

Currently, **Brazil offers one of the most advanced systems of LGBT+ rights protection in Latin America and has led a number of initiatives at UN level for the promotion of the worldwide decriminalization of homosexuality**.[21] Same-sex **marriage** was legalised in 2013 and since then, the State has also enacted explicit **legal protections against discrimination** on the basis of sexual orientation and gender identity, which have been affirmed and upheld by the Brazilian Supreme Court.[22] In 2019, the Supreme Court accorded **homophobia** the same status as racism under Brazilian law, thereby criminalising violence against LGBT+ persons and making it illegal to deny access to educational or professional opportunities.[23] Public attitudes towards the LGBT+ community also remain relatively positive with 67% of Brazilians believing that homosexuality should be socially accepted.[24]

Despite the legal and public acceptance of homosexuality, **violence** against members of the LGBT+ community remains a severe issue, and has been steadily increasing. In 2020, 237 LGBT+ people died in situations of violence; there were 224 murders and 13 suicides, according to Grupo Gay da Bahia, the oldest LGBT+ rights organisation in Latin America.[25] The national Human Rights Ombudsman's Office reported to Human Rights Watch that, between January and June 2020, it had received 1.134 complaints of violence, **discrimination** and other abuses against LGBT+ people. Data from the government's hotline to report abuses, revealed that between 2011 and 2017, there were 12.477 complaints of violence against LGBT+ people in Brazil.[26] Lawyers and activists have attributed the high level of **hate crime** as well as other numerous challenges to LGBT+ protections to the political leadership of former President Jair **Bolsonaro**, a self-proclaimed "proud homophobe" with a long history of anti-gay rhetoric.[27]

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[20] ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p 85. On the role of the Brazilian Supreme Court in the LGBT+ cases, see Flavia Portella Püschel, Same-Sex Marriage in the Brazilian Supreme Court, *Novos Estudos'*, vol. 38(3), December 2019, pp. 653-665.

[21] Maria Beatriz Bonna Nogueira, The Promotion of LGBT Rights as International Human Rights Norms: Explaining Brazil's Diplomatic Leadership, *Global Governance*, vol. 23, 19 August 2017, pp. 545-563; Omar Encarnación, *Latin America's Gay Rights Revolution*, Oxford University Press, Oxford, 2016; Javier Corrales, *The Politics of LGBTQ Rights Expansion in Latin America and the Caribbean*, Cambridge University Press, Cambridge, 2021.

[22] Fabio Teixeira, *Brazil's Top Court Rules to Make Homophobia a Crime*, Reuters, 25 May 2019, available at https://www.reuters.com/article/us-brazil-lgbt-court-idUSKCN1SV009.

[23] Ibid. See also Reuters Staff, *Brazil Supreme Court Rules Homophobia a Crime*, Reuters, 14 June 2019, available at https://www.reuters.com/article/us-brazil-homophobia-idUSKCN1TF02N.

[24] Jacob Poushter and Nicholas Kent, *The Global Divide on Homosexuality Persists*, Pew Research Center, 25 June 2020, available at https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/.

[25] Ibid. See also Reuters Staff, *Brazil Supreme Court Rules Homophobia a Crime*, Reuters, 14 June 2019, available at https://www.reuters.com/article/us-brazil-homophobia-idUSKCN1TF02N.

[26] Sarah Johnson, *'Epidemic of Violence': Brazil Shocked by 'Barbaric' Gang-Rape of Gay Man,* The Guardian, 9 June 2021, available at https://www.theguardian.com/global-development/2021/jun/09/epidemic-of-violence-brazil-shocked-by-barbaric-gang-rape-of-gay-man.

[27] Ibid.

2.1.1.2. Policy measures

Brazil was the first State in the world to adopt nationwide legal restrictions on CT, and has done so through its Federal Council of Psychology (CFP, *Conselho federal de psicologia*).[28] The Brazilian Ministry of Labour has empowered this organisation, an autonomous public body, with the legal function to regulate the status of psychologists and their professional activities in Brazil.[29] **In 1999, the CFP prohibited** through Resolution 1/99 **the pathologisation of homoerotic behaviours** (*estigmatizações contra aqueles que apresentam comportamentos ou práticas homoeróticas*)[30] and **disallowed the participation of psychologists in "coercive and unsolicited" treatments for homosexuality** (*ação coercitiva tendente a orientar homossexuais para tratamentos não solicitados*).[31] It further established that psychologists can neither pronounce nor participate in public speeches appearing in the mass media that are capable of reinforcing social prejudice related to homosexuality as constituting a type of psychological disorder.[32] The ban is not limited to any particular recipients and **applies to both minors and consenting adults**. The unique legal status and governing powers of the CFP have subsequently provided the aforementioned resolution with the legal force required for effective implementation. Moreover, **in 2018, the CFP broadened the ban** on CT by including gender expression, and declared that gender manifestations and identities constitute possibilities of human existence (*possibilidades da existência humana*), which should not be understood as psychopathologies, mental disorders, deviations and/or inadequacies.[33] The resolution further prohibits psychologists from performing any action that favours the pathologisation of "transsexual and transvestite" people, as well as **offering, carrying out, or collaborating** with private, public, institutional, community or promotional events or services that provide conversion, reversal, readjustment or reorientation therapy of gender identity of transgender and/or transvestite people.[34]

However, regulation through the CFP means that the scope of this governance is **limited to licensed psychologists** and thus, cannot affect other professionals or persons offering CT.[35] Consequently, it **fails to address religious-based CT that are widespread in Brazil**. In this respect, conversion practices in Brazil appear to primarily take the form of **Christian counselling**, despite the remarkable popularity of various conservative protestant denominations and outright cults.[36] The ILGA Report notes, in particular, that **Exodus Global Alliance**, an international network of Christian ministries, has a strong foothold in Brazil and provides Christian counselling to individuals "impacted by

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[28] *Conselho Federal de Psicologia do Brasil* is a professional entity based in the Federal District with its regional offices (Regional Councils) located in the capitals of seventeen Brazilian states. The councils give legal and technical advice in psychology. The status of the organization is regulated by Decree 79.822 of June 17, 1977. For their website, see http://www2.cfp.org.br/infografico/quantos-somos/.

[29] ILGA World, *Curbing Deception: 'Conversion Therapy' Report,* p. 85.

[30] Article 2, Resolução CFP, "Estabelece normas de atuação para os psicólogos em relação à questão da Orientação Sexual", N° 001/99 DE 22 de março de 1999 [Federal Council of Psychology, Resolution 001/99, "establishing norms of action for psychologists in relation to the issue of Sexual Orientation" (1999)].

[31] Article 3, Resolução CFP, "Estabelece normas de atuação para os psicólogos em relação à questão da Orientação Sexual", N° 001/99 DE 22 de março de 1999 [Federal Council of Psychology, Resolution 001/99, "establishing norms of action for psychologists in relation to the issue of Sexual Orientation" (1999)].

[32] Ibid.

[33] Preamble, Resolução CFP, " Estabelece normas de atuação para as psicólogas e os psicólogos em relação às pessoas transexuais e travestis", N° 1 de 1 de janeiro de 2018 [Federal Council of Psychology, Resolution 001/18, "establishing rules of action for psychologists and psychologists in relation to transsexuals and transvestites" (2018)].

[34] Articles 1-8, Resolução CFP, "Estabelece normas de atuação para as psicólogas e os psicólogos em relação às pessoas transexuais e travestis", N° 1 de 1 de janeiro de 2018 [Federal Council of Psychology, Resolution 001/18, "Establishing Rules of Action for Psychologists and Psychologists in Relation to Transsexuals and Transvestites" (2018)].

[35] Ibid.

[36] See, for instance, Jandira Queiroz, Fernando D'Elio, and David Maas, *Exodus in the Global Context: "Ex-Gay" Therapy Continues Across the Americas*, Political Research Associates, 21 June 2013, available at: https://politicalresearch.org/2013/06/21/exodus-global-context-ex-gay-therapy-continues-across-americas.

homosexuality".[37] Although the organisation denies engagement in conversion practices, publicly it questions the de-pathologisation of homosexuality. The ILGA report recalls that Exodus claims that "homosexual activity and expression are outside of God's design. Homosexual behaviour, not the feelings or the temptation, is sinful."[38] The ILGA report also reveals that there have been a number of cases of **exorcisms enacted on LGBT+ minors** by **evangelical churches** in Brazil.[39]

2.1.1.3. Criticism of the regulation

Due to the conservative stance of various religious and evangelical organisations and cults in Brazil, CFP resolutions and LGBT+ rights in general have received **significant opposition from religious groups**. The **Organisation of Christian Psychologists and Psychiatrists** (CPPC, *Corpo de Psicólogos e Psiquiatras Cristãos*), which holds a pathologising view and supports "healing homosexuality", has been particularly vocal in its criticism towards the first Resolution.[40]

In 2007, the CFP publicly censured the "Christian psychologist" Rozangela Alves Justino due to her advocacy of CT.[41] Ms. Justino subsequently launched several **lawsuits** at the local and federal level in an effort to invalidate Resolution 1/99, without success. She was eventually stripped of her license as a psychologist in 2017, after her continued use of CT.[42] Regarding the *actio popularis*, launched by Justino, ILGA mentions two conflicting decisions issued by a deferral judge which expose the imperfection of the Brazilian model of "professional regulation", in particular by virtue of opening the door for psychologists to offer confidential "sexual reorientation".

In 2019, a member of the Supreme Federal Tribunal issued an interim decision to suspend the effects of a judgment by a Lower Federal Magistrate, thereby reinstating the ban against CT in full force. In January 2020, **the Supreme Federal Tribunal put a definitive end to judicial attempts to repeal the ban before Brazilian federal courts**. The decision focused mainly on procedural issues regarding legal standing and the viability of the appeal, so no substantive elements were actually discussed in the decision.[43]

Moreover, though unsuccessful, there have been **numerous legislative attempts to repeal the ban**. For example, Bill 2177/03 strived to create an assistance program for homosexual persons who voluntarily opted to change their sexual orientation to heterosexual.[44] Another evangelical parliamentarian introduced a bill to establish social services for those wanting to "leave" homosexuality.[45]

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37 ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p. 38.

38 Ibid.

39 Carola Solé, *Igreja acolhe gays que passaram por 'curas' frustradas e exorcismos,* Carta Capital, 4 October 2017, available at https://www.cartacapital.com.br/diversidade/igreja-acolhe-gays-que-passaram-por-curas-frustradas-e-exorcismos/; "Exorcismo, manipulação e ameaça de morte: a cura gay numa igreja evangélica", *Blog da Morango*, 22 January 2019 (as cited in ILGA, Curbing Deception Report, (n 17), p.44).

40 Sandra Elena Sposito, "Psicologia, Sexualidade e Religião: Ligações Perigosas", *Revista de Psicologia da UNESP*. Vol. 11(1), 2012, p. 102 (as cited in ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p. 86).

41 Nathalia Passarinho, "*Conselho Federal de Psicologia pune psicóloga que oferecia 'cura' para gays: Rozângela Alves Justino recebeu uma censura pública. Ela confirmou que considera a homossexualidade um disturbio*", G1 Globo.com, 31 July 2009, available at: https://g1.globo.com/Noticias/Brasil/0,,MUL1250754-5598,00-CONSELHO+FEDERAL+DE+PSICOLOGIA+PUNE+PSICOLOGA+QUE+OFERECIA+CURA+PARA+GAYS.html).

42 Sandra Elena Sposito, "Psicologia, Sexualidade e Religião: Ligações Perigosas", *Revista de Psicologia da UNESP*. Vol. 11(1), 2012, p. 102 (as cited in ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p. 86).

43 ILGA World, *Curbing Deception: 'Conversion Therapy' Report,* p 87.

44 Ibid.

45 CLAM, *Projeto contra homossexualidade mobiliza entidades,* 9 December 2004 (as cited in ILGA Curbing Deception p.87).

A notable aspect of the CFP resolutions pertains to their emphasis on refraining from public announcements (including in the media and on the Internet), and from events and services that legitimise prejudice toward homosexuals and transgender persons.[46] In doing so, the law tackles the social impact stemming from the advertisement and promotion of such therapies. Conservative MPs have criticised these limitations, arguing that the ban infringes on a professional's right and capacity to work.[47] They attempted to – unsuccessfully – change the provisions in the resolution concerning the professional promotion of conversion therapy.

2.1.2. Other non-EU States

In **2020**, **Albania became the first non-EU State to take legal measures against CT in Europe**. The country followed the Brazilian model and entrusted the national **Order of Psychologists** to take measures against professionals who claim to be able to alter sexual orientation.[48] [49] Since all registered therapists in Albania must be members of this Order to practice their profession on a commercial basis, this legislation disqualifies fraudulent professionals performing CT.

Also **Israel** has, in 2022, introduced a **ban prohibiting medical professionals** from proposing or attempting to reorient LGBT+ patients towards heterosexuality, and enabled **punitive measures by virtue of a directive issued by the Health Ministry Director-General**, despite strong opposition from the ultra-Orthodox community – amongst which such "therapies" have been mostly executed.[50]

In **Taiwan**, rather than codifying the ban initially proposed in a draft bill (which foresaw severe fines and potential short-term license suspensions for medical practitioners administering the "therapy"), the government clarified that CT is **prohibited under the Code of Criminal Procedure, as well as under the Protection of Children and Youths Welfare and Rights Act**.[51]

Ecuador decided that instead to use **criminal law** to counter conversion practices, with sanctions comprising fines and imprisonment, following the country's cruel record in this field.[52] In 2012, a Ministerial Agreement **outlawed** CT in certain institutions. In 2014, an amendment to the Criminal Code of Ecuador specified **aggravating circumstances** for the crime of **torture** when it is perpetrated in order to change a person's sexual orientation or gender identity.[53] This was as a result of heinous acts of mistreatment coming to light in the country.[54]

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46 Federal Council of Psychology, Resolution 1/99, (1999).

47 ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p 87.

48 Ibid.

49 Ryan Thoreson, *Albanian Psychologists Prohibit Anti-LGBT "Conversion Therapy"*, Human Rights Watch, 20 May 2020, available at https://www.hrw.org/news/2020/05/20/albanian-psychologists-prohibit-anti-lgbt-conversion-therapy.

50 Stuart Winer and Toi Staff, *Health Ministry Bans "Conversion Therapy" by Medical Professionals*, The Times of Israel, 14 February 2022, available at: https://www.timesofisrael.com/health-ministry-bans-conversion-therapy-by-medical-professionals/. See also Avner Hofstein and Omer Sharvit, *Gay Conversion Therapy to Fix "Reverse Inclinations" is Alive and Well in Israel*, The Times of Israel, 24 June 2020, available at: https://www.timesofisrael.com/gay-conversion-therapy-to-fix-reverse-inclinations-is-alive-and-well-in-israel/.

51 See Rice, *Taiwan Leads Ban on Gay Conversion Therapy*, Rice, 4 January 2017, available at: http://www.ricemedia.co/current-affairs-commentary-taiwan-leads-ban-gay-conversion-therapy/); Shanghaiist.com, "Taiwan Finalizes Conversion Therapy Ban: Furthering the Island's Reputation as a Progressive Champion of LGBTQ-inclusive Policies", 24 February 2018, available at: https://medium.com/shanghaiist/taiwan-finalizes-conversion-therapy-ban-adb417e5ff44.

52 See Moloney, A., *Gays in Ecuador Raped and Beaten in Rehab Clinics to "Cure" Them,* Thomson Reuters Foundation, 8 February 2018, available at https://www.reuters.com/article/ecuador-lgbt-rights-idUSL8N1P03QO.

53 See Ministerio de Salud Pública (Ecuador), Acuerdo Ministerial No. 767 (2012), Comprehensive Organic Penal Code, Article 151(3).

54 Moloney, A., *Gays in Ecuador Raped and Beaten in Rehab Clinics to "Cure" Them,* Thomson Reuters Foundation, 8 February 2018, available at https://www.reuters.com/article/ecuador-lgbt-rights-idUSL8N1P03QO.

After two failed attempts, **Canada** introduced a **ban on CT** in December 2021, making it a crime to both **execute** and **advertise** such practices, **including whenever there is consent** from a person undergoing such practices.[55] The prohibition came into force in January 2022.[56] In line with this law, sections 320.102–104 of the **Criminal Code** of Canada should establish the following as indictable offences:

- knowingly **causing another person to undergo** conversion therapy or providing such therapy, which is punishable by up to five years of imprisonment;
- knowingly **promoting or advertising** conversion therapy, which is punishable by up to two years of imprisonment;
- receiving a **financial or other material benefit**, knowing that it is obtained or derived directly or indirectly from the provision of conversion therapy, which is punishable by up to two years of imprisonment.

Subsection 164(8) of the Criminal Code now defines "**advertisement** of conversion therapy" as "any material – including a photographic, film, video, audio or other recording, made by any means, a visual representation or any written material – that is used to promote or advertise conversion therapy contrary to section 320.103." The new legislation also amends the Criminal Code to authorise courts to order those advertisements for CT be disposed of or deleted, including from computer systems or the internet. In addition, the existing offence under section 273.3(1)(c) of the Criminal Code, which prohibits the **removal of children from Canada for "specified purposes", now includes subjecting them to CT abroad**. This offence is punishable by up to five years of imprisonment on indictment.[57]

New Zealand banned CT in February 2022, when Parliament adopted by 112 votes in favour and 8 against the Conversion Practices Prohibition Legislation Bill. The law bans conversion therapy and makes it an offence to attempt to forcibly change a person's sexual orientation, gender identity or gender expression. It foresees sentences of **up to 3 years imprisonment** for performing CP on a **child**, or a person younger than 18 years old, or on someone with impaired decision-making ability; and **up to 5 years of imprisonment** for performing CP on anyone, irrespective of age, where the practices have caused serious **harm**. A possibility to obtain civil redress is also foreseen by the law, allowing victims to submit complaints about conversion practices to the Human Rights Commission and the Human Rights Tribunal.[58]

Very recently, on 9 June 2023, **Iceland**'s Parliament adopted a ban on conversion practices on the basis of sexual orientation, gender expression and gender identity, by 53 votes in favour and 3 abstentions. The law punishes anyone making an adult undergo conversion therapy with a sentence

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55 Rachel Treisman, *After Two Failed Attempts, Canada Bans Conversion Therapy,* NPR, 9 December 2021, available at: https://www.npr.org/2021/12/09/1062720266/canada-bans-conversion-therapy. The Canadian government uses acronym "LGBTQ2" to include Two-Spirit, a notion some indigenous people use to describe their sexual, gender and / or spiritual identity.

56 See "Canada: Bill C-4 Banning Conversion Therapy Comes into Force", Library of Congress, 2022, available at: https://www.loc.gov/item/global-legal-monitor/2022-01-19/canada-bill-c-4-banning-conversion-therapy-comes-into-force/.

57 Ibid.

58 Nandini Dwivedi, *New Zeeland parliament bans conversion therapy following final reading*, Jurist, 15 February 2022, available at https://www.jurist.org/news/2022/02/new-zealand-parliament-bans-conversion-therapy-following-final-reading/.

of **up to three years in prison, increased to five years maximum** if CT is enacted on a child. Anyone administering CT could face up to two years in prison if found guilty.[59]

On 19 June 2023, the **Norwegian** government announced the tabling of a law to ban CT, covering all forms of conversion therapy and notably medical or religious-based methods "to influence the person concerned to change, deny or suppress their sexual orientation or gender identity". The law will apply **regardless of whether the individual has consented** to it. **Advertising** CP and offering it **abroad** are also punished. The law will be examined by the Norwegian Parliament in the autumn.[60]

In July 2018, the then **UK** Prime Minister Theresa May vowed to ban conversion practices, but since then legislation was delayed. The government carried out a public consultation on a 2021 proposal but then paused it in March 2022, under PM Boris Johnson. In January 2023, the government stated it would finally publish a draft bill banning conversion practices for everyone, including transgender people, which is now being examined by the PM.[61]

In **Switzerland**, the canton of Neuchâtel became the first of the country's 26 cantons to pass a law banning CP. Several cantons have passed motions in favour of such a ban, but no laws were yet adopted. Following the adoption of a motion by the Swiss National Council in favour of ban, the Ministry of Justice has ordered a report on the matter.[62]

While there is no prohibition on conversion practices at the federal level yet, **a number of States in the United States of America also prohibit or restrict conversion practices** (See Figure 1: Legislation in the USA).[63]

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59 Aimee Woodmass, Iceland bans sexual orientation and gender identity 'conversion therapy', Jurist, 13 June 2023, available at https://www.jurist.org/news/2023/06/iceland-bans-sexual-orientation-and-gender-identity-conversion-therapy/.

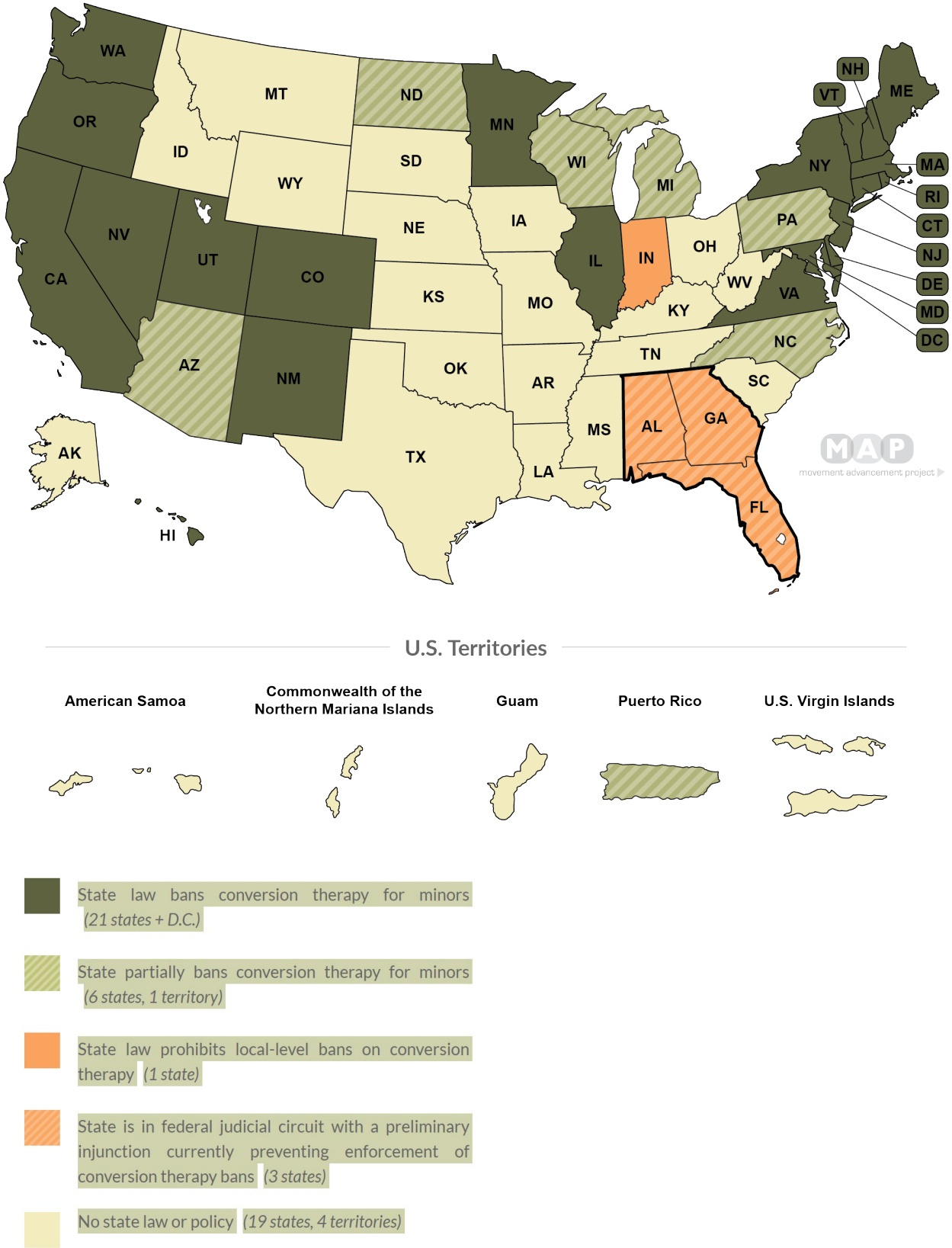
60 CNE.news staff, *Norweigan government presents legislation banning conversion therapy; Christians concerned*, CNE.news, 19 June 2023, available at https://cne.news/article/3216-norwegian-government-presents-legislation-banning-conversion-therapy-christians-concerned.

61 Jessica Murray, *Bring in UK ban on conversion practices now, LGBTQ+ campaigners urge*, The Guardian, 3 July 2023, available at https://www.theguardian.com/world/2023/jul/03/bring-in-uk-ban-on-conversion-practices-now-lgbtq-campaigners-urge; and Amelia Hansford, *Conversion therapy ban 'on Rishi Sunak's desk' with loophole for 'consenting adults'*, PinkNews, 21 June 2023, available at https://www.thepinknews.com/2023/06/21/conversion-therapy-rishi-sunak/.

62 Swissinfo staff, *First law banning conversion therapies passed in Switzerland*, SWI swissinfo.ch, 2 May 2023, available at https://www.swissinfo.ch/eng/society/first-law-banning-conversion-therapies-passed-in-switzerland/48480678; and CNE.news staff, Swiss National Council in favour of ban on conversion therapy, CNE.news, 15 December 2022, available at https://cne.news/article/2224-swiss-national-council-in-favour-of-ban-on-conversion-therapy

63 Casey Leins, *States that Have Banned Conversion Therapy: The Movement to Protect LGBTQ Minors Has Gained Momentum over the Past Year*, US News, 11 April 2019, available at https://www.usnews.com/news/best-states/articles/2019-04-11/these-states-have-banned-conversion-therapy; and Jacob M. Victor, 'Regulating Sexual Orientation Change Efforts: The California Approach, Its Limitations, and Potential Alternatives', *Yale Law Journal*, vol. 123(5), March 2014, pp. 1532-1585.

Figure 1: Legislation in the USA



Source: https://www.lgbtmap.org/equality-maps/conversion_therapy

2.2. Countering conversion practices in the EU Member States

2.2.1. France

2.2.1.1. Socio-legal background

Throughout recent decades, **France has been one of the most advanced countries regarding protection of LGBT+ rights**, with same-sex **marriage** legalised in 2013, and a solid protection against discrimination in employment and in the provision of goods and services enacted in 2008 and 2012 respectively.[64] Likewise, polls have uncovered that 86% of French people believe that homosexuality should be socially accepted, one of the highest rates in the world.[65] Nonetheless, same-sex marriage in France was legalised later than in its neighbouring and equally secular Benelux countries (and even later than in Spain). Until recently, the country has remained restrictive on several other aspects.[66]

Regarding the extent of conversion practices in France, ILGA summarised the conclusions reached from investigations conducted by journalists who had infiltrated two **CT groups** during a two year-period:

> In November 2019, two journalists published *Dieu est amour* ("God is love"), a book detailing their findings after infiltrating two groups offering "conversion therapy" in France (*Torrents de Vie* and *Courage*) […] The journalists found that both of these groups treat homosexuality as a pathological behaviour deriving from personal or family trauma. The authors also pointed out that in order to avoid problems with human rights associations, the groups speak of "deviance", "suffering", and "restoration" instead of "healing". Finally, the researchers emphasized the tremendous potential for harm that these groups have for vulnerable LGBTI people in France, having personally undergone the diverse types of rituals and psychological manipulation aimed at sexual orientation change practiced there.[67]

Le Refuge, a French organisation that provides assistance to LGBT+ youth in distress estimates that 3.5% of all their received calls, relate to CT– primarily conducted by **religious groups**.[68] "Sexual reorientation" programs are practiced by Christian evangelical groups as well as some Muslim Imams and involve "internships" where LGBT+ persons undergo a combination of prayer, religious reading, exorcisms, and isolation.[69] An example of this is the Christian Assembly of the Risen Christ (ACCR) evangelical church in Lille, whose pastor openly preaches about the possibilities of "delivering people from homosexuality", a sermon, which according to his website, has attracted congregations from across France and abroad.[70] These examples expose key problems with counteracting conversion practices in such religious settings, as a significant number of people appear to take part in these activities voluntarily, raising also the issue of "**consent**" in relation to such practices and their regulation. As further captured by the testimonies in the ILGA report:

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64 ILGA, Rainbow Europe, available at https://rainbow-europe.org/#8633/0/0 (hereinafter, Rainbow Europe).

65 Jacob Poushter and Nicholas Kent, *The Global Divide on Homosexuality Persists*, Pew Research Center, 25 June 2020, available at https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/.

66 Such as blood donation by gay people. The discriminatory ban on blood donations was finally removed in 2022, see https://www.euronews.com/2022/01/12/france-removes-restrictions-on-gay-blood-donors. See Uladzislau Belavusau, 'Towards EU Sexual Risk Regulation: Restrictions on Blood Donation as Infringement of Active Citizenship', *European Journal of Risk Regulation*, vol. 7(4), 2016, pp. 801-809.

67 ILGA World, *Curbing Deception: 'Conversion Therapy' Report*.

68 David Rich, *France Sees Rise in Conversion Therapies to "Cure" Homosexuality*. France24, 27 March 2019, available at https://www.france24.com/en/20190327-france-sees-rise-conversion-therapies-cure-homosexuality.

69 Ibid.

70 Ibid.

> [We] have no or very few testimonies in France of adults who have been forced to undergo this type of procedure without consent. **Health professionals** practice this type of therapy with the approval of the 'patient' and they get away with it because they don't promote it as part of their professional practice.[71]

In 2019, the Law Commission of the French **National Assembly** established a **parliamentary fact-finding mission** to hear the testimonies of victims and consider the creation of a specific offence within the French criminal code penalising CT.[72]

2.2.1.2. Legal measures

The French Parliament adopted **the law prohibiting CT in January 2022**. The law, supported by a wide parliamentary majority, criminalises the provision of conversion practices claiming to modify a person's sexual orientation or gender identity (*les pratiques, les comportements ou les propos répétés visant à modifier ou à réprimer l'orientation sexuelle ou l'identité de genre*).[73] The French bill brought attention to the 2018 motion by the European Parliament condemning CT and calling for a ban. The bill further mentioned the legislative efforts by EU Member States such as Malta, Germany, draft legislation in Belgium and the Netherlands, as well as the British commitment to prohibiting CT.[74]

The law applies to all, professionals and non-professionals, minors and adults, regardless of consent. In this sense, it is one of the laws that implements the contents proposed for the ban on CT as recommended by the UN Independent Expert and by the CoE Commissioner for Human Rights more faithfully. It foresees sanctions up to **two years of imprisonment and a 30.000 EUR fine.**[75] Increased penalties are foreseen (respectively, **three years** of imprisonment and a **45.000 EUR** fine) if **aggravating circumstances** apply, such as when conversion practices are targeted towards **minors or vulnerable adults**. The vulnerability, in this respect, is extended by virtue of a possible dependence, due to their age, illness, infirmity, physical or psychological deficiency, pregnancy or the precariousness of their economic or social situation, whenever these facts are apparent or known to the perpetrator.[76] Additionally, when the offence is committed by a person holding parental authority over the minor, the trial court may decide on the **total or partial withdrawal of parental authority**. This novel legislation also widens the possibilities for legal redress and social mobilisation by allowing groups to take civil action on behalf of victims of CT.[77] The regulation, however, has an important disclaimer for the medical profession, namely, that such an offence is not constituted when a health professional simply calls for reflection and caution, particularly in view of a young patient who wonders about their gender identity and who is considering a medical course of treatment tending to sex change. Excluding this exception, medical personnel can be found guilty of this offence and prohibited

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71 Ibid.

72 ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p. 110.

73 LOI n° 2022-92 du 31 janvier 2022 interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne [LAW n° 2022-92 of 31 January 2022, prohibiting practices aimed at modifying a person's sexual orientation or gender identity]. See also BBC, 'LGBT Rights: New French Law to Criminalise 'Conversion Therapy'', 2022 (available at: https://www.bbc.com/news/world-europe-60145970/).

74 Assemblée Nationale, PROPOSITION DE LOI interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne, Assemblée Nationale, available at https://www.assemblee-nationale.fr/dyn/15/textes/l15b4021_proposition-loi#D_Article_1er.

75 Articles 1 and 3, *LOI n° 2022-92 du 31 janvier 2022 interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne* [LAW n° 2022-92 of January 31, 2022 prohibiting practices aimed at modifying a person's sexual orientation or gender identity].

76 Ibid.

77 BBC, *LGBT Rights: New French Law to Criminalise 'Conversion Therapy'*, 2022 (available at: https://www.bbc.com/news/world-europe-60145970/).

from practicing their profession for a period not exceeding ten years.[78] Finally, the law extends the geographic application of the prohibition on practices aimed at modifying the orientation of a person's sexual or gender identity to some overseas territories and regions, namely: New Caledonia, French Polynesia, and the Wallis and Futuna Islands.[79]

While the prosecution of some CT cases may have already been possible under existing provisions, such as within laws against the illegal practice of medicine, harassment or discrimination, **the 2022 law enables better identification and prosecution of CT**, specifically when such crimes are committed against LGBT+ persons.[80]

2.2.1.3. Criticism of the legislation

La Manif Pour Tous, an organisation seeking to protect the "traditional institution of marriage", argues that the French bill misguidedly targets the "*les ascendants directs*" of the minor, i.e., the parents, grandparents, teachers, and relevant health professionals. According to the organisation, as a consequence of this newly adopted legislation, parents will be incapable of playing their role as educators and to genuinely respond to the inquiries about gender and sex posed by their children, anticipating severe penal sanctions.[81] All of the 28 senators who voted against this law in the French Senate were from the political party *Les Républicains*. Some of those politicians argued for the removal of the term gender identity (*l'identité de genre*) due to a difference of opinion on this subject, though such amendments to the text were eventually rejected.[82]

2.2.2. Germany

2.2.2.1. Socio-legal background

Despite its historically controversial record on gay rights,[83] in recent years Germany has fostered an **advanced system of LGBT+ protection**.[84] A tolerant attitude towards homosexuality in the country is captured by statistics: for example, a 2019 poll conducted by the Pew Research Center indicated that

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78 Article 3, *LOI n° 2022-92 du 31 janvier 2022 interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne* [LAW n° 2022-92 of January 31, 2022 prohibiting practices aimed at modifying a person's sexual orientation or gender identity].

79 Articles 4, *LOI n° 2022-92 du 31 janvier 2022 interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne* [LAW n° 2022-92 of January 31, 2022 prohibiting practices aimed at modifying a person's sexual orientation or gender identity].

80 Le Monde, Le *Sénat vote très largement en faveur de l'interdiction des « thérapies de conversion*, 7 December 2021, available at Le Sénat vote très largement en faveur de l'interdiction des « thérapies de conversion » (lemonde.fr).

81 See La Manif Pour Tous : Tous nés d'un père et d'une mère, *Communiqué de Press : La Manif Pour Tous Dénonce l'Intox sur la proposition de loi présentée comme interdisant les thérapies de conversion*, 14 December 2021, available at https ://www.lamanifpourtous.fr/actualites/communiques-de-presse/la-manif-pour-tous-denonce-lintox-sur-la-proposition-de-loi-presentee-comme-interdisant-les-therapies-de-conversion.

82 Jacque Pezet, *Homophobie : Quels sénateurs ont voté contre interdiction des thérapies de conversion ?*, 8 December 2021, available at https://www.liberation.fr/checknews/quels-senateurs-ont-vote-contre-linterdiction-des-therapies-de-conversion-20211208_NEMX72QEUVBVHM3HORL2PHSREI/.

83 Apart from a brutal prosecution of homosexuals by the Nazis, one can recall here that gay men who had survived the Third Reich's concentration camps at times faced charges even in the Federal Republic of Germany, under allegations collected by Nazi authorities. The notorious 1935 version of Paragraph 175 of the German Criminal Code remained in force in the Federal Republic of Germany until 1969. Furthermore, the reparations and pensions available in post-war Germany to other persecuted groups were refused to gay victims (See Peukert, D, *Inside Nazi Germany*, Yale University Press, New Haven, CT 1987. Germany has also remained one of the last amongst Western European countries to legalise same-sex marriage, due to a constitutional definition of marriage as a union of a man and a woman that was interpreted very strictly until 2017.

84 In 2022, Germany even appointed its first commissioner for LGBT+ affairs. See Kate Brady, *LGBTQ+ Rights: Germany Appoints "First Commissioner for Queer Affairs",* DW, 6 January 2022, available at https://www.dw.com/en/lgbtq-rights-germany-appoints-first-commissioner-for-queer-affairs/a-60351173.

the absolute majority of Germans, as high as 86%, believe that homosexuality should be societally accepted.[85] In the last twenty years in particular, LGBT+ rights have been well articulated on a national level, with registered partnerships for same sex couples available since 2001, and the right to **marry and adopt** children enacted since 2017 (with the then Defence Minister Ursula von der Leyen voting in favour). Moreover, **discrimination** on the grounds of sexual orientation is legally prohibited nationwide in the area of employment and in the provision of goods and services.[86] It is furthermore remarkable that even conservative religion-inspired parties – such as the Christian Democratic Union/Christian Social Union – support registered partnerships, and other mainstream parties – such as the Social Democratic Party (SPD), The Left (Die Linke), the Free Democratic Party (FDP) and the Greens (Die Grünen) – advocate for LGBT+ rights, including same-sex marriage.[87]

Though there is a high acceptance of LGBT+ persons in Germany, the Magnus Hirschfeld Foundation (a Berlin-based human rights organisation) suggests that **approximately a thousand people undergo CT in Germany on an annual basis**.[88] In fact, **religion-based CT** remained available in the country until quite recently. In particular, the Association of Catholic Doctors (*Bund katholischer Ärzte, BkÄ*),[89] a religion-based association of doctors that proclaimed itself "the voice of the Catholic medical community", declared on its website that while "homosexuality is not an illness", a number of treatments exist to suppress such "inclinations".[90] Amongst such healing remedies, they advised "constitutional treatments with homeopathic tools […] such as homeopathic dilutions like Platinum", "psychotherapy", and "religious counselling".[91] For homeopathic treatment,[92] they recommend, for example, a prescription of "Globuli", a German title for tiny pills consisting almost entirely of sugar.[93] In this context, the ILGA report further mentioned that conservative members of the German Protestant church continue to resist the gradual acceptance of homosexuality within the church. In particular, ILGA refers to a notorious episode from 2009, when approximately thirty pastors from the region of Rhine-Westphalia wrote an open letter to an online news portal *Der Westen* and condemned anti-conversion statements by the regional president of their church. Their letter suggested that those who discredit CT for homosexuality deny people "who suffer from homosexual feelings the help to change".[94] At this point in time, conversion practices were already strongly denounced and criticised by the Lesbian and Gay Federation in Germany (LSVD), which considered them dangerous and destabilising for young people uncertain about their sexuality.[95]

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85 Jacob Poushter and Nicholas Kent, *The Global Divide on Homosexuality Persists*, Pew Research Center, 25 June 2020, available at https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/.

86 Equaladex, *LGBT Rights in Germany*, available at: https://www.equaldex.com/region/germany.

87 BBC World News, *Germany Gay Marriage Approved by MPs in Snap Vote*, BBC, 30 June 2017, available at https://www.bbc.com/news/world-europe-40441712.

88 BBC World News, *Germany Passes Law Banning "Gay Conversion Therapy" for minors,* BBC, 8 May 2020, available at https://www.bbc.com/news/world-europe-52585162.

89 Sometimes translated in the anglophone literature also as the "Union of Catholic Physicians".

90 ILGA World, *Curbing Deception: 'Conversion Therapy' Report*. See also: Yannick Borkens, *Bund katholischer Ärzte: Homeopathic Conversion Therapists in 21st Century Germany,* Frontiers Sociology, 17 January 2022, available at https://www.frontiersin.org/articles/10.3389/fsoc.2021.667772/full.

91 ILGA World, *Curbing Deception: 'Conversion Therapy' Report*.

92 Homeopathy itself as a 200-year-old practice was originally developed by German physician Samuel Hahnemann (1755-1843). See Denise Hruby, *"In Germany: a Heated Debate over Homeopathy",* Undark, 16 March 2020, available at https://undark.org/2020/03/16/homeopathy-globuli-germany/ which may partially explain a particular popularity of this arguably pseudo-scientific practice in Germany.

93 Christoph Seidler, *German Catholic Doctors Offer Homeopathic 'Gay Treatment',* Spiegel, 2 June 2011, available at https://www.spiegel.de/international/germany/gays-and-god-german-catholic-doctors-offer-homeopathic-gay-treatment-a-766281.html). See also ILGA World, *Curbing Deception: 'Conversion Therapy' Report,* page 54.

94 Ibid.

95 Ibid.

2.2.2.2. Legal measures

Strong pressure to counteract CT in Germany came from the **German Medical Association** (*Bundesärztekammer, BÄK*).[96] In **2014**, it issued a resolution stating that:

> Psychiatric-psychotherapeutic treatment approaches should not focus on homosexuality as such, but on conflicts that arise with homosexuality in connection with religious, social and internalized norms. […] So-called "conversion" or "reparative" procedures, which claim to be able to convert homosexuality into asexual or heterosexual behaviour and give the impression that homosexuality is a disease, must be rejected.[97]

In **2020**, echoing this position, **the German parliament adopted a law that criminalised the practice of CT** (*Verbot der Durchführung von Konversionsbehandlungen*) on **minors** (under 18 years old) and on **adults lacking the ability to consent** (*Willensmangel*), such as in cases of deception, coercion, and threats.[98] This new provision, now included in the **German Criminal Code** (*Strafgesetzbuch*), applies to all treatments that are aimed at changing or suppressing sexual orientation or gender identity, and **prohibits any advertisements or offers** of CT.[99] The law classifies such advertisements or offers as constituting an **administrative offence** (*Ordnungswidrigkeit*) punishable by a **fine**, while the offence of **providing the treatment itself is punishable by a fine of up to 30.000 EUR or one year of imprisonment**.[100] The law further enhances the protection of minors by requiring adults involved in a minor's life (such as teachers) not to "grossly violate their **duty of care**", i.e., through the provision of CT.[101] The act **can apply to pastoral conversations** wherein there is a purposeful intention to influence or change the sexual orientation of the individual.

2.2.2.3. Criticism of the legislation

The legislation was condemned by the more conservative stream amongst the Catholic movements, in particular, within the aforementioned Association of Catholic Doctors.[102] In contrast, the Green Party of Germany has criticised this law for its narrow focus on **minors**, arguing that LGBT+ youth between 18 and 26 years old can also be particularly vulnerable to the practices of CT.[103] Following the 2021 federal elections, the new coalition government in Germany indicated that it **will extend the ban to protect all Germans regardless of age**.[104] For now, the German law seemingly follows the pioneering Maltese legislation (see section 2.2.4.), in its attempt to, on the one hand, leave a choice to undergo such therapies for consenting adults, whilst on the other, to protect adults who may be deemed vulnerable from getting manipulated into undergoing such practices. According to ILGA, the law should better

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96 The German Medical Association (since 1947) is a Berlin-based organization co-ordinating self-governance of physicians in Germany through 17 State Chambers of Physicians, which are responsible for regulation of the medical profession.

97 The translation of the Resolution on Conversion "or" reparative "procedure for homosexuality by the German Medical Association (2014) in English is taken from the report of ILGA World, *Curbing Deception: 'Conversion Therapy' Report*, p. 118.

98 *Gesetz zum Schutz vor Konversionsbehandlungen (KonvBG)* [Act on Protection against Conversion Treatments], G. v. 12.06.2020 BGBl. I S. 1285 (Nr. 28), available at https://www.buzer.de/gesetz/13982/index.html See also ILGA World, *Curbing Deception: 'Conversion Therapy' Report*. The law has been signed by both a chancellor (Angela Merkel back-then) and a Health Minister (Jens Spahn).

99 Ibid, para. 3.

100 Ibid, para. 5.

101 Ibid, para. 5(2).

102 Yannick Borkens, *Bund katholischer Ärzte: Homeopathic Conversion Therapists in 21st Century Germany,* Frontiers Sociology, 17 January 2022, available at https://www.frontiersin.org/articles/10.3389/fsoc.2021.667772/full.

103 Reuters Staff, *Minister Defends Germany's Limited Gay Therapy Ban,* Reuters, 7 May 2020, available at https://www.reuters.com/article/us-germany-equality-lgbt-idUSKBN22J2F5).

104 According to the factsheet of the "Ban Conversion Therapies Now" of the Global Equality Caucus, available at https://equalitycaucus.org/banct/info-hub/legislative-progress.

take into consideration in which context such **consent** is formed, as a series of factors are relevant, such as:

> a state of dependency from people who might be exerting pressure on them (such as people in positions of authority, leadership or trust), the total lack of unbiased information on SOGIECE issues, or the psychological state of the person requiring SOGIECE. These elements, which go beyond the technical reasons under which consent can normally be deemed invalid, would allow for the law to effectively acknowledge and take into account the contextual considerations on how many adults end up seeking these therapies.[105]

2.2.3. Greece

2.2.3.1. Socio-legal background

During the last ten years, the record of **protection of LGBT+ rights has improved in Greece**. In particular, discrimination on the grounds of sexual orientation in employment, and in the provision of goods and services were prohibited in 2016, and laws against hate speech and hate crime were enacted in 2014 and 2015 respectively.[106] Most recently, the government has appointed a committee to draft a national strategy on improving LGBT+ rights, and provided training sessions on gender and sexuality for civil servants.[107] **Cohabitation** agreements for same-sex couples were introduced in 2015 and extended in 2016, while **marriage and adoption are still not legal**. Surveys on the attitude towards homosexuality reveal a relatively low tolerance in Greece, with only 48% of Greek respondents answering that homosexuality should be accepted.[108] The powerful and pervasive Orthodox Church continues to project the view of homosexuality as a sin on Greek society. Regarding conversion practices on LGBT+ people, the Greek Health Minister noted that "there were some false treatments that stated that when a minor has chosen a different sexual orientation, his parents could supposedly proceed with 'treatments' for this child to 'return to normality.'"[109]

2.2.3.2. Legal measures

On 11 May 2022, the Greek Parliament approved a law forbidding CT, though its application is **limited to minors**. The measure was introduced by the Health Minister.[110] The new legislation, Law No. 4931 (A'94/13-05-2022) prohibits conversion therapists from **advertising** CP, introducing fines and terms of imprisonment as possible punishments for such practices.[111] Greek law **does not specify a minimum or a maximum** term of such imprisonment. Furthermore, with regard to advertising, the ban **covers only medical professionals** in this area, as it is assumed that these individuals will receive remuneration, while other categories are not covered. Thus, professionals must not "invite, promote or

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[105] ILGA World, *Curbing Deception: 'Conversion Therapy' Report,* p. 68.

[106] ILGA Europe, Rainbow Europe.

[107] Renee Maltezou and Deborah Kyvrikosaios, *Greece tries to make up lost ground on LGBTQ+ rights*, Euronews, 1 June 2022, available at https://www.euronews.com/2022/06/01/us-greece-lgbt.

[108] Jacob Poushter and Nicholas Kent, *The Global Divide on Homosexuality Persists*, Pew Research Center, 25 June 2020, available at https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/.

[109] Reuters, *Greece Bans LGBTQ Conversion Therapy,* Reuters, 11 May 2022, available at: https://www.reuters.com/world/europe/greece-bans-lgbtq-conversion-therapy-2022-05-11/.

[110] Josh Milton, *Greece Bans Barbaric Conversion Therapy – but Copies Harmful UK "Consent" Loophole*, Pinknews, 12 May 2022, available at https://www.pinknews.co.uk/2022/05/12/greece-conversion-therapy-ban/. The proposal of the law is available here: https://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/11952892.pdf.

[111] Law No. 4931 (A'94/13-05-2022) Doctor for All, Equal and Quality Access to Services of the National Organisation for Health Care Services and Primary Health Care and Other Urgent Provisions (Νομος Υπ'Αριθμ.491 (ΦΕΚ Α'94/13-05-2022, *Γιατρός για όλους, ισότιμη και ποιοτική πρόσβαση στις υπηρεσίες του Εθνικού Οργανισμού Παροχής Υπηρεσιών Υγείας και στην Πρωτοβάθμια Φροντίδα Υγείας και άλλες επείγουσες διατάξεις,*), available here: https://www.taxheaven.gr/law/4931/2022.

advertise in any way -'conversion therapies', either conducted by themselves or by third parties". It is **unclear whether this ban also applies to persons who provide such "treatments" free of charge**.

2.2.3.3. Criticism of the legislation

Positive Voice, an LGBT+ association of HIV-positive people in Greece, welcomed the initiative of the Ministry of Health to ban CT but **criticised the exclusion of all adults** from its scope and the issue of **consent**:

> As far as adults are concerned, the amendment explicitly states that "anyone engaging in conversion practices must first obtain their explicit **consent**" – thus creating the impression that a person can consent to practices that the UN has classified as torture, i.e. their ill-treatment – destabilising the very concept of consent and ignoring the actual **circumstances** under which this could be the case: e.g. when an LGBTIQ+ person is blackmailed by their relatives and/or carers, people providing housing and other necessary material or emotional support (family, partner or friends). There is also the question of **whether this "consent" is "informed"** (as required by the Istanbul Convention, which has been adopted by Greece) and whether it arises, for example, from a sense of shame and self-denial – conditions very common among members of the LGBTQI+ community and resulting directly from the effects of stigma and discrimination that the amendment intends to combat.[112]

Moreover, the organisation calls for the extension of the provision to **non-professional perpetrators** as to include conversion practices that are informally applied by **priests and church** representatives. Since the Church is often the sole provider of "support services", this legislation seemingly **fails to address one of the most prevalent modes of CT**.

2.2.4. Malta

2.2.4.1. Socio-legal background

In the past decade, **Malta has become one of the most advanced EU countries in terms of LGBT+ rights**,[113] even enshrining them in the Constitution.[114] For example, same-sex **marriage** and **adoption** of children by same-sex couples were legalised in 2014 and 2017 respectively. Similarly, social attitudes towards LGBT+ rights have been rapidly improving, which may stem from the fact that the State has implemented numerous social reforms aimed at enhancing LGBT+ rights and protection, especially since the election of the Labour government (with *Partit Laburista*) in 2013.[115] Moreover, some observers have attributed the increasing protection of LGBT+ rights to Malta's accession to the EU and a broader Europeanising influence.[116]

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[112] *Positive Voice*, Press Release, 11 March 2022 (available at: https://positivevoice.gr/9256).

[113] See the latest ILGA-Europe rating (accessed in spring 2022), putting Malta on the first position ahead of Denmark, Belgium, Norway, Luxembourg and Sweden, ILGA-Europe, *Country Ranking,* Rainbow Europe, available at http://www.rainbow-europe.org/country-ranking.

[114] Article 45 of the Constitution of Malta (amendments about discrimination on the grounds of sexual orientation were introduced in 2014).

[115] Jon Henley, *Malta Becomes First European Country to Ban "Gay Cure" Therapy,* The Guardian, 7 December 2016, available at https://www.theguardian.com/world/2016/dec/07/malta-becomes-first-european-country-to-ban-gay-cure-therapy.

[116] Kate Samuelson, *Why the Tiny Island of Malta Has Europe's Most Progressive Gay Rights,* Time, 15 December 2016, available at https://time.com/4597632/malta-gay-rights-conversion-ban/. See also Human Rights Watch, *On LGBT Rights, Malta Learns the Rewards of Progress*, Human Rights Watch, 19 June 2017 available at https://www.hrw.org/news/2017/06/19/lgbti-rights-malta-learns-rewards-progress.

2.2.4.2. Legal measures

The **Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act**, passed in **2016**,[117] made **Malta the first European – and the first EU – country to ban CT**. The comprehensive bill broadly defines "conversion practices" as:

> […] any treatment, practice or sustained effort that aims to change, repress and, or eliminate a person's sexual orientation, gender identity and, or gender expression; such practices do not include -
>
> (a) any services and, or interventions related to the exploration and, or free development of a person and, or affirmation of one's identity with regard to one or more of the characteristics being affirmed by this Act, through counselling, psychotherapeutic services and, or similar services; or
>
> (b) any healthcare service related to the free development and, or affirmation of one's gender identity and, or gender expression of a person; and, or
>
> (c) any healthcare service related to the treatment of a mental disorder.[118]

The Maltese ban criminalises the practice of CT in **both professional and non-professional settings**, a provision later adopted also by Germany, France and Spain.[119] In doing so, the law establishes different **sanctions**, charging **non-professional** cases with a fine (*multa*) between 1.000–5.000 EUR, up to five months' imprisonment, or a combination of both.[120] Notably, the prescribed punishment under this sub-provision increases in instances where an individual performs conversion practices on a **vulnerable** person. In contrast, **professionals** found guilty under this law shall be liable to a fine of 2.000–10.000 EUR, or imprisonment ranging from three months to one year, or again, a combination of both.[121] Therefore, **all individuals are prohibited from practicing and advertising CT, irrespective of whether compensation is received for the service**.

In this regard, the ILGA report notes that the scope of the Maltese provision (the first of its kind in Europe) is broader than its Brazilian equivalent (the first in the world, see section 2.1), given that:

> […] under the Brazilian ban only psychologists are encompassed by the law. Under the Maltese law the term "professional" refers to a person who is in possession of an official qualification or a warrant to practice as a counsellor, educator, family therapist, medical practitioner, nurse, pathologist, psychiatrist, psychologist, psychotherapist, social worker, or youth worker.[122]

As previously alluded to, the law is applicable to **vulnerable** people, who are broadly defined as **minors** under 16 years of age, people suffering from **mental disorders**, and people deemed vulnerable by a court due to their **personal circumstances**. The latter allows adults to seek redress when their "consent" to conversion therapy was coerced, such as, when dependent on family or financial support.[123]

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[117] Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (2016) – Act No. LV of 2016, available – in both Maltese and English – at https://www.parlament.mt/media/81828/act-lv-sexual-orientation-gender-identity-and-gender-expression-act.pdf.
[118] Article 2 of Act No. LV 2016.
[119] Ibid, Article 3(a) and 3(b).
[120] Ibid, Article 4(1).
[121] Ibid, Article 4(2).
[122] ILGA World, *Curbing Deception: 'Conversion Therapy' Report.*
[123] Ibid.

2.2.4.3. Criticism of the legislation

The **Maltese Catholic Church** released a position paper strongly opposing the law and calling this legislation a "draconian restriction" that would "affirm the superior status of homosexuality over heterosexuality", based on the fact that it penalises CT exclusively for homosexual persons.[124] While the Church raised its concern that this legislation allows for CT that "assists a heterosexual to become homosexual",[125] it did not provide any statistics or information about such alleged practices. The position of the Church was defended in the paper also by making *ad hoc* references to human rights provisions in the Maltese Constitution and the ECHR. Article 32 of the Maltese Constitution affirms that "every person in Malta is entitled to the fundamental human rights and freedoms of the individual whatever one's 'sex, sexual orientation or gender identity' in the enjoyment of one's 'private and family life'."[126] The Catholic Church, therefore, stated that the law contravened this constitutional provision and guarantees of equality by discriminating between heterosexuals and homosexuals, as the former are able to seek assistance in changing their sexual orientation, whereas the latter's private life and capacity to seek CT is limited. Moreover, the position paper cited the decision of the European Court of Human Rights (ECtHR) in *Goodwin v UK* (1996).[127] In that case, the Court recognised the right of a person to determine and change their gender. Based on this finding, the paper argued that it is illogical to assume that to change gender constitutes a fundamental right, whilst providing counselling about gender (identity) change is considered a crime.[128]

2.2.5. Spain

2.2.5.1. Socio-legal background

Spain has become **one of the most LGBT-friendly countries in the world**, with same-sex **marriage** and the possibility for **adoption** by same-sex couples enacted into law as early as 2005.[129] In 2006, the Spanish Constitutional Tribunal affirmed that protection from discrimination on the grounds of sexual orientation is covered under the Constitution.[130] Since then, the principle of non-discrimination on the grounds of sexual orientation has been incorporated into a range of domestic frameworks, including Spanish asylum protection, education, and personal data regulations and penitentiary regulations, to name a few.[131] Moreover, LGBT+ culture has had a significant influence on Spanish literature, music, and films. Due to the decentralised system of governance and the legal power accorded to autonomous communities, **some of these had already introduced a ban on CT**, while others had not, when the national ban was introduced in February 2023.[132]

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[124] The Church in Malta, The Bill on Conversion Therapy: A Position Paper, The Church Malta, February 2016, p. 9 para 12, available at https://knisja.mt/files/article/Conversion_Therapy_FULL_-_for_print.145589961661.pdf. See also ILGA World, *Curbing Deception: 'Conversion Therapy' Report,* (hereinafter "A position paper").

[125] Ibid, para. 9.

[126] Ibid.

[127] Judgement 27/3 of the European Court of Human Rights, *Goodwin v. the United Kingdom* (1996), Application Number 17488/90.

[128] The Church in Malta, The Bill on Conversion Therapy: A Position Paper, The Church Malta, February 2016, p. 9 para 12, available at https://knisja.mt/files/article/Conversion_Therapy_FULL_-_for_print.145589961661.pdf, para 8, p. 7.

[129] ILGA-Europe, Rainbow Europe.

[130] Judgement of the Spanish Constitutional Tribubal [*Tribunal Constitucional*] 41/2006, 13 February 2006.

[131] Ministerio De Asuntos Exteriores Y De Cooperación, *Spain LGBT Good Practices*, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/Res_27_32/Spain.pdf.

[132] ILGA Europe, Rainbow Europe.

2.2.5.2. Legal measures

In February 2023, the Spanish Congress approved legislation addressing a broad range of issues connected to the LGBT+ community, marking a significant step towards the unification of legislative provisions in the country. This law is often addressed in brief as ***Ley trans*** (literally "trans-law"), although the act covers wider aspects of **LGBT+ protection** too.[133] Article 17 of this newly adopted law, originally proposed by the Ministry of Equality (*Ministerio de Igualdad),* **prohibits the use of conversion practices** targeted towards the modification of sexual orientation or gender identity, **regardless of whether the individual (or their legal representative) provided consent**.[134] Furthermore, it punishes violations of this ban through the issuance of a **fine or by terminating public subsidies** to groups that "incite or promote LGBTIphobia". The fines vary, depending on the gravity, **from 200 EUR to 150.000 EUR**. **Imprisonment is not envisioned** in the range of punishment.[135]

Though legal prohibition on conversion practices on LGBT+ people has only been recently implemented at the national level, counteractions have long been unfolding within **regional anti-discrimination legislation** introduced in Andalucía, Aragón, Canary Islands, Cantabria, Madrid, Murcia, Navarra, Rioja, and Valencia (see Annex III). All of these regional legislative acts specifically **prohibit conversion "therapy"** and – in Andalucía, Aragón, the Canary Islands, Cantabria, Madrid and Valencia – designate the intensity of the violation as "very severe", and stipulate **penalties** for violations. This prohibition is addressed chiefly to public (health) institutions. The definition, relating to conversion therapy, provided by regional laws not only refers to the "change" (*modificación*) of sexuality or gender identity, but they also extend the scope to include "conversion", "denouncement" or "suppression" (*conversion, anulación o supresión*).

Spanish regional laws cover a **very broad scope** of entities providing conversion "therapies", including medical, psychiatric, psychological, and religious or any other interventions. Furthermore, they **prohibit the advertisement** of such practices. Although the laws cover both sexual orientation and gender identity, gender expression remains inconsistently articulated, though it can perhaps be absorbed by the scope of gender identity. Navarra and Murcia, in this regard, have only promulgated legislation for the protection of transgender and intersex persons, without covering sexual orientation separately. The law of La Rioja targets the protection of transgender persons; however, regarding the ban on conversion practices, it applies the protection to all cases.

Spanish laws prohibit conversion "therapies" **regardless of the consent** of the person concerned or their representatives (*con independencia del consentimiento prestado por las mismas or por sus representantes legales*). Some of these regional laws specifically address public health services or

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[133] *Ley para la Igualdad real y efectiva de las personas trans y para la garantía de los derechos LGTBI* [The Law for the Formal and Substantive Equality of the Trans Persons and to Warrant the Protection of the LGBTI rights], BOE-A-2023-5366. It was approved by the Spanish Congress on 16 February 2023 and entered into force on 2 March 2023. Full text is available at https://www.boe.es/buscar/act.php?id=BOE-A-2023-5366. See also France 24, *Spain Sasses Trans Law Allowing Gender Self-Determination,* 16 February 2023, available at https://www.france24.com/en/live-news/20230216-as-spain-advances-trans-rights-other-early-adopters-hesitate.

[134] Article 17 stipulates as follows: "[*s*]*e prohíbe la práctica de métodos, programas y terapias de aversión, conversión o contracondicionamiento, en cualquier forma, destinados a modificar la orientación o identidad sexual o la expresión de género de las personas, incluso si cuentan con el consentimiento de la persona interesada o de su representante legal*" [The practice of aversion, conversion or counterconditioning methods, programs and therapies, in any form, aimed at modifying the sexual orientation or identity or gender expression of people is prohibited, even if they have the consent of the person concerned or of your legal representative].

[135] Articles 79 and 80 of the *Ley trans* (2023). See also Sam Jones, *Spain Passes Law Allowing Anyone over 16 to Change Registered Gender*, The Guardian, 16 February 2023, available at https://www.theguardian.com/world/2023/feb/16/spain-passes-law-allowing-anyone-over-16-to-change-registered-gender.

include a provision precluding the registration of companies offering CT. Since regional legislators cannot introduce prison sentences, these laws have been designating **administrative fines** as the major penalty. Yet the difference in the size of those fines between the Spanish regions, before the introduction of the federal legislation in 2023, is striking. After the introduction of the initial prohibition in Madrid, the size of such fines seems to have steadily increased in subsequent legislation in the other regions, with the highest maximum fine amounting to 150.000 EUR. Yet, the more recently adopted fines in Cantabria, the Canary Islands and La Rioja, appear to be equal or even lower than in Madrid's legislation. Furthermore, all these regional laws stipulate the option of **closing an entity** that provides conversion "therapies" for up to 3–5 years.

2.2.5.3. Criticism of the regulation

The previous regional laws counteracting CT have been criticised mainly by religious circles. The Secretary General of the Spanish Episcopal Church called the bans unconstitutional due to their interference with the freedom of religion.[136] Similarly, the Spanish Association of Christian Lawyers announced their intention to appeal these bans at the Constitutional Court.[137] Despite the prohibition, some dioceses have continued to provide CT under the guise of "pastoral and spiritual company" for those who "freely seek it".[138] The most recent *Ley trans* (2023) attracted most of the critique, including from some feminists, though more with regard to their concern about the provisions of this law that deal with policies making medical gender reassignment easier, rather than with CT *per se*.[139] The **UN experts hailed this new legislation, in particular, commending the inclusion of the ban on CT**.[140]

2.2.6. Legislative developments and projects in other EU Member States

Proposals for banning conversion practices have been introduced in several other Member States, such as Belgium,[141] Ireland,[142] the Netherlands,[143] Poland,[144] and Portugal.[145] In **Cyprus, Belgium, Portugal, Austria and Ireland** important developments took place more recently. Many of those proposals explicitly mimic other countries' existing legislation.

On 25 May 2023, the Parliament of **Cyprus** adopted a draft law banning conversion therapy on LGBT persons, which amends the penal code by defining as a criminal offence any practice, technique or service by any person aiming to convert, suppress or eradicate sexual orientation, gender identity or the gender expression of a person. The penalties foreseen are imprisonment for **up two years and/or a fine of maximum 5.000 EUR**. **Aggravating circumstances** apply in case the victim is a minor or an individual in a vulnerable position due to illness, disability, mental condition, or a dependent or

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136 Infovaticana, *La Ley LGBT es anticonstitucional y la sanción a Elena Lorenzo nos preocupa,* Infovaticana 26 September 2019, available at: https://infovaticana.com/2019/09/26/la-ley-lgtb-es-anticonstitucional-y-la-sancion-a-elena-lorenzo-nos-preocupa/.

137 ILGA Curbing Deception Report (n 17).

138 BBC World News, *Spanish Catholic Church Probed over "Gay Conversion" Courses*, BBC, 2 April 2019, available at https://www.bbc.com/news/world-europe-47785097; Conor Faulkner, *What is Spain's 'Trans Law' and Why is It Controversial?*, The Local, 25 November 2022, available at https://www.thelocal.es/20221125/iin-depth-what-is-spains-trans-law-and-why-is-it-controversial.

139 See BBC News, *Spain Approves Divisive Transgeder Bill*, 22 December 2022, available at https://www.bbc.com/news/world-europe-64069974.

140 Office of the High Commissioner – United Nations, @Spain: UN Experts Hail New Feminist Legislation@, 21 February 2023, available at: https://www.ohchr.org/en/press-releases/2023/02/spain-un-experts-hail-new-feminist-legislation.

141 Proposition de loi interdisant les pratiques de réorientation sexuelle (2019).

142 Prohibition of Conversion Therapies Bill (2018); Mental Health (Capacity to Consent to Treatment) Bill (2021).

143 *Wetsvoorstel strafbaarstelling conversiehandelingnen* (2022).

144 *O zakazie praktyk konwersyjnych* (2019).

145 *Projeto de Lei 838?XIV/2 Reforça a proteção sexual, da identidade e expressão de género e das características sexuais* (44.a alteração ao Código Penal) 2021.

influential relationship, or if a person refers another individual, for whom they hold legal guardianship to undergo such practices. In these cases, **prison sentences go up to three years and the fine to 10.000 EUR**. **Advertising** conversion therapies is prohibited and punishable by up to **two years in jail and/or a fine up to 5.000 EUR**. The provision of advisory, psychological, and medical services "relating to the exploration, free development and/or affirmation of sexual orientation, gender identity or gender expression, as well as the provision of scientifically established clinical practices by specialised health professionals, provided these are carried out with the purpose of dealing with situations related to the sexual health of individuals" are permitted. According to media articles, a last-minute amendment also passed, whereby the provision of "advice" to LGBT+ persons is also allowed, notably by priests.[146] [147]

The **Belgian** State Secretary for Gender Equality, Equal Opportunity and Diversity announced in **November 2022** the approval of a draft law by the Belgian government, according to which conversion practices would be punishable by **imprisonment of one month to two years** and/or a **fine of 100 EUR to 300 EUR. Aggravating circumstances** to be considered by courts are: whether the offence was committed by a person in a recognised position of trust, authority or influence over the victim, and whether the offence was committed against a minor or a person in a vulnerable situation. Suggesting or inciting conversion practices, directly or indirectly, would also be penalised. People convicted of conversion practices could be prohibited by courts from carrying out a **professional or social activity** related to the commission of these offences for a maximum period of five years.[148] The draft law was examined and approved by the Justice committee of the Belgian Parliament end of June 2023 unanimously, with one abstention.[149] It reportedly now foresees slightly higher sanctions, including imprisonment between **8 days and two years** and a fine of between **208 and 2.400 EUR. Suggesting, inciting or advertising conversion practices is criminalised.** The law will enter into force when adopted by the Belgian Parliament.[150]

In April 2023, media reported that the Parliament of **Portugal** supported in principle a package of draft laws on LGBTIQ rights, including a ban on conversion therapies, with penalties of **up to two years imprisonment** for anyone found to be responsible for practices that "facilitate or promote" such "therapies."[151] The previous law proposals foresaw to introduce disciplinary proceedings against professionals providing conversion practices, along with three years of imprisonment for those facilitating such practices.[152]

In **Austria**, media reported in June 2023 that the government had yet to find an agreement on whether the ban should cover only sexual orientation, or also gender identity and gender expression. This led

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146 Elias Hazou, *Parliament passes bill criminalising conversion therapy*, CyprusMail, 25 May 2023, available at https://cyprus-mail.com/2023/05/25/parliament-passes-bill-criminalising-conversion-therapy/.

147 Pavlos Neophytos, *Cracking down on 'Conversion Therapies': Parties positions and ethical concerns unveiled*, KNEWS, 23 May 2023, available at https://knews.kathimerini.com.cy/en/news/cracking-down-on-conversion-therapies-parties-positions-and-ethical-concerns-unveiled.

148 Maïthé Chini, *Belgium bans 'conversion therapy' for LGBTQ people*, The Brussels Times, 18 November 2022, available at https://www.brusselstimes.com/323548/belgium-bans-conversion-practices-for-lgbtq-people.

149 See the text of the draft law as submitted to the Belgian Parliament: https://www.lachambre.be/FLWB/PDF/55/3429/55K3429001.pdf

150 Anne-Sophie Gayet, *Belgium to criminalise conversion therapy*, Euractiv, 28 June 2023, available at https://www.euractiv.com/section/politics/news/belgium-to-criminalise-conversion-therapy/.

151 The Brussels Times with Belga, *Portugal to ban LGBTQ conversion therapy*, The Brussels Times, 22 April 2023, available at https://www.brusselstimes.com/468502/portugal-to-ban-lgbtq-conversion-therapy.

152 Ibid [See *Projeto de Lei 838?XIV/2 Reforça a proteção sexual, da identidade e expressão de género e das características sexuais* (44.a alteração ao Código Penal) 2021].

to the postponement of the intended tabling of the bill, which would have been a follow up to the unanimous adoption of a resolution to ban conversion therapies related to sexual orientation in 2021.[153]

In May 2023, the **Irish** Minister for Children, Equality, Disability, Integration and Youth stated his and the **government's intention to work for the approval of a law in 2024 to ban and criminalise conversion therapies**, following the publication of a report by the Trinity College Dublin commissioned by the government.[154] The previous draft proposal, that evolved and lapsed in 2019, mimicked the structure of the Maltese legislation, but unlike the latter, it did not include a category of "vulnerable persons". Therefore, had it been adopted into law, it would not have stipulated stricter sanctions for the application of conversion practices on minors like the current legislation does, for example.[155] A subsequent 2021 proposal gave 16– 17 year old minors the possibility to override consent to conversion practices, but did not prohibit such "treatments" *per se*.[156] The innovative aspect of the Irish proposal concerns the prohibition of "any person to remove a person from the State for the purposes of conversion therapy", envisaging a penalty twice as high as for performing such a practice on Irish territory. Furthermore, the proposal includes a clause on global jurisdiction with regard to Irish citizens performing such therapies abroad whenever such a practice also constitutes an offence in that foreign entity.[157]

The Dutch Parliament has called for a ban on several occasions (in particular, in 2019 and 2021).[158] This has led to a lengthy study commissioned on the matter.[159] However, the Dutch government did not consider to legislate in this area following the study and first aspired to develop a code of conduct for religious bodies in the country. In opposition to the government's reluctance to legislate in this area, several parties (D66, VVD, PvdA, GroenLinks, SPs and PvdD) submitted a **parliament initiative law in February 2022**.[160] The proposed legislative provision is equally applicable to professionals and non-professionals practising CT, regardless of whether the individual is a minor or an adult.[161] However, should the individual be a health care professional they may be additionally disbarred from practising their profession. The new law would establish 22.500 EUR in fines and imprisonment ranging from six months to one year for offenders, with the term of imprisonment increased to two years should the

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153 Chiara Swaton, *Austria's proposed conversion therapy ban faces roadblock over transgender rights*, Euractiv, 15 June 2023, available at https://www.euractiv.com/section/politics/news/austrias-proposed-conversion-therapy-ban-faces-roadblock-over-transgender-rights/.

154 Nicole Lee, *LGBTQ+ campaigners welcome Cabinet update on conversion therapy ban in Ireland*, Yahoo!news, 20 June 2023, available at https://uk.news.yahoo.com/lgbtq-campaigners-welcome-cabinet-conversion-152022135.html; see the report "An Exploration of Conversion Therapy Practices in Ireland" at https://nursing-midwifery.tcd.ie/news/assets/pdf/TCD_Conversion_Practices_Full_Report.pdf.

155 Ibid.

156 Ibid.

157 Ibid.

158 See Global Equality Caucus, Ban Conversion Therapies Now!. See also De Standaard, *Ook in Nederland wordt "homogenezingstherapie" strafbaar,* De Standaard, 27 January 2021, available at https://www.standaard.be/cnt/dmf20210127_94983704).

159 See Anton van Wijk, A., Joey Wolsink and Gerine van Barneveld, *Voortgangsrapportage: Een exploratief onderzoek naar pogingen tot het veranderen van seksuele gerichtheid en genderidentiteit in Nederland,* Openoverheid.nl, 20 May 2020, available at https://open.overheid.nl/repository/ronl-7d224646-698c-4cc0-ba1e-761fa7c0071b/1/pdf/onderzoek%20naar%20pogingen%20tot%20het%20veranderen%20van%20de%20seksuele%20gerichtheid%20en%20genderidentiteit%20in%20Nederland.pdf).

160 Ibid. See Ministerie van Volksgezonheid, *Beleidsreactie rapport "Voor de verandering",* Ministerie van Volksgezonheid, Welzijn en Sport, 28 May 2021, available at https://open.overheid.nl/repository/ronl-6b6880c8-b289-4f15-8559-8759d2a34dc2/1/pdf/kamerbrief-over-beleidsreactie-rapport-voor-de-verandering.pdf.

161 Overheid.nl, *Wetsvoorstel strafbaarstelling conversiehandelingen,* available at https://www.internetconsultatie.nl/conversietherapie/b1#header1.

offending act be committed repeatedly or against two or more individuals.[162] Earlier back in 2012, the Dutch government excluded the coverage of conversion practices, as well as of the organisations providing them, from insurance reimbursement.[163]

A **Polish proposal** was put forward in 2019, but did not find traction and lapsed after the elections that same year.[164] It envisaged a ban on conversion practices even with the consent of the person concerned ("*nawet za zgodą zainteresowanego*").[165] In 2020, the Polish Ombudsman challenged the Prime Minister to prohibit such practices – while the government planned, with the support of the Polish Episcopal Conference, to establish church-controlled counselling centres "to regain sexual health and natural sexual orientation".[166]

2.3. Summary and comparison of national regulations

This chapter examined the legal and policy regulations of CT in a number of relevant EU and non-EU States from a comparative perspective. The analysis revealed that a **growing number of States (in particular across the Americas and Europe), are taking measures to counter CT**.

States mainly counter CT either by relying on specialised (medical, psychiatrist or psychological) **professional associations**, which are charged with taking self-regulatory measures against those members administering conversion practices, including by withdrawing their professional licenses (Brazil, Albania, Israel); or by directly enacting **legal bans** prohibiting such practices, imposing sanctions such as imprisonment and fines (Ecuador, Canada, several States in the US, New Zealand, Iceland, France, Germany, Greece, Malta, Spain, Cyprus). The analysis reveals that there is a **growing trend towards the adoption of such legislative bans**.

This trend emerges also **among EU Member States**, as a growing number of them have adopted **laws banning CP**, notably **France, Germany, Greece, Malta, Spain and Cyprus.** Their laws differ in various ways. For instance, in terms of the material scope of application, Greece applies the ban on practicing CT only to **medical professionals**, while the other States apply the ban to anybody (France, Germany, Malta, Spain). The personal scope of application also varies, as some States apply the ban only to **minors and vulnerable adults** (Germany, Greece, Malta) whilst others apply it to **adults as well**, regardless of consent (France, Spain, Cyprus). **Advertising** CP is prohibited in all States. **Aggravating circumstances** are foreseen in a majority of States (France, Malta, Spain and Cyprus). **Sentences** are foreseen in all examined States and include imprisonment for all states except Spain, and fines in all of the examined Member States. Concerning **imprisonment**, the highest maximum sentence is foreseen in France and in Cyprus (2 years) and the lowest in Germany and Malta (1 year), with Greece leaving the matter to the judges' decision. Concerning **fines**, the highest maximum fine is foreseen in Spain (150.000 EUR), followed by France and Germany (30.000 EUR), with the other Member States having lower maximum fines (10.000 EUR in Malta, 5.000 EUR in Cyprus), and Greece leaving it to the judges' decision.

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[162] Ibid.

[163] AD, *Homotherapie niet meer vergoed door zorgverzekeraars,* AD, 5 June 2012, available at https://www.ad.nl/binnenland/homotherapie-niet-meer-vergoed-door-zorgverzekeraars~a9ea2026/.

[164] See European Parliament, European Parliament Research Service, *Bans on Conversion "Therapies" – The Situation in Selected Member States*, PE 733.521, 7 June 2022.

[165] Ibid.

[166] Ibid.

Furthermore, **draft laws** banning CT have been tabled and are being discussed in several States, including EU Member States like Belgium, Portugal, Austria, Ireland, the Netherlands, and non-EU States like Norway, the UK and Switzerland.

3. COUNTERING CONVERSION PRACTICES AT THE EU LEVEL

KEY FINDINGS

- The **European Parliament** has repeatedly criticised and condemned conversion practices, calling on Member States to ban them. Members of Parliament have also called for an **EU-wide ban**. Both the Commission and the Council Presidency have recognised that such practices are harmful and suggested exchange of good practices and measures at national level. This chapter examines the EU legal framework and the possibilities for the EU to adopt measures to counter and ban CP at European level.
- The Treaties allow the EU to adopt **measures against discrimination** on the basis of **Article 19 TFEU**. On this basis, the **Framework Equality Directive** was adopted in 2000, prohibiting discrimination in employment on grounds of, inter alia, sexual orientation. In 2008, the Commission proposed a **draft Directive** to extend protection beyond employment to encompass other areas such as education, goods and services and social protection. However, the proposal remains blocked in the Council since then. Both texts foresee effective, proportionate and dissuasive **sanctions** for breaches of the directives.
- A ban on CP could be based on anti-discrimination law, for example by inserting such ban: (a) in the 2008 Commission proposal; or (b) in a proposal amending the 2000 Framework Equality Directive to extend its material scope beyond employment; or (c) in a new directive specifically aimed at introducing a ban on CP, or (d) in a new directive on discrimination based on sexual orientation, gender identity and gender expression. While these options are possible in theory, anti-discrimination directives need to be approved by **unanimity in the Council**: this requirement has an impact on the chances of approval of the ban on CP, as the blockage of the 2008 Commission proposal in the Council demonstrates.
- States have mostly introduced bans on CP through **criminal law**. At EU level, Article 83(1) TFEU lists a number of **Euro-Crimes** upon which the EU can adopt legislation. Additional crimes can be added upon a proposal of the Commission to be adopted by a decision of the **Council** by **unanimity** and with the consent of the EP. Subsequently, the Commission shall make a legislative proposal to establish minimum rules concerning the definition of criminal offences and sanctions, which should also be approved by ordinary legislative procedure (co-decision by the EP and the Council).
- A ban of CP based on EU criminal law would consequently require adding CP, or homophobia (covering CP), to the list of Euro-crimes, followed by a Commission proposal defining the crime(s). The **unanimity** in the Council, the length of the procedure, as well as the requirement for Euro-crimes to be "in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis" represent challenges in achieving a Euro-ban on CP through criminal law.
- Still, the Commission has recently proposed the addition of **hate speech and hate crime** to the list of Euro-crimes, which could create a possibility for CP to be covered within this framework, provided that the proposal achieves unanimity in the Council. Alternatively, since the list of Euro-crimes include sexual exploitation of **children**, Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography could be amended to cover CP and ban such practices when committed on minors.
- While regulations governing the **free movement of services** (Article 59 TFEU), the **internal market** in the EU (in particular, Article 114 and 115 TFEU and rules on misleading advertising), and **health policies** (Article 168 TFEU) raise doubts on whether they can be used to ban conversion practices, they may still support, justify and explain the necessity of EU action against conversion practices.
- The Commission could issue a non-binding **Recommendation** based on Article 292 TFEU calling on EU Member States to ban CP and provide guidance on the basis of the Independent Expert and of the Commissioner on Human Rights reports. The use of Article 352 TFEU on subsidiary powers requires unanimity in the Council.
- The recent report by the **CoE Commissioner for Human Rights** called on European States to ban on CT, stating that conversion practices "are irreconcilable with several guarantees under the European Convention on Human Rights (ECHR)". Given the close interconnections between the EU and the CoE on matters of protection of fundamental rights, this call further reinforces the reasons for EU Member States and for the EU to take action against CT and ban them.

3.1. European Union

In this chapter, the study will explore the legal and political possibilities for the EU to take action to counter and ban CP - as called for by the UN independent expert, the CoE Commissioner and the EP - on the basis of the current EU Treaties and laws. First, the analysis examines the stance and actions taken by EU institutions, notably the EP, the Commission and the Council, in relation to CP and whether they have highlighted specific possible legal avenues to counter or ban CP at EU level. Subsequently, an examination of EU Treaties and legislation (including draft legislation) will be conducted to ascertain the feasibility of prohibiting or effectively addressing conversion practices at EU level: the areas examined encompass anti-discrimination law, criminal law, internal market regulations, and health policy. Then we will explore EU Treaties and legislation (including draft legislation), to determine whether CP could be outlawed or counteracted at EU level: among the areas explored are anti-discrimination law, criminal law, internal market and health policy. The relevance of the Council of Europe positions and their influence on the EU are also analysed in the concluding section of the chapter.

3.1.1. The stance and actions of EU institutions on conversion practices

The **European Commission** has acknowledged the harmful nature of conversion practices in its **LGBTIQ Strategy** and announced EU action in relation to the **exchange of best practices** to eradicate the phenomenon. In particular, the Commission referred to conversion practices in section 2.4. ("Protecting and promoting LGBTIQ people's bodily and mental health") of its LGBTIQ Equality Strategy 2020-2025, and affirmed as follows:

> **Harmful practices** such as non-vital surgery and medical intervention on intersex infants and adolescents without their personal and fully informed consent (intersex genital mutilation), forced medicalisation of trans people and **conversion practices targeting LGBTIQ people may have serious bodily and mental health repercussions**. **The Commission will foster Member States' exchange of good practice on ending these practices.**

The Commission thus links such "harmful practices" to "serious bodily and mental health repercussions", fostering the exchange of good practices amongst Member States in "ending" CP [167]

The **Progress report** on the implementation of the LGBTIQ Equality Strategy 2020-2025 published by the Commission in 2023 states that "the Commission fosters Member States' exchange of good practice on ending harmful practices, for example, through LGBTIQ Equality Subgroup meetings". The report only mentions CP when reporting about the fact that Greece has banned conversion practices for minors, while **no specific EU action on CP is mentioned**.[168] The publication of the mid-term review of the Strategy scheduled for the end of 2023 will hopefully provide additional information on initiatives to counter CP already implemented or planned for the future.

The **European Parliament** has strongly condemned conversion practices and emphasised the imperative need to counteract increasing levels of hate speech and hate crime biases in its various

[167] Communication from the Commission on the "Union of Equality: LGBTIQ Equality Strategy 2020-2025", Brussels, 12.11.2020, COM(2020) 698 final, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0698.

[168] European Commission, Progress report on the implementation of the LGBTIQ Equality Strategy 2020-2025, https://commission.europa.eu/system/files/2023-04/JUST_LGBTIQ%20Strategy_Progress%20Report_FINAL_WEB.pdf

resolutions.[169] It notably welcomed initiatives prohibiting conversion practices in a **2019** resolution on fundamental rights, as follows:

> [the Parliament] **strongly condemns** the promotion and practice of LGBTI conversion therapies, and **encourages Member States to criminalise** such practices; […] also **strongly condemns the pathologisation of trans and intersex identities** […] considers that both sexual orientation and disability should be included in every catalogue of features protected against discrimination.[170]

In **2020**, the European Parliament deplored the Polish Episcopate's endorsement of conversion "therapy" targeting LGBT+ persons and reiterated its view that Member States should ban such practices. In its resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, the EP stated in paragraph 63:

> **Strongly deplores the Polish Episcopate's official position calling for "conversion therapy" for LGBTI persons**; reiterates the position of the Parliament **encouraging Member States to criminalise such practices** and recalls the May 2020 report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which calls on **Member States to adopt bans** on practices of "conversion therapy;[171]

The Parliament further reaffirmed its stance in **2021**, when it declared the EU an LGBTIQ Freedom Zone, as a direct response to the promotion of homophobic "LGBT-free zones" in certain regions of Poland at that time,[172] while noting that the unacceptable use of medication, psychotherapy and ritual cleansing in conversion practices has been reported in several Member States.[173] The Resolution also summarises the Parliaments arguments in this regard, in particular:

> […] whereas Parliament has already encouraged the Member States to criminalise 'so-called conversion therapy' practices; whereas the May 2020 report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has called on Member States to adopt bans on practices of 'conversion therapy'; whereas the practice is still carried out in at least 69 countries worldwide, including in the European Union, where the **use of medication, psychotherapy and ritual cleansing in conversion therapy have been reported to have taken place in EU Member States**(10); whereas the practice has only been banned in two Member States of the European Union, namely Malta and Germany.[174]

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[169] In this regard, see also Natalie Alkiviadou and Uladzislau Belavusau, Rien Que de Mots: Counteracting Homophobic Speech in European and US Law, *International Journal of Discrimination and the Law*, vol. 21(4), 7 October 2021, pp. 374-400.

[170] European Parliament Resolution of 16 January 2019 on the Situation of Fundamental Rights in the European Union in 2017 (2018/2103(INI)), para 36.

[171] On these aspects, see also European Parliament, European Parliament Research Service, *Bans on Conversion "Therapies" – The Situation in Selected Member States*, PE 733.521, 7 June 2022.

[172] European Parliament Resolution of 11 March 2021 on the Declaration of the EU as an LGBTIQ Freedom Zone (2021/2557(RSP)), para K (hereinafter Resolution of 11 March 2021).

[173] For analysis, see Barbara Grabowska-Moroz and Anna Wójcik, Reframing LGBT Rights Advocacy in the Context of the Rule of Law Backsliding: the Case of Poland, *Intersections: East European Journal of Society and Politics*, vol. 7(4), 2021, pp. 85-103.

[174] Resolution of 11 March 2021.

The **European Parliament Intergroup on LGBT+ rights** exchanged letters to the Commission, in 2020 and in 2021, inquiring on the Commission' intentions and actions on CP and on the possible introduction of a Europe-wide ban.

The 9 October 2020 letter signed by 61 MEPs entitled "so-called 'conversion therapy' practices and their impact on LGBT persons: the need for an EU-wide ban",[175] was addressed to Commission Vice-President and Commissioner for Values and Transparency, Věra Jourová; Commissioner for Equality, Helena Dalli; and Commissioner for Health and Food Safety, Stella Kyriakides. In the letter the MEPs acknowledged the reports on conversion practices (CP) published by the International Rehabilitation Council for Torture Victims, the UN Independent Expert, and the European Parliament reports that condemned CP and urged for its prohibition. The letter also stated that "in the absence of a Horizontal Anti-Discrimination Directive which would have made discrimination on sexual orientation grounds in health matters illegal, the EC has a responsibility to act. Given the shared competence of the EU in public health under article 168 TFEU and in the area of freedom, security and justice under article 83 TFEU, the European Commission could legislate on this matter." In their inquiry, MEPs furthermore asked the Commission whether intended to "initiate a legislative proposal setting in place an EU-wide ban on any form of "conversion therapy" and if not, "what concrete actions has it undertaken until now and which actions is it currently undertaking or foreseeing to in order to support Member States in banning this practice? Is it actively promoting national bans already adopted to other Member States as good practices?"

The Intergroup's letter dated 10 February 2021 aimed to provide a follow-up to the Commission's reply on actions regarding CP.[176] Addressed directly to Commissioner for Equality, Helena Dalli, the letter stated: "From your response, we understand that **the Commission will not propose EU-wide legislation with the effect of banning these practices, owing to the competence of Member States to define their own health policy and the organisation of health services**." The Intergroup subsequently restated its inquiry to the Commission regarding the European Union's efforts to assist Member States in prohibiting conversion practices (CP). It asked whether the Commission promotes such bans as good practices in the framework of the activities foreseen by the November 2020 LGBTIQ Equality Strategy. It also added questions on exchanges of good practices, legal mappings and studies on CP, its impact and its compatibility with fundamental rights, available instruments to ensure Member States uphold fundamental rights and their eventual activation, and further activities at UN level and with Member States.

MEPs additionally employed **parliamentary questions** to inquire about the Commission's stance and actions to combat and prohibit CP in the EU. The Commission has repeatedly answered that since the definition of **health policies and the organisation of health services fall within the competences of the Member States, the Commission cannot take action on CP-related matters.** While this might be correct under current EU law and in specific cases of CP, the Treaties offer possibilities for the EU and the Commission to counter CP and possibly ban it at EU level.

In a **2015** parliamentary question, an MEP asked the Commission whether it shares the view that 'conversion therapies' violate fundamental human rights and what steps will be taken to promote a

[175] "Inaptly named 'conversion therapies' for LGBT people", 17.6.2015, Marina Albiol Guzmán (GUE/NGL), Question for written answer E-009931-15 addressed to the Commission, https://www.europarl.europa.eu/doceo/document/E-8-2015-009931_EN.html

[176] Answer given by Mr Andriukaitis on behalf of the Commission, 26.8.2015, see https://www.europarl.europa.eu/doceo/document/E-8-2015-009931-ASW_EN.html

ban on CT in the Member States.[177] In its reply, the Commission underlined that while it "is committed to fighting discrimination and to upholding, within the limits of its competences, the fundamental rights of all persons, including LGBTI persons, as enshrined in the EU Charter of Fundamental Rights", it "however can only act within the limits of its powers. According to the Treaty on the Functioning of the European Union, the **definition of health policies and the organisation and delivery of health services and medical care** is primarily the responsibility of each **Member State**."[178]

In a **2018** parliamentary question, an MEP raised the fact that "In Belfast, it was recently reported that a church is facilitating a course which, under the guise of the Christian virtue of celibacy, demands that gay couples cease all sexual relationships." Subsequently, the MEP inquired whether the Commission condemns such courses, and what actions it intends to take against such practices.[179] In its answer, the Commission noted that "EC law only covers discrimination based on sexual orientation in the context of employment, and no formal competence of the Commission exists regarding the area mentioned in the question". The Commission, furthermore, added that this area falls within the **competence of Member States**: "In such cases, it is for Member States, including their judicial authorities, to ensure that fundamental rights are effectively respected and protected in accordance with their national legislation, including their constitution, and international human rights obligations."

Interestingly, the Commission also clarifies that Member States shall prevent religious practices that run counter fundamental rights of others. In the reply, the Commission recalled that Article 17 TFEU states that the EU is "neutral towards the organisation by the Member States of their relations with churches and religious associations and communities" and that for these reasons, it is not possible for the Commission to follow up on the issue. But the Commission also recalls that "while protecting the freedom of religion or belief, **Member States should prevent practices** associated with the **manifestation of a religion or belief**, or perceived as such, when these run against the need to protect the fundamental rights and freedoms of others, such as the right to human dignity, the right to respect for private and family life and the right to non-discrimination on grounds of sexual orientation, sex characteristics or gender identity."[180]

In a **2021** parliamentary question on "Banning conversion therapies in the EU", the Commission was asked about the action taken to promote national bans on CP since the adoption of the LGBTIQ Strategy.[181] In its answer, the European Commission noted that "the definition of **health policies and the organisation of health services fall within the competences of the Member States**. However, when exercising their competence, Member States must ensure that fundamental rights are effectively

[177] "Inaptly named 'conversion therapies' for LGBT people", 17.6.2015, Marina Albiol Guzmán (GUE/NGL), Question for written answer E-009931-15 addressed to the Commission, https://www.europarl.europa.eu/doceo/document/E-8-2015-009931_EN.html

[178] Answer given by Mr Andriukaitis on behalf of the Commission, 26.8.2015, see https://www.europarl.europa.eu/doceo/document/E-8-2015-009931-ASW_EN.html

[179] Question for written answer to the Commission (from Martina Anderson), E-001339-18, 2 March 2018. Available at https://www.europarl.europa.eu/doceo/document/E-8-2018-001339_EN.html.

[180] European Parliament, *Answer given by Ms. Jourová on behalf of the Commission,* Parliamentary Question - E-001339/2018(ASW), 30 April 2018, available at https://www.europarl.europa.eu/doceo/document/E-8-2018-001339-ASW_EN.html (hereinafter, Parliamentary Question E-001339/2018).

[181] See European Parliament, *Priority Question for Written Answer*: *Banning Conversion Therapies in the EU,* Parliamentary Question P-003214/2021, Claudia Gamon (Renew), 18 June 2021, available at https://www.europarl.europa.eu/doceo/document/P-9-2021-003214_EN.html.

respected and protected, in accordance with their national legislation and international human rights obligations." [182]

The **2021** parliamentary question tabled by a group of MEPs on the "**Commission recommendation on the prevention of harmful practices**" asked the Commission whether the recommendation - mentioned by the gender equality strategy and the LGBTIQ equality strategy - would expressly cover "the practices of forced abortion, forced sterilisation, intersex genital mutilation, forced medicalisation of trans persons and so-called conversion therapies for LGBTIQ persons" and whether measures would be proposed to counter them.[183] In its reply, the Commission states that the Recommendation on harmful practices would have an intersectional approach focused on women and girls.[184]

The parliamentary question of June **2022** on "Tackling harmful practices, such as '**conversion therapies**', against LGBTQIA+ people" inquired about the Commission's plans to urge Member States to **ban** harmful practices such as CP throughout the EU and take an initiative at EU level.[185] In its answer, the Commission recalls that, as announced in the LGBTIQ Strategy, it "will foster the exchanges of good practices with Member States on ending harmful practices, including conversion practices" and confirmed that it will "present a recommendation on the prevention of harmful practices", but focused only on women and girls. [186]

The **Council** of the European Union examined draft Council **conclusions on the safety of LGBTI persons** in the European Union at the Justice and Home Affairs meeting of 9 June 2023. The text discussed contained a reference to CP and Member States were invited, within their national competences, to:

> **Protect** LGBTI persons, both online and offline, from hate crimes, hate speech, acts of violence and **harmful practices, including being subjected to 'conversion practices'** for instance by developing methods to identify, record and investigate offences committed with an anti-LGBTI motive as well as by encouraging the reporting of such offences by victims and witnesses or by providing training to law enforcement personnel, judicial authorities, agencies or organisations delivering victim support services and other relevant authorities.[187]

Discussion did not lead to reach a consensus on the conclusions, as the representatives of the Polish and Hungarian governments expressed opposition. The Presidency, held by Sweden, concluded that 25 delegations supported the text in its entirety and the "**Presidency conclusions** on the safety of

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[182] European Parliament, *Answer given by Ms. Dalli on behalf of the European Commission*, Parliamentary Question - P-003214/21 (ASW), 12 August 202, available at https://www.europarl.europa.eu/doceo/document/P-9-2021-003214_EN.html.

[183] Commission recommendation on the prevention of harmful practices, 17.11.2021, Question for written answer E-005168/2021to the Commission, https://www.europarl.europa.eu/doceo/document/E-9-2021-005168_EN.html

[184] Answer given by Ms Dalli on behalf of the European Commission, 15.2.2022, https://www.europarl.europa.eu/doceo/document/E-9-2021-005168-ASW_EN.html.

[185] Tackling harmful practices, such as 'conversion therapies', against LGBTQIA+ people, 9.6.2022, Question for written answer E-002091/2022 to the Commission, Assita Kanko (ECR), see https://www.europarl.europa.eu/doceo/document/E-9-2022-002091_EN.html

[186] Answer given by Ms Dalli on behalf of the European Commission, 26.8.2022, https://www.europarl.europa.eu/doceo/document/E-9-2022-002091-ASW_EN.html

[187] See par.9, document available at: https://data.consilium.europa.eu/doc/document/ST-9942-2023-INIT/en/pdf?utm_source=dsms-auto&utm_medium=email&utm_campaign=Presidency+issues+conclusions+on+the+safety+of+LGBTI+persons+in+the+European+Union

LGBTI persons in the European Union" were approved and published, becoming the first Council document mentioning CP.

It is worth noting, that the text, although not explicitly advocating for a ban, includes CP in a list of behaviours often criminalised at Member State level. These behaviours encompass hate crimes, hate speech, acts of violence and harmful practices, which specifically include "being subjected to conversion practices". Member States are then called to take measures pertaining to criminal law enforcement and notably to "identify, record and investigate offences committed with an anti-LGBTI motive ... by encouraging the reporting of such offences by victims and witnesses", as well as to "provide training to law enforcement personnel, judicial authorities, agencies or organisations delivering victim support services and other relevant authorities". The adoption of such conclusions - notwithstanding the unsurprising objections of Poland and Hungary, the two EU Member States currently under Article 7 TEU procedures, but also conditionality, Charter enabling conditions and infringement procedures - consequently represents a first positive step for the Council, as they acknowledge the fact that **conversion practices are harmful and that measures shall be taken to counter them**.

3.1.2. EU anti-discrimination law

This study identifies **EU anti-discrimination law** as a primary avenue for countering or prohibiting conversion practices at the EU level. CP target specifically individuals of the LGBT+ community on the basis of their sexual orientation, gender identity and gender expression. For this reason, they are discriminatory and violate the principle of equality, as also underlined by the UN Independent Expert and the CoE Commissioner. Prior to delving into potential actions that the EU could take to counter CP, based on anti-discrimination law and policies, this study will provide a brief overview of EU anti-discrimination legislation and the policies leading up to the "Union of Equality". It will specifically focus on LGBTIQ+ persons and discrimination based on sexual orientation.

Since the 1980s, the law of the EU has become a substantial transnational source of protection for the rights of LGBT+ persons in Europe.[188] The Rome Treaty (1957), which established the European Economic Community, contained a gender equality clause (nowadays Article 157 TFEU). In the 1990s, this provision played a pivotal role in safeguarding the employment rights of transgender persons on the basis of the jurisprudence of the Court of Justice of the European Union (CJEU). However, subsequent endeavours to advance similar legal protection for gay and lesbian equality at the Court of Justice, based on the EU sex-equality clause, were unsuccessful.

The **Amsterdam Treaty** (1997) sought to address this situation by extending the scope of protected grounds against discrimination in EU law. It included the **addition of sexual orientation**, amongst others, to the list of protected characteristics (nowadays **Article 19 TFEU**). In accordance with that Article, the Council has the authority to **combat discrimination** based on sex, racial or ethnic origin, religion or belief, disability, age or **sexual orientation**. This can be achieved through a **special legislative procedure, requiring unanimity and the consent of the European Parliament**. At the same time, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support any action taken by the Member States

[188] For a detailed analysis in the evolution of LGBT+ rights in EU law, see Uladzislau Belavusau, "Legislative and Judicial Politics of LGBT Rights in the European Union", in Don Haider-Markel (ed.), *Oxford Encyclopedia of LGBT Politics and Policy*, Oxford University Press, 2021. 1-14 (available at: https://www.oxfordreference.com/display/10.1093/acref/9780190677923.001.0001/acref-9780190677923-e-1309?rskey=5lplQe&result=55#acref-9780190677923-e-1309-div1-1).

in order to contribute to the achievement of the objectives referred in the main aforementioned provision. In addition, the provision on gender equality established in 1957 (now Article 157) stipulates the principle of equal pay for equal work. Consequently, it permits the European Parliament and the Council, when acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Based on these two provisions in primary EU law, with differing scopes and legislative procedures for adoption, the EU has adopted three major "equality" directives that shape the scope of EU secondary law in the realm of anti-discrimination measures. The first one is the 2006-recast of the **Directive 2006/54/EC** (also referred to in the literature as **"Equal Treatment" or "Sex Equality" Directive**) that covers, respectively, discrimination on the grounds of sex. The jurisprudence of the CJEU has subsequently extended the scope of protection of this Directive and of Article 157 to trans persons.[189] The Amsterdam Treaty permitted the EU Council to adopt the **Framework Equality Directive** (FED, or also Employment Equality Directive, EED, in literature) **2000/78/EC**.[190] This directive introduced minimum standards of protection against homophobia in employment across all Member States. Building upon the same provision in primary law, but extending its scope beyond employment to also cover education, goods and services and social protection, the Council has additionally adopted the so-called "**Race Equality Directive**" (or RED, 2000/43/EC). [191]

Figure 2: Secondary EU Anti-Discrimination Law

Sex	Racial & Ethnic Origin	Religion, Disability, Age, & Sexual Orientation
Directive 2006/54/EC (a.k.a. "Equal Treatment" or "Gender/Sex Equality" Directive)	**Directive 2000/43/EC** (a.k.a. "Race Equality Directive", or RED)	**Directive 2000/78/EC** (a.k.a. "Framework Equality Directive", or FED)

[189] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054. For analysis of this evolution, see Uladzislau Belavusau, *Legislative and Judicial Politics of LGBT Rights in the European Union*, in Don Haider-Markel (ed.), *The Oxford Encyclopaedia of LGBT Politics and Rights,* Oxford University Press, Oxford, 2020 available at https://www.oxfordreference.com/view/10.1093/acref/9780190677923.001.0001/acref-9780190677923-e-1309?rskey=MVcNO1&result=17.

[190] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0078.

[191] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043.

The FED has been used by LGBT+ litigants in their fight for equal working opportunities and pension rights at the CJEU. Furthermore, the introduction of EU citizenship by virtue of the Maastricht Treaty (1992) and the respective secondary law (the EU Citizenship Directive 2004/38/EC) have paved the way for a (limited) recognition in EU law of the status of same-sex couples, partners and spouses by granting them free movement rights (only).

Figure 3: Unequal Material Scope of the EU Equality Directives

GROUNDS FIELD	RACE	RELIGION	DISABILITY	AGE	SEXUAL ORIENTATION	SEX
Employment and Vocational Training	Yes	Yes	Yes	Yes	Yes	Yes
Education	Yes	No	No	No	No	No
Goods and Services	Yes	No	No	No	No	Yes
Social Protection	Yes	No	No	No	No	Yes

As shown in the Figure, the current EU anti-discrimination law framework based on Art. 19 TFEU is uneven in terms of grounds and areas covered, and protection from discrimination based on sexual orientation limited to employment and does not apply beyond that area, for instance to the areas of education, goods and services, social protection, health and media. To overcome such limitations and to apply the principle of equality for all grounds of discrimination and in all areas, **the European Commission proposed a new equality directive in 2008** with the aim of streamlining, strengthening and updating the existing anti-discrimination legislation within the EU. The proposal aimed at prohibiting discrimination on the grounds of age, disability, **sexual orientation**, and religion or belief in areas beyond employment such as **social protection, education, and access to goods and services**. The proposed directive also included provisions to strengthen protection against discrimination based on gender, particularly in the area of access to goods and services. It would have required Member States to take positive measures to promote gender equality and equality bodies to promote and monitor compliance with the directive. However, the proposal faced **opposition from several Member States and has not yet been adopted by the Council, after 15 years of debates**.[192] This blockage by the Council and by Member States was criticised repeatedly by the European

[192] Silvia Ellena, Lack of Commitment from EU Countries to Curb Equality Efforts Across the Block, *Euroactiv*, 29 November 2021, available at: https://www.euractiv.com/section/non-discrimination/news/lack-of-commitment-from-eu-countries-curbs-equality-efforts-across-the-bloc/.

Parliament,[193] while the Commission and Council Presidencies tried to re-launch the process multiple times, without success.[194]

Taking into account the current Treaties and the legislative setup in the area of EU anti-discrimination law, a **ban on conversion practices on LGBT+ persons may be achieved through anti-discrimination legislation based on Article 19 TFEU, by inserting it**:

(a) **in the 2008 Commission proposal**; or

(b) in a proposal **amending the Framework Equality Directive** (2000/78/EC) to extend its material scope beyond employment; or

(c) in a new directive aimed at introducing **specifically a ban on CP**, or

(d) in a new directive on discrimination based on **sexual orientation, gender identity and gender expression**.

While these options are possible ***in theory***, ***in practice*** anti-discrimination directives need to be approved by **unanimity in the Council** and through a special legislative procedure: this requirement has **a negative impact on the chances of approval of the ban on CP via anti-discrimination law**, as the 15 years-blockage of the 2008 Commission proposal in the Council sadly demonstrates. The same political reasons that have led a number of Member States like Poland and Hungary to constantly oppose the improvement of the rights of LGBT+ persons at the EU level, would apply most probably also to an initiative to ban CP at EU level.[195] Moreover, for a ban to materialize at the EU level, it is crucial that the **Commission** is both politically and legally convinced to propose such a measure, while obtaining the consent of the EU Parliament. Despite the presence of numerous obstacles in decision-making process, politics is the art of the possible, political circumstances change and what is improbable is not always impossible.

A ban based on anti-discrimination law could also impose **sanctions, even of criminal nature.** For instance, the Framework (Employment) Equality Directive (2000/78/EC) states that "(35) Member States should provide for **effective, proportionate and dissuasive sanctions** in case of breaches of the obligations under this Directive" and Article 17 provides for Sanctions, as follows:

> Member States shall lay down the rules on **sanctions** applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. **The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive**. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Similarly, the Race Equality Directive (2000/43/EC) states that "(26) Member States should provide for **effective, proportionate and dissuasive sanctions** in case of breaches of the obligations under this Directive." and Article 15 on Sanctions states that:

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[193] The latest EP resolution on the matter is the European Parliament resolution of 19 April 2023 on combating discrimination in the EU – the long-awaited horizontal anti-discrimination directive, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0111_EN.html

[194] See the latest Council progress report on the draft directive, available at : https://data.consilium.europa.eu/doc/document/ST-9043-2023-INIT/en/pdf

[195] Notes from Poland, "Poland vetoes EU LGBT statement and opposes domestic violence directive", 9 June 2023, see https://notesfrompoland.com/2023/06/09/poland-vetoes-eu-lgbt-statement-and-opposes-domestic-violence-directive/

> Member States shall lay down the rules on **sanctions** applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.[196]

As recalled by the Commission in its report on the application of the Racial Equality Directive and of the Employment Equality Directive, "the Directives do not prescribe specific measures and allow Member States to decide on suitable remedies for achieving the objectives pursued. Depending on the legal avenue chosen, these can take **various forms**, such as a **fine, compensation, an injunction for the wrongdoer to perform or refrain from certain action, publicising the wrongdoing, requiring an apology or imposing criminal sanctions**".[197]

It shall also be noted that EU **Equality Bodies (but also ombudsmen and national human rights institutions)** can play a relevant role in counteracting conversion therapies against LGBT people in case future eventual directives so provide, but also under the current set-up of EU anti-discrimination law. As also noted by the Commissioner for Human Rights, "several national human rights structures (such as ombudsman institutions, national human rights institutions, and other equality bodies) have started working on this issue, taking a firm position and in some cases providing human rights guidance to their governments on the need to combat SOGIE conversion practices. This is the case, for example, in Poland,[198] Scotland[199] and France[200]."[201]

Equality bodies are independent institutions established by EU Member States, which are responsible for promoting and monitoring the implementation of EU non-discrimination legislation at the national level. One way that Equality Bodies can counteract CT is by providing information and raising awareness about the harms and illegality of such practices. They can provide information on the legal framework at the EU and national levels, and highlight the risks and negative impacts of CT on the health and wellbeing of LGBT people, in accordance with the conclusions of EU institutions, such as, the European Parliament. Equality bodies can also provide support to victims of CT, by offering advice and guidance on how to report incidents of discrimination, and providing assistance in accessing legal remedies and support services.

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196 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0043.

197 Report from the Commission to the EP and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive'), COM/2021/139 final, see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0139&qid=1686584094520.

198 https://bip.brpo.gov.pl/pl/content/rpo-do-premiera-terapie-konwersyjne-powinny-byc-zakazane

199 https://sp-bpr-en-prod-cdnep.azureedge.net/published/EHRCJ/2022/1/25/8c18e05c-08ab-4c7d-992b-4b0467541d70/EHRCJS062022R1.pdf.

200 https://www.cncdh.fr/publications/rapport-orientation-sexuelle-identite-de-genre-intersexuation-de-legalite-leffectivite#:~:text=La%20CNCDH%20publie%20son%20rapport,%C3%A0%20l%27effectivit%C3%A9%20des%20droits%22&text=17%20mai%202022-,Dans%20le%20cadre%20de%20la%20mission%20confi%C3%A9e%20par%20le%20Premier,des%20personnes%20LGBTI%20en%20France.

201 https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people

Moreover, equality bodies can work with other stakeholders, such as healthcare professionals, civil society organisations, and LGBT+ associations, to develop and implement strategies to prevent and combat CT. This can include organising training sessions for healthcare professionals and other service providers, developing awareness-raising campaigns, and promoting good practices in service provision and support for LGBT+ people. In addition, equality bodies can monitor and report on the implementation of future EU non-discrimination legislation specifically adopted in relation to CT, and provide recommendations to policymakers and other stakeholders on how to strengthen and improve the legal framework and policies to better protect the rights of LGBT+ people. Equality bodies should pay particular attention to the inadmissibility of conversion practices used in Member States under the guise of psychological counselling or religious freedoms.

3.1.3. Free movement of services, internal market, health law and misleading advertisement

It has been observed that prohibitions on conversion "therapies" have led to a relocation of institutions offering such services to neighbouring States, or as in the case of Spain prior to the introduction of its state legislation in that area, to other regions.[202] When Germany issued such a ban, and due to the likelihood of Austria doing the same, German conversion "therapy" providers moved to Switzerland to enable the continuation of their "practices",[203] providing "treatments". In Madrid, Spain, the first person that was fined 20.001 EUR for performing conversion "therapies" moved to Toledo and transferred their business online.[204] This situation in itself calls for **consideration of the internal market rationale and for the implementation of a pan-EU prohibition on conversion practices** targeting on LGBT+ persons.[205] A series of questions emerge: could conversion practices be considered as "services" in the EU internal market? Could a possible European ban be based on Article 59 TFEU,[206] although the aim of the Article is the liberalisation of services? Or could the ban take the form of "measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market", as foreseen by **Article 114 TFEU (or 115 TFEU)** and as applied in the past to prohibit the marketing of some products in the internal market? The questions merit political and legal examination, notably by the institutions' legal services, which have often dealt with such issues in their (often internal) legal opinions.

Could CP be banned at EU level on the basis of health policy? When exploring the Treaties, it emerges clearly that **health policies** remain largely in the **competence of Member States**, with the EU only complementing national policies by supporting EU governments to achieve common objectives, pool resources and overcome shared challenges. In addition to formulating EU-wide standards for health products and services, the Union also provides funding for health projects across the EU. The EU works for better health protection through its activities, in accordance with Article 168 TFEU. EU action on health issues aims to improve public health, prevent diseases and threats to health (including those

202 European Parliament, European Parliament Research Service, *Bans on Conversion "Therapies" – The Situation in Selected Member States*, PE 733.521, 7 June 2022.

203 Ibid.

204 Ibid.

205 Except for the 2018 Irish proposal, the Member States adopting or envisaging projects of such laws so far have only focused on conversion practices conducted within their own territory.

206 Article 59 TFEU states: "1. In order to achieve the liberalisation of a specific service, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall issue directives. 2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods."

related to lifestyle), as well as to promote research. Article 168 TFEU (5) allows the EU to adopt incentive measures to protect and improve human health, **but explicitly excludes harmonisation of laws and regulations** of the Member States[207] and cannot consequently be used as legal basis to promulgate secondary legislation in the area of counteracting conversion practices *per se*. Having said this, its rationale can reinforce the justification for the adoption of such measures either through EU anti-discrimination or criminal law, as Article 168 TFEU maintains that a high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities and that Union action shall cover the fight against major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health.[208]

The European Commission published on 7 June 2023 a Communication on a comprehensive approach to **mental health**, which makes references to discrimination based on sexual orientation and LGBTIQ persons. It states that "discrimination on the grounds of sexual orientation, gender identity, gender expression, or sex characteristics can also have an impact on mental health, especially for young people. Psychological distress that comes from experiences of marginalisation, discrimination and stigmatisation ('minority stress') increases the risk of suicidal behaviour, self-harm or depression, and will be addressed in line with the LGBTIQ equality strategy 2020-2025".[209] Although at this stage it may be too early to conclude on the scope of EU involvement in shaping national and European mental health policies, it may be relevant for the EU institutions, notably for the Parliament and the Commission, to include in the discussion **CP as a matter of concern for mental health** in the EU (with the matter possibly even included in the future EU Action Plan on mental health).

Misleading advertisement constitutes another area of EU regulation that could be of relevance in relation to the prohibition of conversion practices. The **EU Directive on Misleading and Comparative Advertisement** (2006)[210] defines misleading advertising as "any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor";.[211] In a similar way, conversion practices on LGBT+ persons are based on the deceiving promise (often advertised under the disguise of therapeutic practices by licensed professionals) to "restore" or "cure" something that (a) does not require a cure, as it constitutes a natural type of sexuality and gender identity, and (b) in fact, is impossible to alter despite the fraudulent promise regarding the success of such conversion practices. Obviously, the nexus to the "*economic behaviour"* of the individuals consuming conversion practices as *services* is somewhat weaker, as it deals only with the types of conversion "therapies" that are administered for financial remuneration. Yet in substance, advertisement of such practices is

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207 Article 168 TFEU (5) maintains as follows: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States".

208 In accordance with this provision, Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. The Union shall complement the Member States action in reducing drugs-related health damage, including information and prevention.

209 https://health.ec.europa.eu/system/files/2023-06/com_2023_298_1_act_en.pdf

210 Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 Concerning Misleading and Comparative Advertising [codified version].

211 Ibid, Article 1.

misleading, and therefore it is in the interest of safeguarding the internal market to ban promotion of such practices. The recitals to the Directive (2006), in particular, maintain that:

> [3] Misleading and unlawful comparative advertising can lead to distortion of competition within the internal market.
>
> [4] Advertising, whether or not it induces a contract, affects the economic welfare of consumers and traders.
>
> [5] The differences between the laws of the Member States on advertising which misleads business hinder the execution of advertising campaigns beyond national boundaries and thus affect the free circulation and provision of services.[212]

Furthermore, the Directive (2006) provides a non-exhaustive list of examples of comparative advertising practices that are likely to be misleading, such as falsely claiming that a product is endorsed or approved by a third party, or using misleading visual or audio comparisons. However, since the act is a Directive, it grants discretion to the Member State to regulate these rules, allowing them to adopt additional measures or more precise lists of types of misleading and unlawful comparative advertisements as they deem necessary.

In theory, it is possible to include conversion practices in the list of misleading advertisements provided in the directive through a revision of it at the EU level. Additionally, Member States may independently choose to ban the advertisement of conversion therapies (CT) at the national level, citing the misleading nature of such practices and referencing the directive. However, this approach raises several questions about the efficacy of such an instrument in effectively countering CT in the EU.

The directive primarily focuses on commerce, trade, business, goods and services aiming to safeguard the interests of competitors. As a result, its nature raises doubts about the suitability of addressing CT within this context and through these comparatively weaker instruments, especially considering that Member States are already banning CT as a criminal offence, including its advertisement

If the EU were to implement measures to prohibit conversion practices, it is important to concurrently ban their advertisement in a contextual manner. This approach should consider the provisions outlined in the Directive to prevent potential consumers from being deceived by such "services". Additionally, it would help prevent the advertisement of such services in Member States or non-EU countries where such practices may be legally executed.

3.1.4. EU criminal law, hate speech and hate crime and protection of minors

An EU ban on conversion practices could be imposed through **criminal law**, following the example of many States that have adopted laws criminalizing such practices and imposing fines and sentences. The ban could be achieved by either adding a **specific Euro-crime related to CT** and adopting a subsequent directive, or by adding **hate speech and hate crime** to Euro-crimes, as already proposed by the Commission, and ensuring that the subsequent directive covers CT.

It is worth noting that prior to the entry into force of the Lisbon Treaty, the EU could adopt Framework Decisions concerning matters pertaining to police and judicial cooperation in criminal matters. An important Framework Decision is the **Council Framework Decision** 2008/913/JHA of 28 November 2008 on Combatting Certain Forms and Expressions of **Racism and Xenophobia** by Means of Criminal Law. While it would have appeared logical to propose its revision to incorporate a ban on CT as a form of homophobic hate crime, such a step would also require utilizing the new legal basis and instruments

[212] Ibid.

introduced by the Lisbon Treaty that replaced the Framework Decision. These new legal foundations and instruments will be examined in a later section of this chapter. In summary, the existing Framework Decision remains valid; however, any modifications to it necessitate the EU to possess competence in accordance with the amended Treaty. The amended Treaty introduced a specific competence for the EU to act exclusively on a predefined list of Euro-crimes, which currently does not include racism, xenophobia, hate crime, or hate speech - but that might include them in the future.

It is important to note that **Article 83.2 TFEU on the approximation of criminal laws and regulations of the Member States** – which could be the case for a ban on CT at EU level – conditions the adoption of directives to the existence of a previous "Union policy in an area which has been subject to harmonisation measures" and allows for the adoption of directives "establishing minimum rules with regard to the definition of criminal offences and sanctions" that are "essential to ensure the effective implementation of a Union policy". While there are no harmonised measures or a Union policy specifically addressing CT, there are harmonised measures and a Union policy in place regarding anti-discrimination in employment. However, as previously explained, there are also sanctions associated with violations of anti-discrimination laws. In the event that criminal sanctions are deemed necessary, this Article could be utilized. However, it is important to note that CP should already be encompassed within the scope of the anti-discrimination directive.[213]

a) Adding a specific Euro-crime related to CT

In accordance with the Lisbon Treaty, substantive criminal law can be harmonised based only on three different legal bases: Article 83(1) TFEU (to regulate "Euro-crimes"), Article 83(2) TFEU (to ensure the effective implementation of EU policies), and Art. 325(4) TFEU (to protect the EU's financial interests). In this respect, **the clause on "Euro-crimes" (Article 83(1) TFEU) could be employed by EU legislators to establish a punitive ban on conversion practices against LGBT+ people in all Member States**. This provision of EU primary law is restricted to the **exhaustive list of ten specific offences**, which constitute the so-called "**Euro-crimes**"): (1) terrorism, (2) trafficking in human beings, (3) sexual exploitation of women and children, (4) illicit drug trafficking, (5) illicit arms trafficking, (6) money laundering, (7) corruption, (8) counterfeiting of means of payment, (9) computer crime, and (10) organised crime.[214] Nonetheless, the list is not exhaustive and **further Euro-crimes can be added - provided that they are "*particularly serious*" and have "*a cross-border dimension*"[215] - and defined by unanimous decision of the Council and with the prior consent of the European Parliament**. In this regard, the implementation of a criminal ban on conversion practices would consequently

[213] Article 83.2 TFEU states: "If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76."

[214] Currently, this provision stipulates as follows:

1. The European Parliament and the Council may, by means of **directives** adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: **terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime** and **organised crime**.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

[215] The cross-border dimension in the context of Article 83 TFEU could result from the nature of such offences, their impact, or "*from a special need to combat them on a common basis*".

necessitate a proposal by the European Commission to include CT in the list of Euro-crimes, the consent of the European Parliament (whose position is likely to be in favour of such legislation) and the unanimous vote in the Council. However, it should be noted that attaining unanimous agreement might be challenging, as certain Member States may raise objections and exercise their veto power.

Should the list of the Euro-Crimes be extended to CT, a **directive** could be adopted to ban CT as a crime across the EU. Such directive should establish minimum rules concerning the definition of criminal offences and sanctions. It should, furthermore, ban the advertisement of such practices and ensure that the personal scope of the prohibition covers licensed professionals (such as psychotherapists) as well as any other perpetrator, for commercial and non-commercial purposes.

b) Hate speech and hate crime

When looking at the area of protection against **hate speech[216] and hate crime at EU level**, conversion practices are currently not explicitly covered, as noted by the European Commission.[217] The Council Framework Decision of 2008 punishing racist and xenophobic speech[218] only covers racism and xenophobia, and adding hate speech targeting LGBT+ persons could be done only by adding hate speech to the list of Euro-crimes and adopting a directive to define the crime and corresponding sanctions.[219]

In this regard, it is important to note that on 9 December 2021, the Commission proposed a **Council decision to extend the current list of 'EU crimes' in Article 83(1) TFEU to hate crimes and hate speech**. If the Council decision were to be adopted, the European Commission would then propose an EU **directive** to criminalise further forms of hate speech and hate crime in addition to racist or xenophobic motives.

Consequently, a possible way to counter CT at EU level could be to **include homophobic hate speech and hate crime in such directive, as well as when related to CT**.

While it is expected that the Commission will keep on insisting on the **inclusion of hate crimes and hate speech as Euro-crimes** within the provision of EU law, defining CT under hate speech and hate crime will require a **careful balancing act** of conflicting rights and application of the **proportionality** principle. For example, it might pose challenges to categorize CP automatically under hate speech, such as homophobic or transphobic speech. This is because CT or advertisements of CT, – although rooted in a negative conception of homosexuality or lesbianism or non-conforming gender identities, do not necessarily and always use hate speech in their operation or in the advertisement of CT practices. Moreover, **CT could fall under the definition of hate crime if considered as a violation of human dignity, of psychological integrity or as psychological torture, committed on the basis of homophobia**, with the legislation needing to be precise and proportional.

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[216] On regulation of homophobic speech in EU law, see Natalie Alkiviadou and Uladzislau Belavusau, Rien Que de Mots: Counteracting Homophobic Speech in European and US Law, *International Journal of Discrimination and the Law*, vol. 21(4), 2021, pp. 374-400; Uladzislau Belavusau, A Penalty Card for Homophobia from EU Non-Discrimination Law: Comment on Asociația Accept (C-81/12), *Columbia Journal of European Law*, vol. 21(2), 2015, pp. 237-259.

[217] Parliamentary Question E-001339/2018 (n 161).

[218] Council Framework Decision 2008/913/JHA of 28 November 2008 on Combatting Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law.

[219] The Council Framework Decision was adopted on the basis of Articles 34-36 on police and judicial cooperation in criminal matters of the back-then Treaty on European Union (TEU). The Treaty of Lisbon, which entered into force on 1 December 2009, abolished the instrument of Council Framework Decisions and replaced it by directives. Previously adopted Council Framework Decisions remain valid and in force, but they shall they be amended, they should become directives and the new procedure ex Article 83 TFEU (1) shall apply.

As for the previous possibility of adding CT to the list of Euro-crimes, in order to achieve the objective of countering CT through hate speech or hate crime legislation, the EU would have to: 1) adopt the Council decision to add **hate speech and hate crime to the list of Euro-crimes** by ***unanimity*** in the Council; 2) the Commission should propose a **directive** covering elements of CT as hate speech and/or hate crime; 3) the directive should be **adopted**, with the EP adding CT to its scope in case the Commission proposal failed to do so.

In this regard, it is important to note that the Commission's proposal to add hate crime and hate speech to the list of Euro-crimes was discussed in the Council but failed to reach unanimous support and work continues at technical level to try to find agreement.[220]

As noted at the beginning of this section, imposing a ban through **criminal law at EU level** - by following the example of many States that have adopted such types of measures to counter CT - requires facing a number of procedural and political obstacles. The addition of a **specific Euro-crime related to CT,** or related to **hate speech and hate crime,** and ensuring that the subsequent directives cover CT, are both possible in theory, although impervious in practice. [221]

c) Children's rights

A final element to note is the fact that often CT is carried out on children, which has led many States to adopt bans on CT specifically targeting children and which could be an element to consider when discussing initiatives to counter CT. Article 3(3) of the TEU establishes a general objective for the EU to promote the protection of children's rights, which could be recalled in any legal proposal countering CT. Moreover, the Charter of Fundamental Rights of the EU guarantees the protection of the rights of the child by EU institutions and EU countries when implementing EU law: Article 24 on the rights of the child and Article 32 on the prohibition of child labour specifically cover children's rights. In June 2022, the Council of the European Union adopted conclusions on the rights of the child, with a particular focus on the protection of children's rights in crisis or emergency situations.[222] The Council called on Member States to develop comprehensive policies to fulfil the rights of all children without any discrimination. It emphasized the need to increase efforts in preventing and combating all forms of violence against children. Additionally, the Council. underlined the importance of enhancing justice systems to align with children's rights and promoting opportunities for children to become responsible and resilient participants in the digital society.

Article 83.1 TFEU includes also the sexual exploitation of children in the list of Euro-crimes. It is worth noting that **Directive 2011/93/EU** on combating the sexual abuse and sexual exploitation of children and child pornography was adopted on this legal basis. Given the fact that "sexual exploitation of children" has been interpreted extensively to allow for a large scope for the Directive, it could be possible to **amend the Directive to cover CP and ban such practices when committed on minors**.

Regarding the interpretation of the list of Euro-crimes outlined in Article 83.1 and the question of whether it should be interpreted broadly or restrictively, a related question arises: could the term

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[220] The last accessible document on the Council register is of 9 February 2022, more than a year ago, see Presidency paper Draft Council decision extending the list of eurocrimes of Article 83(1) in the Treaty on the functioning of the European Union to hate crime and hate speech, https://data.consilium.europa.eu/doc/document/ST-6029-2022-INIT/en/pdf. See also JHA Council press release of 3-4 March 2022, https://www.consilium.europa.eu/en/meetings/jha/2022/03/03-04/

[221] As shown by the comparative analysis in this study, limiting the ban of CT only to minors, as well as excluding religious institutions from the scope of the act, were decisive elements for the adoption of national legislations in the area, and might also be at EU level.

[222] See European Council, *Press Release*: *Council adopts conclusions on the rights of the child,* Council of the European Union, 9 June 2022, available at https://www.consilium.europa.eu/en/press/press-releases/2022/06/09/council-adopts-conclusions-rights-child/.

"*sexual exploitation* of women and *children*" mentioned in Article 83.1 TFEU be interpreted extensively to cover also CP as a form of violence and cover also men, as per anti-discrimination Treaty articles? There is currently a debate on this issue in relation to the Commission proposal for a Directive on combating *violence against women and domestic violence* on: 1) whether the term "sexual exploitation" in Article 83.1 TFEU could be interpreted extensively to cover not only trafficking for prostitution, slavery, etc, but also other acts of violence and abuse (such as rape, FGM and other acts in the proposal, normally classified as "sexual violence"); 2) whether limiting EU acts only to "women and children" would raise issues of discrimination towards men. Depending on this legal and political debate, a stricter or larger interpretation of the terms used for euro-crimes in Article 83.1 TFEU could prevail, which would have an impact on whether for instance CP could be covered. Another question that warrants examination is whether the term "sexual" in "sexual exploitation" could also encompass sexual orientation, gender identity and gender expression and whether "exploitation", which in its restrictive interpretation means taking illicit advantage of a person or abusing of its vulnerable situation, could cover CP. Given the complexity of the issues at stake, it seems opportune to closely follow the developments in relation to the proposal on violence against women, the interpretation of Art. 83.1 TFEU and consult the legal services of EU institutions for possible guidance.

3.1.5. Other possible instruments

Further possible instruments that could be used by EU institutions to take action on CT are explored in this section, starting with **recommendations**. **Articles 288 and 292 TFEU** foresee the possibility for EU institutions to issue recommendations, which are not binding and consequently have no legal consequences.[223] However, they are an important instrument of soft law, often used to make recommendations **to Member States** (either country-specific or general on a specific subject) or to provide guidance on the interpretation or content of EU law. For instance, the Commission has issued recommendations on standards for equality bodies,[224] on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions,[225] on the protection, safety and empowerment of journalists and other media professionals in the European Union,[226] as well as country-specific recommendations under the European Semester, and under the Rule of Law report.[227] It is evident that the Commission recommendations touch upon very important subjects for the EU, including fundamental rights, rule of law, democracy, equality, among others. They are an instrument used by the Commission to show its commitment and either prepare further legislative action for the future, or call on Member States to take action in areas where EU competence is limited. In addition, the Council can adopt recommendations, and it did so for instance on the temporary restriction on

[223] Article 288 TFEU recalls that "To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, **recommendations** and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. **Recommendations and opinions shall have no binding force**." Article 292 TFEU states that "The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act. The Commission, and the European Central Bank in the specific cases provided for in the Treaties, shall adopt recommendations."

[224] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H0951.

[225] Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, see https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023H0681.

[226] https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists

[227] See Commission Rule of Law recommendations to Member States at https://commission.europa.eu/document/031018b9-6db6-4d20-8f89-37cf73dc0b24_en.

non-essential travel into the EU, or on life-long learning. Consequently, it appears plausible to conclude that EU institutions, particularly the Commission, **could draft and issue a recommendation calling on EU Member States to ban CP**, as well as propose precise contents for such bans, with the same level of detail used for other recommendations concerning procedural rights or the safety of journalists.

Another theoretical possibility could be to invoke **Article 352 TFEU** also known as the **flexibility clause**. This provision grants the EU **subsidiary powers** in case it lacks competence. Utilizing this clause would require a proposal from the Commission, which must obtain the consent of the EP and **unanimous** approval from the Council. This legal basis cannot be used for measures entailing the harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation: since Article 168 TFEU on health policy excludes the harmonisation of laws and regulations of the Member States, eventual measures banning CT based on Article 352 could not harmonise health laws regulations.[228] Apart from the difficulties posed by unanimity requirement in the Council, doubts could be raised on whether "the Treaties have not provided the necessary powers" to the EU to take action against CT, as anti-discrimination law or criminal law could be used as legal basis instead of resorting to the last resort remedy of subsidiary powers. Opponents would also raise doubts on whether action by the Union really proves to be necessary to attain one of the objectives set out in the Treaties.

3.2. Council of Europe

Although the EU and the Council of Europe are separate international organisations with different institutions, mechanisms and legal and political systems, there are strong links connecting them in the area of Article 2 TEU values, notably democracy, rule of law, fundamental rights, equality and protection of minorities. EU Member States are all part of the Council of Europe and notably of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In the EU Treaty, there are references to the ECHR, as Article 6 TEU states that fundamental rights, as guaranteed by the ECHR (and as they result from the constitutional traditions common to the Member States), constitute general principles of the Union's law. The same article also states that the EU shall accede to the ECHR, a process that has advanced steadily more recently. Furthermore, the EU Charter of Fundamental Rights, an internal EU catalogue of human rights and principles (although, unlike the ECHR, binding for EU institutions and for Member States only when implementing EU law), in many respects mirrors and extends the scope of protection in the ECHR.

For these reasons, the views and judgments of CoE bodies, such as the jurisprudence of the European Court of Human Rights, the Conventions developed at CoE level, the views of the Commissioner for Human Rights and the opinions of the Venice Commission, among others, have relevance for the EU and for the Member States. It is consequently important to note in relation to CT that **in February 2023, Dunja Mijatović, the Human Rights Commissioner of the Council of Europe, issued a statement**

[228] Article 352 TFEU states that: "1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. 2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article. 3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation. 4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union."

(under the form of 'human rights comment') entitled "Nothing to cure: putting an end to so-called "conversion therapies" for LGBTI people". The statement firmly calls for a comprehensive and human rights-based approach to eliminating SOGIE conversion practices, hereby joining the UN Independent Expert in his call.[229] Most importantly, she unequivocally stated that these practices are "irreconcilable with several guarantees under the European Convention on Human Rights (ECHR)", hereby urging the Member States of the Council of Europe to **ban them** for both adults and minors, based on the positive obligations of the Member States under the Convention, as well as highlight participation, support, and rehabilitation for victims, along with the promotion of delegitimising of conversion practices in society.[230]

The Commissioner's statement is particularly relevant when it discusses the interference of SOGIE conversion practices with "several human rights" and states that "these practices are **irreconcilable** with several guarantees under the European Convention on Human Rights (ECHR)."

She notably underlines that these practices "are capable of reaching the threshold of **ill-treatment**, which is prohibited under **Article 3 ECHR**. These practices are **degrading**, insofar as they humiliate the persons subjected to them, diminish their human dignity, and can result in significant physical and mental suffering. In particularly egregious cases, for instance, where violence or sexual abuse is used, such conversion practices may amount to **torture**. Since these acts can be detrimental to a person's mental and physical health, they may also interfere with their **physical or psychological integrity** and **personal autonomy**, which is protected by **Article 8 ECHR** (**right to respect for private and family life**)."

The Commissioner also recalls that "the UN Committee on Economic, Social and Cultural Rights has found that SOGIE conversion practices violate LGBTI people's right to **sexual and reproductive health**. Importantly, since these practices treat people differently on the basis of characteristics such as sexual orientation or gender identity, and lack objective and reasonable justification, they hardly seem compatible with the prohibition of **discrimination** enshrined in Article 14 ECHR and Article 1 of Protocol No. 12 to the ECHR."

She then underlines that such practices are not in the best interests of children and discusses the issue of adults' **consent** to these practices: "the fact that they may have supposedly consented is a misnomer. SOGIE conversion practices falsely claim to be able to cure something which is not an illness. The persons who seek such practices are often also driven by prevalent anti-LGBTI prejudice and hatred in their community or family. These are factors which may affect individuals' ability to give free and fully informed consent."

Most importantly, she addresses "the argument, often spuriously made, that the rights to **freedom of religion or expression** (Articles 9 and 10 ECHR) of those who carry out and support SOGIE conversion practices are violated by state actions to prevent and address such interventions. It is important to underscore that properly drafted conversion practice bans should not interfere with the right to hold a belief or express an opinion on LGBTI issues. However, as opposed to the freedom to have a religion and to hold a belief or not, the right to manifest one's religion or belief may be subjected to **limitations**

[229] Dunja Mijatović, "Nothing to Cure: Putting an End to So-Called "Conversion Therapies" for LGBTI People", Council of Europe – Commissioner for Human Rights: Human Rights Comment, 16 February 2023, available at: https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people

[230] Ibid.

in order to protect the fundamental rights of others, if these limitations are **prescribed by law, necessary in a democratic society and proportionate**."

Finally, the Commissioner reminds Member States that while these practices are often carried out by private actors, governments have a duty to fulfil **positive obligations** in securing the rights and freedoms of all individuals within their jurisdiction through appropriate legal frameworks where claims of breaches are effectively investigated and remedies are effective and accessible.

The findings of the Venice Commission (European Commission for Democracy Through Law) may also be of interest for the EU institutions in this respect, notably its recent opinion with regard to the Hungarian legislation allegedly intended "to fight paedophilia".[231] The Venice Commission noted that "[the Hungarian Act] introduces prohibitions and/or restrictions on any depiction or discussion of diverse gender identities and sexual orientations in the public sphere, including schools and the media, by prohibiting or limiting access to content that "propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality" for individuals under 18 years of age."[232] The Venice Commission carried out an thorough assessment of the law, considering the delicate balance between the State's legitimate aim of protecting the public morality and minors, and the right of freedom of expression, in order to examine the proportionality of the law. The Venice Commission concluded that the protection of public morality and minors does not provide adequate justification for such blanket prohibitions on the portrayal of diverging sexual orientation and gender identity. Moreover, the Act can be instrumentalised to deny legitimate self-expression by LGBT+ persons as the prohibitions are not limited by substance or circumstantial requirements such as age, time, and place.[233] Rather than protecting children, these prohibitions risk creating a "threatening environment" for LGBT+ children, one that can lead to further stigmatisation and discrimination. The Venice Commission resolved this tension by **affirming the right to freedom of expression of LGBTIQ persons**.

Shall the Venice Commission or the ECtHR be called to examine whether **acts of CT** happening in a State (or even paradoxically legislation allowing it explicitly) are in conformity with the ECHR and have to carry out a similar balancing exercise, a similar result reaffirming the fundamental rights of LGBT+ persons not to be subjected to CT would seem logical, taking into consideration the fact that CT is deemed to violate the prohibition of degrading treatments and torture, as well as many other ECHR protected rights. Furthermore, it is important to note that states bear positive obligations to guarantee the protection of fundamental rights, particularly for those in vulnerable positions, such as LGBT+ individuals.

Shall the Venice Commission or the ECtHR be called to examine the compatibility of **CT bans** with the ECHR and notably the freedom of religion and belief, the considerations by the Commissioner for Human Rights would most probably apply, notably when drawing a line between the freedom to have a religion and to hold a belief or not on one side, and the right to manifest one's religion or belief on the other: the latter may, in fact, be subjected to limitations in order to protect the fundamental rights of others, provided that these limitations are prescribed by law, necessary in a democratic society and proportionate and in this sense, bans have to respect, as for any other prohibition with sanctions, these basic rules. Once again, the fact that CT implies a serious violation of fundamental rights of LGBT+persons, would bear weight in the balancing act between rights, which would most probably

[231] Constitutional law experts from the CoE Venice Commission assessed the compatibility of Act LXXIX of Hungarian legislation – adopted by the Venice Commission at its 29th Plenary Session (10-11 December 2021).

[232] Venice Commission Media Release, REF DC 246, Hungary: Amendments affecting LGBTQI people incompatible with international human rights standards, according to Venice Commission.

[233] Ibid.

lead the Courts to affirm the compatibility of bans on CT with the ECHR. These bans not only align with Member States' positive obligations concerning fundamental rights but also aim to protect individuals from the severe harm caused by CT practices.

To conclude, the arguments stemming from the CoE bodies, including the recent findings of the Human Rights Commissioner of the Council of Europe, reinforce the paradigm of **countering conversion practices** and militate for the **compatibility with the ECHR of CT bans,** if not even for their necessity on the basis of positive obligations of States.

4. RECOMMENDATIONS

Having analysed conversion practices, the recommendations by the UN Independent Expert and the CoE Commissioner for Human Rights calling for the introduction of bans on CP, national legislations on conversion practices of EU Member States and of non-EU States, as well as the EU legal framework and the possible avenues that could be followed to counter and ban conversion practices at EU level, the study proposes the following recommendations:

Recommendations

- States, and in particular EU Member States as well as the EU, should ban conversion practices, as recommended, inter alia, by the Independent Expert and by the CoE Commissioner for Human Rights.

Such bans on CPs should:

- provide a **clear, precise and comprehensive definition** of conversion practices, which shall cover all practices that seek to **change, repress or suppress** a person's **sexual orientation, gender identity and/or gender expression**;

- prohibit the **offering, advertising, and performance** of conversion practices in all settings, irrespective of the settings in which CPs are carried out or of the perpetrator or the promoter, so to cover **health-care, religious, educational, community, commercial or any other setting, public or private;**

- the prohibition shall be implemented and enforced through **criminal and/or civil or administrative law;**

- laws should provide for appropriate, proportionate and dissuasive **penalties and sanctions** (taking as a reference acts of torture and cruel, inhuman or degrading treatment or punishment, as well as the gravity of the acts, the victims involved and the harms caused);

- the ban should particularly protect **children, young people** and **vulnerable adults** from CP, by taking special prevention and protection measures;

- **consent** should be deemed irrelevant in relation to the ban on CP, due to its dubious nature in this context, both for children and for adults;[234]

- the offering or provision of CP by health professionals, the involvement of minors or vulnerable adults and any financial remuneration derived from it should be considered as **aggravating circumstances**. This should result in severe consequences, such as the withdrawal of licenses, termination of public funding, and the closure of establishments offering such 'practices'. In cases involving minors, parental responsibility and authority should be examined closely to ensure their well-being and protection;

- the ban should explicitly clarify that it does not apply to **counselling**, that genuinely aims to support individuals in exploring their sexual orientation and gender identity, as highlighted by the CoE Commissioner.[235] Moreover, the bans should ensure a **proper balance** between the right to **freedom**

[234] In this regard, the CoE Commissioner HR states, "With regard to adults subjected to these practices, the fact that they may have supposedly consented is a misnomer. SOGIE conversion practices falsely claim to be able to cure something which is not an illness. The persons who seek such practices are often also driven by prevalent anti-LGBTI prejudice and hatred in their community or family. These are factors which may affect individuals' ability to give free and fully informed consent."

[235] Or as stated by the UN Special rapporteur, "health-care and other services related to the exploration, free development and/or affirmation of sexual orientation and/or gender identity, with a focus on addressing the conflicts that may arise between a patient's orientation, identity and religious, social, or internalized norms and prejudices, with a focus on identity

of religion, belief and expression, and the protection of the **fundamental rights of LGBT+ persons;**[236]

- **claims** related to CP should be promptly investigated, leading to prosecution and appropriate punishment for offenders. **Victims** of CP should be provided with legal, medical, and psychological assistance as well as support. They should have access to justice, including avenues for redress, reparations and rehabilitation; public **funds** shall not be used, directly or indirectly, to support CPs;

- **national human rights institutions, ombudsmen and equality bodies** shall be competent in countering CP, while media and education **campaigns** shall be launched, and **data** collected on CP;

- **laws and regulations** that enable, promote or fuel CP shall be repealed, particularly those that criminalize LGBT+ persons. In their place, anti-discrimination measures and campaigns shall be adopted to promote equality and ensure protection from violence and discrimination based on sexual orientation and gender identity;

- States, and notably EU Member States, should implement the above recommendations and **introduce bans on CP**. If they have already enacted such **bans**, they should review them to ensure that they are in conformity with the above recommendations, stemming from recommendations made by the UN and CoE Commissioner of Human Rights.

In particular, at European Union level:

- **anti-discrimination law, based on Article 19 TFEU,** could provide a possible legal basis to take action to counter CP: a provision prohibiting CP could be proposed to the 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation beyond employment (still being discussed in the Council); or to the original Framework Equality Directive (2000/78/EC); or through a new directive addressing only on CP; or through a new directive, based on the ground of sexual orientation, gender identity and gender expression; effective, proportionate and dissuasive sanctions can be required by anti-discrimination directives to Member States; equality bodies, ombudsmen and national human rights institutions play also an important role in countering CP. While this option is possible in theory, in practice it requires a Commission proposal, EP consent and unanimity in the Council, something that has proven up to now impossible to reach on the 2008 Commission proposal on equal treatment;

- **criminal law** could be a possible legal basis to ban CP: the Commission could propose to add CP, or homophobia (covering CP), to the list of **Euro-Crimes** (under Article 83(1)TFEU), provided that the EP consents and the Council agrees by unanimity, after which the Commission could issue a legislative proposal defining the related crime and the sanctions that need to be approved through the ordinary legislative procedure. The Commission has recently put forward a proposal to add hate speech and hate crimes in the list of Euro-crimes, which could create a possibility for CP to be covered under a future legislative act in this field, provided that the proposal achieves the required unanimity in the Council. Article 83.1 TFEU includes in the list of Euro-crimes also sexual exploitation of children and Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child

exploration and development, reducing distress and the need to address "minority stress", as well as focusing on active coping and social support and the concept of affirmation;"

[236] The CoE Commissioner stated, "properly drafted conversion practice bans should not interfere with the right to hold a belief or express an opinion on LGBTI issues". She also underlined that "as opposed to the freedom to have a religion and to hold a belief or not, the right to manifest one's religion or belief may be subjected to limitations in order to protect the fundamental rights of others, if these limitations are prescribed by law, necessary in a democratic society and proportionate."

pornography could be amended to explicitly cover CP and impose a ban on such practices when committed on minors;

- while the legal basis pertaining to the **internal market** in the EU (in particular, Article 114 and 115 TFEU and rules on misleading advertising) and **health policies** (Article 168 TFEU) raise doubts on whether they can be used to ban conversion practices, they may support, justify and explain the necessity of EU counteraction of conversion practices. The potential use of Article 352 TFEU on **subsidiary powers** also raises doubts, and requires unanimity in the Council;

- the **Commission** could issue a non-binding **Recommendation** based on Article 292 TFEU calling on EU Member States to ban CP and provide guidance on the basis of the Independent Expert and of the Commissioner on Human Rights reports; it shall also implement and strengthen the commitment it took in the LGBT+ Strategy in relation to CT;

- the **European Parliament** could adopt a specific and detailed resolution calling on Member States, the Commission and the Council to take action and ban CP, on the basis of the Independent Expert and of the Commissioner on Human Rights reports;

- the **Council** should follow up to its Presidency conclusions on the safety of LGBT+ persons in the European Union, which called for the protection of LGBT+ persons, both online and offline, from hate crimes, hate speech, acts of violence and harmful practices, including being subjected to 'conversion practices' through various law enforcement-related measures;

- the **EU** could take action also towards non-EU States to ban and counter CP at international, European and bilateral level; the EU should also make sure that CT are countered through the strategies on children's rights, victims' rights, women and girls' rights, countering violence against women, and overall healthcare measures. These efforts should include allocating EU funds to support initiatives aimed at combating CT and promoting the well-being and rights of affected individuals;

- EU institutions should request their respective Legal Services to examine and issue **legal opinions** on the possibilities for the EU to counter and ban CP, and make these opinions accessible.

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ANNEX I: CONVERSION PRACTICES: RELEVANT INTERNATIONAL AND EUROPEAN DOCUMENTS

Conversion Practices: Relevant International and European Documents	Relevant parts focusing on CP
3 July 2001 **UN Special rapporteur** **Question of torture and other cruel, inhuman or degrading treatment or punishment** **Note by the Secretary-General** **A/56/156**	24. The Special Rapporteur has received information according to which members of sexual minorities have been subject to cruel, inhuman or degrading treatment in non-penal institutions. In a number of countries, **members of sexual minorities are said to have been involuntarily confined to state medical institutions, where they were allegedly subjected to forced treatment on grounds of their sexual orientation or gender identity, including electric shock therapy and other "aversion therapy", reportedly causing psychological and physical harm**. The Special Rapporteur notes, in particular, that the World Health Organization removed homosexuality from its International Classification of Diseases-10 (ICD-10) in 1992. The Special Rapporteur has received information according to which, in a number of countries, **persons suspected of homosexuality have been subjected to compulsory, intrusive and degrading medical examinations of anus and penis in order to determine whether penetration had taken place, inter alia, within the context of enlistment for military service.**
4 May 2015 **UN Office of the United Nations High Commissioner for Human Rights** **Discrimination and violence against individuals based on their sexual orientation and gender identity Report of the Office of the United Nations High Commissioner for Human Rights** **A/HRC/29/23** ***- CP violate the prohibition on torture and ill-treatment*** ***- 1st UN call for a ban***	14. The **medical practices condemned by United Nations mechanisms in this context include so-called "conversion" therapy**, forced genital and anal examinations, forced and otherwise involuntary sterilization and medically unnecessary surgery and treatment performed on intersex children.11 38. Other **medical procedures that can, when forced or otherwise involuntary, breach the prohibition on torture and ill-treatment include "conversion" therapy**, sterilization, gender reassignment, and unnecessary medical interventions involving intersex children (see paras. 14 above and 52, 53 and 70 below) 52. There is **mounting concern about so-called "conversion therapies" intended to "cure" homosexual attraction. Such therapies have been found to be unethical, unscientific and ineffective and, in some instances, tantamount to torture** – leading to successful legal challenges and bans in several countries.88 In Ecuador, concerns have been raised about "**rehabilitation clinics**" where lesbians and transgender youths have been forcibly detained with the collusion of family members and subjected to torture, including sexual abuse.89 78. **The High Commissioner recommends that States address violence by** **(g) Banning "conversion" therapy**, involuntary treatment, forced sterilization and forced genital and anal examinations
5 January 2016 **UN Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment A/HRC/31/57, para. 48;**	Lesbian, gay, bisexual, transgender and intersex persons in health-care settings 48. Lesbian, gay, bisexual, transgender and intersex persons are frequently denied medical treatment and subjected to verbal abuse and public humiliation, psychiatric evaluations, forced procedures such as sterilization**, "conversion" therapy, hormone therapy and genital-normalizing surgeries under the guise of "reparative therapies". These procedures are rarely, if ever, medically necessary, lead to severe and life-long physical and mental pain and suffering and can amount to torture and ill-treatment** (A/HRC/22/53). The criminalization of same-sex relationships and pervasive discrimination against lesbian, gay, bisexual, transgender and intersex persons lead to the denial of health care, information and related services, including the denial of HIV care, in clear violation of international human rights standards such as the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

3 February 2016 **Committee against Torture** **Concluding observations on the fifth periodic report of China*** CAT/C/CHN/CO/5 ***Call for prohibition***	**Lesbian, gay, bisexual, transgender and intersex persons** 55.The Committee is concerned about reports that **private and publicly run clinics offer the so-called "gay conversion therapy" to change the sexual orientation of lesbian and gay persons, and that such practices include the administration of electroshocks and, sometimes, involuntary confinement in psychiatric and other facilities, which could result in physical and psychological harm**. While noting that, in December 2014, a Beijing court ordered one such clinic to pay compensation for such treatment, the Committee regrets the State party's failure to clarify whether such practices are prohibited by law, have been investigated and ended, and whether the victims have received redress (arts. 10, 12, 14 and 16). **56. The State party should:** (a)Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and **prohibit the practice of so-called " conversion therapy", and other forced, involuntary or otherwise coercive or abusive treatments against them;** (b)Ensure that health professionals and public officials receive training on respecting the human rights of lesbian, gay, bisexual, transgender and intersex persons, including their rights to autonomy and physical and psychological integrity; (c)**Undertake investigations of instances of forced, involuntary or otherwise coercive or abusive treatments of lesbian, gay, bisexual, transgender and intersex persons and ensure adequate redress and compensation in such cases.**
22 March 2016 **Subcommittee on Prevention of Torture** **Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** **CAT/C/57/4** ***Call for a ban***	68. In health-care settings, ill-treatment and torture include denial of gender-appropriate medical treatment, verbal abuse and public humiliation, psychiatric evaluations, sterilization, and **hormone therapy and genital-normalizing surgeries under the guise of socalled "reparative therapies".** Identifying ill-treatment and discrimination in health-care settings is particularly important since homosexuality is still treated as a pathology by some medical professionals, despite the World Health Organization having removed it from the International Classification of Diseases (ICD-10) in 1992. To date, transgender and intersex persons continue to be pathologized in medical settings based on medical classifications. 69. The Committee on the Elimination of Discrimination against Women and the Special Rapporteur on torture have expressed concern about lesbian, bisexual, transgender and intersex women as victims of abuse and mistreatment by health-service providers (see A/HRC/19/41, para. 56). That includes so-called **"normalization therapies", in pursuit of which members of sexual minorities are said to have been involuntarily confined to medical institutions and allegedly subjected to forced treatment, including electric shock therapy and other "aversion therapy", reportedly causing psychological and physical harm** (see A/56/156, para. 24). As noted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, attempts to "cure" those who engage in same-sex conduct are not only inappropriate, but have the potential to cause significant psychological distress and increase stigmatization of those vulnerable groups (see A/HRC/14/20, para. 23). (...) 81. **States must ban so-called "conversion therapy"**, involuntary treatment, forced sterilization and forced genital and anal examinations; they should also ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, approach sexual orientation and gender identity as medical conditions to be treated, cured or suppressed. In particular, the prevention of harmful medical practices must extend to protection for intersex children, and medically unnecessary procedures must be banned.

12 July 2016 **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer** ***CP are torture or other cruel, inhuman or degrading treatment or punishment.***	K. Forced "conversion therapy" 48. So-called **"conversion therapy", sometimes referred to as "reparative therapy", describes a range of highly discredited practices that could involve electric shock, medication, psychotherapy or spiritual interventions or faith "healings", that aim to change a person's sexual orientation or gender identity or expression. Children are especially vulnerable to being subjected to such practices, in particular at the instigation of their parents or guardians, including through pressure or coercion. 53 The practice of "conversion therapy" has been rejected by every mainstream medical and mental health organization for decades, but due to continuing discrimination and societal bias against LGBTI people, remains widespread. Undergoing such so-called "therapy" can cause severe physical and mental suffering and lead to depression, anxiety, drug use, homelessness and suicide**. 49. While the extent of the use of "conversion therapy" is not known, even conservative estimates suggest that many thousands of children and adults are being subjected to it in many parts of the world. 54 By the end of 2018, only three States Members of the United Nations had banned "conversion therapy", although some efforts towards a national ban have been made at the subnational level in other States.55 The practice of "conversion therapy" has been condemned by the Special Rapporteur (A/HRC/31/57, para. 48; and A/56/156, para. 24), as well as by the Committee against Torture (CAT/C/ECU/CO/7, paras. 49–50; and CAT/C/CHN/CO/5, paras. 55–56), the Subcommittee on Prevention of Torture (CAT/C/57/4, paras. 68–69) and the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23, paras. 14, 38). 50. In the view of the Special Rapporteur, **given that "conversion therapy" can inflict severe pain or suffering, given also the absence both of a medical justification and of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment.**
11 January 2017 **UN Committee against Torture** **Concluding observations on the seventh periodic report of Ecuador** **CAT/C/ECU/CO/7**	Violence against individuals based on their sexual orientation or gender identity 49. The Committee is concerned at allegations of involuntary **placement and ill-treatment of lesbian, gay, bisexual and transgender persons in private centres in which "sexual reorientation or dehomosexualization therapies" are practised**. Despite the closure of 24 such centres, the Committee notes with concern that the proceedings initiated by the Attorney General's Office have, to date, not yielded any convictions. The Committee also strongly condemns the killings of gay and transgender persons that occurred in the State party during the period under review (arts. 2 and 16). 50. The **State party** should ensure that all cases of violence against persons on the basis of sexual orientation or gender identity are **investigated with the aim of prosecuting and punishing the perpetrators of such acts**. It should also carry out awareness-raising activities for the general public in order to combat the social stigmatization of lesbian, gay, bisexual and transgender persons
1 March 2018 **European Parliament resolution of 1 March 2018 on the situation of fundamental rights in the EU in 2016**	Par. 65. **Welcomes initiatives prohibiting LGBTI conversion therapies** and banning the pathologisation of trans identities and **urges all Member States to adopt similar measures that respect and uphold the right to gender identity and gender expression;**
1 May 2020 **Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity** ***calls for a ban***	
2020	

ILGA World: Curbing Deception: A world survey on legal regulation of so-called "conversion therapies"	
17 September 2020 **European Parliament resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law**	Par. 63. Strongly deplores the Polish Episcopate's official position[(119)] calling for "conversion therapy" for LGBTI persons; **reiterates the position of the Parliament[(120)] encouraging Member States to criminalise such practices** and recalls the May 2020 report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, which calls on **Member States to adopt bans on practices of "conversion therapy"[(121)];**
November 2020 **2020-2025 European Commission LGBTIQ equality strategy**	**Section 2.4 Protecting and promoting LGBTIQ people's bodily and mental health** **Harmful practices** such as non-vital surgery and medical intervention on intersex infants and adolescents without their personal and fully informed consent (intersex genital mutilation) 57 , forced medicalisation of trans people and **conversion practices targeting LGBTIQ people** 58 **may have serious bodily and mental health repercussions**. The Commission will foster Member States' **exchange of good practice on ending these practices**.
11 March 2021 **European Parliament resolution of 11 March 2021 on the declaration of the EU as an LGBTIQ Freedom Zone**	Whereas K. whereas Parliament has already **encouraged the Member States to criminalise 'so-called conversion therapy' practices**; whereas the May 2020 report of the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has called on Member States to **adopt bans on practices of 'conversion therapy'**; whereas the practice is still carried out in at least 69 countries worldwide, including in the European Union, where the use of medication, psychotherapy and ritual cleansing in conversion therapy have been reported to have taken place in EU Member States[(10)]; whereas **the practice has only been banned in two Member States of the European Union, namely Malta and Germany;**
17 June 2021 **Congress of Local and Regional Authorities of the Council of Europe Report CG(2021)40-18** **Protecting LGBTI[1] people in the context of rising anti-LGBTI hate speech and discrimination: The role of local and regional authorities**	76. As regards health care, people are still discriminated on the grounds of their sexual orientation in Europe. Although the WHO withdrew homosexuality from its classification of diseases in 1990, this still has an influence on the medical practice and the content of the teaching aids used in the educational establishments of certain Member States of the Council of Europe. In the same context, **many Council of Europe member countries do not prohibit conversion therapy, which refers to practices aimed at changing a person's sexual orientation. However, such practices are explicitly discriminatory and degrading**.[135] It is essential to stop discriminatory medical treatment that considers LGBTI+ persons to be suffering from a medical condition.
28 September 2021 **Parliamentary Assembly of the Council of Europe** **Strengthening the fight against so-called "honour" crimes** **Resolution 2395 (2021)** ***Text adopted by the Assembly***	**4.** So-called "honour" crimes are most often perpetrated or ordered by members of the victim's family who refuse to accept their gender identity, sexual orientation, lifestyle or life choices, desire for emancipation or refusal of marriage. These crimes may take the form of murder, illegal confinement, abduction, torture, mutilation, burning, forced suicide, forced marriage, **conversion therapy**, interference in the choice of a partner or assault. They are often premeditated and organised. Large-scale awareness-raising initiatives must be carried out in order to have a tangible impact. **6.** In light of these considerations, the Assembly calls on the Council of Europe's member States, as well as on all States whose parliaments enjoy an observer or a partner for democracy status, to: **6.6** recognise that LGBTI persons are vulnerable to so-called "honour" crimes and include them in all action plans aimed at preventing and combating this violence, and also **ban conversion therapy**;
16 February 2023: CoE Commissioner for Human Rights: **Nothing to cure: putting an end to so-called "conversion therapies" for LGBTI people**	

https://www.coe.int/en/web/commissioner/-/nothing-to-cure-putting-an-end-to-so-called-conversion-therapies-for-lgbti-people ***Calls for a ban***	
9 June 2023 **Council Presidency conclusions on the safety of LGBTI persons in the European Union**	Member States are invited, within their national competences, to: 9. **Protect LGBTI persons, both online and offline, from hate crimes, hate speech, acts of violence and harmful practices, including being subjected to 'conversion practices'** for instance by developing methods to identify, record and investigate offences committed with an anti-LGBTI motive as well as by encouraging the reporting of such offences by victims and witnesses or by providing training to law enforcement personnel, judicial authorities, agencies or organisations delivering victim support services and other relevant authorities

ANNEX II: COMPARATIVE OVERVIEW OF LAWS AND POLICIES IN THE EU MEMBER STATES ON THE PROHIBITION OF CONVERSION PRACTICES

Member State and law	Material scope of application	Personal scope of application	Prohibition of the advertisement	Aggravating Circumstances	Sanctions for the provision/ practice of CP
FRANCE **LOI n° 2022-92 du 31 janvier 2022 interdisant les pratiques visant à modifier l'orientation sexuelle ou l'identité de genre d'une personne**	Professionals and non-professionals	Minors and adults, regardless of consent	Prohibition of use of an online public communication service, digital and/or electronic platforms.	When practices are conducted on minors or vulnerable adults (such as pregnant women, people in precarious social situations, ill or psychologically deficient people, when these facts are known to the perpetrator)	Fine up to 30.000 and max 2 years imprisonment With aggravating circumstances: up to 45.000 EUR and imprisonment up to 3 years Total or partial withdrawal of parental authority possible.
GERMANY **Gesetz zum Schutz vor Konversionsbehandlungen, 2020**	Professionals and non-professionals	Minors and adults who are unable to consent, such as when coerced	Advertisement of such practices prohibited (administrative offence)	Not applicable	Fine up to 30.000 EUR and imprisonment up to 1 year
GREECE **Γιατρός για όλους, ισότιμη και ποιοτική πρόσβαση στις υπηρεσίες του Εθνικού Οργανισμού Παροχής (ΦΕΚ Α'94/13-05-2022)**	Medical professionals	Minors and adults, who are under a guardianship, without their explicit consent	Advertisement of such practices prohibited	Not applicable	A fine and imprisonment, no minimum nor maximum is defined.

MALTA **Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, 2016**	Professionals and non-professionals	Minors under the age of 16, and vulnerable adults, regardless of consent	Advertisement of such practices prohibited	When practices are conducted on a vulnerable person (i.e. any person (a) under 18, (b) suffering from mental disorder, (c) considered by the competent court to be particularly at risk when taking into account the person's age, maturity, health, mental disability and other factors.	Professionals: fine between 2.000–10.000 EUR and imprisonment between 3 months–1 year Non-professionals: fine between 1.000–5.000 EUR and imprisonment between 1–5 months
SPAIN **Ley 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI**	Professionals and non-professionals	Minors and adults, regardless of consent	Promotion of such practices is prohibited.	The gravity is not specified, but Art. 80 of the Law envisages different fines depending on the gravity, that is to be established by a judge	Fine between 200 to 150.000 EUR or termination of public subsidies
CYPRUS **Law No 39(I) of 2023**	Professionals and non-professionals Without affecting the right to freedom of thought, conscience, religion as in ECHR	Minors and adults	Advertisement is prohibited and punished by a fine of up to 5.000 EUR and/or imprisonment up to 2 years	When practices are conducted on a minor or a vulnerable adult; when the promoter exercises legal guardianship	Fine up to 5.000 and/or imprisonment up to 2 years With aggravating circumstances: up to 10.000 EUR and/or imprisonment up to 3 years

ANNEX III: REGIONAL LAWS IN SPAIN

Region	Political and/or legal regulation
Andalucía	Ley 8/2017, de 28 de diciembre, para garantizar los derechos, la igualdad de trato y no discriminación de las personas LGTBI y sus familiares en Andalucía.
Aragón	- Ley 4/2018, de 19 de abril, de Identidad y Expresión de Género e Igualdad Social y no Discriminación de la Comunidad Autónoma de Aragón; - Ley 18/2018, de 20 de diciembre, de igualdad y protección integral contra la discriminación por razón de orientación sexual, expresión e identidad de género en la Comunidad Autónoma de Aragón.
Canary Islands	Ley 2/2021, de 7 de junio, de igualdad social y no discriminación por razón de identidad de género, expresión de género y características sexuales.
Cantabria	Ley 8/2020, de 11 de noviembre, de Garantía de Derechos de las Personas Lesbianas, Gais, Trans, Transgénero, Bisexuales e Intersexuales y No Discriminación por Razón de Orientación Sexual e Identidad de Género.
Madrid	- Ley 3/2016, de 22 de julio, de Protección Integral contra LGTBIfobia y la Discriminación por Razón de Orientación e Identidad Sexual en la Comunidad de Madrid; - Ley 2/2016, de 29 de marzo, de Identidad y Expresión de Género e Igualdad Social y no Discriminación de la Comunidad de Madrid
Murcia	Ley 8/2016, de 27 de mayo, de igualdad social de lesbianas, gais, bisexuales, transexuales, transgénero e intersexuales, y de políticas públicas contra la discriminación por orientación sexual e identidad de género en la Comunidad Autónoma de la Región de Murcia.
Navarra	Ley Foral 8/2017, de 19 de junio, para la igualdad social de las personas LGTBI+.
Rioja	Ley 2/2022, de 23 de febrero, de igualdad, reconocimiento a la identidad y expresión de género y derechos de las personas trans y sus familiares en la Comunidad Autónoma de La Rioja.
Valencia	- Ley 23/2018, de 29 de noviembre, de igualdad de las personas LGTBI+; - Ley 8/2017, de 7 de abril, integral del reconocimiento del derecho a la identidad y a la expresión de género en la Comunitat Valenciana.

ANNEX IV: LEGAL REGULATION BEYOND THE EU

Countries	Political and/or legal regulation	Material scope of application	Personal scope of application	Advertisement	Sanctions
Albania	Regulation entrusted to Albania's Order of Psychologists	Professionals	Minors and adults	Advertisement of such activities prohibited	Professional disciplinary procedures
Brazil	Estabelece normas de atuação para os psicólogos em relação à questão da Orientação Sexual", N° 001/99 DE 22 de março de 1999	Psychologists licensed in Brazil	Minors and consenting adults	Psychologists prohibited from making (or being involved with) public or mass media announcements containing prejudices connected to homosexuals and psychiatric disorders	Not applicable
Canada	Criminal Code	Not specified	Minors and consenting adults	Promotion or advertisement of such activities prohibited (punishable by imprisonment up to two years)	Imprisonment up to five years
Ecuador	Penal Code	Not applicable	Minors and adults	Not applicable	Fines and imprisonment (up to 13 years for practices comparable to torture)
Israel	Directive	Medical professionals	Not applicable	Not applicable	Sanctions (including loss of license)
Taiwan	Code of Criminal Procedure and the Protection of Children and Youths Welfare and Rights Act	Professionals and non-professionals	Not applicable	Not applicable	Criminal prosecution

ANNEX V: BANNING CONVERSION PRACTICES AND EU LAW

Policy Area	Possible Action(s)	Legal Basis	Secondary Legislation in place	Under Deliberation	Requirements (and *potential obstacles*)
Anti-Discrimination	Insert the ban on Conversion Practices: (a) in the 2008 Commission proposal; or (b) in a proposal amending the Framework Equality Directive (2000/78/EC) to extend its material scope beyond employment; or (c) in a new directive aimed at introducing specifically a ban on CP, or (d) in a new directive on discrimination based on sexual orientation, gender identity and gender expression.	Article 19 TFEU	Employment Equality Directive, Racial Equality Directive, etc	2008 COM Proposal equal treatment beyond employment (under deliberation)	COM proposals, EP consent, *unanimity in the Council*
Free movement of Services	Legal act	Article 59 TFEU[237]			*Can CP be construed as "services"? could a ban be decided on this basis?*
Internal Market	Legal act	Article 114[238] Article 115[239] TFEU			*Can CP be construed as "services" and responding to an "internal market" logic?*
Health		Article 168 TFEU (EU incentive			Article 168(5)[240] TFEU *excludes any*

[237] Article 59 TFEU states: "1. In order to achieve the liberalisation of a specific service, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall issue directives. 2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods."
[238] Article 114 TFEU states that the EP and the Council shall "...adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."
[239] Article 115 TFEU states: "Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market."
[240] Article 168 TFEU (5) maintains as follows: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt - incentive measures designed to protect and improve human health - and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border

		measures designed to protect and improve human health)			*harmonisation* of the laws and regulations of the Member States
Misleading Advertisement	Directive could be modified to include CP - or COM could invite MSs to cover also CP in the implementation of the directive	EU Directive on misleading and comparative advertisement (2006)[241]			- COM proposal, co-decision EP and Council - *could a ban on CT advertisement be based on an act related to commerce of goods and services?*
Criminal law (pre-Lisbon FD racism and xenophobia)	The possibility to adopt Framework Decisions has been removed by the Lisbon Treaty, they are now substituted by Directives	Former Articles 34-36 TEU on police and judicial cooperation in criminal matters	Framework Decision on racism and xenophobia 2008		If amended to include a ban on CT or homophobia or hate crime and hate speech, it would need to find a link with one of the *Eurocrimes* and become a Directive (see below)
Criminal law: approximation	Approximation	Article 83.2 TFEU[242] (Approximation of criminal law essential for the implementation of harmonised measures of a EU policy)			Cannot be actioned in absence of harmonised measures of a EU policy on CT or homophobia
Criminal law: Eurocrimes	- add CP or homophobia to the list of Euro-crimes and then adopt a directive - The COM has proposed to add hate speech and hate crime to the list of Eurocrimes and CP could be covered as hate crime	Article 82 TFEU Article 83 (1) TFEU directive on exhaustive list of Eurocrimes (and does not include			COM proposal to add a new crime to the list of Eurocrimes, EP consent and *unanimity in the Council*, further COM proposal for a Directive

threats to health, - and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, - excluding any harmonisation of the laws and regulations of the Member States".

[241] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version).

[242] "If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76."

		homophobia, nor CP)[243]			
Criminal law: sexual exploitation of children	CP as violence linked to sex and sexual orientation under "sexual exploitation of women and children" listed in Article 83.1 TFEU	Article 83.1 TFEU	Directive 2011/93/EU on sexual abuse and sexual exploitation of children and child pornography[244]		COM proposal to amend the Directive to cover CP; *would only cover CP on minors (depends also on discussions on draft Directive on VAW and the interpretation of "sexual exploitation of women and children" listed in Article 83.1 TFEU)*
CP and its various aspects	COM (or CSL) **Recommendation** calling on Member States to take measures, counter or ban CT	Articles 288 and 292 TFEU[245]	COM refers to countering CT in the LGBTIQ strategy		COM proposal, COM or CSL adoption, *non-binding*
CP and its various aspects (except if harmonization is excluded by the Treaty)	Ban CT on the basis of subsidiary powers by adopting appropriate measures to attain one of the objectives set out in the Treaties, if these	Article 352 TFEU[246]			Cannot harmonise health laws and regulations, other legal basis are available, COM proposal, EP consent,

[243] Article 83.1 TFEU: "The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.
These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.
On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament."

[244] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

[245] Article 292 TFEU: The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act. The Commission, and the European Central Bank in the specific cases provided for in the Treaties, shall adopt recommendations.

[246] Article 352 TFEU : 1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament. 2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article. 3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation. 4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.

	have not provided the necessary powers				*unanimity in the Council*
EP actions resolution, (ev. legislative initiative), legal service opinions, etc	EP to call Member States to ban CP, the Commission to counter CP (as it did for FGM); institutions to consult the respective Legal Services to explore the introduction of a EU ban or other initiatives and actions, etc; CT to be covered in relation to the rights of the child, victims' rights, EU funds, etc.				EP adoption

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), examines "conversion practices" (also called "conversion therapies") aimed at changing, repressing or suppressing the sexual orientation, gender identity or expression of LGBT+ persons. Such practices, due to their discriminatory, degrading, harmful and fraudulent nature, are being banned in a growing number of States, including EU Member States. The study analyses and compares selected national legislations before examining the possibilities to counter such practices at EU level, and makes recommendations.

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