TGEU, IGLYO, ILGA Europe and OII Europe's comments to the Law Proposal No. 391/XVII/1

4 November 2026

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Summary

Bill 391/XVII/1 would repeal the Self-Determination Act and return Portugal back to pathologisation. It would make legal gender recognition (LGR) dependent on a diagnosis of 'gender identity disorder' issued under a procedure that, as drafted, also brings back a surgical pathway and excludes 16 and 17 year olds. It would remove the explicit protection of intersex children from non-consensual medical interventions. Further, it would prohibit trans-specific healthcare for everyone under 18 by statute, replace the existing non-discrimination protection with a narrower ground that can be overridden by the interests of others, ban teaching on gender identity diversity in schools.

These measures are unnecessary and conflict directly with Portugal's international obligations under the European Convention on Human Rights (ECHR), EU law, the UN Convention on the Rights of the Child (CRC) and the Council of Europe's Committee of Minister's Recommendation on equal rights for intersex persons.

We ask Parliament to withdraw the Bill or vote against it in its entirety and, should it proceed, to hear trans and intersex young people, whilst fully ensuring that those young people's wellbeing and safety is guaranteed, and carry out a child rights impact assessment first.

About the submitting organisations

TGEU (Trans Europe and Central Asia) is an umbrella organisation of more than 200 member organisations representing trans people in Europe and Central Asia. IGLYO is the International LGBTQI Youth and Student Organisation, a network of around 150 member organisations working with LGBTQI young people and students across Europe. OII Europe is the European umbrella organisation of intersex-led organisations in Europe, Central Asia and the Maghreb region, with over 20 member organisations from 20 Member States across Europe. ILGA Europe is an independent international NGO bringing together over 700 member organisations across Europe and Central Asia to advance the human rights and equality of LGBTI people.

Remark on language versions: Due to limited time, the submitting organisations used English machine translations (DeepL) of the Bill; any inaccuracies are theirs.

General Observations

Law Proposal No. 391/XVII/1 (hereafter 'the Bill') proposes to repeal Law 38/2018 (hereafter 'the Self-Determination Act') and reinstate the procedure for LGR for adults under Law 7/2011, based on a mental health diagnosis of 'gender identity disorder' and a procedure for intersex minors from age 16. It further proposes the measures summarised above. The Bill moves Portugal away from legal capacity, self-determination and civil freedoms, and back towards pathologisation and paternalism.

The Self-Determination Act has proven a vital tool against discrimination of trans and intersex people in schools, education and the labour market while remaining free of fraud and abuse. In 2018 - 2022, 1,595 persons used the procedure to change their gender marker, more than three times the 523 changes in 2011-2017.[1] The competent authority, the

[1] CIG, Procedimentos de mudança da menção do sexo no registo civil 2011 - 2022 (n.°), available at: https://www.cig.gov.pt/area-igualdade-entre-mulheres-e-homens/indicadores-2022/lgbti/

CIG, reported in 2022 and in 2026 that it had no information about refusals, applications made with fraudulent or criminal intent, or repeat applications to return to a previous marker.[2] Elsewhere it is the same: according to TGEU's study, twelve European countries have self-determination, some for over ten years, and none have repealed it. In Germany, around 30,000 applications in two and a half years stand against two known cases of misuse, which the courts halted, and official bodies in several countries, Portugal among them, report no abuse or negative effects on others.[3]

Restrictions of fundamental rights must be necessary and proportionate: the Portuguese Constitution allows them only as far as needed to safeguard other protected rights or interests (rights such as personal identity, Article 26, included), and Article 8(2) ECHR requires a pressing social need.[4] The named bases for restriction in the Bill are conceptual, hypothetical or foreign problems and are thinly sourced on Portuguese practice. Without a demonstrated need there is no necessity, and we propose to withdraw or vote against the Bill in its entirety.

The Bill would also represent a considerable loss of acquired protection. Under international human rights law, rights once granted may be rolled back only by measures fully justified after careful consideration of all alternatives. The principle is established for the rights to health and education, which Articles 4-B and 4-H touch, and the Portuguese Constitutional Court applies it to social rights;[5] for civil rights it reinforces the necessity test. The Self-Determination Act is clearly superior to Law 7/2011 from a human rights perspective, and the Bill does not meet the standard of justification, so it would amount to a prohibited regression.

The Bill is also silent on pending applications and on registry changes already made under Law 38/2018, including those of 16 and 17 year olds. Legal certainty is a core element of the rule of law, and laws restricting rights, freedoms and guarantees may not have retroactive effect.[6] Article 4-G only preserves acquired rights for changes made 'under the terms of this Law', which leaves open whether earlier entries stay valid.[7] An express transitional provision is indispensable. The Bill is equally unclear about the Civil Registry Code. Law 38/2018 repealed Law 7/2011 'except for its article 5', which contains the Code amendments, so these never ceased to apply.[8] Reinstating Law 7/2011 as a whole would re-enact Article 5 a second time, which fails the requirement of legal clarity.

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[2] For 2022 data see Richard Köhler (2022) Self-determination models in Europe: Practical experiences. TGEU, available at: https://shorturl.at/qbelv; for 2026 data: on email record with TGEU

[3] Köhler (2022), cited above; TGEU, speaking notes for the public parliamentary hearing on Bills 391/XVII/1, 486/XVII/1 and 479/XVII/1, 25 September 2026.

[4] Constitution of the Portuguese Republic, Articles 18(2) and 26; ECHR, Article 8(2).

[5] ICESCR, Article 2(1); CESCR, General Comment No. 3 (1990), para. 9, No. 13 (1999), para. 45, No. 14 (2000), para. 32; Acórdão do Tribunal Constitucional n.º 509/2002.

[6] Constitution of the Portuguese Republic, Articles 2 and 18(3).

[7] GDPR, Articles 5(1)(d) and 16; CJEU, Case C-247/23, Deldits, 13 March 2025.

[8] Law 38/2018 of 7 August, Article 18: https://diariodarepublica.pt/dr/detalhe/lei/38-2018-115933863. On our reading of the consolidated text, the Act does not itself amend the Civil Registry Code.

On the terminology used

Language matters. We address the Bill's terms against internationally recognised terminology.

Intersex vs 'Hermaphrodites'

We find it alarming that the Bill regresses from human-rights compliant language (intersex persons) to outdated, stigmatising language (hermaphrodites). Intersex is widely recognised in international human rights law and medical science, and all 46 Council of Europe member States, Portugal included, recently voted to adopt and use it for persons with innate variations of sex characteristics.[9]

In 2006, the Chicago Consensus Statement found 'hermaphroditism' and 'pseudo-hermaphroditism' to be outdated, stigmatising, and medically incorrect and misleading, and a new catalogue of diagnostic terms has been used by doctors since.[10] Footnote five of the Bill claims that variations and related DSD[11] diagnoses are limited to chromosomal variations, which is not factually correct and could bar access to the procedure for a considerable part of the intersex population.

The claim of the Bill to rest on "scientific and technical standards of medicine" is demonstrably false by its use of 20-year outdated medical language.

On 'Transsexuality' and 'gender identity disorder'

The Bill uses throughout the terms 'gender identity disorder' and 'transsexuality', which are outdated and misleading as legal and medical terms. 'Transsexualism' is diagnosis F64.0 in ICD-10. ICD-11, in force since 2022, has moved 'gender incongruence' out of the chapter on mental disorders into one on conditions related to sexual health, to remove the stigma of a mental disorder while keeping access to healthcare.[12] That diagnosis exists solely to enable access to care for those who need it and was never designed as a criterion for LGR. Portugal supported ICD-11's adoption at the World Health Assembly.[13]

We respectfully submit to use 'trans people' and 'gender identity' instead.

Trans people are persons whose gender identity differs from the sex assigned at birth, and gender identity is each person's deeply felt internal and individual experience of gender, which may or may not correspond to it.[14] 'Gender ideology' has no recognised meaning in law, medicine or the social sciences and is undefined in the Bill; we return to it under Article 4-H.

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[9] Committee of Ministers, Recommendation CM/Rec(2025)7 - CM/Rec(2025)7 - Recommendation of the Committee of Ministers to member States on equal rights for intersex persons (Adopted by the Committee of Ministers on 7 October 2025 at the 1539th meeting of the Ministers' Deputies), https://search.coe.int/cm?i=091259488028b934
[10] P. A. Lee, C. P. Houk, S. F. Ahmed, I. A. Hughes, 'Consensus statement on management of intersex disorders', Pediatrics 2006; 118(2): e488-e500.
[11] DSD - Disorder of Sex Development
[12] WHO, ICD-11, codes HA60 and HA61 (gender incongruence), in force since 1 January 2022; ICD-10, code F64.0.
[13] 72nd World Health Assembly (May 2019).
[14] Yogyakarta Principles plus 10 (2017), preamble; see also Principles 31 and 32.

Article 2(1): Eligibility and capacity of persons under legal guardianship, or deemed legally incapable, and of minors

Article 2 of Law 7/2011 excludes persons under guardianship or deemed incapable 'due to mental illness'. The CRPD requires non-discrimination, equal recognition before the law and supported rather than substituted decision-making (Articles 5 and 12).Portugal replaced interdiction and inabilitação in 2018 with the 'accompanied adult' regime.[15] Excluding persons from recognition because of health or legal status illegally uses disability as a ground for exclusion and relies on categories no longer in Portuguese law, as we already argued in our submissions in 2017.[16]

The article also limits the procedure to adults and would end access for 16 and 17 year olds, who today apply with their legal representatives, a personal hearing and a medical or psychological report on their capacity to consent. Under the current procedure there are already considerable safeguards in place. These safeguards ensure that each decision is taken with the young person's legal representatives and based on an individual assessment of capacity. We are not aware of any case in which the procedure has failed a 16- or 17-year-old, and the CIG reports no refusals, fraudulent applications or repeat applications.[17] Withdrawing this existing right from an entire age group requires strong justification, and the Bill offers none. Because 16- and 17-year-olds apply together with their legal representatives, the Bill would also override decisions that parents have taken jointly with their children.

The Convention on the Rights of the Child (CRC) requires that the child's best interests are a primary consideration, that their views are given due weight according to age and maturity, and that their evolving capacities are respected, which according to the CRC Committee calls for capacity-based assessment rather than fixed age limits.[18] The Council of Europe Commissioner for Human Rights likewise recommends access for minors, ideally without arbitrary age limits.[19] 'Waiting until 18' means a lasting mismatch between a young person's documents and their lived identity. The result is repeated forced disclosure each time a document must be shown, including when registering at school and sitting exams, on diplomas and certificates, when travelling, when applying for first jobs and when in contact with health and other public services. Each disclosure reveals personal information protected under Article 16 CRC (right to privacy, family life, home, correspondent and reputation) and Article 8 ECHR (right to private and family life). The ECtHR has recognised the alienation

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[15] CRPD, Articles 5 and 12; CRPD Committee, General Comment No. 1 (2014); Law No. 49/2018 of 14 August ('maior acompanhado').

[16] ILGA-Europe, TGEU and OII Europe, Comments to Law Proposals 242/XIII/1st, 317/XIII 2nd and 75/XIII 2nd (2017); TGEU, Checklist Gender Recognition Legislation (13 October 2017).

[17] CIG, Procedimentos de mudança da menção do sexo no registo civil 2011 - 2022 (n.°), available at: https://www.cig.gov.pt/area-igualdade-entre-mulheres-e-homens/indicadores-2022/lgbti/

[18] CRC, Articles 3, 5 and 12; CRC Committee, General Comments No. 12 (2009) and No. 20 (2016).

[19] Council of Europe Commissioner for Human Rights (Dunja Mijatović), Issue Paper 'Human Rights and Gender Identity and Expression' (March 2024), key recommendations: https://rm.coe.int/issue-paper-on-human-rights-and-gender-identity-and-expression-by-dunj/1680aed541. See also Council of Europe, Thematic Report on Legal Gender Recognition in Europe (2022).

caused when the status imposed by law conflicts with a person's social reality.[20] For young people, this happens at school, where nearly 75% of LGBTQI respondents in Portugal report bullying, ridicule, insults or threats at school.[21] Nearly 75% of trans respondents in an EU-wide survey knew their gender identity before 18.[22] Other countries offer pathways for minors: Germany scales parental involvement to the child's maturity, and Denmark, which first limited self-determination to over 18 year olds, has since given access to trans minors over concerns that its strict age limit would violate the European Convention protection from age-discrimination.[23]

Article 2(2): Eligibility and capacity of intersex persons

Regarding LGR, the Bill creates a route for 'persons with physical and biological characteristics of both sexes, also known as hermaphrodites' from 16, or earlier with parental authorisation, where medical monitoring shows that puberty has revealed the 'predominant sexual pattern and corresponding psychological development'. The terminology is unfit. The Council of Europe's Intersex Recommendation asks for quick, transparent and accessible LGR for intersex persons,[24] and under the Self-Determination Act intersex persons can apply once their gender identity manifests. The Bill adds an age floor and makes recognition dependent on a medical finding about which sex 'predominates', placing the determination of sex in the hands of medical observers and creating an incentive to wait for the body to 'declare itself', essentially encouraging the logic behind non-consensual, medically unnecessary interventions in childhood. Article 2(2) should be rejected.

On Article 3.1 Application and supporting documents

Under the Bill, Article 2 of Law 7/2011 would be re-enacted, so only a legally competent adult with a diagnosis of 'gender identity disorder' could apply. The Bill amends Article 3(1)(b) to require a diagnosis in accordance with Article 79 of the Code of Ethics of the Portuguese Medical Association. Article 79 requires 1.)diagnosis by a multidisciplinary team (psychiatrist, sexologist, endocrinologist), 2.) corroboration by a second team, and 3.) continuous psychological monitoring for at least two years 'from the establishment of the diagnosis to the post-surgical phase'. Without specification, all three items become prerequisites, so the Bill thus re-introduces not only a mental health requirement but also proof of surgery.

This re-medicalisation raises serious problems under international human rights law. The Parliamentary Assembly of the Council of Europe has called for quick, transparent and

[20] ECtHR, Christine Goodwin v. the United Kingdom, no. 28957/95, 11 July 2002.

[21] FRA, EU LGBTIQ Survey III (2024), country data for Portugal, as cited by IGLYO. [Please check the figure against the FRA data.]

[22] FRA, EU LGBTI Survey II (2019), question on the age at which trans respondents realised their gender identity; the EU-wide result is about 73% before the age of 18 (TGEU cited 72% at the hearing). [To be checked against the FRA data explorer.]

[23] CPR (2024), "Vejledning til ansøgning om nyt personnummer til personer under 18 år begrundet i en oplevelse af at tilhøre det andet køn" ["Guidance on applying for a new personal identification number for persons under the age of 18 on the grounds of a sense of belonging to the opposite sex"], available at: https://www.cpr.dk/borgere/kan-jeg-faa-et-nyt-personnummer/juridisk-koensskifte

[24] Recommendation CM/Rec(2025)7, cited above.

accessible procedures based on self-determination and the abolition of sterilisation, compulsory treatment and a mental health diagnosis as requirements,[25] as has the Council of Europe Commissioner for Human Rights, who also asks for trans-specific healthcare without a mental health diagnosis.[26] The ECtHR has held that conditioning recognition on sterilising treatment or irreversible change violates Article 8 ECHR,[27] as does conditioning access to surgery on sterility,[28] and that recognition cannot depend on surgery;[29] preconditions in LGR must be actually achievable within the State.[30] ICD-11, followed a broader trend towards demedicalisation in LGR,[31] and requires one diagnosis, while the Bill adds verification by two teams, years of monitoring and a surgical pathway. The Court of Justice of the EU has since ruled that proof of surgery may not be required to correct gender data,[32] and that EU law requires accessible LGR procedures where gender identity affects free movement.[33]

A diagnosis would also not protect against the risks invoked in the debate. Safety and security, for instance in detention, depend neither on a diagnosis nor on a person's body and are assessed individually.[34] A diagnostic gate squanders scarce healthcare resources on certifying instead of treating. The shortage of trained professionals in trans-specific healthcare; the requirement of two teams, two years of monitoring and a surgical pathway creates an illegal de facto barrier to recognition.

For intersex persons, Article 3(1)(c) requires a medical report under the same Article 79, designed around a diagnosis of gender identity disorder and surgical transition, which has no relevance for them and would push them into a pathologising pathway. The diagnosis and report requirements should be rejected together with the Bill.

On the repeal of Article 5 of Law 38/2018 and the protection of intersex children

The Bill is presented as protecting children, yet it proposes to remove the one provision of Portuguese law that expressly protects intersex children. In 2018 Portugal became the second European State to ban such interventions: Article 4 of the Self-Determination Act guarantees the right to maintain sex characteristics, and Article 5 prohibits interventions

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[25] PACE Resolution 2048 (2015), Discrimination against transgender people in Europe, para. 6.2.
[26] Council of Europe Commissioner for Human Rights (Dunja Mijatović), Issue Paper 'Human Rights and Gender Identity and Expression' (March 2024), key recommendations: https://rm.coe.int/issue-paper-on-human-rights-and-gender-identity-and-expression-by-dunj/1680aed541. See also Council of Europe, Thematic Report on Legal Gender Recognition in Europe (2022).
[27] ECtHR, A.P., Garçon and Nicot v. France, nos. 79885/12, 52471/13 and 52596/13, 6 April 2017.
[28] ECtHR, Y.Y. v. Turkey, no. 14793/08, 10 March 2015.
[29] ECtHR, X and Y v. Romania, nos. 2145/16 and 20607/16, 19 January 2021.
[30] ECtHR, L. v. Lithuania, no. 27527/03, 11 September 2007.
[31] UN Independent Expert on SOGI, Report on legal recognition of gender identity, A/73/152 (2018).
[32] CJEU, Case C-247/23, Deldits, 13 March 2025.
[33] CJEU, Case C-43/24, Shipova, 12 March 2026.
[34] See Köhler (2022), Self-determination in Europe, cited above and its forthcoming 2026 update (data available upon request.)

modifying the body or sex characteristics of an intersex child before their gender identity has manifested, except where their health is at proven risk.

Non-vital interventions without free and informed consent have been identified as violating physical and mental integrity, the prohibition of ill-treatment and the right to health by the UN Special Rapporteur on torture, the Parliamentary Assembly[35] and, in October 2025, the Committee of Ministers in Recommendation CM/Rec(2025)7, which Portugal helped adopt and which calls for prohibiting non-consensual interventions.[36] The UN Human Rights Committee welcomed Law 38/2018 in 2020 while voicing concern about continued irreversible procedures on intersex children, and the Committee on the Rights of the Child urged Portugal in 2019 to end unnecessary interventions.[37] A 2024 WHO-supported systematic review found a lack of solid evidence behind early 'sex-normalising' surgeries.[38]

The Bill repeals Article 5 of the Self-Determination Act without adequate replacement. Article 4-C(1) of the Bill speaks of a right to retain sexual characteristics but contains no prohibition, while Article 2(2) treats intersex children as persons whose sex is established by medical monitoring. This significantly reduces protection Portugal only recently committed to uphold. The Act could be improved,[39] but the Bill removes the protection instead. We ask that the substance of Articles 4 and 5 be preserved and strengthened.

On new Article 4-A Confidentiality exceptions

Medical confidentiality is protected under Article 8 ECHR.[40] Exceptions must be necessary for a specific purpose. Disclosure to heirs (4-A(c)) or to a spouse in preliminary marriage proceedings (4-A(d)) are not valid purposes: spouses' sex does not matter for the validity of marriage or for inheritance,[41] and disclosure would only expose protected health data. Exception 4-A(e) is ambiguous and thus inappropriate for medical confidentiality. These exceptions should be limited to cases ordered by a court.

Article 4-B [new]: Protection of minors and non-maleficence

Article 4-B(1) prohibits for everyone under 18 any medical intervention in the context of gender dysphoria, including puberty blockers, hormones or any other drugs that may alter primary or secondary sexual characteristics, and surgery. The stated basis is non-maleficence and the best interests of the child. We share these principles, but they point the other way. The CRC requires that best interests be assessed individually, according to the child's specific situation, and gives children the right to be heard and to the highest

[35] UN Special Rapporteur on torture, A/HRC/22/53 (2013); PACE Resolution 2191 (2017).
[36] Recommendation CM/Rec(2025)7, cited above.
[37] CRC Committee, Concluding observations on Portugal, CRC/C/PRT/CO/5-6 (2019), para. 28; Human Rights Committee, Concluding observations on Portugal, CCPR/C/PRT/CO/5 (2020), paras. 16-17.
[38] 'Perspectives on conducting "sex-normalising" intersex surgeries conducted in infancy: a systematic review', PLOS Global Public Health (2024).
[39] ILGA-Europe, TGEU and OII Europe, Comments to Law Proposal 75/XIII 2nd (2017), points 17.3 and 18.
[40] GDPR, Articles 5(1)(c) and 9(1); ECtHR, Z v. Finland, no. 22009/93, 25 February 1997.
[41] Law No. 9/2010 of 31 May.

attainable standard of health in line with their evolving capacities.[42] A prohibition for every child regardless of age, circumstances and clinical judgment replaces that assessment by a general rule, although risks and benefits can only be weighed per child by qualified professionals together with the young person and their parents. The Bill treats interventions that differ greatly in reversibility, timing and rationale as one, and on its wording 'any other drugs that may … alter primary or secondary sexual characteristics' also reaches hormonal care given to children for other medical reasons, including intersex children. It contradicts Article 4-D(2), provides no transition for young people already in treatment, and no evidence from Portugal shows that current practice harms them.

As already pointed out in the hearing, the lack of scientific research stems in part from chronic underfunding of this area of medicine. On the other hand, there are practical obstacles to conducting randomised controlled trials and double blind studies with young people on the use of puberty blockers and hormone replacement therapy, due to serious ethical concerns.[43] Long-term observational studies are considered standard practice and existing evidence calls for individual assessment, good research and adequately resourced specialised services, not a statutory ban. On the other hand, negative assessments of gender-affirming care for young people like the Cass Review have been heavily criticised on methodological grounds, including its assessment of the quality of evidence and pre-supposed outcomes.[44]

Tying access to critical medicine on the condition to research participation risks violating the requirement of free and informed consent to medical research participation and the right to best attainable healthcare under Article 11 European Social Charter. Limited capacity in specialised children's services and the eligibility criteria of clinical trials can restrict access to research and treatment.[45] As a result, children who might benefit from puberty suppression may be excluded from the only available route to care, at a crucial developmental moment when the distress associated with pubertal changes can be particularly acute. A dearth of quality-research should result in more and better funded research, not in less services for young people.[46] Organisation of services and barriers to accessing care should be assessed

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[42] CRC, Articles 5, 12 and 24; CRC Committee, General Comment No. 14 (2013), para. 32, and No. 15 (2013).

[43] Giordano (2025), Keep calm but do not carry on: ethical issues with the recommendations made by the Cass Review (2024), https://jme.bmj.com/content/early/2025/07/03/jme-2024-110613

[44] Integrity Project, Yale Law School, 'An Evidence-Based Critique of "The Cass Review" on Gender-affirming Care for Adolescent Gender Dysphoria' (2024, not peer-reviewed): https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf; 'Critically appraising the Cass report: methodological flaws and unsupported claims' (peer-reviewed, 2025): https://pmc.ncbi.nlm.nih.gov/articles/PMC12065279/

[45] See for example the PATHWAYS trial: official eligibility criteria by the National Institute for Health and Care Research (NIHR), UK. The published criteria require participants to be attending an NHS gender service, to have a diagnosis of gender incongruence, to be in a specified stage of puberty and to be younger than 15 years and 11 months. Young people who have already received puberty-suppressing or gender-affirming hormones are excluded. These criteria demonstrate that access through the trial is not available to every child who might seek or benefit from puberty suppression. In particular, the age, pubertal-stage and previous-treatment criteria create a defined eligibility boundary.

[46] Taylor et al. (2024), Interventions to suppress puberty in adolescents experiencing gender dysphoria or incongruence: a systematic review, https://adc.bmj.com/content/109/Suppl_2/s33

against children's rights, not solely against research objectives.[47] The requirement of 'healthy and normal' development (Article 4-B(2)) is also incompatible with the diversity of human development and reinforces the stigma that, as FRA data show, already makes school hostile for many LGBTQI young people.[48]

No other area of healthcare provision receives a similar level of scrutiny. The routine prescription of puberty blockers to cisgender children to prevent early onset puberty is an identical medical procedure. This is a medical debate for medical experts, and it is not for the Parliament to settle this.

We recommend deleting Article 4-B, and suggest to hear trans and intersex young people and youth organisations in child-friendly formats, and a child rights impact assessment to determine their actual needs in healthcare.

On Article 4-C [new]: Protection of sex characteristics

Article 4-C(1) echoes Article 4 of the Self-Determination Act without the prohibition that gave it effect, and 4-C(2) targets an undefined practice that, to our knowledge, does not exist in Portugal. We recommend replacing it with Articles 4 and 5 of the Self-Determination Act.

Article 4-D [new]: Healthcare

Support and healthcare are welcome in principle, but the framing is not. Article 4-D(1) provides support 'from the outset' to minors and adults who 'present with identity disorders, including gender identity disorder', presenting gender diversity as a disorder to be treated. Support must be voluntary and consent-based, and for minors it risks being read as endorsing practices aimed at changing identity, which Portugal has criminalised and UN experts have found may amount to torture or ill-treatment.[49] Adults' and minors' access to trans healthcare should rest on informed consent without mandatory psychiatric assessment, as we argued before.[50] We recommend deleting references to 'disorder' and aligning Article 4-D with an individualised, rights-based approach.

Article 4-F [new]: Prohibition of discrimination

Article 4-F(1) prohibits discrimination 'on the grounds of their status as a transgender person'. The ECtHR treats gender identity as protected under Article 14 ECHR,[51] and the Council of Europe's recommendations also cover sex characteristics.[52] The recognised ground is gender identity, not a 'status', and it should be complemented by sex characteristics, which we prefer to 'intersex status', so intersex persons are not left out. The

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[47] Horton et al. (2024), Child rights in trans healthcare – a call to action, https://pmc.ncbi.nlm.nih.gov/articles/PMC11268223/
[48] FRA, EU LGBTIQ Survey III (2024), country data for Portugal
[49] Law No. 15/2024 of 29 January; UN Independent Expert on SOGI, Report on conversion therapy, A/HRC/44/53 (2020).
[50] ILGA-Europe, TGEU and OII Europe, Comments to Law Proposals 242/XIII/1st, 317/XIII 2nd and 75/XIII 2nd (2017); TGEU, Checklist Gender Recognition Legislation (13 October 2017).
[51] ECtHR, P.V. v. Spain, no. 35159/09, 30 November 2010.
[52] Recommendations CM/Rec(2010)5 and CM/Rec(2025)7.

Bill thus reduces today's protection. We recommend rejecting Article A-F(1) and retaining Article 2 of the Self-Determination Act.

Article 4-F(2) makes non-discrimination subject to case-by-case assessment where the 'safety, privacy or physical integrity of persons of the opposite biological sex' is at stake, in prisons, public toilets and public sport. The explanatory memorandum does not cite the existence of problems in these areas, creating a limitation without justification. This provision undermines the essence of non-discrimination protection, which is to safeguard a vulnerable minority without making them subject to the goodwill and understanding of the majority. We recognise that tailored, evidence-based rules developed by prison administrations can be legitimate here. In detention, safety is determined case by case, including by hearing the trans detainee. The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) states that trans persons should be accommodated in the section corresponding to their gender identity (not their legal gender marker), as placement elsewhere heightens the risk of violence.[53] The CPT also speaks out against a surgery or sterilisation requirement in LGR. But it is another matter for the legislator to present the mere presence of trans persons as a potential danger to others. Differences in treatment on grounds of sex and gender identity need particularly weighty reasons,[54] and the Bill offers neither those nor evidence of incidents. Similarly, leaving tailor-made solutions to sports associations bears the risk of the exclusion of trans and intersex people from amateur as well as professional sports. Where rules establish a difference in treatment between trans and cisgender women, for such a difference in treatment to be permitted by law, it must pursue a legitimate purpose and the rules put in place must be necessary and appropriate.[55]

We are particularly concerned about the effect on children and young people. Rule restricting participation in 'public sport' by 'biological sex' would reach youth leagues, club training and school sport, where young people's first and most frequent experience of sport takes place. Such rules risk excluding trans and intersex children and adolescents from sport with their peers at an age when taking part matters most for their physical and mental health, sense of belonging and social development. They may also expose intersex young people in particular to intrusive scrutiny of their bodies. At this level the justification of 'safety' or 'fairness' is at its weakest, as youth and grassroots sport is mainly about participation, health and education. A blanket rule is also hard to reconcile with Articles 2, 3 and 31 of the CRC (non-discrimination, best interests and the right to play and recreation).[56]

We recommend deleting Article 4-F(2). We welcome 4-F(3) and (4), the latter to be reworded without the presumption of a 'biological sex' to which one returns.

On Article 4-H (new) Education and teaching

Article 4-H(1) prohibits the inclusion of 'gender ideology' in curricula for under 18s and reserves education in this field exclusively to parents or guardians. The term is undefined,

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[53] CPT, 33rd General Report (2023), section on transgender persons in prison, published 25 April 2024: https://rm.coe.int/1680af7216

[54] ECtHR, Salgueiro da Silva Mouta v. Portugal, no. 33290/96, 21 December 1999; P.V. v. Spain, cited above.

[55] Tribunal de première instance francophone de Bruxelles, Section civile, Ordonnance, 24/329/C,10 July 2025, https://igvm-iefh.belgium.be/sites/default/files/media/documents/20250710_ano.pdf

[56] CRC, Articles 3, 3 and 31.

which raises problems of legal certainty. The ECtHR found in *Macatė v Lithuania* that the State had not shown that information about sexual diversity harms children.[57] Under Article 2 of Protocol No. 1 the State may teach sensitive subjects if information is objective, critical and pluralistic, without a parental veto.[58]

The Court of Justice of the EU has just rejected the argument on which Article 4-H relies. In *Commission v Hungary*, Hungary defended restrictions on minors' access to content on homosexuality and on gender identities differing from the sex assigned at birth with the best interests of the child, which Article 24(2) of the Charter makes a primary consideration, and the right of parents to educate their children according to their convictions. In its judgment of 21 April 2026 the Full Court accepted that these aims can in principle justify restrictions, but found the prohibition a particularly serious interference with freedom of expression and information under Article 11 of the Charter, as the law presumed any depiction of such identities inherently harmful to children.[59] Advocate General Ćapeta had made the same point in her Opinion of 5 June 2025: protecting minors' healthy development can be a legitimate aim, but Hungary offered no evidence that shielding children from this content serves their best interests, and such legislation reflects prejudice rather than child protection.[60] Article 4-H rests on the same unproven presumption.

Article 4-H frames education on gender diversity as a matter between the State and parents, leaving children's own rights out of view. Under Articles 13 and 17 of the CRC, children have the right to seek and receive information, including from a diversity of sources, and Article 29 requires education to prepare them for life in a free society in a spirit of understanding, tolerance and equality. Reserving this field exclusively to parents leaves trans and LGBTQI pupils whose families are not supportive without any reliable source of age-appropriate information, and these are often the young people most at risk of isolation and harm.

The role of parents is not absolute and cannot cancel the State's duty to protect all pupils. A rule forbidding schools to address gender diversity makes bullying harder to prevent and conflicts with Article 4-H(2), which guarantees all children an environment of equality, respect and non-discrimination. This concern is concrete in Portugal, where nearly three in four LGBTQI respondents report bullying, ridicule, insults or threats at school.[61] Removing the subject from curricula would deprive teachers of the means to address that hostility and would send a message to LGBTQI pupils that their identities are not accepted in the school environment.

Because 'gender ideology' is undefined, Article 4-H would also have a wide chilling effect. Teachers unable to know where the line lies would avoid the subject altogether, including when responding to bullying, answering pupils' questions or using inclusive examples in class. Experience with comparable laws, for example recent legislation in Hungary and Russia, shows that such provisions silence schools well beyond their literal scope and leave LGBTQI pupils without protection or recognition.

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[57] ECtHR [GC], Macatè v. Lithuania, no. 61435/19, 23 January 2023.
[58] ECtHR, Kjeldsen, Busk Madsen and Pedersen v. Denmark, 7 December 1976, para. 53; Article 2 of Protocol No. 1; CRC, Articles 13, 17 and 29(1).
[59] CJEU (Full Court), Case C-769/22, European Commission v Hungary, 21 April 2026.
[60] Opinion of Advocate General Ćapeta, 5 June 2025, Case C-769/22.
[61] FRA, EU LGBTIQ Survey III (2024), country data for Portugal.

The ‘ideological neutrality’ invoked is a constitutional principle,[62] but a statutory ban on a subject chosen for its perceived ideological content is itself a violation of Article 43(2). Neutrality requires pluralistic information, not silence. The CJEU highlighted in *Commission v Hungary* the importance of exposure to diverse ideas and identities as a backbone to pluralism in society. We recommend deleting Article 4-H.

On Article 5 Amendment to the Civil Registry Code

Article 5 of Law 7/2011 contains provisions that never ceased to apply but deserve attention now. Article 69(4)(a) provides for a parent’s gender marker change to be recorded on the birth records of their adult children at the child’s request. We have long argued the opposite: parents should be recognised in their children’s birth records in line with their legal gender and without a trace, since outdated records breach the privacy of parent and child and expose the family to discrimination.[63] It should be possible for the parents also of a minor to apply for a change of their data on their children’s birth certificate.

Article 70(1)(i), read with Article 69(4)(b), makes recording a spouse’s LGR on the marriage record conditional on the other spouse’s consent, giving a third person a veto over a person’s legal identity. In Portugal where marriage has been open to same-sex couples since 2010, the spousal veto serves no legitimate purpose, and Article 70(1)(i) should be repealed regardless of the Bill.

On the Right of Young People to be Heard

The Bill would directly affect children and young people, most immediately 16 and 17 year olds, who would lose access to LGR, young people in need of trans-specific healthcare under Article 4-B, intersex children, and all school students under Article 4-H. Under Article 12 of the CRC[64], every child capable of forming their own views has the right to express them freely in all matters affecting them, with those views given due weight in line with their age and maturity. In its General Comment No. 12 (2009)[65] the Committee on the Rights of the Child makes clear that this right applies to the development of laws and policies, not only to individual proceedings. It sets out basic requirements for meaningful participation: it must be transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, safe and sensitive to risk, and accountable. General Comment No. 20 (2016) on adolescents[66] reinforces this by calling on States to involve adolescents in decisions that affect them and to respect their evolving capacities. A reform that would remove existing rights from young people without seeking their views falls short of these obligations. We therefore ask that, should the Bill proceed, Parliament first holds hearings with trans and intersex young people and the organisations that work with them, designed in line with the requirements above and with their safety, anonymity where needed and wellbeing fully guaranteed.

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[62] Constitution of the Portuguese Republic, Article 43(2).
[63] TGEU, Checklist Gender Recognition Legislation (13 October 2017); ILGA-Europe, TGEU and OII Europe, Comments to Law Proposal 317/XIII 2nd (2017), on Article 9.
[64] CRC, Article 12(1)-(2).
[65] CRC Committee, General Comment No. 12 (2009).
[66] CRC Committee, General Comment No. 20 (2016).

Conclusions

The submitting organisations see no demonstrated need for the Bill and many clear conflicts with Portugal's human rights obligations. It would bring back medical gatekeeping, exclude 16 and 17 year olds, replace individual best-interest decisions by a blanket ban on healthcare, reduce the protection of intersex children, weaken non-discrimination protection, limit information in schools and leave existing registry entries in doubt. We ask the Assembly to withdraw the Bill or vote against it in its entirety and, should any reform be considered, to precede it by a child rights impact assessment and by hearings of trans and intersex persons, including young people, whilst fully ensuring that those young people's wellbeing and safety is guaranteed.