



## **What Is The Problem With The Hungarian Law On Foreign Funded NGOs?**

On 13 June 2017, the Hungarian National Assembly (Parliament) adopted the Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereinafter: the Law). It obliges associations and foundations that receives at least 7.2 million HUF annually from foreign source to register with the court as an organization receiving foreign funding, to annually report about their foreign funding, and to indicate the label “organization receiving foreign funding” on their website and publications. The list of foreign funded NGOs is also published on a government website.

This law has been a part of a series of measures that began in 2013 designed to discredit and silence civil society organisations that are trying to hold the government to account to its obligations concerning anti-corruption, environmental protection, fundamental rights, democracy and the rule of law. The draft of the law was submitted to the Parliament on the 7 April 2017 by three Members of Parliament, when unfounded allegations on NGOs by members of the Hungarian Government, misleading reporting on the activities of NGOs from government-friendly media, the so-called consultation with the title 'Let's Stop Brussels' characterized the season.

### **What is the Problem with the Hungarian Law on Foreign Funded NGOs?**

- **The Law interferes with the freedom of expression of the organizations as it affects their right to good reputation**
- **The Law violates the right to privacy and personal data protection**
- **The Law violates freedom of association**
- **The Law violates the general prohibition of discrimination in relation to the freedom of association**
- **There was no public consultation during the legislative process**
- **The Law introduces unjustified and disproportionate restrictions to the free movement of capital**
- **The Law follows the autocratic Russia's example**

**International and European institutions' views on the Hungarian Law**

- **The Law interferes with the freedom of expression of the organizations as it affects their right to good reputation**

The law violates the citizens' and their organizations' freedom of expression when it obliges NGOs to use negative labels as their self-identification, in order to discredit their opinions in the public discourse. This labelling roots in the presumption that foreign funding enables foreign interest groups to enforce their own interests instead of the public interest, through the societal influence of the NGOs, and it endangers the political, economic interests of the country as well as the operation of statutory institutions without undue influence. (This presumption appears in the preamble and the justification of the Bill.) Compelling NGOs to use negative labels on their publications causes that their opinions will be handicapped: they will be always coupled with the discrediting message stating that the source of the opinions expressed are serving other interests than those of the Hungarian nation and society. Such an interference with these rights is not a proportionate tool for enhancing transparency and national security, or acting against money laundering, since the already existing regulations are much more effective. Transparency is ensured by the requirement from civil society organizations to publish their financial data, also indicating the sources of support. While national security and the fight against money laundering are served not by publicity but by the appropriate functioning of institutions dedicated for such purposes. The requirements set by the new act are both unnecessary and disproportionate.

*For these reasons the law fails to comply with Article 11 of the EU Charter of Fundamental Rights, Article 19 of ICCPR and Article 10 of ECHR.*

- **The Law violates the right to privacy and personal data protection**

The law violates the rights to data protection and privacy when it obliges the organizations to submit the name, country and city of foreign donor, even if they are private individuals, if their donation exceeds 500,000 HUF per year. The list of individuals providing financial support to certain NGOs is a list of identifiable people indicating their affiliation, opinion and belief. There is no proportionate legitimate aim of such an interference with personal privacy, and none of the possible legal grounds specified in the EU GDPR of such a data processing may be applied. There is no justification in a democratic state to make a list of individuals who support certain organizations. Furthermore, the obligation to list private donors is also a violation of their freedom of expression. By supporting a cause, they also express their opinion, and being listed for doing so is a disproportionate restriction on that right by the state.

*For these reasons the law violates Article 8 of the EU Charter, Article 8 of ECHR, Article 17 of ICCPR and Article 9 of the EU General Data Protection Regulation (2016/679).*

- **The Law violates freedom of association**

The sanctions imposed by the Law (fines between 10.000 – 900.000 HUF  $\approx$  32 – 2.900 EUR; a lawfulness supervision procedure that may lead to the termination of the organisation, or to the appointment of a trustee) are extremely harsh, therefore disproportionate, considering the nature and the significance of the obligations specified by the Law. Such restrictions of the freedom of association would not meet the standards of having a legitimate aim, pressing social need and proportionality.

*For these reasons the Law violates Article 12 of the EU Charter, Article 22 of ICCPR, Article 11 of ECHR.*

- **The Law violates the general prohibition of discrimination in relation to the freedom of association**

It discriminates when it treats NGOs differently on the basis of the sources of funding they receive. The foreign origin of the sources of an NGO cannot be considered as a legitimate reason for a differentiated treatment. The Law also violates sectoral equity: it treats NGOs with legal personality differently than other entities without any reasonable justification; therefore it disproportionately targets and burdens NGOs with onerous requirements not applicable to the corporate sector. The Law imposes more burdensome reporting requirements and sanctions on NGOs than on other entities (including other entities that are also involved in the policy discourse) without proper justification. It is also not justified why the Law applies to this category of NGOs and excludes other organizations, such as sports and religious organizations from the scope of the Law, especially in light of the reasons attached to the Bill of the Law (General Reasoning), according to which the main consideration behind the legislation is that NGOs can and do influence public opinion. It is obvious that religious organizations also have this ability – often to a much greater extent than other civil society organizations –, and it is also clear that on the basis of this reasoning, media companies should also fall under the same obligation.

*The Law violates Article 21 and 12 of the EU Charter, Article 26 and 22 of ICCPR, Article 14 and 11 of the ECHR.*

- **There was no public consultation during the legislative process**

Although the Bill was planned and supposed to be submitted by the Government, it has been submitted as a proposal by three Fidesz MPs. This move made it possible to evade the obligation to carry out consultation as foreseen by Act CXXXI of 2010 on public participation in the legislative process, which is mandatory for government-submitted bills. The government called for a consultation between the five parliamentary groups of political parties. None of the opposition factions supported the proposal. The general public was informed about the draft before its submission to Parliament only through an information leak to the media; therefore no public/professional debate could precede the political debate in Parliament. Furthermore, to our knowledge, the government has not conducted any risk assessment regarding the planned legislation.

*Such a process violates the right to participate in public affairs protected by Article 25 of ICCPR.*

- **The Law introduces unjustified and disproportionate restrictions to the free movement of capital**

The new registration, reporting and publicity requirements foreseen by the law are discriminatory and create an administrative and reputational burden for these organisations. These measures may have a dissuasive effect on the funding from abroad and make it difficult for the concerned NGOs to receive it. The Law treats funding from Hungary and from another EU member states differently.

*The Law is not in harmony with Article 63 of the Treaty on the Functioning of the European Union.*

- **The Law follows the autocratic Russia's example**

When the draft law, the Bill T/14967 was made public, it was hard not to notice the similarities with the Russian Foreign Agent Act, regarding the intentions, content and, in some parts even the wording of the two documents. Some parts of the Hungarian Law were the literal translation of the Russian law. Both laws' starting point is that the foreign funded organizations, through their societal influence, assert other interests than the nation's, therefore they may pose a high risk to the national security and sovereignty. (See Article 2.6 of the Russian law and the Preamble of the Hungarian law.) The Hungarian lawmakers followed the Russian example when they drafted the definition of the organizations supported from abroad, the notion of foreign funding, and the exemptions (e.g. religious organizations). Both laws are irrespective of the origin of the funds (governments and private sources are treated equally, all countries are considered as foreign sources) and of their percentage in an NGO's overall budget. However, there are some differences too, the Hungarian law do not use the word 'agent', its scope is not limited to the organizations that are politically active, and defines a threshold for the foreign funds. The Parliamentary Assembly of the Council of Europe also stated in its Resolution 2162 (2017) of 27 April 2017 that the Hungarian Bill was "inspired by the corresponding Russian law".

The obligations of the organizations supported from abroad are similar to the obligations of the Russian foreign agent NGOs:

- The organizations are labelled, and must register themselves with the label.
- The list of the relevant organizations is made public on a government website.
- The organizations shall also annually report about their foreign funding, including the donors and transactions and the sum of the foreign donation.
- The label should also be marked on the organization's website and be indicated on all of its publications, similarly to the Russian law.

The wording of the article in the Hungarian law regulating the latter obligation is so telling: it is a translation of the last paragraph of Article 24.1. of the Russian law. The original Hungarian Bill copied the rule of the Russian law when regulated that an organization is disengaged from the obligations if they do not receive foreign funds in three consecutive years.

## International and European institutions' views on the Hungarian Law

The draft of the Law was expressed by a number of international figures and institutions responsible for safeguarding democracy, the rule of law and fundamental rights, and there were several calls on the Hungarian government to substantially amend or withdraw the bill entirely.

- *Expert Council on NGO Law: Opinion on the Hungarian Draft Act on The Transparency of Organisations Supported From Abroad. Opinion prepared by the Expert Council at the request of the Conference of INGOs of the Council of Europe April 201.*

On 24 April 2017, the Expert Council on NGO Law upon the request of the Conference of INGOs of the Council of Europe issued a legal opinion that examined the compatibility of this law with international standards and best practices. After this examination, the Expert Council opinion concluded that the Hungarian draft law “gives rise to concerns with respect to its compatibility with the ECHR and other recognized international standards and principles especially regarding the compatibility of the draft Act with the rights to freedom of association, expression, participation in the conduct of public affairs, privacy and ability of NGOs to seek, receive and use resources.” [85] Chief concerns were: signalling out NGOs based on their income from abroad and creating special category that will result in further regulation and labelling; discriminatory treatment of such NGOs; additional burdensome reporting requirement and sanctions for those NGOs. The draft Act undoubtedly imposes additional administrative and financial burden on those organizations and will likely stigmatize them, which will hamper their ability to carry out their statutory mission. [86] Although the draft law is “based on reasoning that increased transparency of the NGOs receiving funding from abroad is necessary to protect the national security, sovereignty and is in line with the efforts to combat money-laundering and terrorism financing”, the draft law “fails to provide evidence why and how such NGOs provide concrete danger to the society. The mere fact that NGOs influence the public opinion is not a justifiable ground to impose additional measures that will undermine the operations of the sector.” [86-87] The overall harmful rhetoric by public officials which preceded and follows the development of this draft Act, also raises doubt as to the actual motivations of the Hungarian authorities in developing the draft and suggests that they aim to target NGOs because of their opinions. [91] The Expert Council therefore calls the authorities not to adopt the draft Act and to find strength to embrace the diversity of opinions that form the fabric of a democratic society. [92]

- *Letter from the Council of Europe Commissioner for Human Rights, Nils Muižnieks, to Mr László Kövér, Speaker of the National Assembly of Hungary, concerning the proposed draft law on foreign-funded NGOs, CommDH(2017)14*

On 26 April 2017, Nils Muižnieks, Council of Europe Commissioner for Human Rights addressed a letter to the Speaker of the National Assembly of Hungary where he raised his concerns about the proposed Hungarian law. The Commissioner regretted to note that the draft law was introduced against the backdrop of continued antagonistic rhetoric from certain members of the ruling coalition, who publicly labelled some NGOs as "foreign agents" based on the source of their funding and questioned their legitimacy. He expressed his concerns that the imposition of a standard label creates

a real risk of creating negative stereotypes about organisations that receive funds from abroad as "foreign agents", discrediting such organisations and causing a chilling effect on their activities. He draws the attention to the relevant guidance included in his opinions on the legislation of the Russian Federation on the so-called "Foreign Agents Law" of 2012, with which the proposed draft law bears a number of similarities. He also drew the attention CoE Committee of Ministers Recommendation CM/Rec(2007)14, the UN Human Rights Council Resolution 22/6, and Venice Commission Opinion on the Russian law. He states that foreign-funded NGOs should not be penalised, stigmatised or put at any disadvantage whatsoever on the basis of the foreign origin of their funding. The Commissioner adds that to his knowledge, NGOs in Hungary are already required to report in full and complete transparency on their funding and activities, in accordance with the existing disclosure requirements. It is therefore difficult to grasp what legitimate purpose would be served by the additional administrative burden that the new law seeks to impose on some of them. Of particular concern is the fact that non-compliance with the new requirements would lead to the imposition of fines and, ultimately, to the Prosecutor's action for dissolution by a court through simplified proceedings. According to the Commissioner, the sanction of dissolution and striking non-compliant organisations off the court register risks destroying the very essence of the right to association protected by Article 11 of the ECHR. The Commissioner recalls the relevant judgments of the ECtHR. He stresses that in light of Recommendation CM/Rec(2007)14, the grounds for the dissolution of an NGO should be strictly limited to the three recognised by international standards: bankruptcy, long inactivity, and serious misconduct. These should apply equally to all types of NGOs and be subject to full procedural guarantees. Any sanctions applied can only be used as a last resort, and must be proportionate and meet a pressing social need. The Commissioner lastly notes that one of the aims of the proposed law, as also mentioned in its reasoning and preamble, is to expand control mechanisms related to money laundering and the financing of terrorism, however, the operative provisions of the law do not address this purported aim as they only refer to Hungarian legislation against money laundering and terrorism in fixing the threshold of funding that activates the application of the new law. This reinforces the impression that the draft law seeks to establish an artificial link between receiving foreign funding and criminal activity civil society organisations are of key importance for the functioning of any healthy democratic society. While they should operate in all transparency and without undue interference, any restrictions placed on them must be prescribed by law and proportionate to the legitimate aims they seek to achieve. Importantly, they should not be placed on a par with political parties or lobbyists. They have the fundamental right to peacefully debate governmental policies and to publicly express their opinions. Their transparency and accountability should not be achieved by labelling or by subjecting them to unjustified or discriminatory treatment. The far-reaching and stigmatising restrictions of this freedom, which the draft law seeks to introduce, can hardly be regarded as "necessary in a democratic society" and reconciled with the requirements of Article 11 of the ECHR, and other international and Council of Europe standards. For these reasons, he strongly urged the National Assembly to reject the proposed law.

- *Parliamentary Assembly of the Council of Europe Resolution 2162 (2017) of 27 April 2017: Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University.*

On 27 April 2017, the Parliamentary Assembly of the Council of Europe adopted a Resolution on this matter. In its Resolution the Assembly outlined the international context of the Hungarian Bill with recalling that in the recent years the Assembly has repeatedly denounced the dramatic deterioration of the situation of civil society in certain Council of Europe member States, in particular following the adoption of restrictive laws and regulations regarding registration, operating and financing. The Resolution refers to the Resolution 2096 (2016), where Assembly explicitly criticised the so-called “foreign agents law”, modifying the Russian legislation on non-commercial organisations, and changes to the legislation on non-governmental organisations (NGOs) in Azerbaijan imposing inappropriate restrictions on their activities [3]. The Resolution states that the “alarming trend seems to be spreading in Europe. Today, the Assembly is thus concerned with developments in Hungary and in particular the proposal for a draft law on transparency of organisations receiving foreign funding. The Assembly agrees that NGOs must be transparent about their sources of funds, but cannot accept the allegations that civil society organisations serve foreign interest groups, rather than the public interest, and may endanger the national security and sovereignty of a country simply because they receive foreign funding over a certain yearly threshold.” [4] The Assembly noted that the Hungarian draft law, although inspired by the corresponding Russian law, does not include some of the latter’s elements criticised by the Venice Commission, such as the use of the controversial term “foreign agent” or the specific and thus discriminatory reference to NGOs which defend human rights, and that it provides for a judicial, rather than administrative, review. However, the Assembly was concerned about a number of issues that the Hungarian draft law raises with respect to freedom of association and of expression and the right to privacy, in particular as regards:

- the lack of public consultation prior to its submission to parliament;
- the obligation for NGOs receiving foreign funding to indicate this on all the materials published or distributed;
- the obligation for NGOs to submit detailed personal data of foreign donors, including private individuals;
- the gravity of the sanctions provided in the draft, including ultimately the dissolution of the association for non-compliance with administrative obligations;
- the scope of application of the draft law, which applies to certain associations and excludes others, such as sports and religious organisations. [6]

The Assembly also regretted “the overall accusatory and labelling rhetoric by Hungarian public officials surrounding the drawing up and discussion of the draft law, which raises doubts about the real aims of the proposed legislation”. [7] The Assembly therefore requested the opinion of the Venice Commission on the compatibility with Council of Europe standards of the Hungarian draft law on the transparency of organisations receiving foreign funding, and called on the Hungarian authorities to co-operate with the Venice Commission and suspend the parliamentary debate on the draft law on the transparency of organisations receiving foreign funding. [11]

- *UN Special Rapporteurs on the Bill T/14967 on the Transparency of Organizations Financed from Abroad - OL HUN 2/2017*

On 9 May 2017, three Special Rapporteurs of the United Nations, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders jointly addressed a letter to the Hungarian government on the Bill No. T/14967. The Special Rapporteurs were strongly concerned that the Bill appears to discriminate against, and delegitimize NGOs that receive funding from foreign organizations or individuals, and has the potential to stigmatize their work. By forcing NGOs to use a label such as “foreign-supported organization” on their websites, press, and other public communications, regardless of how the NGOs identify themselves, the Bill would curtail the NGOs’ rights to freedom of expression and association. The majority of NGOs that receive foreign funding are focused on civil and political rights, and more likely to criticize government and government policies, such as organizations who receive funding by George Soros and the Open Society Foundation, which Prime Minister Viktor Orbán has specifically singled out in his public remarks, including in his February 2017 annual state of the nation speech. Because the proposed Bill applies selectively to some NGOs, and because those organizations would undoubtedly face public stigmatization by being associated with foreign funders, their expressions of peaceful dissent would likely be chilled. The Special Rapporteurs refer to Article 19 of the ICCPR, which guarantee freedom of expression and opinion to everyone. They add that “by being forced to choose between being fully funded, or operating without a stigmatizing label, the above restrictions in the Bill would significantly restrict NGOs’ freedom of expression and ability to operate.” While the right to freedom of expression is not absolute under ICCPR Article 19(3), restrictions on expression are only appropriate under narrow circumstances. The Special Rapporteurs note that while fighting money laundering and terrorism funding (which are stated as concerns in the preamble) are indeed legitimate and important State interests, it is unclear how forcing NGOs to register as “foreign-supported organizations” furthers those State interests. They were seriously concerned that the Bill was superfluous. The compilation of financial reports was already mandatory for NGOs and they have been available for public access. The public may access information on the sources and funded activities these organizations received and whether these resources were granted abroad. Additionally, they were concerned that the sanctions imposed by the Bill are not proportionate. In fact, the Bill would introduce new grounds for dissolution by the court as a sanction for noncompliance with administrative obligations, which is a restriction of the right to freedom of association. The dissolution of an NGO for failure to self-label as a “foreign-supported organization” is unduly harsh and disproportionate.

- *European Parliament Resolution of 17 May 2017 on the situation in Hungary, 2017/2656(RSP)*

On 17 May of 2017 the European Parliament adopted a resolution “on the situation in Hungary”. The European Parliament in its resolution not only regretted that the developments in Hungary have led to a serious deterioration of the rule of law, democracy and fundamental rights over the past few years, inter alia, freedom of assembly and association, restrictions and obstructions to the activities



of civil society organisations [2], but also called on the Hungarian Government in the meantime “to withdraw the proposed Act on the Transparency of Organisations Receiving Support from Abroad (Hungarian Parliament Bill T/14967)” [6]

- *European Commission for Democracy Through Law (Venice Commission): Opinion 889/2017 on The Draft Law On The Transparency Of Organisations Receiving Support From Abroad. CDL-AD(2017)015.*

On 20 June 2017 the Venice Commission adopted its opinion on the Hungarian draft law. The opinion analysed its compatibility with the applicable CoE standards. The Commission made clear that while on paper certain provisions requiring transparency of foreign funding may appear to be in line with the standards, the context surrounding the adoption of the relevant law and specifically a virulent campaign by some state authorities against civil society organisations receiving foreign funding, portraying them as acting against the interests of society, may render such provisions problematic, raising a concern as to whether they breach the prohibition of discrimination, contrary to Article 14 ECHR. In particular, although the label “organisation receiving support from abroad” objectively appears to be more neutral and descriptive compared, in particular, to the label of “foreign agent”, it should be emphasised that placed in the context prevailing in Hungary, marked by strong political statements against associations receiving support from abroad, this label risks stigmatising such organisations, adversely affecting their legitimate activities and having a chilling effect on freedom of expression and association. [65] According to the Venice Commission, the legitimate aims of ensuring transparency of civil society organisations in order to prevent undue foreign political influence and the fight against money laundering and the financing of terrorism, cannot be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work. This effect would go beyond the legitimate aim of transparency which is alleged to be the only aim of the law. [66] The Venice Commission opinion was adopted after the final vote on the Bill in the Hungarian Parliament, when the preliminary opinion of the Venice Commission was already made public. In the final opinion the Venice Commission was of the opinion that the law as adopted “will cause a disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination”. [68]

- *European Commission: Commission launches infringement procedure for law on foreign-funded NGOs*

On 13 July 2017, the European Commission decided to send a letter of formal notice to Hungary for the Law. The European Commission concluded that the Law does not comply with EU law for interfering unduly with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, in particular the right to freedom of association. According to the Commission, the Law also introduces unjustified and disproportionate restrictions to the free movement of capital, as outlined in the Treaty on the Functioning of the European Union. The law also raises concerns as regards the respect of the right to protection of private life and of personal data. It does not strike a fair balance between transparency interests and the right of donors and beneficiaries to protect their personal data. The Commission has therefore concluded that Hungary is failing to fulfil its obligations under the EU Treaties and the Charter of Fundamental Rights of the European Union. On

4 October 2017, the European Commission issued a reasoned opinion – the second step in the infringement procedure – to the Hungarian Government. Hungary has one month to take the necessary measures to comply with the reasoned opinion. If Hungary fails to reply satisfactorily to the reasoned opinion, then the Commission may refer the case to the Court of Justice of the EU.

*Budapest, 9 October 2017*