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EXPERT COUNCIL ON NGO LAW
CONF/EXP(2025)4 **5 June 2025**

EXPERT COUNCIL ON NGO LAW

OPINION ON THE BILL ON THE TRANSPARENCY OF PUBLIC LIFE SUBMITTED TO THE NATIONAL ASSEMBLY OF HUNGARY ON 13 MAY 2025

Adopted by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe

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EXECUTIVE SUMMARY

This Opinion examines the compatibility of the provisions in the Bill on the Transparency of Public Life, which was submitted to the National Assembly of Hungary on 13 May 2025 – together with certain amendments that had been proposed by the Justice Committee - with European standards protecting freedom of association and related rights.

It begins by outlining the rationale claimed for adopting the proposed measures in the Bill. Thereafter, it sets out the specific changes that the latter would make and then assesses their compatibility with relevant European standards before concluding with an overall evaluation of them.

The Opinion finds that several of the Bill's provisions are not sufficiently prescribed by the law as required when imposing restrictions on fundamental rights and freedoms guaranteed by European standards.

More fundamentally, it considers that there must be serious doubts as to whether the adoption of any of the provisions in the Bill would have any legitimate aim under those standards.

Furthermore, having regard to the resulting preclusion of foreign support for objectives consistent with European standards, the excessive obligations to disclose personal data, the misuse of the anti-money laundering and terrorist requirements, the overbreadth of the inspection powers, the excessive nature of the penalties proposed, the absence of an effective remedy in respect of the use of the powers that would be conferred and the loss of income for which there would at least be a legitimate expectation of receiving, the measures contained in the Bill are not ones that could be considered as necessary in a democratic society.

In the circumstances, the Opinion concludes that the enactment of the Bill would cause grave and unjustified damage to civil society in Hungary, would be inconsistent with a wide range of commitments that this member state of the Council of Europe and of the European Union has undertaken and would thus be entirely inappropriate.

Although debate on the Bill has now been postponed until the Autumn, the Opinion is being published now because of the significance of the threat that the implementation of its provisions would pose for the legitimate functioning of civil society organisations in Hungary, with the hope that the postponement of its consideration becomes permanent.

A. INTRODUCTION

1. This Opinion examines the compatibility of the provisions in the Bill on the Transparency of Public Life ("the Bill") which was submitted to the National Assembly of Hungary on 13 May 2025 – together with certain amendments that had been proposed by the Justice Committee - with European standards protecting freedom of association and related rights.[1]

2. The provisions in the Bill would, if adopted, establish a range of requirements arising from the undertaking of foreign-funded activities by organisations and make various consequential amendments to the Civil Code Act, the Act on the Freedom of Association, the Public Benefit Status and the Operation and Support of Civil Society Organisations, the Act on the Court Register of Civil Society Organisations and Related Procedural Rules and the Act on Company Registration, Court Proceedings and Winding-up.

3. The Bill is not accompanied by any explanatory memorandum and there was no consultation relating to its provisions prior to its introduction into the National Assembly. These provisions would, if adopted, enter into force on the fifteenth day following the Bill's promulgation as an Act.

4. The objectives which the Bill purports to achieve are those set out in its preamble. These objectives are primarily to require the listing of certain foreign-supported organisations, the imposition of restrictions on the ability of such organisations to accept foreign funding and their eligibility for certain tax benefits and the creation of requirements for their managers to make a declaration of assets and to be considered as politically exposed persons.

5. Debate on the Bill was postponed on 4 June 2025 until the Autumn. However, the present opinion is being published now because of the significance of the threat that the implementation of its provisions would pose for the legitimate functioning of civil society organisations in Hungary, with the hope that the postponement of its consideration becomes permanent.

6. The relevant European standards are to be found in the European Convention on Human Rights ("the ECHR"), the Charter of Fundamental Rights of the European Union ("the EU Charter"), the Framework Convention for the Protection of National Minorities ("the Framework Convention"), the European Union's General Data Protection Regulation ("the GDPR"), Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing ("Directive 2015/849"), Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe

[1] The provisions in the Bill would be applicable to any legal person, including companies and non-governmental/civil society organisations, as well as other organisations without legal personality. However, this Opinion only focus on the compliance with European standards insofar as they would affect the latter organisations.

("Recommendation CM/Rec(2007)14"), the Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making ("Recommendation on lobbying"), the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights ("the Joint Guidelines"), the Recommendations of the Financial Action Task Force ("the FATF"), the Venice Commission's Check List on the Rule of Law and the case law of both the European Court of Human Rights ("the ECtHR") and the Court of Justice of the European Union ("the CJEU").

7. The Opinion begins by outlining the rationale claimed for adopting the Bill's provisions. Thereafter, it sets out the specific changes that the latter would make and then assesses their compatibility with relevant European standards before concluding with an overall evaluation of them.

8. The analysis in the Opinion is based on an unofficial translation of the provisions in the Bill.

B. THE RATIONALE

9. The Preamble invokes in support of the objectives to be achieved through the adoption of the provisions in the Bill various assertions, namely, that: (a) there had been a serious violation of Hungary's sovereignty through the unlawful financing from abroad of the 2022 general election campaign of the opposition party alliance; (b) certain civil society and business organisations had become a means of influencing domestic public life and shaping it along foreign interests through funding provided to them by another state, foreign organisation or individual; (c) the development of activist networks mostly maintained by foreign interests and financed from abroad that "carry out political activity under the guise of the right of association or freedom of enterprise"; and (d) the aggregate results of a national consultation that showed that the overwhelming majority of the Hungarian people "said no to having others decide for us on issues that fundamentally affect our lives".

10. No substantiation was, however, provided for any of these assertions or for why other, less exacting measures would be insufficient to address the problems asserted to exist.

11. Moreover, there was no indication in the preamble as to the inadmissibility of any specific content of the impugned activity other than that there was supposedly foreign funding behind it.

12. Furthermore, no explanation was given as to why any of the activity that was claimed to be unlawful could not be effectively tackled through reliance on existing legal measures.

13. Rather it was simply stated that:

> The state must defend national sovereignty by all possible means. The approach of the current regulations must change. The state has a duty to ensure that citizens, as well as persons, institutions and organisations involved in state and social decision-making processes, can take their decisions free from the influence of foreign powers, organisations or persons.

14. In addition, there was no examination as to what, if any, impact the provisions in the Bill would have – if adopted – on the fulfilment of the above-mentioned European standards applicable to Hungary.

15. However, the following remarks by the Prime Minister earlier this year clearly give an important insight into the thinking that lies behind the crafting of the measures being proposed in the Bill:

> After today's festive gathering will come house cleaning for Easter. The bugs have survived winter. We are dismantling the financial machine that has used corrupt dollars to buy politicians, judges, journalists, bogus civil society organisations and political activists. We will disperse the entire shadow army. They are the latter-day Habsburg troops, the minions of Brussels, paid to do the empire's bidding against their own country. They have been here too long. They have survived too much. They have received money from too many places. They have switched sides too many times. In 1848, we had the Emperor's crows on our backs, and now we have Weber chicks squawking over our heads. We have had just about enough of them. The spring winds bring flood water, let it carry them off… They wear the scarlet letter, their fate will be shame and contempt.[2]

C. THE BILL'S PROVISIONS

16. This section sets out first the applicability of the Bill's provisions and the definition of key terms used in them, followed in turn by an examination of those provisions concerned with the listing of organisations and its consequences, verification of listed organisations, obligations for managers of listed organisations, the performance of tasks – including inspections – by the anti-money laundering body ("the AML body") and certain other measures.

Applicability and definition

17. The provisions in the Bill would apply to any legal person and organisations without legal personality which threaten the sovereignty of Hungary by carrying out activities aimed at influencing public life with foreign support.[3]

18. The sovereignty of Hungary would be considered to be threatened by any foreign-funded activity or endeavour to influence public life that "violates, portrays in a negative manner, or supports action against the values set out in" certain of the provisions of the Fundamental Law, namely, those concerned with: Hungary as an independent, democratic rule-of-law State; its responsibility for the fate of

[2] Speech by Prime Minister Viktor Orbán on the 177th anniversary of the Hungarian Revolution and War of Independence of 1848–49, 15 March 2025.

[3] Section 3

Hungarians living beyond its borders; the protection of the institution of marriage as the union of a man and a woman and family ties being based on marriage and/or the relationship between parents and children; the striving for cooperation with all the peoples and countries of the world to create and maintain peace and security, and to achieve the sustainable development of humanity; and the obligation of each and every body of the State to protect the constitutional identity and the Christian culture of Hungary.

19. "Activities to influence public life" would be defined as covering those activities aimed both at "influencing democratic discourse and state and social decision-making processes, including activities influencing decision-making by individuals who exercise public authority responsibilities of the state" and "the will of voters or activities that may influence the outcome of elections".

20. Despite the apparent link in the first paragraph between the threat to sovereignty stemming from action relating to the specified provisions in the Fundamental Law and the conduct of activities to influence public life, that link is not maintained in the remaining provisions of the Bill as they are treated as discrete bases for listing of organisations in Section 4 so that the principal focus of the measures being proposed is on the receipt of foreign support and not the specific aim of such support. In other words, there is no real content restriction on the activities regarded as influencing public life, just a condition that it should not have foreign support.

21. "Foreign support" for the purpose of the Bill's provision would be defined as:

> any direct or indirect contribution of a foreigner in the form of assets, including property - in particular: money, goods, rights and claims -, services, financial advantage, intangible assets, donations, grants, grants awarded upon a call for proposals, support received under an individual application or grant contract, benefits, gifts, loans, or proceeds resulting from a legal relationship of any kind, whether or not made repayable

22. In addition, "Foreigners" would for this purpose be regarded as covering: foreign natural persons; another state; and legal persons, organisations without legal personality or other organisations registered abroad or having their central administration abroad. It is not clear whether "legal persons … other organisations registered abroad or having their central administration abroad" is intended to cover international or intergovernmental organisations but a literal interpretation of these terms would have that effect.

23. A "donor" would be considered to be a foreigner who provides foreign aid directly or indirectly through a third person or organisation. This term would also include those organisations or individuals who buy services or products.

Listing and its consequences

24. The listing of organisations whose activities – namely, those referred to in paragraphs 17 and 18 above - threaten the sovereignty of Hungary would underpin all the other measures being proposed in the Bill.

25. The existing Sovereignty Protection Office would be required to make proposals for the listing of the organisations concerned and the Government would then decide which ones to list. According to Section 33, the Government would be authorised but not required to list the organisations proposed by the Sovereignty Protection Office.

26. Thereafter, the AML body would be empowered to verify *ex officio* or on the basis of a notification whether the activity of a listed organisation continues to meet the conditions for listing and could, as a consequence of this verification, propose its delisting. However, it is under no obligation to do so.

27. The AML body would also be responsible for informing listed organisations of the fact of listing, the consequences arising from it and the legal consequences of breaching the provisions in the Bill once adopted.[4]

28. Once listed, certain requirements or restrictions would then arise under Section 7 for the organisations concerned and their executive officers, founders and members of their supervisory or controlling committee.

29. Thus, the organisations would (a) only be able to accept foreign income with the permission of the AML body, (b) not be able to receive the designation for public purposes by taxpayers of one per cent of their personal income tax calculations and (c) need to obtain a declaration from any natural and legal persons and organisations without legal personality providing them with support in cash or financial advantage that such support had not been received directly or indirectly from a foreigner.

30. Furthermore, the executive officers, founders (if exercising their founders' rights at the time of listing) and members of their supervisory or controlling committee of listed organisations would be considered as politically exposed persons within the meaning of Act LIII 2017 on the Prevention and Combating of Money Laundering and Terrorist Financing. They would also be obliged to make an annual asset declaration.

Verification

31. The Bill includes a number of provisions that would allow for the verification of listed organisations, which particularly concern transactions in the accounts of listed organisations and the adoption of measures relating to acceptance of foreign support without authorisation.[5]

[4] Section 8.

[5] In Sections 9-12.

32. Thus, there would be monitoring by credit institutions of the payment transactions of the listed organisations "in order to identify the support coming from abroad" and thus requiring authorisation.

33. Where such transactions are identified, access to the funds by the listed organisations concerned would be suspended for up to five days, during which time the AML body would be required to issue a decision ordering either the suspension or execution of the transaction concerned.

34. In the event of the AML body finding that the support under the transaction is intended to influence public life, in particular by complying with the foreign donor's requests or promoting its objectives, it shall order the repayment of the support to the donor. Otherwise, it would be required to authorise the execution of the transaction.

35. In making any finding that the transaction is intended to influence public life, the AML body is required to take into account the supported organisation's past activities, objectives, public statements and press and social media appearances. Moreover, in order to be able to reach its conclusion as to the aim of the transaction, the AML body is given a period of 90 days from the suspension of the transaction, renewable once.

36. In the event of a listed organisation receiving support based on a transaction subject to authorisation without the relevant decision of the AML body – whether as a result of failure to comply with or ignorance of the foregoing requirements – the AML body can require the payment to the National Cooperation Fund of the amount of support provided to that organisation via a transaction subject to authorisation.

37. Furthermore, the AML body would be required to conduct an administrative inspection of a listed organisation if there is information that it had accepted foreign support in any form without that body's authorisation. In the event of the AML body finding that the organisation concerned had accepted such support, it would be required to impose on it an administrative fine equal to 25 times the amount accepted and also call upon the organisation to pay the amount corresponding to the support accepted to the National Cooperation Fund within 15 days.

38. In addition, the AML body would be required to ban a listed organisation from further activities to influence public life in the event of it not paying the fine or making the payment to the National Cooperation Fund within the deadline or of it accepting foreign support without authorisation for the second time. Also, if such support is accepted for a second time, the listed organisation would be required to pay the corresponding amount to the National Cooperation Fund.

39. As a result of being listed, all existing contracts of listed organisations that involve foreign support would become null and void. As a result, those organisations would be required to stop ongoing activities under those contracts and return any funds received under them that have not been used before the date on which they were listed.

40. No decision of the AML body would be subject to immediate legal challenge in administrative proceedings. Furthermore, there is an absolute 30-day deadline for bringing an action against the AML body once its decision has become final. This action would be determined in a summary procedure by the Curia in a chamber of five professional judges. This would be required to decide within 45 days but would not be able to reverse the decision of the AML body.

Obligations for managers of listed organisations

41. Particular requirements would be concerned with the executive officers, founders and members of the supervisory or controlling committees of listed organisations, collectively referred to as "the managers" of those organisations.[6]

42. Thus, the AML body must identify the managers of listed organisations within 8 days of the relevant listing decision. Such managers would then have to make annually a declaration of assets and would become subject to enhanced customer due diligence under the Act on the Prevention and Combating of Money Laundering and Terrorist Financing.

43. The Minister responsible for justice ("the Minister") would be required to verify the fulfilment of the declaration of assets, which would then be published on the government website and only be deleted one year after the obligation to make the declaration.

44. In the event of finding that a manager has not complied with the obligation to make a declaration of assets, the Minister would be required to make a decision declaring this fact and publish it on the government website. Any managers who have failed to make such a declaration would then be suspended from the right of representation of the organisations concerned until the declaration is sent to the Minister, who can impose an administrative fine of between five hundred and two million Hungarian forint (between approximately EUR 1,240 and EUR 4,962) on managers who fail to make a final declaration of assets. Such fines can be imposed repeatedly.

45. There would be no remedy against any suspension of the right of representation by managers, but the action referred to in paragraph 40 would be applicable to the imposition of fines on them.

46. The AML body would, in the course of its administrative inspection of listed organisation, be required to identify all the relatives of their managers who have a seat or a subsidiary in Hungary within the meaning of the Act on Credit Institutions and Financial Enterprises and falling within the scope of the Act on the Prevention and Combating of Money Laundering and Terrorist Financing. It would then be required to notify the financial institutions concerned that the managers with such relatives are politically exposed persons.

[6] Sections 12-20.

Performance of tasks – including inspections - by the AML body

47. In the performance of its tasks – including those outlined above – the AML body would be able to act either *ex officio* or on the basis of a report or complaint and would also be able to act on the basis of information available to it in the course of its tasks.

48. Moreover, it would be possible for anyone to submit a report or complaint to the AML body and, notwithstanding the provisions of the Act on Complaints, Whistleblowing and the Rules for Reporting of Abuses, this could be done irrespective of which body is entitled to initiate a procedure.

49. Furthermore, in order for it to receive reports and complaints, the AML body would be required to operate a reporting platform providing an opportunity for confidential communication ensuring the anonymity of the whistleblowers and complaints. There would also have to be a possibility for persons making a report or complaint to be able to contact the AML body by means other than this reporting procedure.

50. For the purpose of clarifying the facts of the case in the course of an inspection by the AML body, the latter would have a wide range of powers, namely, the ability to

    a. impose regular or exceptional obligations to provide it with information on those organisations or persons required to cooperate with it;
    b. be provided by such organisations or persons with a very wide range of types of information[7] - which can include personal and protected data and incriminating evidence, data or documents unless they would accuse themselves or a relative of having committed a criminal offence - and then to prepare extracts or copies of what has been provided;
    c. require those obliged to cooperate to prove the accuracy of the facts in their statements, testimony or information, in particular by providing other information or attaching documents; and
    d. require those obliged to cooperate to be heard about the personal and protected data as well and to provide it with this data unless that is precluded by the Act on the protection of the data concerned.

51. In addition, there would be an obligation to provide the necessary information in writing as well and to send the documents relating to the subject of the inspection to the AML body.

52. Those are obliged to cooperate with the AML body not only include the managers of listed organisations but also “any person or organisation” according to Section 25(4) and, as Section 26 indicates, anyone present at an on-site inspection.

[7] Namely, information relating to their activities, data, reports, supporting documents, investigation material, accounting records, regulations, documentation relating to specific transactions, proposals of its governing, executive and controlling bodies, minutes of the meetings of these bodies, written observations of the auditor, the auditor's report, the reports and minutes of internal audits and any other statement not listed above related in the form specified by the AML body.

53. The AML body would be able to dispense with a general requirement to provide those who are subject to inspection with written notification at least 15 days ahead of its commencement where such notification would jeopardise the effectiveness of the inspection or procedure.

54. Furthermore, the AML body would be able to carry out on-site inspections at any place where evidence could be retrieved that is necessary to clarify the facts and those carrying it out. The person carrying out the inspection would be able to: enter the premises necessary for this purpose; observe and examine documents, data carriers, objects, work processes relating to the subject of the inspection; ask the client, their representative or any other person present at the place of inspection for information; request or prepare a statement from a person; make a physical mirror copy or certified copy of any data carrier, including data stored by a hosting service provider; and use the copy to inspect the data stored on the data carrier.

55. When carrying out such an inspection by means of an IT tool, the AML body would have to be granted access to the data after having verified the right to carry out the inspection, where necessary by ensuring the technical and authorisation conditions for access to the IT system.

56. Also, for the effective and safe conduct of an on-site inspection, the AML body would be able to request the assistance of the police if the nature of the inspection warranted this.

57. For the purpose of carrying out its tasks, the AML body would be able to receive data from other public bodies and from other bodies holding the data and to process that data. In particular, it would be able to request and receive data without charge from the following records or data processing operations:

    - the personal data and address register;
    - data processed by the tax authority;
    - the land registry;
    - registers kept by the courts, in particular the register of companies, civil society organisations and foundations;
    - the register of self-employed persons;
    - the ultimate beneficial ownership registry;
    - the register of centralised bank accounts and safe deposit boxes;
    - the financial institutions having a seat or branch in Hungary as defined in the Act on Credit Institutions and Financial Enterprises;
    - the road traffic register; and
    - the credit insurance register.

58. It would be possible to refuse a request for the disclosure of data held by the AML body if this would jeopardise the interests of crime prevention, law enforcement or national security so long as the interest underlying the refusal exists, up to a maximum of 30 years from the date on which the data was generated. It would be for the head of the AML body to decide whether any such request can be complied with.

Certain other measures

59. Three other measures are envisaged in the Bill's provisions.

60. Thus, a proposed amendment to the Act on the Right of Association, the Public Benefit Status and the Operation and Support of Civil Society Organisations would enable a prosecutor to call upon a civil society organisation to fulfil its obligations under the Bill (once enacted) or other legislation to restore its lawful obligation. If the organisation concerned fails to comply with such an order, it would then be dissolved by a court upon an action brought by the prosecutor and its remaining financial assets would have to be allocated to the National Cooperation Fund.

61. Furthermore, a proposed amendment to the Act on the Court Register of Civil Society Organisations and Related Procedural Rules would require a court - in its decision on the dissolution of a civil society organisation if the legality supervision procedure had been initiated in connection with an unlawful operation based on a violation of an obligation specified in the Bill (once enacted) – to prohibit the executive officers of the organisation concerned both from so acting for any such organisation and from founding one within 5 years.

62. Also, listed organisations would be excluded from receiving the designation for public purposes by taxpayers of one per cent of their personal income tax calculations. While this would take effect from the tax year following the entry into force of the Bill once enacted, the amounts designated by taxpayers after the expiry of the 2024 tax year would not be transferred to the beneficiary organisations but instead would be paid to the following foundation founded by the state.[8]

D. EVALUATION OF THE PROPOSED PROVISIONS

Introduction

63. The provisions in the Bill have implications for the enjoyment of a wide range of rights applicable to the organisations that will be affected by them, as well as of the managers of those organisations and potentially of others who may be required to cooperate with the tasks proposed for the AML body.

64. The rights concerned are those relating to freedom of association, freedom of expression, respect for private life, property and to an effective remedy for violations of these rights, all of which are guaranteed by the ECHR and the EU Charter, and amplified or elaborated on the Framework Convention, the GDPR, the Joint Guidelines and the case law of both the ECtHR and the CJEU.

[8] Namely, Batthyány-Strattmann László Alapítvány A Gyógyításért, a public benefit organisation for the treatment of diseases.

65. Thus, restrictions on freedom of association can arise from restrictions on those who can form them[9] and be involved in their management[10], as well as on access to funding from foreign sources[11] and the ability of national minorities to establish free and peaceful contacts across frontiers[12]. As the protection of opinions and the freedom to express them within the meaning of Article 10 of the ECHR is one of the objectives of the freedom of association enshrined in Article 11, interference with the latter freedom will inevitably have implications for the exercise of the former one.[13]

66. Moreover, the right to a fair trial will be adversely affected by restrictions on the right of access to court affecting the civil rights and obligations of those concerned[14] and there will be an interference with right of respect to private life by compulsion to disclose and an inability to prevent access to personal data[15]. Furthermore, there will be an interference with the right to property where a measure affects an existing possession or one for which there is a legitimate expectation of it being realised.[16]

67. All such restrictions on these rights can only imposed where they are prescribed by law, have a legitimate aim and are necessary in a democratic society.

68. Furthermore, both Recommendation CM/Rec(2007)14[17] and the Joint Guidelines[18] require that associations and non-governmental organisations such as those that would be affected by the adoption of the Bill's provisions should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation. In addition, the Venice Commission's Check List on the Rule of Law emphasises that key elements of lawmaking involve both the provision of the public with a meaningful opportunity to contribute to the legislative process and the adoption of an impact assessment before adopting legislation, especially as regards its impact on human rights.[19]

Prescribed by law

69. It is not sufficient for provisions to be included in legislation in order to be regarded as "prescribed by law". Such provisions must also be shaped by precision in the scope

[9] See, e.g., Article 11 of the ECHR and paragraph 16 of Recommendation CM/Rec(2007)14

[10] See, e.g., *Lovrić v. Croatia*, no. 38458/15, 4 April 2017, at para. 71.

[11] See, e.g., *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022.

[12] See Article 17 of the Framework Convention.

[13] See *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007, at para. 33.

[14] See, e.g., *De Souza Ribeiro v. France (No. 2)* [GC], no. 22689/07, 13 December 2012.

[15] See, e.g., *Z v. Finland, no. 22009/93*, 25 February 1997.

[16] See, e.g., *Pressos Naviera S.A. and Others v. Belgium*, no. 17849/91, 20 November 1995.

[17] Para. 77.

[18] Principles 8 and 9 and para. 33 of the Explanatory Note to the Joint Guidelines.

[19] p. 25.

of powers conferred, i.e., the absence of any unfettered discretion allowing arbitrary interference with rights and freedoms.[20]

70. Such unfettered discretion is built into several of the provisions in the Bill.

71. Thus, the Government would be entirely free to decide under Section 33 of the Bill whether it will designate an organisation that has been proposed for listing by the Sovereignty Protection Office. Equally, the AML body has unconstrained freedom to decide whether to propose the delisting of an organisation which no longer meets the conditions for listing and there is no requirement for the Government to act on any proposal that it might make.

72. Furthermore, the notion of whether activities can be regarded as "aimed at influencing democratic discourse", etc. for the purpose of Section 3 is extremely open-ended and could be capable of covering entirely private exchanges of any character as these might ultimately be characterised as having some tenuous influence on the thinking of those concerned.

73. Moreover, whether activities can be said to be "aimed" at influencing – whether democratic discourse or the will of voters – will depend very much on entirely subjective judgments which may not be at all in the mind of those engaging in them.

74. In addition, the AML body would have an extremely broad discretion under Section 11 as to whether it conducts an administrative inspection, requiring only some "information that the listed organisation has accepted foreign support", with no quality condition applicable to the information acted upon. Indeed, the possibility envisaged by Section 23(4) of confidentiality and anonymity for informants is calculated to facilitate the submission of vexatious and malicious allegations against listed organisations.

75. Also, the breadth of the powers under Section 25 to obtain information in the course of an inspection is not constrained by any limits as to reasonableness or relevance and applies to anyone with the most tangential connection to the listed organisation concerned.

76. The scope for arbitrariness is additionally enhanced by the very wide definition of foreign support, as well as the lack of clarity as to whether international organisations of which Hungary is a member are to be treated as foreigners for the purpose of the Bill's provisions, which may make it difficult – if not impossible - for an organisation to judge whether any engagement by it with an entity outside Hungary could be problematic.

[20] See, e.g., *Rotaru v. Romania* [GC], no. 28341/95, 4 May 2000, at paras. 57-62.

Legitimate aim

77. The title of the Bill and the terms of the preamble postulate securing transparency in public life as the aim of the provisions being proposed.

78. However, there is no explicit requirement for transparency in the restrictions authorised by the right to freedom of association under the ECHR or the EU Charter.

79. Nonetheless, the ECtHR has found that a prohibition on the funding of political parties by foreign States – which effectively gave rise to an obligation for them to publish donations through depositing them in a specified bank account - was necessary for the prevention of disorder.[21]

80. It has also recognised that the possibility for associations to participate in elections and accede to power might make it necessary to require some of them to register as political parties, so as to make them subject to, for instance, stricter rules concerning party financing, public control and transparency.[22]

81. Moreover, Recommendation CM/Rec(2007)14 provides that the fundraising undertaken by non-governmental organisations ("NGOs") should be:

> subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.[23]

and subjects their right to support a particular candidate or party in an election or a referendum to the need for them to be transparent in declaring their motivation with any such support also being subject to legislation on the funding of elections and political parties[24].

82. In addition, the ECtHR has accepted, in principle, that the objective of increasing the transparency with regard to the funding of civil society organisations may correspond to the legitimate aim of the protection of public order.[25]

83. On the other hand, requiring an association or civil society organisation to become a political party in order to be registered because its goals – the restoration of the Constitution of 1879 and of the monarchy – were deemed "political" and thereby become subject to stricter rules concerning party financing, public control and transparency even though there was no intention to field candidates has not been regarded by the ECtHR as necessary in a democratic society. [26]

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[21] *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007.

[22] *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.

[23] Paragraph 50.

[24] Paragraph 13.

[25] *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 122 and *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024, at para. 69.

[26] *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.

84. As a result, it is questionable whether assimilating all such organisations to political parties on account of their receipt of foreign funding – at least an implicit view reflected in the Bill's provisions - could be regarded as a legitimate aim, particularly as it is well-established that:

> NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law[27]

without having to become or be treated as a political party[28].

85. A legitimate aim for the imposition of transparency requirements relating to financial operations might be capable of being afforded to measures to deal with money laundering and terrorist financing, such as are those recommended or required in the FATF Recommendations and Directive 2015/849.

86. However, the FATF Recommendations, insofar as they are relevant for NGOs, only concern ones whose activities and characteristics specifically put them at risk of terrorist financing abuse and there must have been a clear and evidence-based risk assessment undertaken in that regard which has not taken place. Furthermore, the focus of Directive 2015/849 is on establishing the identify of any natural person who exercises ownership or control over a "legal entity".

87. As such neither instrument seems pertinent to the objectives being pursued by the Bill, which are not linked to either money laundering or terrorist financing. Indeed, the use of the AML body for the purpose of implementing the provisions in the Bill might be seen as giving a misleading impression as to the aim being pursued, which in itself could be seen as inconsistent with the pursuit of a legitimate aim. Thus, the anti-money laundering and terrorist financing mechanisms are being misused and undermined in order to target and restrict the legitimate activities of civil society organisations.

88. Moreover, notwithstanding the concern with influencing public life, the measures in the Bill cannot be regarded as pursuing the legitimate aim of securing transparency in respect of lobbying, which the Recommendation on lobbying defines as:

> promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making

as its aim is the disclosure of information on lobbying activities in the context of public decision-making processes and the establishment of a public register of lobbyists[29] whereas the Bill seeks to restrict access to funding from foreign sources.

[27] Recommendation CM/Rec(2007)14, para. 12.

[28] As the *Zhechev* case makes clear.

[29] Section E.

89. In any event, it should be noted that this Recommendation also provides that the legal regulation of lobbying activities:

> should not, in any form or manner whatsoever, infringe the democratic right of individuals to: a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively; b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively.[30]

90. Finally, it should be noted that the CJEU has held that:

> The objective of increasing the transparency of the financing of associations, although legitimate, cannot justify legislation of a Member State which is based on a presumption made on principle and applied indiscriminately that any financial support paid by a natural or legal person established in another Member State or in a third country and any civil society organisation receiving such financial support are intrinsically liable to jeopardise the political and economic interests of the former Member State and the ability of its institutions to operate free from interference.[31]

91. Such a presumption undoubtedly informs the provisions in the Bill.

92. In the light of the foregoing, the absence of any substantiation in or accompanying the Bill for the problem which it purports to solve or for the unsuitably of other, less exacting measures, as well as the fact that there was no process of consultation or impact assessment concerning its provisions, the impression could easily be gained that the aim being pursued is not actually one of transparency but simply of restricting or depriving the organisations that will be subject to its provisions of access to the funding needed to pursue objectives which are entirely legitimate.

93. Certainly, the receipt of some sort of support from a particular entity cannot by itself indicate that it is pursuing that entity's interests or that the pursuit of particular interests by the organisation receiving it does not accord with the entirely legitimate objectives held by it and which it would pursue regardless of the source of the support. Indeed, as the financial support received by many governments themselves from international and foreign sources demonstrate, the receipt of income from outside a particular State can be, and generally is, with a view to pursue interests which that State considers important. Receipt of such income by a government does not in itself mean that it is pursuing the interests of the international or foreign source, even if there might be a coincidence in the results they want to see achieved, and that is no less true for organisations such as those that would be subject to the Bill's provisions who receive support from a source outside Hungary.

94. However, regardless of whether there can be said to be a legitimate aim for the provisions in the Bill, these must still be shown to be necessary in a democratic society in order to prevent a finding of a violation of the rights affected.[32]

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[30] Paragraph 4.

[31] *European Commission v. Hungary*, Case C-78/18, judgment of 18 June 2020, para. 86.

[32] See, e.g., *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007, at paras. 40-42.

Necessary in a democratic society

95. For the purpose of determining whether the measures proposed in the Bill could be regarded as necessary in a democratic society, the impact of them on the exercise of freedom of association and the other rights affected thus needs to be evaluated to establish whether this would be proportionate to any legitimate aim being pursued and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient".

96. As far as concerns the access to support by listed organisations, the proposed provisions do not seek to regulate such access insofar as it has a foreign source but to prevent this entirely if it is in the form of a financial transaction – the principal form - since it is provided that, if identified as coming through a credit institution, the amount concerned will be blocked and then returned to the donor. Furthermore, a significant alternative source of funding, namely, the allocation of income from personal income tax will be denied to the organisations concerned, notwithstanding that the amount of non-financial support that could lead to their listing is miniscule, such as the provision of a book for their library. This goes beyond the need to make a choice between domestic and foreign funding seen as problematic by the ECtHR.[33]

97. Moreover, it would not be possible to receive foreign support for any activity that is seen as criticising provisions in the Fundamental Law that potentially conflict with the international commitments accepted by Hungary, such as the notion that the family is only a union of a man and woman,[34] notwithstanding that it is a legitimate objective for associations and other civil society organisations to seek to promote changes in the constitution in a peaceful manner[35].

98. Furthermore, the inability to receive any form of foreign support would inevitably preclude in many – if not all - instances persons belonging to national minorities from establishing and maintaining free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage, and from participating in the activities of NGOs at the international level despite the undertaking by Hungary under Article 17 of the Framework Convention not to interfere with such a possibility.

99. In addition, the requirement that the managers of listed organisations must submit a declaration of their assets interferes with their right to respect for private life without having any evident connection with the supposed aim of restricting the receipt of foreign support for the organisations concerned, which is to be achieved primarily through the monitoring of their financial transactions.[36]

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[33] See, e.g., *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 169.

[34] See, e.g., *Bayev and Others v. Russia*, no. 67667/09, 20 June 2017.

[35] See, e.g., *The Socialist Party and Others v. Turkey* [GC], no. 21237/93, 25 May 1998.

[36] See, e.g., *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024, at para. 114.

100. Also, the provision that these managers are to be considered as politically exposed persons is inconsistent with the scope of the definition of such persons in Article 3(9) of Directive 2015/849[37] and the nearest equivalent person would be the member of the governing body of a political party, which would not be the case for those organisations that are listed. In any event, the use of such a designation in both the Directive and FATF Recommendation 12 is directed to the control of bribery, corruption, money laundering and terrorist financing, which is clearly not the aim of the Bill despite the use that would be made of the AML body for the implementation of its provisions.

101. Moreover, the basis for carrying out an inspection of a listed organisation by the AML body, which does not require any reasonable suspicion of wrongdoing, which is a crucial element in the adequate and effective safeguards against any abuse and arbitrariness in the conduct of any search and seizure.[38] Furthermore, there is no protection against oppressive use of the inspection power through the repeated imposition of exceptional obligations to provide information and no protection against the examination of material which might concern journalistic sources or legal professional privilege.[39] Also, there is no sufficient guarantee that the information sought must be relevant, which is of particular concern given that personal and protected data may be required by the AML body. Nor is there any provision for judicial control before any examination of the mirror image captured of data during an inspection.[40] In the circumstances, the power of inspection is not subject to sufficient measures to ensure compliance with the requirements of Article 8 of the ECHR, Article 7 of the EU Charter and the GDPR.

102. Account needs also to be taken of the potential penalties that can be imposed in respect of non-compliance with the proposed requirements of the Bill.[41] Not only, is there the possibility of significant fines for acceptance of foreign support – 25 times the amount received together with the loss of the amount itself – but also the prospect of bans on activities for a second receipt of foreign support and the possibility of dissolution for violation of an obligation specified in the Bill when it will be difficult always to judge what is foreign support. Such penalties are unduly harsh and would be sufficient to preclude them from being regarded as necessary in a democratic society as restrictions on the right to freedom of association. This would

[37] Namely, "natural person who is or who has been entrusted with prominent public functions and includes the following: (a) heads of State, heads of government, ministers and deputy or assistant ministers; (b) members of parliament or of similar legislative bodies; (c) members of the governing bodies of political parties; (d) members of supreme courts, of constitutional courts or of other high-level judicial bodies, the decisions of which are not subject to further appeal, except in exceptional circumstances; (e) members of courts of auditors or of the boards of central banks; (f) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; (g) members of the administrative, management or supervisory bodies of State-owned enterprises; (h) directors, deputy directors and members of the board or equivalent function of an international organisation".

[38] See, e.g., *UAB Kesko Senukai Lithuania v. Lithuania,* no. 19162/19, 4 April 2023, at paras. 112-113.

[39] See, e.g., *Roemen and Schmit v. Luxembourg*, no. 51772/99, 25 February 2003 and *Mancevschi v. Moldova*, no. 33066/04, 7 October 2008.

[40] See, e.g., *Särgava v. Estonia*, No. 698/19, 16 November 2021, at para.100 where such a procedure was seen as a possible guarantee against the data being manipulated

[41] See, e.g., *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 179.

also be the case with the power to prohibit the executive officers of the organisation concerned both from so acting for any such organisation and from founding one within 5 years when a civil society organisation is being dissolved under the legality supervision procedure, particularly as this prohibition need have no connection with the nature of the violation or the difference between the organisation dissolved and the one that would be created.

103. Also relevant for the determination of whether certain restrictions can be seen as necessary in a democratic society, as well as a violation in itself of the right to a fair trial under Article 6(1) of the ECHR and Article 47 of the EU Charter[42], is the restriction on the ability to obtain interim relief against decisions of the AML body despite their significant impact on the organisation concerned. In addition, the absolute bar on extending the time limit for bringing an action against the AML body, the lengthy delay envisaged for decision-making and the inability of the Curia to reverse the decisions of the AML body are likely to impede the right of access to court and cast doubt on the effectiveness of this remedy for the purpose of Article 13 of the ECHR and Article 47 of the EU Charter.

104. Although the State is free to determine to which entities it provides support for the purpose of pursuing their objectives,[43] it is not entitled – as already noted - to deprive them of assets which have vested or ones for which they have a legitimate expectation. However, that would be the effect of the proposed transfer of the amounts accruing from the designation for public purposes by taxpayers of one per cent of their personal income tax calculations for the 2024 tax year to a foundation founded by the State. Such a transfer would thus be incompatible with the right to property under Article 1 of the First Protocol to the ECHR and Article 17 of the EU Charter.

105. Finally, although no special name – such as "foreign agent" – is attached to organisations that are listed, that designation still amounts to signalling the organisations concerned as ones which carry out certain work or tasks on the orders or instructions of another individual or entity (the "principal") in return for remuneration in the framework of the principal-agent relationship. As such it is equally likely that the ECtHR would conclude that such a designation was

> unjustified and prejudicial and also liable to have a strong deterrent and stigmatising effect on their operations[44]

notwithstanding that they are part of civil society in Hungary and working to uphold respect for human rights, the rule of law and human development for the benefit of its population.

[42] See, e.g., *Micallef v. Malta* [GC], no. 17056/06, 15 October 2009.

[43] See paragraph 59 of Recommendation CM/Rec(2007)14.

[44] *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 136.

106. Each of these points taken individually and certainly cumulatively leave no room for doubt that the implementation of the proposed measures in the Bill could not be regarded as necessary in a democratic society and would thus, in addition to the provisions that are insufficiently prescribed by law, give rise to significant violations of the rights to freedom of association, freedom of expression fair trial, property, respect for private life and an effective remedy.

An ulterior purpose?

107. Article 18 of the ECHR provides that:

> The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

108. The ECtHR recognises that there is a considerable difference between cases in which the prescribed purpose was the one that truly actuated the authorities, though they also wanted to gain some other advantage, and cases in which the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts. It is only in the latter case that there would be a violation of Article 18 taken in conjunction with the other rights under the ECHR concerned.

109. In view of the absence of any substantiation for need for the restrictions proposed in the Bill and the nature of the restrictions which clearly go beyond what might be required to achieve transparency, there are undoubtedly grounds for serious suspicion of predominant ulterior motives behind the proposed measures in the Bill, namely, not to prevent threats to the sovereignty of Hungary but to preclude all engagement by organisations within that country with entities outside where there is the slightest risk of such engagement being characterised as a form of support.

110. Whether that would actually be found to be the case is, of course, a matter that the ECtHR would have to determine. However, the fact that this is a possibility that could even be contemplated is an indication of the grave nature of the interference with the rights under the ECHR and other European standards that have been identified above.

E. CONCLUSION

111. The proposed measures in the Bill would have a very serious impact on the right to freedom of association and several other guaranteed rights.

112. Several of the provisions in the Bill cannot be regarded as fulfilling the prescribed by law requirement.

113. More fundamentally, there are serious doubts as to whether the adoption of any of the provisions would have any legitimate aim.

114. Furthermore, having regard to the resulting preclusion of foreign support for objectives consistent with European standards, the excessive obligations to disclose personal data, the misuse of the anti-money laundering and terrorist requirements, the overbreadth of the inspection powers, the excessive nature of the penalties proposed, the absence of an effective remedy in respect of the use of the powers that would be conferred and the loss of income for which there would at least be a legitimate expectation of receiving, the measures contained in the Bill are not ones that could be considered necessary in a democratic society.

115. In the circumstances, the enactment of the Bill would cause grave and unjustified damage to civil society in Hungary, would be inconsistent with a wide range of commitments that this member state of the Council of Europe and of the European Union has undertaken and would thus be entirely inappropriate.