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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

HUNGARY

DRAFT LAW¹

**ON THE TRANSPARENCY OF ORGANISATIONS
RECEIVING SUPPORT FROM ABROAD**

AND

EXPLANATORY MEMORANDUM

¹ Translation provided by the Hungarian authorities

DRAFT

Act... of 2017

on the transparency of organisations receiving support from abroad

The National Assembly,

duly respecting that organisations established under the freedom of association are the manifestation of social self-organisation and their operation contributes to democratic oversight and to the public debate on public affairs, and that such organisations have a definitive role in the shaping of public opinion,

emphasising that – having regard to the social role of associations and foundations – the transparency of such associations and foundations is of great public interest, recognising that the support provided by unknown foreign sources to organisations established under the freedom of association might lead to it being used by foreign interest groups to promote – through the social influence of these organisations – their own interests instead of community objectives in Hungary’s political and social life; furthermore, taking into account that this may pose a threat to Hungary’s political and economic interests and the uninfluenced operation of institutions established by law, and

contributing to the international efforts to combat money laundering,
adopts the following Act:

Section 1

(1) For the purposes of this Act, those associations and foundations that receive the allocations defined in paragraph (2) shall qualify as organisations receiving support from abroad (hereinafter: ‘organisation receiving support from abroad’).

(2) Within the meaning of this Act, allocations of money or other assets originating either directly or indirectly from abroad shall be considered, regardless of their legal title, as support, provided that such allocations – calculated separately or cumulatively – reach twice the amount specified in Section 6(1) b) of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter: ‘Pmt.’) in a given fiscal year.

(3) The amount of support referred to in paragraph (2) shall not include any of the grants received by the association or foundation, as per specific legislation, from the European Union through a budgetary organ.

(4) This Act shall not apply to:

- a) associations and foundations that do not qualify as non-governmental organisations;
- b) associations that fall within the scope of Act I of 2004 on Sports;
- c) organisations that perform religious activities.

Section 2

(1) An association or foundation referred to in Section 1(1) shall, within 15 days, notify that it has become an organisation receiving support from abroad as soon as the amount of allocations it has received in the reference year reaches twice the amount specified in Section 6(1) *b*) of the Pmt.

(2) The organisation receiving support from abroad shall send the notification referred to in paragraph (1) to the regional court with jurisdiction over its registered seat (hereinafter: 'registering court') with the data content specified in Annex 1. The registering court shall attach the notification to the records of the association or foundation in the register of non-governmental and other organisations that do not qualify as companies (hereinafter: 'Register') and shall register the association or foundation as an organisation receiving support from abroad.

(3) Applying the rules specified in paragraph (1) as appropriate, organisations receiving support from abroad shall notify the registering court annually of the support received in the previous year by providing the data specified in Annex 1 along with their report.

(4) The registering court shall, by the 15th day of each month, send to the minister responsible for managing the Civil Information Portal (Civil Információs Portál) the names, registered seats and tax identification numbers of all the associations and foundations in respect of which the court entered into the Register, in the preceding month, the fact that they qualify as an organisation receiving support from abroad. The minister responsible for managing the Civil Information Portal shall publish without delay the received data enabling public access free of charge on the electronic interface dedicated to the purpose.

(5) After filing the notification referred to in paragraph (1), the organisation receiving support from abroad shall, without delay, publish on its webpage, in press products it publishes as referred to in the Act on the freedom of the press and the fundamental rules of media content, and in its other publications the fact that it qualifies as an organisation receiving support from abroad pursuant to this Act.

(6) The organisation receiving support from abroad shall be bound by the obligation specified in paragraph (5) as long as it qualifies as an organisation receiving support from abroad.

Section 3

(1) If an association or foundation fails to comply with its obligations under this Act, the prosecutor shall – after becoming aware of this fact – give a notice to the association or foundation to comply with its obligations pursuant to this Act within 30 days of the communication of the notice, following the rules applicable to the prosecutor.

(2) If the organisation receiving support from abroad fails to comply with its obligation specified in the prosecutor's notice, the prosecutor shall call upon it again to comply with its obligations pursuant to this Act within 15 days. If the organisation receiving support from abroad continues to fail to comply, the prosecutor shall, within 15 days after the expiry of the above deadline, initiate at the registering court the imposition of a

fine under Section 37(2) of Act CLXXXI of 2011 on the Court Registration of Non-Governmental Organisations and Related Procedural Rules.

(3) If, after the imposition of a fine under paragraph (2), the organisation receiving support from abroad continues to fail to comply with its obligation specified in this Act, the prosecutor shall file action for the deletion of the association or foundation from the Register by applying the rules specified in Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations (hereinafter: 'Ectv.').

(4) If, acting upon the prosecutor's claim, the court winds up the association or foundation, it shall, in turn, launch a simplified deletion procedure in accordance with Subtitle 2/B of the Ectv., without delay, and shall delete the association or foundation from the Register.

Section 4

(1) If the money or other assets allocated from abroad to an organisation receiving support from abroad fail to reach twice the amount specified in Section 6(1) b) of the Pmt. in any of three consecutive fiscal years, then the association or foundation shall no longer qualify as an organisation receiving support from abroad, and – applying the rules on notification as appropriate – it shall make a notification of this fact within 30 days after adopting its annual report for the year when this circumstance occurs.

(2) After the notification specified in Section (1), the registering court shall, without delay, delete from the Register the indication according to which the association or foundation is an organisation receiving support from abroad.

Section 5

This Act shall enter into force on the eighth day following its promulgation.

Section 6

The following provision shall replace Section 9/K (6) of Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations:

“(6) A simplified deletion procedure shall be instituted

a) at the association's request, if the association decides to wind up or determines that the substantive legal conditions for its dissolution have occurred, and since its establishment it has not had, or currently does not have, a tax identification number, and

b) based on the court's initiative, if the conditions for the deletion under Section 3(4) of Act ... of 2017 on the Transparency of Organisations Receiving Support from Abroad exist.”

Section 7

The following point *g*) shall be added to Section 2 of Act CLXXXI of 2011 on the Court Registration of Non-Governmental Organisations and Related Procedural Rules:

(It shall be the court's duty to)

“*g*) record the notification made pursuant to Act ... of 2017 on the Transparency of Organisations Receiving Support from Abroad in the Register referred to in this Act.”

Section 8

The following paragraph (3) shall be added to Section 9/A of Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities:

“(3) Act ... of 2017 on the Transparency of Organisations Receiving Support from Abroad shall not apply to organisations that perform religious activities.”

Annex 1 to Act ... of 2017

The data content of the notification on the fact that an organisation becomes an organisation receiving support from abroad

Reference year:

I. Data on the organisation receiving support from abroad

Name of the organisation:

Registered seat of the organisation:

Registration number of the organisation:

II. Support received from abroad

Support received from abroad (total):

Details of the support received from abroad: [indication of amount per transaction, with the exact indication of the source (for natural persons: name, country, city; in other cases: name, registered seat)]:

1.

2.

3.

...

EXPLANATORY MEMORANDUM

General statement of reasons

Hungary, in conformity with its obligations under international law, ensures the conditions for civil society to organise itself to the highest level. Legislation and enforcement both take account of the fact that the right of association – as a freedom that is closely related to the fundamental rights of communication and that can be exercised collectively – is of particular importance with regard to democratic social systems. Non-governmental organisations and foundations play an important role in democratic control and in the shaping of public opinion through the activities they perform and through the achievement of the objectives set by their founders. Hence, there is fundamental public interest in ensuring that society as a whole and individual citizens are aware of the interests these organisations represent.

Recent decades have seen the rise of a threat, also recognised as realistic by international forums, primarily linked to the rapid growth and extension of transnational financial processes, that foreign interest groups try to make use of civil society organisations. The tools frequently used for this purpose take the form of support allocated using various legal titles, which may, directly or indirectly, be suitable for influencing the operations of a non-governmental organisation, even to the extent that its fundamental objectives are considerably transformed. Such grants seek to ensure that – through the social influence of the non-governmental organisations receiving the grants – interest groups that provide such support assert their own interests in Hungary's political and social life. This influence may be targeted at making a specific political or economic decision, at determining the trends of certain policies or, in the widest sense, at the functioning of the democratic institutional system of the state. These processes may pose a high risk to Hungary's national security and sovereignty. Moreover, account must be taken of the challenges posed by financial flows of non-transparent origin associated with money laundering and the financing of terrorism. It should be noted that the resulting threat is not limited to the for-profit sector; it may surface in the civil sector as well. This Act – taking into account the efforts made by the international community as well – completes the control mechanisms related to money laundering and the financing of terrorism, ensures the transparency of foreign funding with regard to the organisations of civil society, and thus contributes to the maintenance of public confidence in such organisations.

This Act is targeted at the capacity to see and show which organisations can be regarded as organisations receiving support from abroad. The Act establishes an adequate balance between the free operation of associations and foundations on the one hand, and transparency as a social expectation on the other hand. The mechanism of notifications and reports specified in the Act is perfectly suitable for this purpose. The regulation related to the existing systems of the court register and the Civil Information Portal establishes effective social control over the data content on funding from abroad. The Act does not imply a restriction of the exercise of the freedom of association, yet makes it possible for the general public to see clearly which organisations make attempts to influence the opinion and behaviour of the Hungarian state and its individual citizens, and along which interests.

Detailed statement of reasons

Section 1

The Act shall explicitly apply only to organisations that are registered as associations or foundations, and, on the basis of Act CLXXV of 2011 on the Freedom of Association, Public Benefit Status and the Operation and Funding of Non-Governmental Organisations (hereinafter: 'Ectv.'), as non-governmental organisations, and receive support from abroad, the amount of which in a fiscal year – either separately or cumulatively – reaches twice the amount specified in Section 6(1) *b*) of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter: 'Pmt. '), that is, HUF 7,200,000.

All allocations, including money or other assets that pass into the possession of the association or foundation, either directly or indirectly, shall be taken into account for the purpose of calculating the amount of the support, regardless of legal title.

However, the amount of support shall not include any grant received by the association or foundation, as per specific legislation, from the European Union through a budgetary organ, because that amount, having been channelled to the public distribution system, can no longer be regarded as "foreign".

The Act shall not apply to the organisations listed, considering the fact that either they do not qualify as non-governmental organisations in the first place or their operation is linked to the exercise of other fundamental rights.

Section 2

The Act defines the obligations arising from an organisation becoming an organisation receiving support. Such an association or foundation shall make a notification, within 15 days, of the fact that it has become an organisation receiving support from abroad as soon as the amount of allocations it receives in the reference year reaches twice the amount specified in Section 6(1) *b*) of the Pmt., i.e. HUF 7,200,000. (2) The organisation receiving support shall send the notification to the tribunal with territorial competence over its registered office (hereinafter: 'registering court') with the data content specified in *Annex 1*. The registering court shall record this fact in the register of non-governmental organisations and other organisations that do not qualify as companies (hereinafter: 'Register') and, among the existing data of the association or foundation, shall record that the organisation qualifies as an organisation receiving support.

On the basis of the information provided by the registering court, the minister responsible for managing the Civil Information Portal shall, without delay, publish the name, the registered office and the tax identification number of the association or foundation on the electronic interface dedicated to this purpose, which is available free of charge for anyone.

In turn, the organisation receiving support from abroad shall publish (e.g. in its leaflets and printed and electronic press products) the fact that it qualifies as an organisation receiving support from abroad pursuant to this Act.

Section 3

As for the failure to fulfil the obligations specified in this Act, this Act provides for a gradual and proportionate system of sanctions. In this respect, the duty of the prosecutor entails pronounced responsibility. After a prosecutor's procedure of instructions given in two stages, the registering court may impose a fine in accordance with the general provisions of the Cnytv (Act on the Court Registration of Non-Governmental Organisations). As a last resort – if no previous measures have resulted in compliance with the law – the registering court may, in accordance with the rules on simplified procedure, delete the association or foundation.

Section 4

The Act also contains safeguards of the rules governing the termination of this quality of organisations receiving support from abroad. This may happen if the amount of money or other assets allocated to the organisation receiving support does not reach twice the amount specified in Section 6(1) *b*) of the Pmt. in any of five² consecutive fiscal years. The association or foundation shall notify the registering court of this fact within 30 days after the adoption of the annual report for the year when this circumstance occurs.

A safeguarding provision ensures that the registering court shall delete from the Register the indication according to which the association or foundation is an organisation receiving support from abroad without delay upon this notification.

Section 5

Provision on entry into force.

Sections 6 to 8

Introducing modifications in related legislation that are necessary with regard to this legislative proposal.

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