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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

HUNGARY

DRAFT LAW

**ON THE TRANSPARENCY OF ORGANISATIONS
RECEIVING FOREIGN FUNDS**

AND

EXPLANATORY MEMORANDUM

DRAFT

**Act no. ... of 2017
on the Transparency of Organisations Receiving Foreign Funds**

The National Assembly

respecting that organisations established based on the freedom of association are the manifestations of self-organisation in society, and their operation contributes to democratic checks and balances and to the open debate on public affairs, furthermore taking into consideration that these organisations have a decisive role in forming of public opinion; emphasising that the transparency of these organisations is of special public interest due to the societal engagement of associations and foundations;

recognising that funding from unknown foreign sources to organisations established based on the freedom of association might enable foreign interest groups to enforce their own interests instead of public interest in the political and social life of Hungary, through the societal influence of these organisations, and with respect to the fact that this may endanger the political, economic interests of the country as well as the operation of statutory institutions without undue influence, and

contributing to the international fight against money laundering,
adopts the following Act:

Article 1

(1) With respect to the application of this Act, associations and foundations which receive funding specified in paragraph (2), shall be regarded as organisations receiving foreign funds (hereinafter these organisations together shall be referred to as: organisations receiving foreign funding).

(2) For the purposes of this Act, regardless of its legal title, any financial or other economic support originating directly or indirectly from abroad which, individually or in total, reaches the double of the sum specified in Article 6 paragraph (1) (b) of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter referred to as: Act on Money Laundering) in a year, shall be regarded as financial support.¹

(3) Funds from the European Union paid to an association or a foundation through a [Hungarian] budgetary institution according to separate law shall not be taken into account for the amount of the funds specified in paragraph (2).

(4) This Act shall not apply to: 2

- a) associations and foundations which are not regarded as civil society organisations;
- b) associations under the scope of Act no. I of 2004 on Sports;
- c) associations pursuing religious activities.

¹ 1 i.e. 7.2 million HUF (app. 24,000 EUR) presently

Article 2

(1) If the sum of funding received reaches the double of the amount specified in Article 6 paragraph (1) (b) of the Act on Money Laundering, the association or foundation under Article 1 paragraph (1) shall declare, within 15 days, that it has become an organisation receiving foreign funds.

(2) The organisation receiving foreign funds shall submit the declaration under paragraph (1) to the Regional Court competent according to its registered address (hereinafter referred to as: Registering Court), with the data content set forth in Annex no. 1. The Registering Court shall attach the declaration to the data of the association or foundation concerned in the register of civil society organisations and other organisations not regarded as companies (hereinafter referred to as: Register), and register the association or foundation as an organisation receiving foreign funds.

(3) In accordance with the provisions specified in paragraph (1) as appropriate, simultaneously with the report², the organisation receiving foreign funds shall annually declare the support received in the previous year, with the data content specified in Annex no. 1.

(4) The Registering Court shall send the names, registered addresses and tax numbers of the associations and foundations which in the previous month were registered as organisations receiving foreign funds in the Register to the Minister responsible for the management of the Civil Information Portal until the 15th day of each month. The Minister responsible for the management of the Civil Information Portal shall, without delay, publish these data on the electronic platform developed for this purpose, which will be available free of charge.

(5) The organisation receiving foreign funds, following the declaration under paragraph (1), shall publish on its website, without delay, and shall indicate on its press products falling under the scope of the Act on the Freedom of the Press and the Fundamental Rules of Media Content and on any other publications that it to be regarded as an organisation receiving foreign funds under this Act.

(6) The organisation receiving foreign funds is subject to the obligation in paragraph (5) as long as it is considered an organisation receiving foreign funds under this Act.

Article 3

(1) If the association or foundation does not fulfil its obligation under this Act, after becoming aware of this fact, the public prosecutor shall request the association or foundation, in accordance with the applicable rules, to fulfil this obligation within 30 days following the communication of this request.

(2) If the organisation receiving foreign funds does not fulfil its obligation specified in the public prosecutor's request, the public prosecutor shall repeatedly request the organisation to fulfil its obligations under this Act, setting a 15-day deadline. Should this deadline pass without any result, within 15 days, the public prosecutor shall initiate with the Registering Court the imposition of a fine in accordance with Article 37 paragraph (2) of Act CLXXXI of 2011 on the Court Registration of Civil Society Organisations and the Related Rules of Procedure.

(3) If the organisation receiving foreign funds still fails to fulfil its obligation under this Act following the imposition of the fine in accordance with paragraph (2), the public prosecutor shall institute a legal action in accordance with the provisions of Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations (hereinafter referred to as: Act on the Right of Association) for the dissolution of the association or the foundation.

(4) If the court dissolves the association or foundation upon the public prosecutor's action, it shall initiate simplified cancellation proceedings in accordance with Chapter 2/B of the Act on the Right of Association, and cancel the association or foundation from the Register.

Article 4

(1) If the financial or other economic support received by the organisation receiving foreign funds does not reach the double of the sum specified in Article 6 (1) b) of the Act on Money Laundering in any of three consecutive tax years, the association or foundation will not be considered an organisation receiving foreign funds any longer; by application of the provisions on registration as appropriate, it shall declare this fact within 30 days from the adoption of the annual report after this condition is met.

(2) Upon receiving the declaration specified in paragraph (1), the Registering Court shall, without delay, delete from the Register the indication that the association or foundation is an organisation receiving foreign funds.

Article 5

This Act shall enter into force on the eighth day after it is promulgated.

Article 6

Article 9/K paragraph (6) of Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations shall be replaced with the following provision:

- (6) A simplified cancellation procedure can be applied
- a) at the association's request if the association has decided on its dissolution, or it has found that the substantive legal conditions of its dissolution are met and it did not have any tax number during its existence and does not have any, either, and
 - b) upon the initiative of the court, if the conditions of dissolution under Article 3 paragraph (4) of Act ... of 2017 on the Transparency of Organisations Supported from Abroad are met."

Article 7

Article 2 of Act CLXXXI of 2011 on the Court Registration of Civil Society Organisations and the Related Rules of Procedure shall be supplemented with the following point g):

(Duties of the court)

- "g) to enter the declaration under Act ...of 2017 on the Transparency of Organisations Supported from Abroad in the Register specified in this Act."

Article 8

Article 9/A of Act CCVI of 2011 on Freedom of Conscience and Religion and the Legal Status of Churches, Denominations and Religious Communities shall be supplemented with the following paragraph (3):

„(3) Act ...of 2017 on the Transparency of Organisations Supported from Abroad shall not be applied to organisations pursuing religious activities.” 5

Annex no. 1 to Act ... of 2017

Data content of the declaration of an organisation becoming an organisation receiving foreign funds

Indication of the year under review:

I. Data relevant to the organisation receiving foreign funds

Name of the organisation:

Registered address:

Registration number:

II. Support from abroad

Total of support from abroad:

Support from abroad in detail [indicating the sum per transaction, the exact source (in case of a natural person: name, country, city, in any other case: name, registered address)]:

1.

2.

3.

...

GENERAL REASONING

In line with its international legal obligations, Hungary ensures the conditions for self-organisation of the civil society at a high level. Both the legislation and the application of law pays due consideration to the fact that the right of association, as a liberty very closely connected to the various fundamental rights of communication, is of special importance in a democratic society. Civil society organisations and foundations play an important role in democratic control and in shaping public opinion through the activities they carry out and through the implementation of the goals set by their founders. Thus, there is a fundamental public interest in making it clear to the entire society and the individual citizens what interests these organisations represent.

A danger which has emerged in the previous decades – related primarily to the fast-paced expansion of transnational financial processes –, also deemed realistic by international fora, is that foreign interest groups try to exploit the organisations of the civil society. A common tool to this is financial support provided on various legal grounds, which may, directly or indirectly, be suitable for influencing the operation of a civil society organisation, possibly to the extent that it significantly transforms the basic goals of the civil society organisation concerned. Such financial support is provided with the aim to enforce the own interests of the supporting interest groups in the Hungarian political and social life using the societal influence of the civil society organisation. This influence may be directed at the adoption of a specific political or economic decision, the definition of policy directions, or in the broadest sense, the operation of the democratic state institutional system. These processes may greatly endanger the national security and sovereignty of Hungary.

It is also important to pay due consideration to the challenges caused by financial transactions of non-transparent sources regarding money laundering and terrorism. It cannot be disregarded that the resulting danger does not threaten the for-profit sector only, but may also appear in the civil sector. In line with the efforts of the international community, this Act expands the control mechanisms related to money laundering and the financing of terrorism, ensures the transparency of foreign financing for organisations in the civil society, and thus, also contributes to the maintenance of public trust regarding these organisations.

The aim of this Act is to see and make visible which organisations can be considered as organisations receiving foreign funds. The Act strikes a fair balance between the free operation of associations and foundations and their transparency which is a social demand. The declaration and report-making mechanism set up by this Act is fully suitable for this aim; the links to the already existing judicial records and the Civil Information Portal enable the efficient social control of the data content regarding foreign financing. The Act does not result in a limitation to the exercise of the right of association, but it creates the opportunity for making it clear to the public which organisations and in what interests want to influence the opinion and the behaviour of the Hungarian state and its individual citizens.

Detailed reasoning

Article 1

The Act applies exclusively to associations and foundations registered as civil society organisations in the meaning of Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations (hereinafter: Act on the Right of Association) which receive financial support from abroad reaching the double of the sum specified in Article 6 paragraph (1) (b) of Act CXXXVI of 2007 on the Prevention and Combating Money Laundering and Terrorist Financing (hereinafter: Money Laundering Act), that is 7,200,000 Hungarian forints (around 24,000 EUR).

Regardless of its legal title, any support received by the association or foundation, either directly or indirectly, must be calculated among the amount of support, including both financial and other economic support.

On the other hand, funding received by the association or foundation through a [Hungarian] budgetary institution from European Union sources on the basis of separate law is not to be included, since conceptually, such funds, becoming a part of the [Hungarian] state distribution mechanism, cannot be considered foreign any longer.

The scope of the Act does not apply to the organisations mentioned, since they are either not regarded as civil society institutions in the first place, or their operation is related to the exercise of other fundamental rights.

Article 2

The Act determines the obligations resulting from the status of a supported organisation; the association or foundation is required to declare the fact that it has become an organisation receiving foreign funds within 15 days from the day when the support received in the year under review reaches the double of the sum specified in Article 6 paragraph (1) (b) of the Act on Money Laundering, that is 7,200,000 Hungarian forints. The supported organisation is required to make the declaration to the Regional Court competent according to its registered address (hereinafter referred to as: Registering Court) with the data content specified in Annex no. 1. The Registering Court records this fact in the register of civil society organisations and other organisations not regarded as companies (hereinafter referred to as: Register), by adding it to the existing data of the association or foundation, i.e. it records the organisation as a supported organisation.

Upon information received from the Registering Court, the Minister responsible for the management of the Civil Information Portal will promptly disclose the name, registered address and tax number of the association or foundation on an electronic platform developed for this purpose, which will be publicly available free of charge.

After that, the organisation receiving foreign funds must indicate on its publications (e.g. flyers, printed and electronic press products) that it constitutes an organisation receiving foreign funds as defined in this Act. 8

Article 3

The Act establishes gradual and proportionate sanctions for the violation of the obligations specified by it. The public prosecutor has enhanced responsibility in this regard. Following a two-step request by the public prosecutor, the Registering Court may impose a fine in accordance with the general rules of the Act on the Court Registration of Civil Society Organisations, and ultimately, if neither of the previous measures results in law-abiding conduct, it has the possibility to cancel the registration of the association or foundation according to the rules of the simplified procedure.

Article 4

The Act also contains rules to ensure the cancellation of the status of organisations supported from abroad. This becomes necessary if the financial or other economic support received by the supported organisation does not reach the double of the sum specified in Article 6 paragraph (1) (b) of the Act on Money Laundering in any of five consecutive tax years. The association or foundation declares this fact to the Registering Court within 30 days from the adoption of the annual report in the year when the condition is met.

According to this provision ensuring fairness, after such declaration, the Registering Court will delete from the Register that the association or foundation is an organisation receiving foreign funds.

Article 5

Entry into force clause.

Articles 6-8

The necessary amendments to related laws in order to adapt them to the bill.