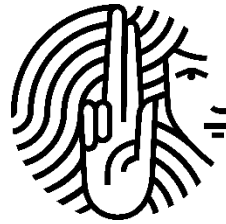


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HUNGARY'S ACT ON THE PROTECTION OF NATIONAL SOVEREIGNTY

What It Is and What It Is Not

8 February 2024

In December 2023, the Hungarian Parliament adopted [Act LXXXVIII of 2023 on the Protection of National Sovereignty](#) (the Act). The Act consists of two main pillars: establishing a new Sovereignty Protection Office (SPO) to carry out investigations, and amending the Criminal Code to sanctions electoral candidates and representatives of nominating organisations using prohibited foreign funds for campaigning purposes with up to three years of imprisonment.

Over 100 [civil society organisations](#), more than 15,000 [citizens](#), and 10 independent [media outlets](#) strongly criticised the new law. The Council of Europe Commissioner for Human Rights [called for the abandonment](#) of the proposal, the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Human Rights Defenders noted the imminent negative implications of the adoption of the proposal in their [joint communication](#) to the Hungarian Government. The Monitoring Committee of the Parliamentary Assembly of the Council of Europe [seized the Venice Commission](#) to provide an opinion on the proposal.

On 7 February 2024 the European Commission [announced](#) that it decided to launch an infringement procedure against Hungary for violating EU law on the Defence of Sovereignty.

Key points

- The SPO was set up as of 1 February 2024. Its president is nominated by the Prime Minister and appointed by the President of the Republic for a renewable term of six years. The current office-holder is Mr Tamás Láncki.
- The main task of the SPO is “to protect constitutional identity” through various activities listed in Section 2 of the Act, including by carrying out investigations against individuals or legal entities. The SPO releases a public report about the findings of its Investigations.
- No legal remedies are available against the SPO’s actions, including against its investigations or the publication of its findings.
- The SPO has very broad powers to request information or data from the subjects of its investigations who cannot challenge this. In addition, it will be fed information by the National Information Centre, a recently established super-intelligence agency.

- Beyond setting out the SPO and its activities, the Act introduced a new Section 350/A into the Criminal Code on “Illegal influence of the will of voters”. Candidates and certain representatives of nominating organisations found guilty of committing this crime can be punished with up to three years of imprisonment.

On what grounds can the SPO launch an investigation?

According to Section 3 of the Act, the following circumstances provide grounds for the SPO’s investigation:

Section 3. In connection with its investigative activities, the [SPO]

a) shall explore and investigate

aa) interest representation activities, not including the activities of diplomatic or foreign missions and professional interest representation organisations,

ab) information manipulation and disinformation activities,

ac) activities aimed 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,

carried out in the interest of another state and, irrespective of its legal status, of a foreign organ or organisation and natural person if they can harm or jeopardise the sovereignty of Hungary;

b) shall explore and investigate the organisations whose activity funded with supports from abroad may exert influence on the outcome of elections;

c) shall explore and investigate the organisations which, using supports from abroad, perform or support activities aimed at influencing the will of voters.

What are the problems with these points?

The wide-ranging grounds in Section 3 contain language that lacks clarity and definition both in the adopted act and in the wider Hungarian legal framework. For example, no definition exists for “information manipulation” or “disinformation activities”. The Prime Minister and other prominent politicians of the governing majority regularly refer to independent media as “fake news”.

Similarly, no definition is available for what is “democratic discourse”. Hence it cannot be excluded that a private individual’s comment on social media would fall under the term “activity aimed at influencing democratic discourse”.

As the first three activities (Section 3.a) do not require any financial contribution from a foreign entity, defining what it means that an activity is carried out “in the interest of” another state or a foreign body or natural person is impossible. For example, the Hungarian Helsinki Committee is the only entity in Hungary providing free-of-charge legal assistance to asylum-seekers. Would providing such assistance fall under an activity that is carried out in the interests of a foreign natural person, such as an individual seeking asylum?

Finally, no precise definition is available for the meaning of “sovereignty”, while its closest cousin, the notion of constitutional identity as interpreted by the Constitutional Court is rather vague and elusive, allowing wide room to manoeuvre. Moreover, the listed activities do not have to cause actual harm or

be a threat to it to provide grounds for an investigation, they should merely have the potential to pose harm.

What does the SPO investigation mean in practice?

Part 2 of the Act provides for the rules on the SPO's investigation. The Office has the right to

- request information and data from the organisation it is investigating (Section 7(1));
- request information and data from any state or local government body "concerned in the case" (Section 7(2));
- request information and data from "any other organisation or person concerned in the case" (Section 7(2));
- have access to all data in the possession of the organisation under investigation or the state or local government organ concerned in the case, make copies thereof and inspect or request copies of all such documents (Section 8(1a));
- request copies of any data or document related to the case under investigation from any organisation or person related to the case under investigation (Section 8(1c)).

Once the investigation is concluded, the SPO will publish a report on the facts found and the conclusions it arrived at.

What are the consequences of non-compliance?

The SPO does not have the right to issue fines or impose sanctions on entities or individuals refusing to satisfy its information requests or cooperate. However, such cases shall be mentioned in the annual public report of the SPO.

In case an organisation fails to provide the SPO with the information it requested, the president of the SPO may initiate that the Parliament's National Security Committee hears "the head of the investigated organisation". Notably, this can happen also in the case the organisation is fully cooperative but "it is justified by the nature or gravity of the case at issue in any other way".

So what can you do if you disagree with the launching of the investigation or the findings of the SPO?

The law precludes any legal remedy against the actions of the SPO, as the SPO's activities do not constitute administrative procedure. Hence no judicial or other avenues are available to challenge the SPO's procedure or its report, which is thus devoid of any rule of law safeguards.

So is this a copy of the Russian foreign agent law?

Absolutely not. The Russian foreign agent law targets those that receive funding from abroad and carry out specifically defined activities. The Hungarian Act is worded in a way that neither the receipt of foreign funds is necessary to fall under its scope, nor are the potential activities defined in a manner that is foreseeable. Another fundamental difference is that, at least in theory, the Russian law provides for legal remedies at almost every step of the procedure whereas the Act precludes any remedy. The SPO, unlike the Russian body responsible for maintaining the list of foreign agents, has

wide-ranging investigative powers that also include access to classified information gathered by the intelligence agencies.

How can the SPO use classified information?

According to the law, the SPO is authorised to receive regular briefings from the newest intelligence agency, the National Information Centre (Nemzeti Információs Központ, NIK). established after the 2022 elections. The NIK can access all data accumulated by the various intelligence agencies, provide briefings based on these to certain members of the Government, and instruct other agencies to carry out particular activities. The SPO will not be able to instruct either the NIK or other secret services to carry out operations against an individual or entity, but it will receive all information available at the agencies in order to facilitate the performance of its tasks. At the same time, it has the right to issue recommendations to authorities, including the security services.

The EU is planning to adopt similar policies, the US has the FARA, so why is this law seen as a threat?

Tackling foreign interference in itself is not a threat to a pluralist democracy. However, the SPO is not meant to address hostile foreign interference only or foreign interference in general. Nevertheless, from the moment of its inception, lawmakers, leading government officials as well as the SPO's president SPO have been referring to Hungary's NATO and EU allies and partners as sources of influence that are regarded as threats. Unlike the US FARA Act or even the EU's proposed directive on foreign interest representation, the Hungarian law is designed to allow cherry-picking in the selection of its targets for investigations, by using the vaguely defined foreign influence as a guise to do so.

So what might be the real purpose of the SPO?

Smear campaigns against individuals and organisations critical of certain government policies or those simply voicing dissent are a defining feature of an illiberal regime. It is telling that the SPO president is the same Mr. Tamás Láncki who as the editor-in-chief of the weekly Figyelő magazine oversaw the publication of the infamous list of 200 "Soros mercenaries" after the 2018 elections. Attacks in similar vein can be expected, as well as fishing expeditions carried out under the guise of the SPO's investigation in order to trigger action by other state authorities. In fact, it is likely that such outcomes would be the primary results of the SPO's activities.

What is the amendment to the Criminal Code?

A new Section 350/A was added to the Criminal Code:

Illegal influence of the will of voters

Section 350/A A member, responsible person or executive officer of a nominating organisation within the meaning of the Act on election procedure and a candidate within the meaning of the Act on election procedure who uses prohibited foreign support or material advantage originating from an agreement disguising, to circumvent this prohibition, the origin of prohibited foreign support is guilty of a felony and shall be punished by imprisonment for up to three years.

Unlike the sections establishing the SPO, this Section largely uses well-defined terms. The use of foreign funds in election campaigns had already been prohibited under the election laws and the Act now criminalises this conduct.

A nominating organisation is a legal entity that officially fields at least one candidate during the official election period in a manner regulated in detail in the Act on Election Procedure. Since amongst other requirements, the election commission enters the nominating organisations into the official register, therefore no organisation can involuntarily become a nominating organisation and this status ends once the election has been held.

Nonetheless, some questions remain that lead to uncertainty. The notion of “material advantage originating from an agreement disguising” foreign funding is vague and can lead to absurd situations. For example, if a participant at a training co-funded from foreign funds later runs as a local mayor and uses the knowledge they learnt during the training, would this fall under the new crime? Similarly, if a nominating organisation adopts the position of an organisation on a policy area that receives funding from abroad, would this fall under the new crime?

9 June 2024 will be a double election day in Hungary, municipal elections will be held and the new members of the European Parliament will be elected. These elections, traditionally and by definition, involve a wide range of cross-border activities. How regular campaign events involving the presence of European parties or non-Hungarian politicians can take place and whether they may be subject to the criminal law provision remains to be seen.