



ARTICLE¹⁹

Hungary: Act on the Defence of National Sovereignty

2024

Legal analysis

Executive summary

In this legal analysis ARTICLE 19 comments on the compatibility of the recently passed Act on the Defence of National Sovereignty (2023) (the Act) in Hungary.

ARTICLE 19 is gravely concerned about the passage and anticipated use of the Act, which we view through the lens of years of attacks on the media and civil society in Hungary. It threatens to put a final nail in the coffin for any ability of media and civil society to independently operate in the country.

In the lead-up to its passage, the Act has already been subject to significant scrutiny both regionally and internationally. ARTICLE 19 finds this was for good reason. The Act establishes a non-independent body with an investigatory mandate to demand documents or testimony—both physical and digital—from any organisation or person in Hungary within fifteen days. The target of such an investigation can include journalists, media organisations, civil society, and any person or entity engaged in “advocacy.” Initiating an investigation does not require any criminal suspicion or judicial review, and failure to comply can lead to public censure and forwarding of information to other agencies. This breadth is entirely intentional; the Act’s own commentary plainly asserts that it grants “wide powers of investigation in relation to the organisations under investigation, state and local government bodies and other organisations and persons involved in the case.”

While media and media activities are not referenced directly in the text of the legislation, the Act is so broadly worded that it captures media in its plain language. Political candidates that accept foreign funding are also subject to up to three years in prison. It is unclear the extent that prohibitions on foreign support of a candidate would capture, for instance, an independent media outlet with some foreign grants merely covering the candidate or criticizing an opponent. As such the severity of the threat posed by the Act cannot be overstated.

ARTICLE 19’s key concerns with the Act include:

- **The Act grants sweeping powers based on vague terms.** The Act’s core provisions are rooted in vague terminology, including “information manipulation,” “disinformation activities,” and “activities aimed at influencing democratic debate” that are not defined in law. It is ostensibly passed to for the “protection of national sovereignty” which is also not defined.
- **The Office for the Defence of Sovereignty (the Office) is not independent and has limitless investigatory power over any employee of a media or civil society organisation, with no requirements of criminal suspicion, judicial oversight, or basic due process safeguards.** The Office is formally granted investigative powers, including rights of inspection and copying, in physical or electronic medium, of any organisation or person in Hungary. It has the power to compel any member of the staff of a media or civil society organization for either written or oral information or documents. The goal

of these measures is stated to be the “mapping” of organisations, which is not a legitimate aim under international law. Moreover, the Office is appointed directly by the President and the Prime Minister and is not subject to any legislative or other independent oversight outside of the President.

- **The Act creates a chilling effect on media and civil society, amounting to unlawful interferences with both the rights of expression and association.** International and regional standards make clear that the imposition of invasive investigative measures, as well as stigma created by publication of non-compliant cases, amount to interferences with the right of freedom of association. Where these measures are taken to harass media outlets, they also constitute interferences with freedom of expression. Granting broad investigative powers to question any member of a media organisation or non-profit, and publish or share the results with any government agency, is not a proportionate or necessary means to achieve any legitimate aim.
- **The Act fails to protect data and allows for sharing of journalist information across agencies, including law enforcement.** The Act is vague in the limited instances it claims to provide protections, and it allows for unlimited sharing of collected information with other agencies. This appears to create a dangerous loophole which allows law enforcement to circumvent any legal requirements to collect evidence against journalists or, worse, seek out their sources.
- **The Act imposes disproportionate criminal sanctions on candidates who either receive funding or “property derived from” foreign funding to influence the electorate, threatening to chill political opposition to the majority.** The scope of this is concerningly broad: an independent media outlet that merely receives a grant from abroad, and goes to support a candidate or devote media space to their support, might be considered under the breadth of the law to trigger criminal sanctions for the candidate.

ARTICLE 19’s key recommendations:

- The Hungarian Government must repeal the Act immediately as it is fundamentally incompatible with basic human rights standards on freedom of expression and freedom of assembly. As drafted it threatens the very existence of independent media and civil society in Hungary.
- The Government must take immediate steps to protect and promote an independent environment for media and civil society in the country.
- The European Commission should launch infringement proceedings against Hungary and challenge the law in the EU courts.

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Introduction

ARTICLE 19 is gravely concerned about the state of media freedom in Hungary. The International Press Institute (IPI) noted that last year has ominously been a period of “relative quiet in terms of major new threats to media freedom”; however, this is a symptom of the overwhelming success of a decade-long campaign to stifle critical voices.¹ Indeed, a majority of media has been co-opted by the ruling party and holds a line of a dominant pro-government narrative. Over this period, ARTICLE 19 has witnessed a harrowing decline in media freedom and shift of media ownership into pro-government hands.²

Attempts to scrutinize and starve off the funding of civil society are not new in Hungary. In December 2017, the European Commission referred Hungary to the European Court of Justice (the CJEU) in part due to a repressive registration measure on foreign funding of NGOs.³ As a result, the CJEU found violations of Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union guaranteeing right to respect for private and family life, right to protection of personal data and right to freedom of association.⁴ Hungary was forced to repeal the law, but the spectre of foreign funding of civil society was raised once more by the majority Fidesz party in the 2022 parliamentary election campaign. In the months following, the party accused its opposition of circumventing prohibitions on direct foreign funding through the support of NGOs.

ARTICLE 19 finds that the Act is the latest prong of a decade-long campaign by the government of Prime Minister Victor Orbán to harass critics, suppress democratic checks and balances, distort the media market and weaken the financial sustainability of independent media. This has been affected in part through measures that restrict, punish, and stigmatise critical journalism and NGOs that are deemed to be hostile to national interests.

The Act was indeed introduced as a tool to address “left-wing journalists, pseudo-NGOs and dollar politicians.”⁵ Government figures have indicated that the objective of the Act is to stop domestic political actors from accepting foreign funds. However, when the bill was first announced, a leading Fidesz politician said that among other intended targets were so-called

¹ IPI, [Analysis: One year after election, media freedom in Hungary remains suffocated](#), 5 April 2023.

² ARTICLE 19, [Country in Focus: Hungary](#), 2018.

³ The European Commission, [Infringements -European Commission refers Hungary to the Court of Justice for its NGO Law](#), 7 December 2017.

⁴ Court of Justice of the European Union, [Press Release](#), *Commission v. Hungary*, Judgment in Case C-78/18, 18 June 2020. See also Council of Europe, European Commission for Democracy through Law (Venice Commission), [Opinion on the Draft Law on the Transparency of the Organisations Receiving Support from Abroad](#), Opinion 889/ 2017, 16-17 June 2017, paras 43 and 45.

⁵ Balázs Cseke and Judit Presinszky, [A sovereignty protection bill to be tabled in autumn “against left-wing journalists, pseudo-NGOs and dollar politicians” in Hungary](#), telex, 21 September 2023.

'dollar media' and 'Soros media' – pejorative terms used to label media receiving money from the US or the European Union.

ARTICLE 19 observes that the attacks of the Hungarian Government on civic space and media freedom have increasingly isolated Hungary in its practices both regionally and internationally, leading to recent condemnations. This includes the strong statement by the US State Department that "this new law is inconsistent with our shared values of democracy, individual liberty, and the rule of law."⁶ The Council of Europe Commissioner for Human Rights urged to abandon it, as it would lead to authority to request sensitive data and private information without oversight.⁷

We also note that during Hungary's most recent Universal Periodic Review, the State Secretary for Administration of the Ministry of Justice recognized the "broad contribution of civil society organizations to the promotion of common values and goals and highlighted the important role they played in various fields of society."⁸ A considerable number of States focused their recommendations on the protection of independent media and civil society, with a specific call to repeal laws that may interfere with the space. Some examples include:

- Ireland urged Hungary to "create an enabling environment for civil society by removing all legislation which affects organizations' abilities to operate effectively";⁹
- Luxembourg echoed the call for legislative reform, encouraging Hungary to "repeal laws that place undue restrictions on civic space and media";¹⁰
- France encouraged Hungary to adopt "effective measures to ensure the promotion of media pluralism and freedom of expression";
- Austria urged Hungary to refrain from "obstruction and intimidation of independent media outlets and journalists,"¹¹ and Belgium similarly urged Hungary to protect media from "undue influence, interference or intimidation";¹²
- New Zealand similarly recommended that Hungary "recognize the important role of civil society organizations ... and remove any obstacles to their effective functioning."¹³

Comments related to media and civil society were also raised by numerous European countries, as well as other States including Australia, Chile, Ecuador, and Uruguay.¹⁴ Sierra Leone specifically called Hungary to "ease restrictions on civil society organizations that use foreign funding."¹⁵

⁶ US Department of State, [Concern with Hungary's Sovereign Defense Authority Law](#), 20 December 2023.

⁷ Boldizsar Gyori, [Council of Europe urges Hungary to shelve sovereignty bill](#), Reuters, 27 November 2023.

⁸ Human Rights Council, [Report of the Working Group on the Universal Periodic Review: Hungary](#), A/HRC/49/8, 21 December 2023, para 98.

⁹ *Ibid.*, Recommendation 128.25.

¹⁰ *Ibid.*, Recommendation 128.129.

¹¹ *Ibid.*, Recommendations 128.120, 128.126.

¹² *Ibid.*, Recommendation 128.127.

¹³ *Ibid.*, Recommendation 128.23.

¹⁴ *Ibid.*, Recommendations 128.121, 128.125, 128.133, 128.252.

¹⁵ *Ibid.*, Recommendation 128.26.

While Hungary in its National Report defended its view that restrictions on civil society organizations are a “legitimate aim,” it also stressed that “Hungary recognises the vital contribution of non-governmental organisations to the promotion of common values and goals.”¹⁶ Hungary also noted that “they play an important role not only in the democratic control of the government and shaping public opinion but also in addressing certain social difficulties and fulfil other community policy needs.”¹⁷ In this respect, we urge that Hungary stay true to this stated commitment and rescind measures such as the Act which only move in the wrong direction.

¹⁶ Human Rights Council, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Hungary](#), A/HRC/WG.6/39/HUN/1, 17 August 2021, paras 36 and 39.

¹⁷ *Ibid.*, para 39.

Applicable international human rights standards

Hungary maintains obligations to protect and promote freedom of expression and freedom of association, respectively, pursuant to Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR). Additionally, international and regional standards expand on the compatibility of restrictions on disinformation and the receipt of foreign funds under international standards.

Restrictions on the right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR), and given legal force through Article 19 of the ICCPR¹⁸ as well as in Article 10 of the European Convention (the European Convention).¹⁹

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person's choice. The UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States' compliance with the ICCPR, has affirmed that the scope of the right extends to the expression of opinions and ideas that others may find deeply offensive.²⁰

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR and Article 10(2) of the European Convention, provided that the limitation meets a "three-part test." This requires that the limitation must be:

- **Provided for by law:** any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly;
- **In pursuit of a legitimate aim,** listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (*ordre public*), or of public health or morals;
- **Necessary in a democratic society,** requiring the State to demonstrate in a specific and individualised fashion the precise nature of the threat, and the necessity and

¹⁸ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. The ICCPR has 167 States parties.

¹⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 September 1950.

²⁰ See HR Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 12 September 2011, para 11.

proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.²¹

Additionally, Article 20(2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law.

The HR Committee has made clear that, for laws pertaining to national security in particular, it is not compatible with Article 19(3) of the ICCPR to invoke limitations “to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.”²²

In the context of elections, while the HR Committee acknowledges the legitimacy of seeking to protect voters from intimidation or coercion, they urge that such laws “must not impede political debate.”²³ This reflects the principle that “in circumstances of public debate concerning public figures in the public domain and public institutions, the value placed by [the ICCPR] upon uninhibited expression is particularly high.”²⁴

Right of access to funding, including foreign funding

International and regional human rights standards make clear that the right to freedom of association, guaranteed in Article 22 of the ICCPR and Article 11 of the European Convention, includes not only the ability to form associations and organizations, but to do so without undue interference or stigma.

In 2013, the Special Rapporteur on the right to freedom of peaceful assembly and of association’s report affirmed that a civil society organization’s access to funding from domestic, foreign and international sources was “an integral part of the right to freedom of association.”²⁵

Issues surrounding funding of NGOs have been specifically addressed by the European Court of Human Rights (the European Court). For instance, in *Ismayilov v. Azerbaijan*, the European Court found in respect to a registration framework for associations, that “significant delays in the registration procedure, if attributable to the Ministry of Justice, amounts to an interference with the exercise of the right of the association’s founders to freedom of

²¹ *Ibid.*, paras 22 and 34.

²² General Comment No. 34, *op. cit.*, para 30.

²³ *Ibid.*, para 28.

²⁴ *Ibid.*, para 38.

²⁵ Human Rights Council, [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#), A/HRC/23/39, 24 April 2013, para 20.

association.”²⁶ The OSCE, in setting forth Guidelines on Freedom of Association in 2015, provided in Principle 7 that States “shall not restrict or block the access of associations to resources on the grounds of the nationality or the country of origin of their source, nor stigmatize those who receive such resources.”²⁷

The Venice Commission of the Council of Europe, in assessing limitations on NGOs in Egypt, similarly provided that:

Legitimate aims should not be used as a pretext to control NGOs or to restrict their ability to carry out their legitimate work, notably in defence of human rights. The prevention of money-laundering or terrorist financing does not require nor justify the prohibition or a system of prior authorisation by the government of foreign funding of NGOs.²⁸

The guidance of the Venice Commission also cautioned against procedural interferences, including stigma, aggressive auditing, or excessive penalties.²⁹

Regulation of disinformation, “false information” or “fake news”

In recent years, the international community has reiterated and demonstrated increasing consensus on the threat that restrictions of “false information” or “fake news” pose for freedom of expression. For example:

- In 2022 the UN Secretary General’s report on disinformation from a framework of human rights and fundamental freedom emphasized that “State responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression.”³⁰ Ultimately, the Secretary General advised against a criminal approach to addressing disinformation, instead promoting access to robust public information, and ensuring that any regulatory measurements be implemented with caution and separate executive function “to avoid abusive or manipulative approaches.”³¹
- The UN General Assembly made it clear that countering disinformation “requires” State responses to be in “compliance with international human rights law” and accordingly did not include criminal measures as an appropriate response.³² The General Assembly

²⁶ European Court of Human Rights, *Ismayilov v. Azerbaijan*, App. No. 4439/04, 17 January 2008, para 48.

²⁷ OSCE, [Guidelines on Freedom of Association](#), 2015, Principle 7.

²⁸ Venice Commission, [Interim Opinion on the Draft Law on Civic Work Organisations of Egypt](#), CDL(2013)023, 16 October 2013, para 35.

²⁹ *Ibid.*, para 30.

³⁰ UN General Assembly, [Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), Report of the Secretary General, A/77/287, 12 August 2022, para 10.

³¹ *Ibid.*, paras 26 and 27.

³² *Ibid.*, para 13.

explicitly reiterated the need to ensure that efforts to counter disinformation do not violate the right to freedom of expression and media freedom.³³

- The Human Rights Council subsequently echoed this call, reiterating the need that approaches to disinformation are rooted in human rights, and not used as a “pretext to restrict the enjoyment and realization of human rights or to justify censorship, including through vague and overly broad laws criminalizing disinformation.”³⁴
- The Special Rapporteur on freedom of expression issued a comprehensive report on international standards surrounding disinformation in 2021.³⁵ In that report, she found that so-called “false news” laws typically failed to meet the three-pronged test of legality, necessity and legitimate aims set forth in Article 19(3) of the ICCPR.³⁶ Specifically, these laws usually “do not define with sufficient precision what constitutes false information,” and “[w]ords such as ‘false’, ‘fake’, or ‘biased’ are used without elaboration and assertions based on circular logic are made.”³⁷ She called for States to work with the private sector to call for multi-stakeholder responses to disinformation in order to promote free, independent, and diverse media. The Special Rapporteur’s report followed joint statements from the Special Procedures worldwide expressing that “the human right to impart information and ideas is not limited to “correct” statements, that the right also protects information and ideas that may shock, offend and disturb, and that prohibitions on disinformation may violate international human rights standards.

So-called “Foreign Agents” laws: a comparative perspective

While the Act itself is not labelled a foreign agent law, in imposing restrictions on freedom of expression in the name of foreign influence it shares many characteristics with these measures.

“Foreign agent”-type laws have proliferated in recent years in states across the region and all share a number of qualities, often being inspired by one another. For example, at the time of the introduction of Hungary’s past legislation in 2017 that restricted foreign funding

³³ Resolution adopted by the General Assembly on 24 December 2021, [Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), A/RES/76/227, 10 January 2022.

³⁴ Human Rights Council, [Role of States in countering the negative impact of disinformation on the enjoyment and realization of human rights](#), A/HRC/49/L.31/Rev.1, 30 March 2022.

³⁵ [Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression](#), A/HRC/47/25, 13 April 2021.

³⁶ *Ibid.*, para 54.

³⁷ *Ibid.* (Giving as an example the definition where “a statement is false if it is false or misleading, whether wholly or in part, and whether on its own or in the context in which it appears.”)

of NGOs, the Parliamentary Assembly of the Council of Europe described the measure as having been “inspired by the corresponding Russian law.”³⁸

While there might be legitimate concerns about foreign influence in a globalised world, and attempts to influence democratic decision-making, any restrictions on freedom of expression and association imposed by these laws must still comply with the three-part test of legality, legitimacy, and necessity and proportionality. However, these laws are typically drafted with unduly vague and overbroad language, with limited guidance as to what is prohibited. For example:

- The OSCE Representative on Freedom of the Media expressed her concerns at the expansion of Russia’s foreign agents law, noting that the practice of Russian authorities designating media outlets and journalists as foreign agents “imposes excessive burdens upon media organisations and individuals, and, by stigmatising them, exerts a dangerous chilling effect on their work.”³⁹
- Accordingly, the Venice Commission analysed the amendments introduced to the laws in question and the related enforcement practices, and expressed its concern about the risk of arbitrary implementation and the potential chilling effect “due to the lack of legal certainty concerning the scope of the ‘foreign agent’ designation.”⁴⁰

In many instances, states may draw a comparison that the United States has a foreign agents registration law, the Foreign Agents Registration Act (FARA), in an attempt to justify their own adoption of a measure. While we do not engage in a detailed analysis of that framework here, we do observe that FARA’s vague wording leaves it ambiguous as to its breadth, which has been a subject to controversy and contention.⁴¹ Additionally and importantly, many of the foreign agents laws in other countries such as Russia go beyond the already-broad US approach, which requires establishing an “agency” relationship between an individual or entity and a foreign ‘principal’ and has some limited carve-outs.⁴²

³⁸ See Council of Europe, Resolution 2162 (2017), [Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the European Central University](#), 27 April 2017.

³⁹ Organisation for Security and Co-operation in Europe, [OSCE Media Freedom Representative expresses grave concern about dangerous effects of ‘foreign agent’ legislation on media freedom in Russia](#), 24 August 2021.

⁴⁰ Venice Commission, [Opinion On The Compatibility With International Human Rights Standards Of A Series of Bills Introduced By The Russian State Duma Between 10 and 23 November 2020 To Amend Laws Affecting “Foreign Agents,”](#) Opinion No. 1014/2020, 2-3 July 2021, para 55.

⁴¹ See e.g., ARTICLE 19, [Requiring media to register as ‘foreign agents’ poses threat to free speech](#), 17 November 2017; Nick Robinson, [Fixing the FARA Mess](#), Just Security, 16 March 2022.

⁴² Samantha Laufer, [A Difference in Approach: Comparing the US Foreign Agents Registration Act with Other Laws Targeting Internationally Funded Civil Society](#), International Journal of Not-for-Profit Law, Vol. 19 No. 1, April 2017.

Analysis of the Act on the Defence of National Sovereignty

ARTICLE 19 emphasises, at the outset, that the underlying basis of the Act is severely flawed and unsalvageable from a human rights perspective. The debates leading into the passage of the Act, as well as its very preamble language, make the Act's true purposes clear. As a result, while we provide specific comments and observations in this analysis, the Act will not be repaired by simply amending these core concerns. We recommend the repeal of the entire Act.

Preamble text and failure to articulate legitimate aims

The first fifty words of the Act's preamble make its true problematic purposes clear, stating that "Hungary's sovereignty is increasingly under unlawful attack." The Act claims that "foreign organisations and individuals" seek to undermine "Hungarian interests and rules," with no specification of what those interests and rules actually entail. The text—which was passed by the Parliamentary majority—then continues to name an opposition candidate and party as the primary problem in recent elections. At the very outset, the measure admits its partisan and politicised roots.

While this introductory text superficially claims to seek to uphold "democratic debate" and "transparency," it accomplishes the opposite. No mention is made of international obligations to protect and promote human rights, in particularly the rights to freedom of expression and association, or to cultivate a diverse and pluralistic media environment. International consensus has emerged that promoting access to information, rather than criminal sanctions, are the most effective means to address fears of so-called disinformation or interference. We observe at the outset that these goals in the Act do not address legitimate aims under international standards.

Limitless investigatory powers provisions

A core purpose of the Act is to establish an executive body called the Office for the Defence of Sovereignty (the Office). The Office possesses analytical, evaluative, and investigative activities.

Section 3 of the Act lays out the primary investigative competencies of the Office, which are sweeping in scope and unacceptably cover many forms of expressive activity. The commentary of the Act asserts that this breadth is intentional; it states that the Office is granted "wide powers of investigation in relation to the organisations under investigation,

state and local government bodies and other organisations and persons involved in the case.”

Article 3(a) empowers the Office to “detect and investigate” activities that are carried out not on behalf of other States, but “in the interests of another State.” These activities that may be investigated include:

- “advocacy activities”;
- “information manipulation”;
- “disinformation activities”;
- “activities aimed at influencing democratic debate and the decision-making processes of State and society”; and
- “activities influencing the decision-making process of persons exercising public authority, if they could harm or threaten the sovereignty of Hungary.”

ARTICLE 19 reiterates that these terms lack definition both in the Act and in any international or regional instruments. There is no universally accepted consensus as to what “disinformation activities” entail. As such, if they are used as a basis for restricting freedom of expression they fail to be defined in law.

Further, the commentary to the Act makes clear that a primary end goal of these investigations is the broad “mapping” of entire organisations, which can include their membership, funding, legal structures, and all activities. We observe that “mapping” of organisations does not appear as a legitimate aim in either Articles 19 or 22 of the ICCPR or any international or regional guidance. Neither is the regulation of “advocacy” a legitimate aim for restrictions on freedom of expression.

The measures the Office may take to investigate these activities are sweeping. For instance, the Office may do the following pursuant to Article 8(1):

- Access, inspect, and copy *all* physical and electronic data in the possession of the investigation target that “may be relevant”;
- Access, inspect, and copy all physical and electronic data that “may be relevant” in the possession of the state or local government body concerned with the investigation;
- Request written and oral information from the target organisation, or any organisation that “may be related” to the case;
- Request written and oral information directly from any staff member of the target organisation, or *any* person that “may be related” to the case.

It cannot be emphasised enough that these measures do not require criminal suspicion. Nor is there any requirement of a basis (or even showing of a basis) prior to conducting inquiries. There are no limitations on scale and scope; these investigative measures can be aimed at anyone in Hungary. In fact, there are no specific requirements that the targets be Hungarian organisations or persons. A journalist might be asked to reveal sources, or asked to turn over privileged materials, and be publicly shamed or referred to law enforcement for failing to cooperate.

The targets of investigation, or any requestee of information, is labelled a “party obliged to cooperate” under the Act and must respond within a time limit set by the Office that can be no less than fifteen days, pursuant to Article 7(3). While the Office itself cannot impose penalties for non-compliance, it indicates in Article 7(4) that non-compliance is “recorded” and leads to a “highlight” in the Office annual report. Presumably, this information is also shared with the same local and state bodies that originally participated in the agency. It is unclear whether failure to comply with the Office itself may be then used as a circular basis for criminal suspicion for further investigative measures.

Finally, failure to comply may have criminal repercussions in the context of direct participation in elections; i.e. a candidate for office or organisation serving as a nominating organisation could be at severe risk in the case of non-compliance.

Lack of independence of the newly-established Office for the Defence of Sovereignty

Article 1(2) of the Act asserts that the Office “shall be independent in the performance of its duties” and that its tasks may be prescribed “only by law.” Additionally, the same Article asserts that the Office shall be free from any influence. However, this claim is difficult to provide credit given that it is expressly undermined by other parts of the Act which all but guarantee the Office fails to be independent. Some of the specific issues are as follows:

- The President of the Office is, pursuant to Article 14(1), a political appointee proposed by the Prime Minister and appointed directly by the President. Under Article 14(2) the President of the Office must not be considered to be a “national security risk.”
- This President of the Office, who is not independent, under Article 18(1)(d) determines all “technical rules and methods for investigations.”
- The term of the President of the Office is a considerably long period—six years. It may only be ended prematurely by resignation, death, or by action of the President and Prime Minister. Disqualifying issues such as conflicts of interest are determined case-by-case by the President. Complaints based on false declarations of assets might be brought by the public, but are adjudicated by the Prime Minister and President.
- The budget of the Office may be reduced, per Article 1(7), “only with the agreement of the Office.”
- There is no external legislative or judicial review of the activities of the Office. Its most important functions are insulated from any review or remedies for aggrieved persons. Article 8(2), which sets forth investigative procedures, asserts that “no administrative lawsuit may be brought in relation to its activities under this Chapter.”

- Interpretation of key legal provisions are defined by the Office and not by law; in particular, phrases such as “information manipulation” and “disinformation activities,” as well as “threaten the sovereignty of Hungary” are all entirely up to the Office to define.
- The Office’s leadership is permitted to have conflicts of interest, despite language purporting to prohibit party affiliation among Office employees. The provisions of Article 14 set forth numerous restrictions on the President of the Office, including that it may not be a member or an official of a party or may not engage in party political activity or office on behalf of or in the interests of a political party. However, several of these prohibitions are omitted for lower officials. For instance, the Vice-Presidents of the Office, under Article 17(2), must only adhere to Articles 14(2) and 14(7) of the restrictions on the President. Notably absent is 14(8), which requires that “The President of the Office may not engage in party political activity or in public office on behalf of or in the interests of a political party.” While a *mutatis mutandis* provision applies, it is glaring that certain provisions are nonetheless excluded. As such, under the text it is entirely permissible for employees of the Office to act “in the interests of a political party” even without formal affiliation.

Based on all these elements, the Office appears to be independent of any meaningful review.

Data sharing and circumvention of due process safeguards for criminal investigations

The existence of the Office provides a dangerous avenue for the executive to effectively circumvent any due process requirements for investigating any entity. All the information that the Office is able to collect without any criminal suspicion may be shared at will with no notice to the targets of investigation. Article 5 expressly provides that the Office may “conclude agreements with other public bodies and *non-public bodies* in order to provide the information necessary for the performance of its tasks.” While the article stipulates that such agreements must be subject to “requirements relating to the protection of personal, classified and other data,” this does not actually provide for any specific legal restrictions.

The Act contemplates for this data to include sensitive data. In fact, the commentary to the Act is explicit as to this; “In the course of its investigations, the Office may also obtain access to data which, with the exception of the data covered by the Act, are classified as sensitive data and tax secrets.”

While the Office itself does not have the ability to directly impose criminal sanctions, there is nothing stopping it from sharing that data with agencies that do and encouraging them to take further action. The provisions of Article 8 already empower the Office to request and be in communication with state or local government regarding a subject of investigation. As

before, it is unclear whether failure to comply with the Office itself may be used in a circular manner to justify further investigative measures.

Chilling effect of criminal provisions on independent media and civil society

The criminal provisions of the Act impose particularly disproportionate penalties (upwards of three years in prison) for a candidate that accepts any “foreign funding”. Specifically, the Act adds to the Criminal Code, under the heading “Unlawful influencing of the will of voters § 350/A,” a prohibition on any candidate or any nominating organisation that “uses” prohibited foreign funds, or “uses a financial advantage derived” from such funds will be punished by up to three years in prison. This language of a “financial advantage derived” from funding leaves room for interpretation for what conduct is covered by the criminal prohibition beyond direct financial contributions.

While these criminal provisions do not expressly target non-candidates, the prohibition against receipt of funding still threatens to have a significant chilling effect on media and civil society, especially if what counts as providing funds is open to any interpretation. Would independent expenditures in support of a political issue in a campaign—for instance, a media outlet independently running public service advertisements, if that outlet received some funding from abroad—lead to criminal sanctions for a candidate? Similar questions might be asked regarding any advocacy conducted by civil society that has any international support, or the local office of an international not-for-profit or journalistic organisation.

Given the disproportionate nature of the penalties, ARTICLE 19 is concerned that this may even lead some speakers to refrain from speaking in support of candidates in order to avoid inadvertently getting them into trouble. The fact that other provisions of the Act allow for the investigation of any “advocacy” tend to suggest that the overall Act is intended to proscribe not just a candidate’s receipt of direct financial contributions, but any intangible support via the media and civil society. Doing so in reality punishes candidates for the speech of others.

Conclusions and recommendations

Despite significant regional and international scrutiny on Hungary's efforts to stifle independent media and civil society, as well as prior judicial reprimand of its past effort in 2017 to strangle the funding of civil society, Hungary nonetheless continues to head in the wrong direction by passing the Act on the Defence of National Sovereignty.

ARTICLE 19 finds that the Act provides yet another tool for the majority government to further repress independent media and civil society in the country under vague grounds of protecting 'national sovereignty'. The best solution to address fears of disinformation or interference is the promotion of rich access to information and a vibrant, pluralistic press, undertaken in consultation with all relevant stakeholders.

As a result, ARTICLE 19 urges

The Hungarian Government:

- To immediately repeal the Act on the Defence of National Sovereignty. The Act is fundamentally incompatible with basic human rights standards on the protection and promotion of freedom of expression. As drafted it threatens the very existence of independent media and civil society in Hungary.
- To take immediate steps to protect and promote an independent environment for media and civil society in the country.

The European Commission:

- To immediately investigate and provide recourse for this repressive measure. Namely, it should launch infringement proceedings against Hungary and challenge the law in the EU courts.

ARTICLE 19 and its partner organisations remain available to continue to monitor and assist in remedying the urgent media situation in Hungary which remains on life support.

About ARTICLE 19

ARTICLE 19 is an international think-do organisation that propels the freedom of expression movement locally and globally to ensure all people realise the power of their voices.

Together with our partners, we develop cutting-edge research and legal and policy analysis to drive change worldwide, lead work on the frontlines of expression through our nine regional hubs across the globe, and propel change by sparking innovation in the global freedom of expression movement. We do this by working on five key themes: promoting media independence, increasing access to information, protecting journalists, expanding civic space, and placing human rights at the heart of developing digital spaces.

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This analysis is part of the Media Freedom Rapid Response (MFRR), a Europe-wide mechanism which tracks, monitors and responds to violations of press and media freedom in EU Member States and Candidate Countries. This project provides legal and practical support, public advocacy and information to protect journalists and media workers. The MFRR is organised by a consortium led by the European Centre for Press and Media Freedom (ECPMF) with ARTICLE 19, the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the Institute for Applied Informatics at the University of Leipzig (InfAI), International Press Institute (IPI) and CCI/Osservatorio Balcani e Caucaso Transeuropa (OBCT). The project is co-funded by the European Commission. www.mfrr.eu/



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