



Budapest, 1 February 2018

## **OPERATION STARVE & STRANGLE:**

### **HOW THE GOVERNMENT USES THE LAW TO REPRESS HUNGARY'S CIVIC SPIRIT**

#### **1. BACKGROUND**

On 18 January 2018, the Hungarian government launched the '[Stop Soros](#)' package, a proposal of three laws that target civil society organisations.

- Draft law on the social responsibility of organisations supporting illegal migration;
- Draft law on immigration financing duty;
- Draft law on immigration restraint order.

These laws follow up on the 2017 NGO Law on foreign-funded organisations (Act LXXVI of 2017) over which the European Commission has decided to refer Hungary to the EU Court of Justice. The 2017 NGO Law requires that NGOs receiving foreign funding over €24,000 register on a separate list, report and publicly label themselves as 'foreign-funded' or face sanctions.

The latest proposal comes amidst a wider effort to stigmatize specific individuals and non-governmental organisations, and has been presented as a bid to stop 'illegal migration', to 'strengthen the protection of borders' and to 'protect Hungary's national security interests'. The proposed measures will affect a number of areas key to the functioning of civic life in Hungary. Despite their name, they not only target those who allegedly engage in supporting or funding 'illegal migration', but through less-conspicuous provisions also target the wider group of NGOs.

#### **2. CONTENT**

Organisations that receive foreign funding and that allegedly "propagate mass migration" or "support illegal migration" would be required to register at court as such, acknowledging such "illegal" activity. They would have to make this stigmatizing information public, for example by publishing this label on every publication. Any foreign revenue given for "supporting illegal migration" for organisations which register would be subjected to a 25% tax. Legal procedures for non-compliance could end in a fine of 200% of the foreign revenue or dissolution of the organisation. NGOs would be required to hold a separate bank account for foreign funds, which would be monitored by the prosecutor's office and the Central Bank. Also, NGOs would be required to disclose to authorities the personal data of any person they make payments to (staff, contractors, partners).

By introducing much stricter requirements, any NGO could lose its public benefit status, which gives tax advantages to both organisation and their clients. The proposal foresees that at least half of the funding received by such organisations during a reporting year must come from domestic sources. Furthermore, organisations will need to demonstrate that their annual income from the 1% personal income tax designations (a tax scheme intended to stimulate individual

giving to the civic sector) is at least half of their income from foreign funding. So far, approximately 20% of NGOs in Hungary operate under the public benefit status.

Third, the proposal would impose new restrictions on the movement of both Hungarian and non-Hungarian nationals involved in humanitarian support such as refugee assistance at the border. The proposals also include provisions for the exclusion of nationals of other countries from Hungarian territory.

### **3. IMPACT ON THE NGO SECTOR**

Following up on the 2017 NGO Law on foreign-funded organisations, the latest draft laws are potentially lethal blows to civil society in Hungary: their novelty is that the threat is now existential and also targets individuals. Should the proposals be adopted in spring 2018 without major changes, they will cause grave and irreparable damage to Hungarian civil society. By the end of 2018, a number of NGOs will be unable to function or carry out core work due to five direct and imminent threats to their mission.

#### **I. Funding for essential services will be cut and driven away**

- a. All foreign donors who directly or indirectly give funds to targeted Hungarian NGOs should calculate losses, as their funds will be partly (25% tax) or fully (200% fine) seized by the government;
- b. The risk of the government taxing funding in an arbitrary manner could make yet unaffected donors pull away from funding civil society in Hungary;
- c. Domestic funding for the work of the civil sector is largely available from public funds administered by national or local government agencies, which is already politically conditioned and discourages public advocacy or exposing faulty or inefficient public services.

#### **II. Trust in civil society and willingness to seek assistance will decline**

- d. Smear-campaigns, compliance procedures and investigations will further stigmatise and discredit NGOs by accusing them of performing illegal activities;
- e. Authorities would gain access to the data of all persons working for, contracted by or receiving assistance from NGOs, thus intimidating individuals from supporting, working for or seeking help from them;
- f. An estimated 80-85% of about 900-1,000 prominent NGOs risk losing public benefit status, i.e. tax-free status and other advantages. This will dramatically raise costs for NGOs and for clients, who will have to pay taxes after the value of free services/assistance (15% personal income tax + 19.5% health care tax).

#### **III. Sanction procedures and targeted tax investigations drain and divert NGO resources**

- g. NGOs that have refused to register under the 2017 Law on foreign-funded NGOs can expect to face legal procedures for non-compliance once they publish their annual financial reports at the end of May 2018. These procedures are likely to roll out during the summer and will further aggravate the pressure.
- h. Politically-motivated tax investigations could pave the way for repressive criminal prosecutions against NGO leaders and human rights defenders.

#### **IV. Threatened by enhanced government surveillance measures, NGOs will be effectively silenced**

- i. Human rights defenders who work with targeted organisations could be declared a national security risk and be subjected to arbitrary and unlawful restrictions on their freedom of movement;

- j. NGOs will have to assume their work and staff are being monitored by intelligence services, pressuring them into self-censorship and impacting their families;
- k. Stigmatising civic groups and individuals as national security risks will have a chilling effect on other groups, supporters and clients by sending a clear message that at any point in time they could become targets as well.

**V. Serious risk of ‘mimicry effect’ by potential Europe-wide copying of worst practices related to shrinking civic space**

- i. The proposed laws could serve as a model within the EU to thwart the valuable work of civil society organisations that fight for the respect of human rights in the European Union, a danger that the EU Fundamental Rights Agency has recently underlined.

**4. NEXT URGENT STEPS FOR THE EU AND OTHER INTERNATIONAL INSTITUTIONS**

Hungarian democracy has been in free-fall for some time. We witnessed the dismantling of rule of law institutions, and a full-scale assault aimed at stifling independent media and universities. This is weakening the entire European project from within. Hungary’s NGO sector is the latest battlefield where havens of autonomous thinking and action are tightened and shut down. This trend must stop.

**We call on European Union bodies, and more specifically**

- the **European Commission**, to urgently raise with the Hungarian government that the ‘Stop Soros’ draft legislation would, if passed, violate the freedom of association guaranteed under Art. 12 of the EU Charter of Fundamental Rights, Arts. 11 and 14 of the European Convention on Human Rights, and Art. 22 of the International Covenant on Civil and Political Rights;
- the **Commission**, to closely monitor the unfolding legislative process and the extent to which the proposal violates EU law, including its Fundamental Rights Charter;
- the **Commission**, to immediately file the application as regards the 2017 NGO Law to the EU Court of Justice and seek interim measures to suspend the law and to seek an expedited ruling;
- the **Commission**, to encourage the Hungarian government to request a joint opinion from the Venice Commission of the Council of Europe and from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) regarding the compatibility of the proposal with Council of Europe and OSCE standards;
- the **European Parliament**, to consider the adoption of an urgent resolution to denounce this proposal and the targeting of human rights defenders in Hungary in line with the previous EP resolution 2017/2656(RSP) on the situation in Hungary, in addition to its on-going work on the ensuing report;
- the **European Parliament** and the **Commission**, to actively support the establishment of a robust financial instrument that would allow for a more active policy to defend, uphold and promote democracy and rule of law in EU Member States; push for the inclusion of the instrument in the next Multi-Annual Financial Framework;
- the **EU Agency for Fundamental Rights**, to engage in further research to document ways in which the freedom of association is increasingly subject to assault in a growing number of EU Member States.

### **We call on Council of Europe (CoE) bodies, and more specifically**

- the **CoE Secretary General**, to publicly voice concern about the draft laws and encourage Hungary to once again engage Council of Europe's expertise in thoroughly reviewing its compliance with CoE standards, thus avoiding disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination; take other necessary and possible actions available through CoE mechanisms;
- the **CoE Parliamentary Assembly**, to raise concern and discuss the draft laws at the next meeting of its Committee on Legal Affairs and Human Rights in March 2018, and request an opinion of the CoE Venice Commission;
- the **CoE Committee of Ministers**, to make these laws and their compliance with the CoE standards a subject of urgent discussion at the earliest possible meeting on the Deputies Level, as well as its next Ministerial session in May 2018;
- the **CoE Conference of INGOs**, to take an active stance against the stigmatization and discrimination of NGOs in Hungary and follow up on its report of the fact-finding mission to Hungary from November 2016;
- the **Special Representative on Migration and Refugees** of the CoE Secretary General, to look at the draft laws from the perspective of refugee rights and access to legal aid;
- the **CoE Commissioner for Human Rights**, to raise concern with regard to the draft 'Stop Sopros' package and recommend action to prevent violations of the rights guaranteed by the Convention.

### **We call on the OSCE Office for Democratic Institutions and Human Rights (OSCE-ODIHR) to**

- deploy an election observation mission to Hungary's parliamentary elections in April 2018 to closely monitor, as a priority, the government's misuse of administrative resources and the election campaign that continues to vilify civic organizations engaged in public interest causes;
- review the 'Stop Soros' draft legislation in light of Hungary's OSCE human dimension commitments and, more specifically, the OSCE-ODIHR Guidelines on Freedom of Association.

### **We call on the UN Office of the High Commissioner for Human Rights (OHCHR) to**

- communicate, without delay, strong concern about the deteriorating conditions for human rights defenders to the Hungarian government and report back to the UN Human Rights Council;
- express alarm over present threats to freedom of association and to the work of human rights defenders as well as the increasingly menacing restrictions on civil society on the occasion of the upcoming review of the state party report of Hungary by the UN Human Rights Committee at its 122nd session starting on 12 March 2018.

## **5. RESOURCES**

### a) Hungary

- [Unofficial translation of the 2018 draft laws](#)

### b) European Union

- European Commission, [‘Infringements - European Commission refers Hungary to the Court of Justice for its NGO Law’](#) (7/12/2107);
- European Parliament, [Resolution on the Situation in Hungary](#) (2017/2656(RSP), 17/5/2017);
- Fundamental Rights Agency, [Challenges facing civil society organisations working on human rights in the EU](#) (January 2018).

### c) Council of Europe

- Council of Europe Parliamentary Assembly Resolution 2162 (2017), [Alarming developments in Hungary: draft NGO law restricting civil society and possible closure of the Central European University](#) (27/4/2017);
- Council of Europe Venice Commission, [Opinion on the Draft Law on the Transparency of Organisations receiving support from abroad](#) (16-17/6/2017)
- Council of Europe Commissioner for Human Rights, [‘Commissioner calls on Hungary’s National Assembly to reject law on foreign-funded NGOs’](#) (3/5/2017);
- Council of Europe’s Conference of INGOs (Expert Council on NGO Law), [Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported from Abroad](#) (24/4/2017);
- Council of Europe’s Conference of INGOs (Expert Council on NGO Law), [Civil Participation in the Decision-Making Process - Fact Finding Visit in Hungary](#) (20-22/11/2016).

### d) OSCE-ODIHR

- OSCE-ODIHR, [Guidelines on Freedom of Association](#) (adopted by the CoE Venice Commission at its 101st Plenary Session, 13-14/12/2014);
- OSCE/ODIHR, [Limited Election Observation Mission Final Report](#) (Parliamentary Elections, 6/4/April 2014).

### e) United Nations

- UN High Commissioner for Human Rights, [‘Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries’](#) (Human Rights Council 36th session, 11/9/2017);
- UN Special Rapporteur on the Situation of Human Rights Defenders and UN Special Rapporteur on the Promotion and Protection the Right to Freedom of Opinion and Expression, [‘UN rights experts urge Hungary to withdraw Bill on foreign funding to NGOs’](#) (15/5/2107);
- UN Report of the Special Rapporteur on the Situation of Human Rights Defenders, [Note by the Secretariat: Mission to Hungary](#), 2016A/HRC/34/52/Add.2 (19/1/2017).

### f) Civil society

- Civil Liberties Union for Europe, [Participatory Democracy Under Threat: Growing Restrictions on the Freedoms of NGOs in the EU](#) (28/8/2017);
- European Center for Not-for-profit Law, [‘How ‘Stop Soros’ Draft Laws Target the Wider Hungarian CSO Sector’](#) (23/1/2018);
- Amnesty International, [‘Hungary: Authorities Must Stop Choking Civil Society’](#) (24/1/2018);
- Hungarian Civil Liberties Union and Hungarian Helsinki Committee, [‘What is the Problem with the Hungarian Law on Foreign Funded NGOs?’](#) (9/10/2017),
- Hungarian Helsinki Committee, [Timeline of governmental attacks against NGOs](#)