

Bulgarian MPs Submitted a Draft Law on Controlling Foreign Funding for NGOs

July 5, 2020

The document is based on a brief developed by Lilly Dragoeva, Executive Director of Bilitis Resource Center Foundation.

What's going on?

On July 1st, 2020, a group of MPs from the United Patriots Parliamentary Group submitted a Draft Law amending and supplementing the Non-profit Legal Entities Act in the Bulgarian Parliament.¹

The Draft Law proposes an amendment to the Non-profit Legal Entities Act in two parts – the part regarding the functioning of the Civil Society Development Council, as well as proposing the creation of a new legal framework on declaring and controlling the funding of NGOs received from a foreign country or from a foreign natural or legal person.

▪ **The Civil Society Development Council**

The Civil Society Development Council is a newly formed structure that was **composed** in May 2020 after carrying out an online voting among pre-registered Bulgarian NGOs. **The Council has not started its work yet.** It is an advisory body to the Council of Ministers, which is established on the basis of Art. 4 of the Non-profit Legal Entities Act. The Council has functions for developing and implementing policies to support the development of civil society in Bulgaria. The Council consists of 14 NGOs and **is presided by the Deputy Prime Minister.** However, the Draft Law envisages taking away some of the functions of the Council, including setting the priorities for financial support of NGOs and the distribution and control of

1

[https://www.parliament.bg/bg/bills/ID/157496?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A%20BGPParliament_zakoni%20\(Parliament.bg%20zakoni\)&fbclid=IwAR17mUVL1dJF9nqjZGqXBXFpIYBdYHFHqraF_KBH-VwGe1clfzaXWEKICOO](https://www.parliament.bg/bg/bills/ID/157496?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A%20BGPParliament_zakoni%20(Parliament.bg%20zakoni)&fbclid=IwAR17mUVL1dJF9nqjZGqXBXFpIYBdYHFHqraF_KBH-VwGe1clfzaXWEKICOO)

financial resources that the state provides to NGOs. In the motives to the Draft Law it is stated that “it is clear that these activities of the Council are similar to the status of a state agency within the meaning of the Administration Act”, while at the same time the Council has „only advisory functions to support state policy supporting the development of civil society organizations“. Additionally, the amendment veils the provision that the members of the Council could not receive funding **provided by the state** thus imposing conflict of interest provision.

- **Hunting down the “foreign agents”**

Of particular concern in the Draft Law, however, is its second part – introducing a new Article 40a, which proposes the creation of “a special register at the Ministry of Finance to reflect all sources of funding for the activities of non-profit legal entities working in public benefit, as well as those working in private benefit, in the amount of over BGN 1,000, when the sources of financing are from a foreign state or from a foreign natural or legal person, with the exception of the funds received from the European Union, in order to achieve transparency regarding their financing”.

The Draft Law envisages a 7-day period from the receipt of financing of over BGN 1000 (approx. EUR 500), to submit (on paper or electronically) a written evidence for the source and the amount of the received financing. In case of non-fulfillment of the obligation, a property sanction and / or "temporary suspension of the status in public benefit" is envisaged. **In case of continuous non-fulfillment the respective NGO can be terminated on the grounding of contradiction to the Constitution, the laws and the good morals.**

In addition, an amendment to the Anti-Corruption and Confiscation of Illegally Acquired Property Act is proposed, providing for the creation of an obligation for the chairpersons and members of the management bodies of non-profit legal entities, registered in public benefit to declare when in the previous calendar year the NGO has received foreign funding. This obligation is “by analogy with persons holding senior public positions” (such as President, Vice President, Prime Minister, Ministers, MPs, MEPs from Bulgaria) thus establishing an extreme level of responsibility of private persons. According to the motives, "this way additional control is provided over the funds, which are managed publicly, but also in a personal capacity by the leaders of the non-governmental organizations".

What is the Current Situation?

It should be pointed out that under the current legal framework NGOs already have broad obligations to declare their income and transactions before the tax authorities. They are supposed to report on their activities annually as well. They are equally treated as any other legal entities, paying all taxes, including VAT (if registered). Additionally to these obligations some NGOs even now are reporting the funds received from abroad on a quarterly basis to the Bulgarian National Bank upon request from the Bank. These reports are obligatory and there are fines. NGOs are supposed to have money laundering policies and they are obliged to declare the origin of their finances to the bank authorities, they have bank accounts, the banks further reporting to respective state institutions.

Why is this important?

This Draft Law is extremely dangerous as it follows closely the Russian model for shrinking civic space and labelling NGOs receiving international funding as “foreign agents”.

Furthermore, the Draft Law to an extent replicates the Law that passed in Hungary in 2017 and which the Court of Justice of the European Union exactly two weeks ago on June 18, 2020, found “discriminatory and unjustified”². In its ruling, the ECJ found that “the restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law”.

The suggested changes and amendments are discriminatory, disproportionate and unconstitutional. The formulation of the limitations is so vague that it opens the door for a very broad interpretation of the wording “foreign country and foreign person”. It can, in fact, limit any foreign funding of NGOs in Bulgaria, jeopardizing the whole civil society sector.

The Draft Law has disproportionality and discriminatory character towards both donors and NGOs. Partnering countries of Bulgaria, providing public funding, such as EEA member states will be put in a disadvantaged position compare to the funding provided by the EU. The Draft Law is discriminatory for NGOs in terms of receiving foreign funding compared to other entities, especially those of not for profit

² <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

origin, such as Universities, Cultural institutions, religious denominations. The Draft Law is also discriminatory for NGOs in comparison to all other existing private and public bodies like public authorities (state agencies, municipalities, etc.), even private companies.

What is at stake?

- 1) This Draft Law is a first step towards establishment of state control over the funding of civil society in Bulgaria, opening the door for nationalistic, pro-Russian and “anti-gender ideology” politics to prosecute NGOs who do not share their anti-democratic values.
- 2) The special register which will be created at the Ministry of Finance can be instrumentalised to exert pressure and even close down particular NGOs or groups of NGOs who openly criticize certain politics or operate in particular fields such as human rights, gender equality, ecology and environment, as well as grant makers.
- 3) The Draft Law provides for prosecution not only at the level of legal entities but also on a personal level by creating the requirement that chairpersons and members of the management bodies shall individually declare received funding from abroad.

What you can do?

We call on you to inform your partners in the European Commission and the European Parliament, relevant intergovernmental institutions and international partners, and to alarm them about the disturbing developments in Bulgaria. **It should be prevented that the country slides additionally back in its democratic achievements.**

We would appreciate some reaction on your behalf. If you require any further information, please do not hesitate to contact: Krasimira Velichkova, Director of the Bulgarian Donors’ Forum - kvelichkova@dfbulgaria.org, or Iliyana Nikolova, Executive director of Workshop for Civic Initiatives Foundation - inikolova@frgi.bg.