



Background and context

Independent civil society organisations (CSOs) in Hungary have been under vigorous attacks by the Government for years. Attempts to stifle CSOs included an extensive smear campaign and rhetorical attempts of intimidation, launching ill-founded legal procedures against them, and hindering their work via various means. The series of attacks culminated in the adoption of Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereafter: LexNGO 2017), which stigmatised certain CSOs as “foreign-funded organisations”: it obliged CSOs receiving support from abroad exceeding a certain threshold to register as foreign funded organisations, indicate this term on all their publications and declare information on donations received from abroad, including, in the case of donations exceeding a certain limit, specific data of the donor. The law also provided for the possibility of applying penalties to organisations that do not comply with those obligations.

On 18 June 2020, [the Court of Justice of the European Union declared](#) that the LexNGO 2017 violated EU law, and amounted to unjustified interference with the respect for private life, protection of personal data and the freedom of association. However, for over 10 months, the governing majority failed to comply with the judgment, and repealed the LexNGO 2017 only in May 2021, as of 1 July 2021. However, at the same time, it adopted [Act XLIX of 2021](#) on the Transparency of Organisations Carrying out Activities Capable of Influencing Public Life (hereafter: LexNGO 2021), which entered into force on 1 July 2021. The adoption of the new law was not preceded by any public consultation, even though that would have been mandatory by law; and CSOs have not been consulted directly either, which is problematic also because the lack of such consultation was a point of criticism raised with respect to the LexNGO 2017 as well, for example by the [Venice Commission of the Council of Europe](#).

The content and scope of the LexNGO 2021

The LexNGO 2021 and an accompanying law that amended Article 5 of [Act LXVI of 2011](#) on the State Audit Office (hereafter: SAO Act) made certain **CSOs subject to inspection/audit by the State Audit Office**. The scope of the LexNGO 2021 covers

- **all CSOs which are operating as an association or a foundation; and**
- **whose annual balance sheet total in a given year amounts to at least HUF 20 million (ca. EUR 53,000).**

The LexNGO 2021 does not cover

- associations or foundations which do not qualify as CSOs under the Hungarian law, that is, political parties, trade unions, public foundations and party foundations;
- sports associations;
- religious communities;
- national minority organisations and associations, and foundations engaged in the protection and representation of interests of a given national minority or in an activity directly related to the cultural autonomy of the given national minority.

Thus, the LexNGO 2021 qualifies CSO activities as “capable of influencing public life” and places the respective organisations under stricter control by the state solely on the basis of their form of operation and their balance sheet total, by the force of the law.

According to the amended provisions of the SAO Act, the State Audit Office **shall inspect/audit CSOs** falling under the scope of the LexNGO 2021 **from the aspect of lawfulness** (i.e. it does not look into whether the CSO operates in an expedient manner, only whether it complies with the pertaining legal norms). The new provisions do not limit the audit to the financial management of the organisations and/or to the use of funds and subsidies received from the state budget, but provide a legal basis for the inspection of all the activities and operations of the audited CSO. The main characteristics of the audit are as follows:

- It is **up to the sole discretion of the State Audit Office whether to use the mandate provided** by the new provisions and actually audit a particular CSO falling under the scope of the LexNGO 2021.
- The State Audit Office shall publish an annual summary report on the associations and foundations falling under the scope of the LexNGO 2021.
- The lawfulness of the content of **the State Audit Office’s report cannot be challenged before a court** according to the applicable case-law of ordinary courts and the Constitutional Court, leaving CSOs without any means of legal remedy even if the report contains unjustified statements about their operations.

How does the LexNGO 2021 violate the rights of CSOs and Hungary’s Fundamental Law?

The LexNGO 2021 and the amended provisions of the SAO Act (1) violate the CSOs’ freedom of association and freedom of expression, (2) unduly discriminate against CSOs falling under their scope, and (3) violate the constitutional provisions pertaining to the mandate of the State Audit Office.

(1) The violation of the freedom of association and freedom of expression of CSOs

The provisions in question interfere with the affected CSOs’ freedom of association, protected by Article VIII(2) of Hungary’s Fundamental Law, Article 11 of the European Convention on Human Rights, and Article 12 of the EU Charter of Fundamental Rights, due to the unlimited audit mandate conferred upon the State Audit Office in their regard, which endangers their freedom to determine their own internal operations. Furthermore, the laws interfere with the CSOs’ freedom of expression, protected by Article IX of the Fundamental Law and Article 10 of the European Convention on Human Rights, since the State Audit Office’s public reports can affect the credibility and opinion-forming power of the audited CSOs, and thereby influence which CSOs can effectively participate in public debates.

According to the preamble and the explanatory memorandum of the LexNGO 2021, the reason for introducing the new rules in question was that the concerned organisations influence public debates and therefore their transparency should be enhanced. (Thus, the legislator seems to justify the interference with the rights of CSOs with their participation in public life/debates, i.e. with the fact that they exercise their freedom of association and freedom of expression.) However, existing laws already prescribe a range of reporting obligations for CSOs to ensure the transparency of their finances, and the new rules do not enhance their transparency. Consequently, the new rules are not appropriate to achieve their alleged legitimate aim. Furthermore, the interference with the rights of CSOs is not necessary, because enhancing transparency could be achieved by other, less restrictive means, such as by making better use of existing institutions overseeing the operation and activities of CSOs, and/or by enhancing the accessibility of the data collected and published by the state about the finances of

CSOs, etc. Finally, the restrictions are disproportionate to the legitimate aim pursued: they do not provide any possibility for a remedy against the State Audit Office using its unlimited audit powers and its results, and the risk of stigmatisation outweighs the (ill-founded) expectations of increased transparency.

(2) Undue discrimination against affected CSOs

CSOs falling under the scope of the LexNGO 2021 are clearly treated differently with respect to their freedom of association and freedom of expression than the CSOs not falling under the scope of the law. The LexNGO 2021 and the accompanying provisions put affected CSOs in a detrimental position, since they have to subject themselves to the audits, which may entail excessive administrative burdens, the obligation to hand over personal data of their clients, etc. The new rules treat the various CSOs differently, even though they are in a comparable situation: several types of organisations which do not fall under the scope of the LexNGO 2021, such as national minority organisations or trade unions, whose activities are also “capable of influencing public life” (or sometimes directly aim to do so due to their interest representation functions). Furthermore, the exemption of national minority organisations means that CSOs representing certain vulnerable minorities are treated differently from other CSOs fulfilling the same function with regard to other minorities: e.g. organisations protecting the rights of LGBTQI people are treated differently from those protecting the interests of national minorities. This differential treatment between the various categories of CSOs has no legitimate aim, and amounts to discrimination, prohibited by Article XV(1)-(2) of the Fundamental Law and Article 14 of the European Convention on Human Rights.

(3) The violation of the constitutional provisions on the mandate of the State Audit Office

Article 43(1) of the Fundamental Law sets out that the State Audit Office “shall be the organ of the Parliament responsible for financial and economic audit. Acting within its functions laid down in an act of Parliament, the State Audit Office shall audit the implementation of the central budget, the administration of public finances, the use of funds from public finances and the management of national assets.” The new statutory provisions extend the mandate of the State Audit Office in a way that is in contradiction with the State Audit Office’s constitutional mandate as included in the Fundamental Law, for the following reasons:

- The scope of audit is not limited to CSOs who manage funds originating from the central budget. Thus, the State Audit Office, whose mandate is to audit the administration of public finances, is vested by the new law with the task of auditing funds falling outside the scope of public finances.
- The new provisions make the CSOs themselves the subject of audit, even though according to the Fundamental Law, the State Audit Office shall only carry out economic and financial audits. Audit activities beyond that, such as the ones the new provisions seem to suggest, are incompatible with its constitutional mandate.

The constitutional mandate of the State Audit Office is also related to the principle of the separation of powers as declared by Article C(1) of the Fundamental Law; its activities constitute an institutional guarantee of the separation of powers. Extending the State Audit Office’s mandate to CSOs, which do not exercise and do not seek to acquire public power, is incomprehensible from the perspective of the principle of the separation of powers as well.

Since the LexNGO 2021 and the amended provisions of the SAO Act violate various articles of Hungary's Fundamental Law as described above, in December 2021, eight affected civil society organisations (including the Hungarian Helsinki Committee) submitted a constitutional complaint against these provisions to the Constitutional Court. As of 10 May 2022, this complaint is pending.