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From Chilling Effect to Immediate Harm: Consequences of the Sovereignty Protection Act

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The Act on the Protection of National Sovereignty entered into force on 23 December 2023 and consists of two distinct elements: the establishment of the new Sovereignty Protection Office (SPO) as of 1 February 2024, and an amendment to the Hungarian Criminal Code prescribing prison sentence for the use of funding from abroad (overtly or “in disguise to circumvent the prohibition”) for political campaign purposes.¹ The Act, and in particular the parts relating to the SPO, raises clear conflicts with EU law.² The European Commission has launched an infringement procedure against Hungary, which is still pending at the time of writing.³

The main task of the SPO is “to protect constitutional identity” through various activities, including by carrying out investigations against individuals or legal entities. The law’s deliberately vague definitions allow for the initiation of such investigations against anyone who, in the SPO’s opinion, is carrying out activities in the interest of a foreign entity or individual. In addition, the Act explicitly precludes any legal remedy against the actions of the SPO. The SPO has access to the widest possible data in relation to its investigations, including classified data collected by intelligence agencies, and may request sensitive and confidential data from the entities under investigation and other related parties.

In February 2024, the Civilisation coalition conducted a survey among its partner organisations to understand the threats posed by the recently enacted Sovereignty Protection Act for CSOs in Hungary and to assess how it affects their activities, strategies and funding. **The responses already showed the existence of a chilling effect.** The findings, presented in detail below, not only highlight the **recent sharp shrinkage of civic space**, but also show how **organisations are forced to fundamentally transform their activities in the face of increasing political pressure.** In this regard, the SPO imposes significant burdens and threats on CSOs and actively impedes their activities. Recurring elements in the responses received include intimidation and deterrence, obstacles to fundraising and cooperation, or the depletion of already scarce resources.

¹ Act LXXXVIII of 2023 on the Protection of National Sovereignty, official English translation available at: <https://njt.hu/jogszabaly/en/2023-88-00-00>.

² See joint analysis of the Hungarian Helsinki Committee and Amnesty International Hungary of 8 February 2024 at: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/02/Sovereignty_Protection_Act_breaches_EU_law_2024.pdf.

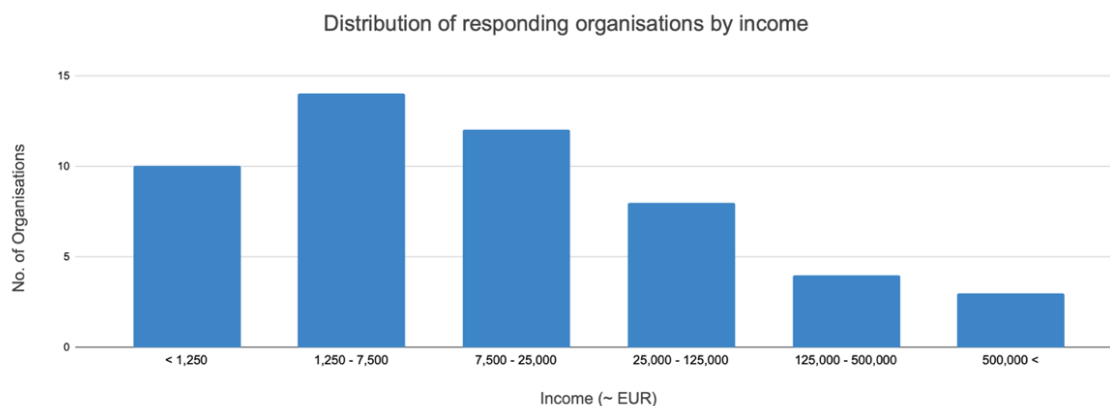
³ INFR(2024)2001, see the European Commission’s press release regarding its reasoned opinion sent to Hungary on 23 May 2024 at: https://ec.europa.eu/commission/presscorner/detail/en/inf_24_2422.

After the survey was conducted, the SPO **launched an investigation against at least one civil society organisation and an independent investigative media outlet**. Transparency International Hungary and Átlátszó, the largest independent investigative organisation, announced on 25 June 2024 that the SPO had sent them a notice of being under investigation along with an extensive list of questions.⁴ The next day, two popular influencers published a video announcing that they had been reported to the SPO by a Fidesz local councillor.⁵

Organisations responding to the survey

Respondents include organisations with decades of experience as well as more recently established ones.⁶ Some 40 per cent are based in the capital, 36 per cent in rural towns and 22 per cent in smaller towns. The vast majority of organisations surveyed (93%) are either associations or foundations. They also rely on a large number of volunteers: a third of respondents employ more than 20 volunteers, while almost half employ between 2 and 10.

The histogram below presents the distribution of responding organisations by income. The right-skewed nature of the graph indicates that almost half of the responding organisations (47%) had an income of less than EUR 7,500, while only 12% had an income of more than EUR 125,000.



The responses also highlight that almost **two-thirds of the organisations surveyed (65%) have serious or very serious difficulties in financing their day-to-day operations**. In addition, 83% of respondents consider their operations to be secure for a maximum of one year, while 20 organisations, i.e. almost 40% of all respondents, consider their operations to be secure for a maximum of six months.

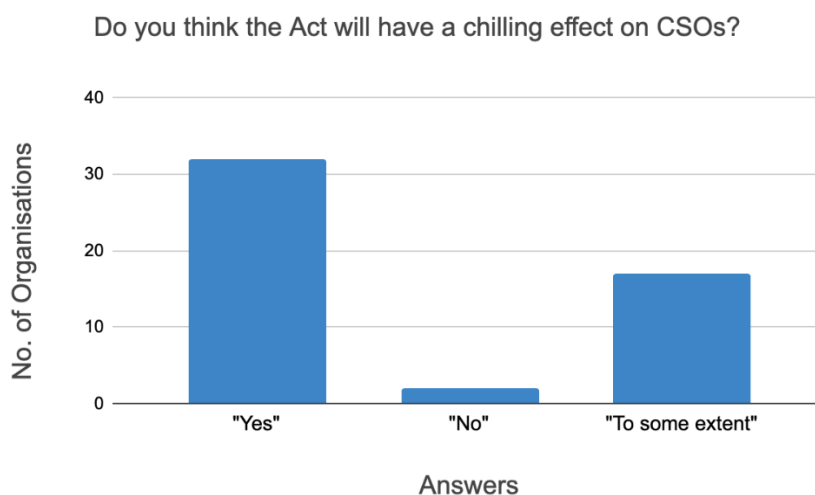
⁴ Transparency International Hungary's statement: <https://transparency.hu/en/news/spo-targets-ti-hungary/>. Átlátszó's statement: <https://english.atlatszo.hu/2024/06/25/the-sovereignty-protection-office-launched-an-investigation-against-atlatszo/>

⁵ See the video of Jólvanézígy (in Hungarian) at: <https://www.youtube.com/watch?v=IO3q4xjD1-c>

⁶ Although the results cannot be considered representative of the Hungarian civil sector as a whole, in order to facilitate the interpretation of the response rates, we have also included the percentages of responses in addition to the frequencies.

Impacts of the Sovereignty Protection Act

The results indicate that the Sovereignty Protection Act has a wide range of effects on the functioning and activities of civil society organisations in Hungary. While only two respondents thought that the law had no deterrent potential for domestic CSOs, the majority of organisations (63%) thought that it did. The remaining third of respondents adopted a wait-and-see stance, which may be attributed to the lack of clarity surrounding the law and the unforeseen consequences it may have at the time the survey was conducted. The following sections aim to provide insight into the answers obtained.



Funding and financing

According to one respondent, the law fundamentally limits the possibilities for generating resources:

"[The law] restricts our ability to raise funds; large sums of money that can be applied for are dropped or become risky, even if they are only of a purely social, educational nature."

In addition, some felt that the law could discourage donors from supporting CSOs. Another organisation has argued that the law also reduces foreign funding.

"Individual donors are discouraged from giving, and organisations do not approach certain donors for donations."

"This is one of the reasons why EU funding is not forthcoming, and another reason why our international funding opportunities and image are damaged."

At the same time, some argued that the law could even deter organisations from applying for funding, putting their finances at risk.

"They do not dare to apply for foreign money, they do not dare raise political issues."

"[...] it can scare smaller organisations away from foreign and EU grants, putting their funding at risk."

Chilling effect

Many organisations have reported that the law could have a fear-inducing effect, particularly because of its vague wording. Another source of intimidation is the threat of a possible extension of the law. Many also fear that it will discourage people from getting involved in public life.

"Anyone can be targeted, there are no precise criteria, any critical remark can arouse suspicion."

"The wording of the law is not specific, it is general and therefore many will be frightened by the "blurring" it contains. The assessment of risk will be based on intuition, mainly on who wants to be in the shop window, i.e. who has a high tolerance for harassment or how much it threatens their survival."

"Because the organisation can be accused at any time of representing foreign interests, of politicking, and it can be inspected."

"[...] the threat of an audit at any time without a warrant from the prosecutor looms, even when we are trying to work properly. It is stressful and intimidating, which is the purpose of the law."

"It is not clear what is being sanctioned, so many people find it easier to avoid matters that could be considered political."

Some respondents felt that this could even have an impact on the activities of the organisations, leading to 'self-limitation', with less ability to deal with real issues within their mandate.

"Because of the uncertainty of whether there will be direct consequences of the law being applied, CSOs are more likely to practise self-censorship, often have only foreign funding available, and if they have a politically related project (as we do) they may feel threatened."

"[The law] may discourage organisations from expressing their professional criticisms of the government or the state, or from turning to international organisations for help or redress, or from reporting to international organisations on domestic conditions."

"[...] it diverts our resources (time, people) from our actual tasks. When we are 'invaded' by inspectors and have to deal with them, we cannot concentrate on our real work."

Activities

16 per cent of the respondents said that the law had a direct impact on their work and that they were changing something (e.g. their strategy, activities, communications) as a result. Moreover, almost a third (31%) of responding organisations said that they knew of an CSO that had changed or planned to change its activities and resource generation practices as a result of the Sovereignty Protection Act, i.e. it does not seek foreign funding or accept foreign support. The law has a particular impact on organisations that are part of regional networks or work closely with foreign organisations.

"The deliberately vague and fear-inducing nature [of the legislation] could lead to self-censorship, reorganisation or cessation of activities even in the case of non-nominating organisations, and could deter organisations from becoming nominating organisations."

"This law, in turn, made cross-border relations highly suspect."

A respondent working for an educational organisation that has already restructured its activities as a result of the Act said:

"Education and curriculum development will remain, recruitment/organising/ delegation will not continue."

Conclusion

The Sovereignty Protection Act imposes significant burdens on CSOs and actively impedes their activities. According to the results of the survey, the chilling effect of the law creates fear and self-regulation, hinders cooperation between organisations, and diverts resources away from the actual activities of the organisations. In these circumstances even EU funding can be perceived as a threat. All of this is likely to be exacerbated following the investigation against Transparency International Hungary and Átlátszó, especially given that a significant proportion of the questions sent to TI Hungary focus on its activities in relation to EU institutions and mechanisms.⁷

⁷ See the questions, in Hungarian at: https://transparency.hu/wp-content/uploads/2024/06/TI_Hu_szuverenitasvedelmi_hivatal_level_240618.pdf