

LEGAL OPINION

HUNGARY'S 2021 ANTI-NGO LAW



HUNGARY'S ANTI-NGO LAW

Executive Summary

The present document summarizes the main findings available in the attached legal note. The executive summary, the legal note and the two annexes clarify the current violations of EU law committed by Hungary in adopting a new “anti-NGO” law. The note states that, by adopting a new law that arbitrarily expands the power of auditing and control of the State Audit Office (SAO), Hungary has deliberately maintained the previously established general climate of hostility and is generating a chilling effect preventing NGOs and foreign funders from exercising their fundamental freedoms. The note will conclude that the new law is in violation of freedom of establishment and to provide services, freedom of movement of capital and freedom of association. Therefore, Member States should pressure the Commission to continue the existing infringement procedure against Hungary under Article 260 TFEU and they should consider launching an infringement procedure against Hungary under Article 259 TFEU.

BACKGROUND: in mid-April 2021, Orban’s government announced the withdrawal of the “Transparency Law of Organisations Supported from Abroad” adopted in 2017.¹ The Transparency Law received ferocious criticism from politicians, civil society organisations and EU institutions.² It was accused of stigmatizing civil society organisations (CSOs) receiving foreign funds, by depicting them as “foreign actors”. In June 2020, the Court of Justice of the EU (CJEU) ruled against the Transparency Law, declaring that it violated CSOs’ freedom of establishment and prevented them from exercising their role as democratic watchdogs. The CJEU ordered Hungary to repeal the Law. Following intense months of negotiations, in mid-May 2021, the Hungarian Parliament repealed the law and, at the same time, adopted a new law on the transparency of NGOs.

¹ See [here](#) the English translation of the Law.

² See, for instance, the [opinion of the Expert Council of NGO Law](#) at the Conference of INGOs of the Council of Europe, the [analysis of the Commissioner for Human Rights](#) of the Council of Europe, the [preliminary opinion of the European Commission for Democracy through Law](#) (Venice Commission), [the comments of UN Special Rapporteurs](#) on the situation of human rights defenders and on the promotion and protection of the right to freedom of opinion and expression. See also the European Commission [press release](#) launching the infringement procedure and the [referral of the case](#) to the CJEU.

What is happening?

The new law foresees expanded powers of control and auditing for the SAO, a parliamentary body normally only responsible for controlling public expenses. In so doing, the new law raises concerns as to the impact that such increased power will have on NGOs' freedoms, given in particular:

- The **lack of legal certainty** as to the grounds for starting investigations and adopting sanctions;
- The **lack of effective judicial remedies** to seek redress for damages; and
- The **lack of independence** of the SAO and of the Prosecutor General from the ruling party Fidesz.

Given the established practice of the SAO of starting investigations and suggesting the imposition of fines and sanctions in politically sensitive moments against opposition political parties, it is likely that a similar practice will be established concerning non-government aligned NGOs (especially those acting in fields such as LGBTQI protection, political institutions' accountability and reception and integration of migrants and refugees).

Does this concern EU law?

Yes. The Court of Justice of the EU (CJEU) clarified that Member States have an obligation to adopt measures and to refrain from practices that could make it less attractive to exercise the fundamental freedoms recognized in the Treaties. This is particularly relevant regarding internal market freedoms, especially freedom of establishment and to provide services and of movement of capitals.

Additionally, the CJEU recognized that the right to freedom of association constitutes one of the essential bases of a democratic and pluralistic society, because it allows citizens to act collectively in the fields of mutual interest, thereby contributing to the proper functioning of public life. Additionally, it clarified that such a right includes several different aspects, among which is the ability to pursue its activities and operate without unjustified interference by the State. Finally, the Court clarified that it considers NGOs' capacity to receive financial resources and to operate without being exposed to the threat of penalties as essential elements allowing NGOs to pursue their action and, consequently, to exercise their freedom of association.

With this law, Hungary creates a hostile environment for NGOs and funders. In particular, the new anti-NGO law:

1. **Contributes to strengthening the climate of legal uncertainty** as to the rules and margin of discretion of the SAO to carry out investigations, and the means of redress in case of damage;
2. **Does not dispel doubts** as to the **independence of the SAO** and of the **Prosecutor General**; and

3. Casts doubts concerning the arbitrary use that can be made of the investigative and reporting powers of the SAO to stigmatize certain NGOs.

As a consequence, by adopting the new anti-NGO law, Hungary failed to fulfil its obligation under the Treaties, as concerns Articles 49, 52 and 63 TFEU and Article 12 of the Charter.

Member States should pressure the Commission to pursue the existing infringement procedure against Hungary under Article 260 TFEU, for Hungary's failure to comply with the Court's ruling in Transparency of Association. However, in doing so, Member States should be aware that the burden of proof lies with the Commission. It is the Commission's responsibility to demonstrate that the new law is not in compliance with such ruling. In the specific case at hand, problems may arise in this regard and the Commission may face difficulties in arguing that the new law determines the same violations of EU law as the now repealed anti-NGO law.

Alternatively, **Member States should consider starting an infringement procedure under Article 259 TFEU**. They should build on the CJEU's caselaw to challenge the intimidatory effect of such national measures by holding that it "can have a negative impact on donors and/or the activities of a civil society organisation, by limiting, even if only theoretically, donations [...] or limiting cooperation with organisations/individuals residing in other EU countries".³ In doing so, **the burden of proof for Member States would be limited**. Indeed, they should only prove that the new measure is likely to have an impact on the internal market fundamental freedoms. Then, the burden of proof would lie on Hungary to demonstrate that the new law:

- Does not have an impact on any of the internal market fundamental freedoms, or
- Falls within one of the justification criteria allowing the adoption of restrictions to fundamental freedoms.

³ Pech L., "*The Concept of Chilling Effect – Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*", pp. 29-30.

HUNGARY'S ANTI-NGO LAW

Legal Opinion

Introduction

This note presents RECLAIM's legal strategy against the new anti-NGO law, adopted on 17 May 2021 by the Hungarian Parliament.¹ The note will argue that the new law deliberately contributes to the maintenance of the previously existing hostile environment (and the subsequent chilling effect), which are liable to make less attractive the exercise of the right to freedom of association, freedom of establishment, and to provide services, and freedom of movement of capital for civil society actors, thus violating EU law. In particular, by subjecting NGOs to the possibility of arbitrary investigations conducted by the State Audit Office (SAO), the new law makes it less attractive for NGOs to establish their activities in Hungary and foreign funders to financially support NGOs in Hungary.

This note will first analyse the new law. In particular, it will focus on the different aspects of the actions of the SAO. Second, it will present the applicable legal framework and Member States' obligations under EU law. The note will argue that the mere existence of provisions generating a chilling effect and making it less attractive to exercise fundamental freedoms violates EU law.

Finally, the note will conclude that the new law adopted by the Hungarian Parliament in May 2021 is not in compliance with EU law insofar as it amounts to an unjustified restriction of the freedoms protected in the Treaties, and in particular, the freedom of establishment and to provide services, and freedom of movement of capital. In so doing, it also constitutes a violation of NGOs' fundamental freedoms, and in particular, freedom of association. Consequently, both the European Commission and the Member States should consider launching an infringement procedure against Hungary for violations of Articles 49, 56 and 63 TFEU and Article 12 of the Charter.

¹ See [here](#).

Table of contents

Introduction	1
1. The new legal framework foresees an arbitrary power of audit and sanction against NGOs for the State Audit Office (SAO) and the office of the Prosecutor General.	3
1.1. The new legal framework creates an environment of legal uncertainty.....	3
1.1.1. The new legal framework does not provide sufficient legal certainty.....	4
1.1.2. Access to an effective remedy against abusive investigations and criminal proceedings is not ensured.	4
1.1.3. The new legal framework does not guarantee that the procedure will be held impartially and independently.....	5
1.2. The new legal framework maintains a hostile environment and generates a chilling effect that directly impacts NGOs' daily activities.	7
2. Hungary has an obligation to respect the freedom of association and assembly when implementing EU law.....	10
2.1. Member States must ensure the respect of the freedom of establishment and providing of services and freedom of movement of capital.....	10
2.2. The reliance on “public interest” to justify a measure restricting fundamental freedoms is sufficient to regard that measure as implementing EU law.	11
2.3. When implementing EU law, Member States must respect freedom of association.	12
3. By generating a chilling effect, the new anti-NGO law violates EU fundamental freedoms and internal market rules	13
4. The European Commission and Member States should consider launching an infringement procedure against Hungary.	15

1. The new legal framework foresees an arbitrary power of audit and sanction against NGOs for the State Audit Office (SAO) and the office of the Prosecutor General.

1. On 17 May 2021, the Hungarian Parliament adopted a new bill on “non-governmental organisations engaged in activities suitable for influencing public life transparency and amendments to certain related laws”.² The new law provides for:
 - The withdrawal of “Act LXXVI of 2017 on the Transparency of Foreign-Supported Organisations” (Transparency Law); and
 - Amendments to the cardinal law establishing the SAO (Act LXVI of 2011 on the State Audit Office – hereafter “SAO Act”), envisaging the expansion of its powers. The new law provides that the SAO will be entitled to audit non-governmental organisations performing activities suitable for influencing public life.

1.1. The new legal framework creates an environment of legal uncertainty.

2. According to the Hungarian Fundamental Law, the SAO carries out its audits according to the principles of lawfulness, expediency, and effectiveness (Article 43(1) Fundamental Law.³). Similarly, the new law prescribes that, when auditing NGOs, the SAO should base its work on the principle of lawfulness.
3. In essence, this principle relates to the obligation of national authorities to act within the limits prescribed by law. Moreover, the correct implementation of this principle relates to the respect of the principle of legal certainty. The latter has long ago been recognised as a general principle of EU law by the CJEU.⁴ It implies that the application of the law to a specific situation must be predictable.
4. The following paragraphs will show that the new law lacks precision and clarity: first, as to the separation of powers among different public authorities; second, as to the procedures connected to the exercise of such powers; and third, with respect to the grounds and procedures for NGOs to challenge acts and decisions affecting their actions. Such a lack of clarity contributes to the lack of legal certainty in the general legal framework regulating the activity of NGOs as modified by the new law.

² The Hungarian version of the bill is available [here](#).

³ The English translation of the Fundamental Law is available [here](#).

⁴ Judgment of the Court (Fifth Chamber) of 11 July 1990, in case C-323/88, [Sermes](#).

1.1.1. The new legal framework does not provide sufficient legal certainty.

5. Act CLXXV of 2011 “on the right of association, the public benefit status, and the operation and support of non-governmental organisations”⁵ lays down NGOs’ registration and reporting obligations.⁶ It also establishes that the Prosecutor General’s Office is the competent authority to control the legality of the actions carried out by the organisations. In addition to this, the newly introduced law expands the SAO’s mandate, adding NGOs to the list of entities that it can audit.
6. It stems from the above that two different national authorities are competent for verifying the lawfulness of NGOs’ activities, namely the Prosecutor General as to the verification of compliance with the provisions concerning the registration and conduct of the business of the NGO and the SAO as to the verification of compliance with accounting and reporting obligations. Additionally, and in any case, the Prosecutor General may launch a judicial proceeding based on accounting irregularities reported by the SAO.⁷
7. Neither the new law nor the SAO Act or Act CLXXV explains the grounds on which the SAO may start an investigation. Additionally, there is no reference to the margin of discretion that the SAO enjoys when evaluating whether or not to start an investigation. Finally, there is no indication of the threshold of evidence needed for the SAO to launch an investigation. On this basis, the SAO could decide to launch an investigation based on circumstantial evidence, input provided by the Government and the Parliament⁸, or allegations from anonymous parties.

1.1.2. Access to an effective remedy against abusive investigations and criminal proceedings is not ensured.

8. According to the SAO Act, the findings stemming from the SAO audit activities may be commented upon by the audited non-governmental organisation. However, this does not constitute an effective judicial remedy. Indeed, as the Hungarian Constitutional Court held in its ruling no. 32/2019 (XI. 15)⁹, the SAO is to be considered a non-authority. Therefore, its reports cannot be challenged before a judicial authority, clarified in Article 1 of the SAO Act. The article specifies that the SAO reports, findings, and conclusions may not be challenged before a court or other authority; and it is particularly important considering that the reports of the investigation carried out by the SAO are public (see Article 32, paragraph 3, of the SAO Act). This also applies to the names of the inspected individuals or the head of the legal persons and personal data related to the audited activity.
9. The possibility to seek redress for damage stemming from prosecutorial misconduct is also limited. Indeed, there is no possibility to challenge abuses of power committed by the Prosecutor General, who is only responsible before the Parliament. Since such responsibility only amounts to Parliamentary hearings and there are no effective and/or credible sanctions, the Prosecutor General’s actions cannot be challenged. Indeed, Article 3 of Act CLXIII of 2011 on the Prosecution Service provides that the Prosecutor General and Prosecutors shall be accorded the same immunity scheme applicable to Members of the Parliament.

10. In light of the above, it can be argued that the legal framework established by the new law deliberately contributes to the maintenance of a climate of general distrust as to the possibility for

⁵ The Hungarian version of the law is available [here](#).

⁶ See, in particular, articles 11, 12, 28, 29 and 30.

⁷ See, in this regard, Chapter IV of Act CLXIII of 2011 on the “Prosecution Service”, which regulates the competence of the Prosecution Service to intervene outside the scope of criminal law in cases concerning the public interest. In particular, under article 26, prosecutors shall exercise these powers in an attempt to eliminate non-compliance primarily by instituting contentious and non-contentious proceedings at Court (right to file lawsuits), launching administrative proceedings and pursuing a legal remedy.

⁸ See, in this regard, Article 3 of the SAO Act, which states that the SAO may carry out inspections at the request of the Government and is obliged to do so based on a decision of the Parliament.

⁹ The Hungarian version of the ruling is available [here](#).

NGOs to seek redress in case of damage stemming from the publicity of the SAO's reports or from the investigations carried out by the Prosecution Service on alleged irregularities committed by the NGO itself. Even though in the subsequent proceedings the NGO may be found not guilty of any irregularity, the mere fact that (i) the SAO and the Prosecutor General's Office may launch investigations and make them public; and (ii) the affected NGO cannot directly and effectively challenge the acts connected to such investigations are sufficient elements to intimidate NGOs.

1.1.3. The new legal framework does not guarantee that the procedure will be held impartially and independently.

The SAO and its President are not independent.

11. The SAO Act lays down general provisions stating the formal independence of the SAO from other national authorities and the Government. Conversely, the SAO is the leading financial and economic control body of the Parliament and performs its task as a subordinate to the Parliament. The link between the SAO and the Parliament is further clarified in other provisions. In particular, Article 3, paragraph 3, letter a) establishes that the SAO is obliged to carry out an audit following a decision of the Parliament.
12. Whereas the legal framework seems to provide sufficient reassurance as to the formal independence of the SAO, many NGOs and Hungarian opposition parties have raised doubts as to the substantial autonomy of the SAO and, more specifically, of its President.
13. First, it must be pointed out that the current President of the SAO, László Domokos, is a historical member of the leading political party in Hungary, Fidesz. The political affiliation between Mr Domokos and Fidesz has been highlighted several times by NGOs and opposition political parties. Their allegations of the SAO acting on behalf of, or in the interests of, Fidesz are related to the results of the SAO's investigations: where irregularities in outcomes were found, they mainly concerned opposition political parties. Yet no measure has ever been adopted against Fidesz.¹⁰ This has occurred despite substantial doubts about the financial misuse of public funds by Fidesz to support its electoral campaign in 2018 financially.¹¹
14. The SAO correctly conducts its investigations on all political parties every two years. However, two elements raise significant concerns and cast doubt as to the impartiality of the SAO's actions:
 - Whereas the SAO usually limits itself to binding and non-binding recommendations to solve irregularities, in the period before the elections, it has made more vigorous use of its powers in asking for the immediate repayment of allegedly unduly received sums from opposition political parties before signalling these irregularities to the Treasury, which is competent to deal with the adoption of fines on the sole basis of the findings of the SAO.¹²
 - As conceived and applied, the two-year timeframe leads to the SAO having conducted investigations and published its reports on opposition parties right before the elections. This practice raises concerns about possible abuses of the SAO's power to influence public opinion to favour Fidesz.
15. As to the two aspects pointed out above, the SAO acted within its remit; however, the timing raises concerns about the possibility that the SAO made more substantial use of its powers, specifically

¹⁰ See, among others, the [interview](#) released in 2017 by Miklos Ligeti of Transparency International Hungary, who argued that, in the light of the studies carried out by Transparency International Hungary, it is evident that the choice of the SAO to investigate political parties' financial expenses is the result of a party political decision. For a detailed overview, see Annex I.

¹¹ See more [here](#).

¹² Since there is no legal remedy against the SAO's reports, the authority responsible for the enforcement of the payment obligation contained therein is attributed to the Treasury (see [Article 75 of Act CXCV on Public Finances](#)). This has been confirmed by the Constitutional Court in its judgment no. 32/2019 (para. 70).

during election campaigns, to limit the financial resources available to opposition political parties to run their campaigns. OSCE raised similar concerns in its report on the fairness of the 2018 Hungarian Parliamentary Election.¹³

16. The SAO's reports have an additional impact. Indeed, they may be used as a basis by the State Treasury or the National Tax and Customs Administration (NAV) to launch further investigations or adopt fines. As a matter of fact, following the SAO's findings regarding Jobbik's irregularities, in March 2021, the NAV ordered an additional investigation.¹⁴ As to the State Treasury, Transparency International Hungary underlined that the State Treasury may directly adopt quasi-fines on the sole basis of the SAO's report, further enhancing the impact of such reports on political parties.¹⁵
17. Additional allegations concern the disproportionate fines adopted against opposition political parties, leading some to consider dismantling their party.¹⁶ As outlined by several NGOs, "the SAO continues the practice of imposing excessive fines on opposition parties while there is no direct opportunity for legal remedy, which many see as the misuse of power".¹⁷
18. The perception of a lack of independence of the SAO is characteristic not only of opposition political parties and NGOs but is widespread among the population. A survey commissioned by the opposition Hungarian Liberal Party (MLP) in mid-2020 found that 44% of Hungarians do not believe that the SAO is acting independently and impartially (71% of opposition voters and 20% of Fidesz voters).¹⁸
19. In light of the above, it is possible to conclude that public opinion regarding the SAO's independence from Fidesz has been highly affected over the last few years, with opposition political parties expecting to be targeted. Consequently, NGOs working on politically sensitive issues expect to become targets of the SAO.

The Prosecutor General's Office and the Prosecutor General are not independent.

20. Under Article 3 of Act CLXIII of 2011 on "the Prosecution Service", the Prosecution Service shall be an independent constitutional organisation subject exclusively to law.
21. Despite formal independence being enshrined in the law, many NGOs outlined that several issues have led to doubts about the independence of the Prosecution Services. In particular, in their contribution to the 2021 Rule of Law Report of the European Commission, eight international and national NGOs pointed out that "the perception of the prosecution's independence is eroded by the fact that the prosecution service failed to bring several high-level corruption scandals associated with political decision-makers before justice. The most prominent omission occurred in the so-called Elios case, where the questionable absorption of EUR 43 million by companies that belong to the interest group of the Prime Minister's son-in-law did not result in prosecution, although OLAF [the EU anti-fraud office] found that a mafia-type of a cartel lurked behind these dealings".¹⁹

¹³ See more [here](#).

¹⁴ See [here](#).

¹⁵ See [here](#).

¹⁶ See [here](#), [here](#) and [here](#).

¹⁷ See the opinion of the Hungarian Civil Liberties Union [here](#) and a comprehensive press report entitled "4 év alatt 816 millió forintot szedtetett be az ellenzéki pártoktól az ÁSZ" [The SAO has collected HUF 816 million from opposition parties over four years] [here](#).

¹⁸ See [here](#).

22. As in the case of the SAO's President, the current Prosecutor General, Péter Polt, is a former member of Fidesz and maintained personal relationships with several politicians.²⁰ His current mandate started in 2010 and was renewed in 2019 for another 9-year mandate.
23. The Prosecutor General played a role in pursuing Orbán's agenda against judicial independence. For example, he was responsible for filing an appeal against a Hungarian judge's request to refer a case to the CJEU for a preliminary ruling.²¹ As the CJEU clarified in its settled caselaw, the request for a preliminary ruling enjoys a presumption of relevance, and it falls within the competence of the referring Court to evaluate the need for an interpretation of EU law to solve the case pending before it.²² The action of the Prosecutor General was, therefore, unjustified interference with judicial independence.
24. The European Commission raised additional concerns on the independence of the Prosecutor General in its 2020 Rule of Law Chapter on Hungary.²³ As stated in the report, GRECO highlighted the undue interference with the independence of the other Prosecutors. In particular, GRECO issued recommendations "to review the rules for appointment of the Prosecutor General".²⁴ and "recommended introducing strict criteria to guide and justify decisions to remove cases from subordinate prosecutors and called for the review of how disciplinary proceedings are handled".²⁵
25. Considered together, these elements lead to the conclusion that there is a generalised perception of a lack of independence and impartiality as to the actions of the SAO and the Prosecution Services.

As the CJEU repeatedly held in its caselaw on judicial independence, the perception of independence of the concerned authority by the general public is a fundamental element ensuring the institution's effective functioning.²⁶ Consequently, the mere fact that there is a generalised lack of trust in their independence and impartiality among the population is sufficient to intimidate NGOs, which may fear being targeted by such authorities due to their actions in politically sensitive fields.

1.2. The new legal framework maintains a hostile environment and generates a chilling effect that directly impacts NGOs' daily activities.

26. The present section aims to demonstrate that the measures described above are liable to create a hostile environment and to generate a chilling effect on NGOs, which may feel discouraged from pursuing their activities in Hungary, and on donors, who may feel prevented from continuing to provide financial support to said NGOs.

¹⁹ See the report "*Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*", signed by Amnesty International Hungary, Eötvös Károly Institute, Hungarian Civil Liberties, Hungarian Helsinki Committee, K-Monitor, Mertek Media Monitor, Political Capital and Transparency International Hungary, March 2021.

²⁰ See more [here](#).

²¹ See more [here](#).

²² CJEU, Judgment of 26 March 2020, in joined cases C-558/18 and C-563/18, *Miasto Łowicz (Régime disciplinaire concernant les magistrats)*, paras 56-59.

²³ The English version of the chapter is available [here](#).

²⁴ See footnote no. 49 of the 2020 Rule of Law Report – Hungary Country Chapter: "GRECO Fourth Evaluation Round – Evaluation Report, para. 177; GRECO Fourth Evaluation Round – Interim Compliance Report, para. 20. A minority blocking the election in Parliament of a successor can maintain the Prosecutor General in office after the expiry of their mandate".

²⁵ See footnote no. 50 of the 2020 Rule of Law Report – Hungary Country Chapter: "GRECO Fourth Evaluation Round – Evaluation Report, paras. 190 and 216; GRECO Fourth Evaluation Round – Interim Compliance Report, paras. 24 and 34. GRECO recommended (recommendation xvii) that disciplinary proceedings in respect of prosecutors "be handled outside the immediate hierarchical structure of the Prosecution Service".

27. The concept of chilling effect may be defined “as the negative effect any state action has on natural and/or legal persons, and which results in pre-emptively dissuading them from exercising their rights or fulfilling their professional obligations, for fear of being subject to formal state proceedings which could lead to sanctions or informal consequences such as threats, attacks or smear campaigns”.²⁷ The reference to state action should be understood in broader terms, referring to “any measure, practice or omission by public authorities which may deter natural and/or legal persons from exercising any of the rights provided to them”.²⁸ It is possible to identify three deliberate methods aimed at dissuading natural or legal persons from exercising their rights:

- The adoption of ambiguous legal provisions;
- The arbitrary enforcement of these provisions against the most vocal critics of the autocratic government and its authorities (e.g., opposition political parties and politicians, civil society groups, activists, judges, prosecutors etc.) with the aim to intimidate them and reinforce the idea among the general public that the government is in control of the opposition; and
- The adoption of disproportionate sanctions aimed at discouraging people from voicing their dissent and exercising their rights and freedoms.²⁹

28. As concerns the new anti-NGO law, first, it does not sufficiently clarify the grounds on which an investigation may be started by SAO, the margin of discretion enjoyed by it, the procedure carried out and the means of redress in case of damage. There are no references to the basis on which an investigation may be started. Consequently, it should be concluded that the SAO is free to launch an investigation based on any information or input received. Finally, in light of the recent ruling of the Hungarian Constitutional Court, there is a legal gap as to the possibility of challenging the report of the SAO and seeking redress in case of damage stemming from the publicity of the reports.

29. Second, and in the light of the above, it is possible to presume that the new law will be used to target NGOs operating on sensitive and highly politicised issues. In this regard, it is worth recalling that the SAO may launch investigations based on information received by the Government and is obliged to do so at the Parliament’s request.³⁰ Since Fidesz holds a substantial majority both in the Government and in the Parliament³¹, the SAO will likely launch investigations against NGOs based on input provided by Fidesz. Even if such investigations are not undertaken, NGOs will probably feel threatened by such a possibility in light of the above.

30. Third, the new law will likely lead to disproportionate sanctions to discourage further manifestation of political dissent. It is expected to presume that the practice of sanctioning opposition political parties in politically sensitive moments will generate fear among NGOs and discourage them from exercising their rights and freedoms. This is particularly true considering the climate of distrust that the Hungarian government has created against NGOs over the last decade.³²

²⁶ See, among others, CJEU, Judgment of the Court of 25 July 2018, in case C-216/18 PPU, *LM*, para. 66, where the Court clarified that the “*guarantees of independence and impartiality require rules [...] in order to dispel any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it.*”

²⁷ Pech L., “*The Concept of Chilling Effect – Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*”, Open Society – European Policy Institute, 2021, p. 4.

³⁰ On the basis of the *standing orders of Hungary’s Parliament*, the Parliament votes by a qualified majority only as an exception. The general rule is the vote by a simple majority. Since there is no special provision foreseeing a qualified majority in the case above, it must be concluded that a simple majority may oblige the SAO to start an investigation.

³¹ See Annex II for a more comprehensive view of the current parliamentary landscape.

³² See, in particular, the *smear campaign against the Hungarian Helsinki Committee* and the 2018 Soros law package criminalising solidarity towards migrants (*joint declaration* by the President of the

31. In the light of the above, it should be concluded that the new law, by deliberately contributing to the maintenance of a hostile environment against NGOs, is liable to generate a chilling effect, which in turn, may lead NGOs to choose not to pursue their actions in Hungary and may lead funders not to provide financial support to NGOs operating in Hungary.

Conference of INGOs and the President of the Expert Council on NGO Law of the Council of Europe, [joint opinion](#) of the Venice Commission and OSCE on the package, UN Special Rapporteurs' [comments](#), and [EU non-paper](#) on values-related infringements in Hungary).

2. Hungary has an obligation to respect the freedom of association and assembly when implementing EU law.

32. Under EU law, Member States have an obligation to remove any barrier limiting the exercise of the freedom of establishment and to provide services and freedom of movement of capital across the Member States. The CJEU has clarified the extent of this obligation by holding that the mere existence of provisions liable to make less attractive the exercise of such freedoms shall be regarded as implementing EU law and thus falling within the scope of application of the Treaties. Furthermore, this conclusion also implies the applicability of the provisions of the Charter.

2.1. **The Member States must ensure the respect of the freedom of establishment and providing of services and freedom of movement of capital.**

33. Under Article 49 TFEU, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons. Additionally, Article 56 TFEU provides that restrictions on freedom to provide services within the Union shall be prohibited with regard to cross-border operations. As to the freedom of movement of capitals, Article 63 TFEU provides that all restrictions on the movement of capital between Member States shall be prohibited.

34. The Court clarified that it is sufficient that a national measure interferes with free movement to consider it in breach of the Treaties (so-called restrictions/market access approach).³³ Additionally, as pointed out by Advocate General Sharpston in her Opinion in *Ruiz Zambrano*, in *Säger* the Court held that Article 56 TFEU requires “the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, when it is liable to prohibit or otherwise impede the activities of a provider of services”.³⁴ Furthermore, AG Sharpston points out that in *Kraus*³⁵ the Court held that “measures liable to hamper or to render less attractive the exercise by [EU] nationals [...] of fundamental freedoms guaranteed by the Treaty also came within the scope of Community law”.³⁶

35. Finally, in the previously cited *Commission v Hungary (Transparency of Associations)* ruling, the Court confirmed, in line with the caselaw above concerning internal market freedoms, that the potential dissuasive effect of a piece of legislation is sufficient to establish the existence of a failure to fulfil obligations.³⁷

³³ See, in particular, the Court’s reasoning in case C-384/93, *Alpine Investments BV v Minister van Financien*, para. 35 and subsequent case law, where the Court shifted from the discriminatory approach to the so-called restrictions/market access approach.

³⁴ See notes 47 and 48 of AG Sharpston Opinion in case C-34/09, *Ruiz Zambrano v Office national de l’emploi (ONEM)*.

³⁵ CJEU, Judgment of the Court of 31 March 1993, in case C-19/92, *Dieter Kraus v Land Baden-Württemberg*, para 32.

³⁶ AG Sharpston Opinion in case C-34/09, *Ruiz Zambrano v Office national de l’emploi (ONEM)*, para. 71.

³⁷ CJEU, Judgment of the Court (Grand Chamber) of 18 June 2020, in case C-78/18, *Commission v Hungary (Transparency of Associations)*, para.118

2.2. The reliance on “public interest” to justify a measure restricting fundamental freedoms is sufficient to regard that measure as implementing EU law.

36. Under Articles 52(1) and 62 TFEU, Member States are allowed to derogate from the rules on freedom of establishment and movement of services on grounds such as public interest, public security and public health. However, the Court clarified the limits of such derogation. In *Église de Scientologie*³⁸, the Court held that:
- Derogations must be interpreted strictly,
 - Derogations cannot serve purely economic ends,
 - Any person negatively affected by those derogations must have access to effective legal redress,
 - Derogations are subject to the principle of proportionality.
37. In the *Carpenter* case, the Court also clarified that, when relevant, fundamental rights must be taken into account.³⁹
38. Regarding public interest, the Court admitted a wide range of justifications, one of which is the fight against crime or fraud.⁴⁰ However, it clarified that, once the Member State has relied on a justification, it must show that the measures adopted are proportionate (meaning that they are “appropriate for ensuring, consistently and systematically, the attainment of the objective pursued and not to go beyond what is necessary in order for it to be attained”.⁴¹) and when relevant, compatible with fundamental rights as enshrined in the Charter.
39. As follows from the Court’s caselaw, where a Member State argues that a measure of which it is the author and which restricts fundamental freedoms guaranteed by the TFEU is justified on the basis of that Treaty or by an overriding reason in the public interest recognised by EU law, such a measure must be regarded as implementing Union law within the meaning of Article 51(1) of the Charter, such that it must comply with the fundamental rights enshrined in the Charter.⁴²

³⁸ CJEU, Judgment of the Court of 14 March 2000, in case C-54/99, *Église de Scientologie*, para. 17.

³⁹ CJEU, Judgment of the Court of 11 July 2022, in case C-60/00, *Carpenter*, paras 40 and 41.

⁴⁰ CJEU, Judgment of the Court of 24 March 1994, in case C-275/92, *Schindler*.

⁴¹ CJEU, Judgment of the Court (Grand Chamber) of 18 June 2020, in case C-78/18, *Commission v Hungary (Transparency of Associations)*, para. 76.

⁴² *Ibid*, paras 101 and 103.

2.3. When implementing EU law, Member States must respect freedom of association.

40. Under Article 12 of the Charter, "Everyone has the right to freedom of peaceful assembly and freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests".
41. In *Commission v Hungary (Transparency of Associations)*, the CJEU held that "the right to freedom of association constitutes one of the essential bases of a democratic and pluralistic society since it allows citizens to act collectively in fields of mutual interest, and in doing so to contribute to the proper functioning of public life".⁴³ Additionally, it clarified that such a right includes several different aspects, among which is the ability to pursue its activities and operate without unjustified interference by the State".⁴⁴ Finally, it clarified that legislation that renders significantly more difficult the actions or the operation of associations, by, *inter alia*, limiting their capacity to receive financial resources or exposing them to the threat of penalties, is classified as interference in the right to freedom of association.⁴⁵
42. In essence, the Court clarified that it considers NGOs' capacity to receive financial resources and operate without being exposed to the threat of penalties as essential elements allowing NGOs to pursue their actions and, consequently, exercise their freedom of association.

⁴³ CJEU, Judgment of the Court (Grand Chamber) of 18 June 2020, in case C-78/18, *Commission v Hungary (Transparency of Associations)*, para. 112.

⁴⁴ *Ibid.*, para. 113.

⁴⁵ *Ibid.*, para. 114.

3. By generating a chilling effect, the new anti-NGO law violates EU fundamental freedoms and internal market rules

43. The European Commission has used the concept of chilling effect in its 2020 Rule of Law Report regarding legal measures, political attacks, smear campaigns, abusive lawsuits and threats targeting journalists, civil society, judges and prosecutors.⁴⁶
44. The CJEU itself relied on the concept in several cases, although using different terms to refer to it (e.g., dissuasive effect, deterrent effect, or, in the French version, *effet dissuasif*, *effet démoralisant*, *effet de refroidir*). In addition, the term has been used in various cases, such as consumer protection, commercial transactions, unfair terms in consumer contracts, cross-border abduction of minors, and online sale of medicinal products.⁴⁷
45. Moreover, its use by the CJEU has recently expanded with regard to the rule of law-related cases. In its judgment in the *Transparency of Associations* case⁴⁸, the Court analysed the Hungarian anti-NGO law and the connected measures holistically. The Court referred in particular to the legislator's willingness to stigmatise NGOs receiving funds from abroad in order "to create a climate of distrust with regard to them, apt to deter natural or legal persons from other Member States or third countries from providing them with financial support".⁴⁹ The Court repeatedly relied on the chilling effect of such measures, stating that they "are such as to limit the capacity of associations and foundations at issue to receive financial support [...], having regard to the dissuasive effect of such obligations and the penalties attached to any failure to comply with them. [...] In that context, the systematic obligations in question are liable [...] to have a deterrent effect on the participation of donors resident in other Member States or third countries in the financing of civil society organisations [...] and thus to hinder the activities of those organisations and the achievement of the aims they pursue. They are furthermore of such a nature as to create a generalised climate of mistrust vis-à-vis the associations and the foundations at issue, in Hungary, and to stigmatise them".⁵⁰
46. As Pech has pointed out, "by adopting a holistic and prospective analysis of the combined and potential effects of the measures in dispute, the Court of Justice offers an effective way to challenge this technique under EU law".⁵¹

⁴⁶ Pech L., "*The Concept of Chilling Effect – Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*", p. 4.

⁴⁷ *Ibid.*, pp. 18-19. See in particular the following cases: CJEU, Judgment of the Court (First Chamber) of 25 November 2020, in case C-269/19, *Banca*, para. 31; Judgment of the Court (Fourth Chamber) of 19 November 2020, in case C-454/19, *ZW*, para. 43; Judgement of the Court (Ninth Chamber) of 18 November 2020, in case C-299/19, *Techbau*, para.53; Judgment of the Court (Seventh Chamber) of 28 October 2020, in case C-611/18 P, *Pirelli*, paras 89 and 99; Judgment of the Court (Third Chamber) of 1 October 2020, in case C-649/18, *A*, para 90.

⁴⁸ CJEU, Judgment of the Court (Grand Chamber) of 18 June 2020, in case C-78/18, *Commission v Hungary (Transparency of Associations)*.

⁴⁹ *Ibid.*, para. 58.

⁵⁰ *Ibid.*, paras 116 and 118.

⁵¹ Pech L., "*The Concept of Chilling Effect – Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*", p. 24.

47. In the light of the analysis carried out above, it is possible to conclude that the new anti-NGO law deliberately contributes to the maintenance of a hostile environment and generates a chilling effect, which in turn makes it less attractive for NGOs and funders to exercise their fundamental freedoms as recognised by the Treaties.

48. In particular, the new anti-NGO law:

- Contributes to furthering the existing climate of legal uncertainty as to the rules and margin of discretion of the SAO to carry out investigations and the means to redress in case of damage.
- Does not dispel doubts as to the independence of the SAO and of the Prosecutor General; and
- Casts doubt concerning the arbitrary use that can be made of the investigative and reporting powers of the SAO to stigmatise certain NGOs.

Consequently, the new law deliberately contributes to maintaining a hostile environment and generates a chilling effect.

49. Such a conclusion directly impacts Hungary's obligation under the Treaties. Member States have the positive obligation to remove any barrier limiting the exercise of the four fundamental freedoms and a negative obligation not to interfere with such freedoms. The mere fact of making less attractive the exercise of fundamental freedoms protected by the Treaties violates the Treaties.

50. Consequently, by adopting the new anti-NGO law, Hungary has failed to fulfil its obligations under the Treaties, namely, its commitment to refrain from any activity liable to make it less attractive for EU nationals to exercise their rights and freedoms recognised in the Treaties.

4. The European Commission and the Member States should consider launching an infringement procedure against Hungary.

51. In light of the above, it is possible to conclude that the anti-NGO law adopted by Hungary in May 2021 is in breach of EU law, with specific regard to the following provisions:

- **Articles 49 and 56 TFEU**, as it is liable to make less attractive for EU nationals the exercise of their freedom of establishment and to provide services, as recognised by the Treaty. Indeed, due to the hostile environment, EU nationals may feel discouraged to establish NGOs in Hungary, especially if operating on sensitive and highly politicised issues.
- **Article 63 TFEU**, as it is liable to make it less attractive for funders, both in other Member States and in third countries, to provide financial support to NGOs operating in Hungary, thereby limiting the freedom of movement of capital.
- **Article 12 of the Charter**. As recognised by the Court in its ruling in *Transparency of Associations*, access to financial support is a fundamental element allowing NGOs to operate and achieve the aims they pursue. Consequently, access to funds represents an essential element for the free exercise of their freedom of association. Accordingly, by discouraging funders from providing financial support to NGOs in Hungary, the new law represents an undue limit to the freedom of association.

52. Consequently, the Commission should consider pursuing the existing procedure for failure to fulfil an obligation (“infringement procedure”) against Hungary on the basis of Article 260 TFEU. Indeed, by adopting the new law, Hungary has failed to take the necessary measures to ensure the implementation of the Court’s judgement in *Transparency of Associations*, particularly regarding the pre-existing violation of Articles 63 TFEU and 12 of the Charter. Therefore, Member States should pressure the Commission to take in this sense, on the basis, among others, of the principle of sincere cooperation (enshrined in Article 4, paragraph 3, TEU), which obliges Member States to implement EU law and the Court’s judgement in good faith.

53. In the event the Commission considers that it is not possible to pursue the existing procedure, it shall consider launching a new infringement procedure based on Article 258 TFEU for violation of Articles 49, 52 and 63 TFEU as well as Article 12 of the Charter. In this case, Member States should pressure the Commission to ask for the adoption of interim measures (namely the suspension of the new law) with the provision of financial penalties in case of lack of compliance to avoid further damages to the NGO sector.

54. Additionally, Member States should consider starting an infringement procedure under Article 259 TFEU. In particular, as pointed out by Pech, they should build on the CJEU’s reasoning in *Transparency of Associations* and “challenge inter alia the chilling effect of any national measure, broadly understood, which interferes with the exercise of Charter rights – and in particular freedom of association – if the mere existence of ‘regulatory constraints’ or the mere prospect of the potential application of any national measure can have a negative impact on donors and/or the activities of a civil society organisation, by limiting, even if only theoretically, donations from residents from other EU countries or limiting cooperation with organisations/individuals residing in other EU countries”.⁵²

⁵² Pech L., “*The Concept of Chilling Effect – Its untapped potential to better protect democracy, the rule of law, and fundamental rights in the EU*”, pp. 29-30.

The information in these documents is confidential, privileged, and only for the intended recipient's information and may not be used, published, or redistributed without RECLAIM's prior written consent of RECLAIM's Director.

The opinions expressed are in good faith and while every care has been taken in preparing these documents, RECLAIM staff makes no representations and gives no warranties of whatever nature in respect of these documents, including but not limited to the accuracy or completeness of any information, facts and/or opinions contained therein.

RECLAIM, the director, employees and members of the board cannot be held liable for the use of and reliance on the opinions, estimates, forecasts and findings contained in these documents.

HUNGARY'S ANTI-NGO LAW

Annex I

Overview of SAO's investigations between 2016 and 2021

According to Article 10 of the Act XXXIII on the operation and management of political parties¹, **the SAO shall monitor the management of the parties and their connected foundations** receiving regular financial support from the central budget **every two years**. Based on the information published on the SAO website², in the timeframe 2016-2021, all political parties have been audited three times. The results of the auditing are the following.

In **2016**, irregularities were found concerning **Dialogue for Hungary** (PM), the **Hungarian Liberal Party** (MLP) [currently not present in the Parliament, at the time the report was issued it held one seat as opposition party], **Jobbik** and the Foundation connected to it, **Hungary's Green Party** (LMP) and the Foundation connected to it. In all cases, the SAO issued proposals and adopted **binding recommendations** to resolve the irregularities.

In **2017**, the SAO audited **Fidesz** and the Foundation connected to it. Both were found in **compliance with all legal requirements**. Over the same year, the SAO also audited the **Christian Democratic People's Party** (KDNP) and its Foundation; **minor irregularities** were found concerning the latter, but the SAO decided not to adopt binding recommendations to solve them. Conversely, following the auditing of the **Socialist Party** (MSZP), the SAO found irregularities and adopted **non-binding recommendations**. **Serious irregularities** were found connected to the action of **Democratic Community of Welfare and Freedom** (JESZ – currently not represented in the Parliament) and its Foundation, which led the SAO to **refer the case** to the Treasury, the Ministry of Finance and the Prosecutor General's Office.

In January **2018**, **serious irregularities** were found concerning **Jobbik**, the **Democratic Coalition** (DK) and the **Hungarian Liberal Party** (MLP). The findings resulted in the SAO requesting the three parties the **immediate repayment of the allegedly illegal funds**.³ The three parties were all opposing Fidesz in the *2017-2018 electoral campaign*, in the light of the *Parliamentary elections* then held in April 2018. In the same month, **irregularities** were found concerning **Dialogue for Hungary** (PM), **Hungary's Green Party** (LMP) and the **Socialist Party** (MSZP), which led to the SAO **referring the case** to the Treasury. Over the year, irregularities were also found concerning three Foundations, namely those linked to the Democratic Coalition (DK), the Socialist Party (MSZP) and the Green Party (LMP).

¹ Text in Hungarian available [here](#).

² Available [here](#).

³ In total, Jobbik was requested to repay almost €1 million, DK was asked to repay €24'000 and MLP was asked to repay €19'000. Additional fines have been reported by [newspapers](#) as concerns DK and LMP. It is worth mentioning that few days after the publication of the SAO's reports, the Ministry of National Economy announced that the Treasury would extend the payment deadline, allowing opposition parties to pay after the Parliamentary Election (held in April 2018).

In **2019**, **serious irregularities** were found concerning the **Momentum Movement** (currently not represented in the Parliament) and **PM**. In both cases, the SAO decided for the **suspension of the disbursement of public funds** and the **referral of the case** to the Prosecutor General's Office. Additionally, the SAO audited **Fidesz** and its ally, the **Christian Democratic People's Party (KDNP)**. It found **minor irregularities** and adopted **non-binding recommendations**. It also audited the two connected foundations. Whereas Fidesz' foundation was found in compliance with its legal requirements, the SAO adopted binding recommendations concerning the Christian Democratic People's Party's foundation minor irregularities.

In **2020**, the SAO found irregularities concerning all opposition parties and their foundations. This led to the **self-dissolution** of **Together** and the **suspension of funds** for the **Democratic Coalition (DK)**. The SAO adopted **binding recommendations** for the **Green Party (LMP)** and its Foundation, the **Socialist Party (MSZP)** and its Foundation and **Jobbik** and its Foundation.

In **2021** (at the time of writing), the SAO audited the **Hungarian Liberal Party (MLP)** and found **irregularities**. It also audited **Fidesz** and its ally, the **Christian Democratic People's Party (KDNP)**, and the two connected Foundations. Three of them were found **in compliance with their legal requirements**. **Minor irregularities** were found concerning the Christian Democratic People's Party (KDNP), and the SAO adopted binding recommendations.

HUNGARY'S ANTI-NGO LAW

LEGAL OPINION

Date of publication	Audited political party	Result of the auditing	Follow-up to the auditing (obligation of repayment, fines, suspension of financial support, etc.)
06/2016	<u><i>Dialogue for Hungary (PM)</i></u> <i>(see also here)</i>	Irregularities	Adoption of binding recommendations
06/2016	<u><i>Hungarian Liberal Party (MLP)</i></u> <i>(see also here)</i>	Minor irregularities	Adoption of binding recommendations
09/2016	<u><i>Jobbik</i></u> <i>(see also here)</i>	Irregularities	Adoption of binding recommendations
09/2016	<u><i>Foundation for a Thriving Hungary</i></u> <i>(see also here)</i> <i>[Jobbik]</i>	Minor irregularities	Adoption of binding recommendations
09/2016	<u><i>Hungary's Green Party (LMP)</i></u> <i>(see also here)</i>	Irregularities	Adoption of binding recommendations
09/2016	<u><i>Ecopolis Foundation</i></u> <i>(see also here)</i> <i>[LMP]</i>	Minor irregularities	Adoption of binding recommendations
06/2017	<u><i>Barankovics István Foundation</i></u> <i>(see also here)</i> <i>[KDNP]</i>	Minor irregularities	Proposed recommendations (not binding)
06/2017	<u><i>Alliance for Civic Hungary Foundation</i></u> <i>(see also here)</i> <i>[Fidesz]</i>	Regular	
06/2017	<u><i>Socialist Party (MSZP)</i></u> <i>(see also here)</i>	Irregularities	Adoption of binding recommendations

HUNGARY'S ANTI-NGO LAW

LEGAL OPINION

06/2017	<u><i>Christian Democratic People's Party (KDNP) (see also here)</i></u>	Minor irregularities	Proposed recommendations (not binding)
07/2017	<u><i>Fidesz (see also here)</i></u>	Regular	
09/2017	<u><i>Antall József Foundation (see also here) [JESZ]</i></u>	Serious irregularities	Referral of the case to the Treasury (for the adoption and execution of fines), to the Ministry of Finance and to the Prosecutor General
09/2017	<u><i>Democratic Community of Welfare and Freedom (JESZ) (see also here)</i></u>	Serious irregularities	Referral of the case to the Treasury (for the adoption and execution of fines), to the Ministry of Finance and to the Prosecutor General

01/2018	<u><i>Jobbik (see also here)</i></u>	Serious irregularities	Order of repayment
01/2018	<u><i>DK (see also here)</i></u>	Serious irregularities	Order of repayment and adoption of binding recommendations
01/2018	<u><i>MLP (see also here)</i></u>	Serious irregularities	Order of repayment and adoption of binding recommendations
01/2018	<u><i>PM (see also here)</i></u>	Irregularities	Adoption of binding recommendations and referral of the case to the Treasury (for the adoption and execution of fines)
01/2018	<u><i>LMP (see also here)</i></u>	Irregularities	Adoption of binding recommendations and referral of the case to the Treasury (for the adoption and execution of fines)
01/2018	<u><i>MSZP (see also here)</i></u>	Irregularities	Adoption of binding recommendations and referral of the case to the Treasury (for the adoption and execution of fines)

April 2018 – Parliamentary elections

HUNGARY'S ANTI-NGO LAW
LEGAL OPINION

06/2018	<i><u>Foundation for the New Republic (see also here) [DK]</u></i>	Minor irregularities	Adoption of binding recommendations
08/2018	<i><u>Mihály Dancesics Foundation (see also here) [MSZP]</u></i>	Irregularities	Adoption of binding recommendations
08/2018	<i><u>Ecopolis Foundation (see also here) [LMP]</u></i>	Irregularities	Adoption of binding recommendations
01/2019	<i><u>Momentum Movement (see also here)</u></i>	Serious irregularities	Suspension of financial support and referral of the case to the Prosecutor General to initiate proceedings
01/2019	<i><u>PM (see also here)</u></i>	Serious irregularities	Suspension of financial support and referral of the case to the Prosecutor General to initiate proceedings
01/2019	<i><u>Fidesz (see also here)</u></i>	Minor irregularities	Adoption of binding recommendations
01/2019	<i><u>KDNP (see also here)</u></i>	Minor irregularities	Adoption of binding recommendations
12/2019	<i><u>Alliance for Civic Hungary Foundation (see also here) [Fidesz]</u></i>	Regular	
12/2019	<i><u>István Barankovics Foundation (see also here) [KDNP]</u></i>	Minor irregularities	Adoption of binding recommendations
05/2020	<i><u>Together (see also here)</u></i>	Serious irregularities	In liquidation at the time the report was issued

HUNGARY'S ANTI-NGO LAW

LEGAL OPINION

05/2020	<u><i>DK (see also here)</i></u>	Serious irregularities	Suspension of financial support
08/2020	<u><i>LMP (see also here)</i></u>	Irregularities	Adoption of binding recommendations
08/2020	<u><i>Ecopolis Foundation (and here) [LMP]</i></u>	Irregularities	Adoption of binding recommendations
08/2020	<u><i>Foundation for Renewable Hungary (and here) [PM]</i></u>	Irregularities	Adoption of binding recommendations
09/2020	<u><i>MSZP (and here)</i></u>	Minor irregularities	Adoption of binding recommendations
11/2020	<u><i>Foundation for the New Republic (and here) [DK]</i></u>	Minor irregularities	No measures
12/2020	<u><i>Jobbik (and here)</i></u>	Irregularities	Adoption of binding recommendations

01/2021	<u><i>MLP (and here)</i></u>	Irregularities	Adoption of binding recommendations
04/2021	<u><i>Fidesz (and here)</i></u>	Regular	
04/2021	<u><i>KDNP (and here)</i></u>	Minor irregularities	Adoption of binding recommendations
06/2021	<u><i>Alliance for Civic Hungary Foundation (and here) [Fidesz]</i></u>	Regular	
06/2021	<u><i>Start Hungary Foundation (and here) [Momentum Movement]</i></u>	Regular	

HUNGARY'S ANTI-NGO LAW

Annex II

Hungary's Parliamentary landscape as of June 2021

The current Hungarian political landscape is dominated by Fidesz, with 117 out of 199 seats in the national Parliament (unicameral). Fidesz reached an agreement for a political coalition with the minority Christian Democratic People's Party (KDNP), which has currently 16 seats in the Parliament.

The opposition is highly fragmented. Jobbik is currently the main opposition party with 26 seats, followed by the Hungarian Socialist Party (MSZP) in coalition with Dialogue for Hungary with 20 seats, the Democratic Coalition (DK) with 9 seats, Politics Can Be Different (LMP) with 8 seats. The three remaining seats are assigned to three minority parties. Fidesz alone has a majority of 58.8% of the parliamentary seats; following the political agreement with KDNP, the two parties reached 66.83% of parliamentary seats.¹

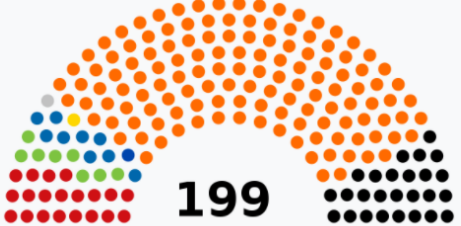
Most acts in the Parliament are adopted by simple majority (50% +1 of the votes of the Members of the Parliament (MPs) physically present during the vote). For the adoption of certain acts, a qualified majority is required (normally two thirds or four fifths). The qualified majority requirement may refer to either the number of MPs physically present during the voting session or to the total number of seats (199).

To ***adopt a cardinal law*** [e.g., the amendments of the new anti-NGO law concerning the adoption of the SAO Act], the qualified majority corresponds to at least two-thirds of the Members of the Parliament physically present during the voting session (see Article T(4) of the Fundamental Law).

In essence, given the strong majority held by Fidesz and the highly fragmented opposition, this leads to Fidesz being able alone to pass amendments to cardinal laws when all its MPs are present.

¹ See Table I for a visual representation of the current seats in the Parliament following 2018 elections.

Table 1: *Wikipedia* graphic of the political parties' representation in the Parliament following the 2018 elections.



Party (alliance)	Party lists			FPTP			Total	
	Votes	%	Seats	Votes	%	Seats	Seats	±
Fidesz-KDNP	2,824,206	49.27	42	2,636,203	47.89	91	133	—
Jobbik – Movement for a Better Hungary	1,092,669	19.06	25	1,276,842	23.20	1	26	▲ 3
Hungarian Socialist Party – Dialogue for Hungary	682,602	11.91	12	622,458	11.22	8	20	▼ 10
Politics Can Be Different	404,425	7.06	7	312,731	5.64	1	8	▲ 3
Democratic Coalition	308,068	5.37	6	348,178	6.28	3	9	▲ 5
Momentum Movement	175,225	3.06	0	75,035	1.35	0	0	New
Hungarian Two-tailed Dog Party	99,410	1.73	0	39,763	0.72	0	0	New
Together	37,561	0.66	0	58,591	1.06	1	1	▼ 2
National Self-Government of Germans in Hungary	26,477	0.46	1				1	▲ 1
Hungarian Workers' Party	15,640	0.27	0	13,613	0.25	0	0	—
Family Party	10,640	0.19	0	9,839	0.18	0	0	—
Hungarian Justice and Life Party	8,713	0.15	0	6,897	0.12	0	0	—
Party for a Fit and Healthy Hungary	7,309	0.13	0	5,525	0.10	0	0	—
National Self-Government of Gypsies	5,703	0.10	0				0	—
Other parties (less than 0.1%)	33,173	0.58	0	43,256	0.78	0	0	▼ 1
Independents				55,612	1.00	1	1	▲ 1
Total	5,731,821	100.00	93	5,504,543	100.00	106	199	—
Valid votes	5,731,821	98.97						
Blank/invalid votes	59,611	1.03						
Registered voters / Turnout	8,312,173	69.73						

LEGAL OPINION

This document is part of RECLAIM's Legal Opinion Series.

RECLAIM's legal opinions offer a detailed examination of national laws that raise issues under the EU law perspective. They contain recommendations and suggestions for EU Institutions and Member States' authorities on how to address EU law breaches.

or more information about our services, visit reclaiming.eu/helpdesk