



Benedek Jávör  
Member of the European Parliament

Frans Timmermans  
First Vice-President  
European Commission

Brussels

Brussels, 6th July 2017

Dear Mr. Timmermans,

I am writing to you to submit a formal complaint to the European Commission regarding the legislation adopted against the NGOs in Hungary.

The Hungarian Parliament adopted the Act LXXVI of 2017 "on the Transparency of Organisations Receiving Foreign Funds" on 13 June 2017 (Lex CSO). According to the adopted law those relevant<sup>1</sup> CSOs which receive direct or indirect funding in excess of the level provided in the Law<sup>2</sup>, those must register themselves as 'organisations receiving foreign funding', declare the source and level of the foreign funding (which is subsequently disclosed publicly) and identify themselves as 'organisations receiving foreign funding' on their publicity and other materials and almost certainly I will be mentioned in their media appearances. Failure to do so leads to fines and other legal consequences according to the Act CLXXI of 2011 on the Court Registration of CSOs and the Relative Procedural Rules.

We believe that the Lex CSO constitutes not only a serious breach of Human Rights according to the Hungarian Basic Law, the European Convention on Human Rights but also the very fundamentals of the EU law. In fact, the Lex CSO could affect all the four fundamental freedoms set out by the TFEU.

The Lex CSU is effectively a registration/authorisation requirement that discriminates directly on the basis of nationality (or geographical origin), and consequently as a matter of well-established EU law is an unlawful restriction. It must be unlawful to treat organisations that receive donations from outside the

---

<sup>1</sup> It applies to "associations and foundations" that qualify as Civil Society Organisations ("CSOs") as defined in the CSO Act of CLXXV of 2011 of the Freedom of association, the public benefit status and the operation and support of civil society organisations.

<sup>2</sup> Twice the amount specified in Article 6 paragraph (1) (b) of the Act on Money Laundering. This is currently amounts to 7,2 million HUF (Approximately 23400 EUR).



Benedek Jávör  
Member of the European Parliament

Member State (Hungary) differently to those that receive donations from within the Member State. The Lex CSO does not provide any overriding public interest, which could serve as a basis for restricting the freedom of movement of capital and payments. The only argument is based on a claimed 'need' to know national origin of the funding for its own sake.

We also believe that is not just free movement of capital that is potentially affected but also the free movement of providing services. The economic role played by 'not for profit' organisations was recognised by the ECJ in the past and even the Hungarian law allows them to carry out services which is linked to economic activity. The Lex CSO involves serious potential restrictions on the free movement of services as a relevant CSO in Hungary may wish to receive services at a reduced cost from outside Hungary, which could constitute 'economic support' covered by the proposed Law, i.e. 'foreign funds' or they may want to provide services to individuals outside of Hungary for which they may pay money which could equally constitute 'foreign funds' according to the Lex CSO.

Furthermore, the Lex CSO does not provide a proper definition to the 'foreign funds'. Article 1(2) of the Lex CSO states that *"For the purposes of this Act, regardless of its legal title, any financial or other economic support originating directly or indirectly from abroad . . . shall be regarded as financial support"*.

That definition is extremely vague, in terms of the character of the benefit, the activities affected and geographical origin. As it does not provide us with precise definitions, therefore it creates a high level of uncertainty in the application of the law, which undermines legal certainty and therefore indirectly the rule of law.

In fact this practice is highly controversial, especially when it comes about European Funds: if European funds are spent by the Hungarian government it does not constitute foreign fund, but when it is spent by anybody else, then it is considered as foreign fund. This shows clearly the mendacity of the Lex CSO.

The freedom of movement of goods and workers could be both potentially affected by the Lex CSO since it potentially restricts the exercise of each of those freedoms.

The Lex CSO engages the freedom of movement of workers because it appears to treat as 'foreign funds': any funds provided to a relevant CSO which funds originate from wages paid to a Hungarian citizen from their work abroad, or to another EU national who had exercised their freedom of movement as a worker, and any voluntary or reduced cost work provided to a relevant CSO by a Hungarian citizen employed abroad or by another EU national who had exercised their freedom of movement as a worker, since this may be 'economic support'.



Benedek Javor  
Member of the European Parliament

The Lex CSO applies to the movement of goods that constitute economic support (or the sale of goods by relevant CSOs outside Hungary as well.

Furthermore, I believe that the Lex CSO would contravene a number of the rights protected by the EU Charter of Fundamental Rights, which is incorporated into EU law.

I am looking forward to seeing strong action from the European Commission!

Yours sincerely,

Benedek Javor  
Member of the European Parliament

