

Protecting National Sovereignty: What is the Real Threat?

Comparing U.S. Foreign Agents Registration Act to
Hungary's Protection of National Sovereignty Law



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Summary

The Foreign Agents Registration Act (FARA) was enacted in 1938 in response to concerns about foreign propaganda and therefore requires disclosure through registration. FARA has undergone ten amendments and saw limited application until 2016, when the Department of Justice (DOJ) began enforcing FARA more aggressively.

- 1) FARA applies to all individuals acting on behalf of “foreign principals”, a term that currently may be interpreted to include foreign governments, political parties, companies, civil society organizations, state-owned enterprises and individuals. However, there have been efforts to restrict the definition of foreign principals and focus on FARA’s exemptions of private activities indirectly controlled and indirectly promoting the interests of foreign governments.
- 2) FARA did not create a new body tasked with enforcing the law; instead, the U.S. Department of Justice handles the enforcement through a FARA Unit that conducts audits and by sending *Letters of Inquiry*, which usually include requests for documents and narrative responses, from potential registrants.
- 3) Violations of FARA committed “wilfully”, either by making false statements or omitting information, may result in criminal penalties including fines of up to \$10,000 or imprisonment for up to five years.
- 4) The DOJ has the authority to initiate civil and administrative cases when there is “sufficient credible evidence of a significant violation” of FARA and rather than imposing a penalty, the DOJ might compel a party to register, or it might seek a temporary or permanent injunction, and/or a restraining order. Alleged violators trial before a verdict is made and may appeal the decision.

The Protection of National Sovereignty Law was adopted by the Hungarian Parliament on December 12, 2023, it entered into force 10 days later and the office designated for its enforcement was set up on February 1, 2024, with the mandate to carry out a variety of different activities aiming to protect national sovereignty.

- 1) Under Hungary’s Protection of National Sovereignty Law, the government has the power to investigate and identify organizations that have received foreign funding aimed to influence voters, but individuals and organizations are not required to register. Under Hungary’s Law, nearly all individuals and legal entities, except for the members of the diplomatic corps, can be investigated regarding foreign influence and foreign funding.
- 2) The Sovereignty Protection Office (SPO) was created as a new agency tasked with investigating specific activities carried out in the interest of another State or a foreign body, organisation or natural person, if they are likely to violate or jeopardise the sovereignty of Hungary; and organisations whose activities using foreign funding may influence the outcome of elections or the will of voters.
- 3) Though it may not impose sanctions *per se* the SPO, while enforcing the Protection of National Sovereignty Law may resort to publishing libelous reports in which it publicly labels those who violate the law as “non-compliant”, and it may also suggest summoning the leadership of such violators before the Parliament’s Committee on National Security.
- 4) Individuals and organizations that are “named and shamed” are not entitled to due process or transparency surrounding the investigation and may not appeal against defaming assertions.
- 5) The Protection of National Sovereignty Law also makes it a criminal offense for candidates, political parties and associations participating in elections from using foreign funding to influence or attempt to influence the will of voters for the elections in question.

1. Background

Many countries have enacted domestic laws, commonly referred to as foreign influence legislation, that mandate the disclosure of certain activities involving foreign agents. Such laws are present in countries including the United States, Australia, Israel, the United Kingdom, and Slovakia. Since 2019, the European Commission has proposed a directive on foreign influence to harmonize the various laws among its 27 EU Member States, some of which already have foreign influence laws in effect.¹ Despite lacking the power to regulate the national security of its Member States, the Commission's proposal, which was not discussed by the European Parliament until the June 2024 elections, relies on the EU's competence to harmonize diverse legislation that could create obstacles to the functioning of the internal market.

Most famously in 2016, France enacted the Sapin II Law, which requires registration for foreign agents operating in France.² However, it differs from other foreign influence legislation because France's lobbyist register does not differentiate between foreign and domestic representatives.³ Instead, all lobbyists must disclose any third parties they represent.⁴ However, similar to other foreign influence legislation, the Sapin II Law established a French Anti-Corruption Agency.⁵ In 2024, France proposed foreign influence legislation that more closely resembles FARA.⁶ This law would also require people lobbying for foreign interests to register, with sanctions imposed on those who do not comply. This proposal makes it possible to freeze the financial assets of "people, firms or entities found to have engaged in foreign interference."⁷

Russia expanded foreign influence legislation in 2022 called the Law on Control Over Activities of Entities/Persons Under Foreign Influence.⁸ This law entails extensive reporting requirements and grants the government the power to label those who received support from foreign states or who are under foreign influence as "affiliated with a foreign agent."⁹ This designation comes with a number of restrictions and is made without any sort of trial and cannot be appealed.¹⁰ Under the Russian law, the definition of the term "foreign agent" is broad enough that it can be construed to include nearly anyone, meaning that it can be weaponized to restrict speech and opinions for political reasons.¹¹

¹ *Legislative Proposal Establishing Harmonised Requirements in the Internal Market on Transparency of Interest Representation Carried Out on Behalf of Third Countries*, 2023/0463(COD), EUR. PARL. (2023)

[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2023/0463\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2023/0463(COD)&l=en).

² Loi 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique [Law No. 2016-1691 relating to transparency, the fight against corruption and the modernization of economic life], Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 10, 2016.

³ See THE LAW LIBRARY OF CONGRESS, LOBBYING AND FOREIGN AGENT REGISTRATION LAWS 1, 10-14 (2023).

⁴ See *id.* at 10.

⁵ See *About Us*, AGENCE FRANÇAISE ANTICORRUPTION, <https://www.agence-francaise-anticorruption.gouv.fr/en/lagence>.

⁶ Proposition de loi visant à prévenir les ingérences étrangères en France [Proposed law aimed at preventing foreign interference in France], No. 269, Assemblée Nationale [National Assembly] Mar. 27, 2024.

⁷ See *France's Assemblée passes bill against foreign interference*, LE MONDE (Mar. 27, 2024), https://www.lemonde.fr/en/france/article/2024/03/27/france-s-assemblee-passes-bill-against-foreign-interference_6660175_8.html.

⁸ See ALBERTO ALEMANN & FELIX SAMES, HOW TO EVALUATE A FOREIGN INFLUENCE LEGISLATION? A COMPARATIVE ANALYSIS (The Good Lobby 2023), <https://www.thegoodlobby.eu/wp-content/uploads/2023/11/TGL-Study-How-to-Evaluate-a-Foreign-Influence-Legislation-A-Comparative-Analysis.pdf>.

⁹ See *id.*

¹⁰ *Russia: New Restrictions for 'Foreign Agents'*, HUMAN RIGHTS WATCH (Dec. 1, 2022), <https://www.hrw.org/news/2022/12/01/russia-new-restrictions-foreign-agents>.

¹¹ See *id.*

2. FARA's Origin, Scope and Reform

The U.S. Foreign Agents Registration Act (FARA), enacted in 1938, serves as a disclosure tool aimed at countering foreign propaganda activities, particularly in the context of the pre-World War II era. Its primary goal is to enhance transparency concerning foreign influence within the United States by allowing the government and the public to identify the sources of information from foreign agents. Although FARA's language is quite broad, the U.S. Department of Justice (DOJ) has historically interpreted it narrowly, resulting in relatively limited civil or criminal litigation. In the 84 years since its adoption, fewer than 100 cases have been brought to court under FARA.

In the years following its enactment, FARA was predominantly applied in the 1940s to combat communist and Nazi propaganda, though it was uncommon for the U.S. to prosecute individuals under this law.¹² Recently, however, the DOJ has increased its enforcement of FARA, using the law to prosecute notable public figures such as Paul Manafort and Michael Flynn for their involvement with the Russian government.¹³ Prior to 2016, the DOJ had only brought seven criminal FARA cases and had not pursued any civil injunctive relief since 1991.¹⁴ Since 2016, however, the DOJ has brought cases against more than thirty individuals and organizations on a mixture of criminal and civil charges.¹⁵ While many cases are still pending, parties convicted of criminal FARA violations in recent years have largely faced fines and/or some sort of additional requirements to ensure future compliance with FARA in civil cases.¹⁶ Prison sentences are rare, but the DOJ has sought imprisonment in several particularly egregious cases.¹⁷

As FARA enforcement has increased in recent years, reformers, including the American Bar Association (ABA), have directed additional efforts towards narrowing and clarifying the scope of this law.¹⁸ The ABA created a FARA task force in 2019 and published a report in 2021 outlining potential reforms to the law that would clarify vague terminology of "foreign principal" and narrow the scope of the law. Additionally, many have focused on FARA's eight exemptions for several persons engaging in private and non-political activities as well as other categories such as registered lobbyist, academics, attorneys, and diplomats.¹⁹

In 2022, two dozen non-profit organizations representing a wide spectrum of issues, including the Global Business Alliance, the International Center for Not-for-Profit Law, the Institute for Free Speech, and the National Association of Criminal Defense Lawyers, submitted public comments in response to the DOJ's announcement that it would be considering changes to FARA.²⁰ This growing interest in FARA reform from such different organizations suggests that FARA reform

¹² See Nick Robinson, *Fixing the FARA Mess*, JUST SECURITY (Mar. 16, 2022), <https://www.justsecurity.org/80690/fixing-the-fara-mess>.

¹³ See *Recent FARA Cases*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/nsd-fara/recent-cases>.

¹⁴ AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT, U.S. DEP'T OF JUSTICE (2016).

¹⁵ See *Recent FARA Cases*, *supra* note 13.

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See AM. BAR ASS'N, *FARA: ISSUES AND RECOMMENDATIONS FOR REFORM* (2021); NICK ROBINSON, *FOREIGN INFLUENCE REGISTRATION LAWS AND CIVIL SOCIETY: AN ANALYSIS AND RESPONSES* (International Center for Not-for-Profit Law 2024).

¹⁹ See *Does FARA exempt any activities from Registration?*, CAPLIN & DRYSDALE (2024), www.fara.us; JACOB R. STRAUS, CONG. RSCH. SERV., IF10499, *FOREIGN AGENTS REGISTRATION ACT (FARA): AN OVERVIEW* (2024), explaining that FARA contains eight exemptions that allow a potential registrant to avoid registering with the DOJ (22 U.S.C. § 613). The eight exemptions are for (1) diplomatic or consular officers; (2) officials of foreign governments; (3) staff members of diplomatic or consular officers; (4) private and non-political activities, including the solicitation of funds; (5) religious, scholastic, or scientific pursuits; (6) defense of a foreign government vital to U.S. defense; (7) certain persons qualified to practice law and who are engaged in certain legal representation; and (8) persons engaged in lobbying activities and registered under the Lobbying Disclosure Act (LDA; 2 U.S.C. §§1601-1614).

²⁰ See *Clarification and Modernization of Foreign Agents Registration Act (FARA) Implementing Regulations*, 28 Fed. Reg. 70787 (Dec. 13, 2021); *Fixing the FARA Mess*, *supra* note 13.

has become increasingly popular but its outcomes remain uncertain but the exemption for foreign registered lobbyist has been highly criticized.²¹

FARA reformers are largely seeking a narrowing of the law in two areas. First, they have called for a more robust definition of the term “foreign principal” that clearly distinguishes government bodies from foreign nationals and NGOs under the law.²² Second, critics have requested clarification on what it means for an agent to be acting at the request of a foreign principal and suggested that FARA narrow the kinds of activities within its scope.²³

Overall, many FARA reformers are concerned that the broad nature of FARA’s language will be increasingly and unnecessarily used to interfere with non-profits, businesses, media, religious institutions, universities, and other organizations in a manner contrary to congressional intent and contrary to the First Amendment.²⁴ Additionally, with the politicization of FARA, reformers have argued that it has come time for either Congress or the courts to intervene.²⁵ However, while many bills to reform FARA have been proposed over the years, FARA has not been amended since 1995.²⁶ With growing calls for clarity, Congress may finally enact some sort of change to FARA.²⁷

²¹ See STRAUS, *supra* note 19.

²² See AM. BAR ASS’N, *supra* note 18, at 6-9.

²³ See ROBINSON, *supra* note 18, at 6-9.

²⁴ *Fixing the FARA Mess*, *supra* note 13.

²⁵ See *id.*

²⁶ See Andy Wright, et al., *Foreign Agents Registration Act Reform: On the 2022 Agenda?*, JUST SECURITY (Feb. 7, 2022), <https://www.justsecurity.org/80110/foreign-agents-registration-act-reform-on-the-2022-agenda/>; See e.g., Retroactive Foreign Agents Registration Act, H.R.4545, 118th Cong. (2023); Foreign Agents Disclosure and Registration Enhancement Act of 2021, S. 1724, 117th Cong. (2021).

²⁷ See Brian J. Fleming, et al., *Potential for FARA Reform in the 118th Congress*, STEPTOE (May 18, 2023), <https://www.steptoel.com/en/news-publications/political-law-blog/potential-for-fara-reform-in-the-118th-congress.html>.

3. Hungary's track record of foreign influence legislation

Hungary's newest foreign interest legislation, the Protection of National Sovereignty Law, was adopted on December 12, 2023.²⁸ The governing dynamics of this legislation stems from the government's endeavour to legally condemn certain individuals and organisations whose criticism it considers to closely relate to predominantly foreign funding.

The adoption of the Protection of National Sovereignty Law is not the first attempt on the Hungarian government's behalf to substantiate the political assumption that funding received by Hungarian rights defense groups and watchdog organisations from abroad puts these organisations' credibility and professionalism to serious risk and it ultimately transforms them into obedient mouthpieces of the donors.

In 2017, the first legislation aiming to suggest the existence of causality between the fact that an organisation accumulates revenues from non-Hungarian resources and the credibility and reliability of opinions asserted by such organisations was the Law on Transparency of Organisations that receive Support from Abroad.²⁹ In its opinion, the Council of Europe's Venice Commission raised concerns that portraying "civil society organisations receiving foreign funding ... as acting against the interests of society ... may breach the prohibition of discrimination" and asked for profound reconsideration.³⁰ In 2020, following an infringement procedure commenced by the European Commission against the Hungarian government in 2018, the Court of Justice of the European Union (CJEU) found that the Law on Transparency of Organisations which received Support from Abroad "introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations", as a result of which this legislation had to be repealed.³¹

Despite the pending process, the political determination to expose certain civil society organisations to potential sanctions still prevailed, and manifested in the adoption of the so-called "Stop Soros" legislation in 2018, which served to outlaw people who assist asylum-seekers to claim asylum by threatening them with punishments of up to one year in prison.³² In a 2021 ruling, resulting from another infringement procedure initiated by the Commission, the CJEU found that with the introduction of this law, Hungary has failed to fulfil numerous asylum and international protection obligations under several EU directives.³³ Preceding the CJEU's ruling, the Venice Commission voiced severe criticism, too, in an opinion which it concluded by calling on Hungary's government the repeal the "Stop Soros" law.³⁴ Therefore, Hungary had to utterly amend

²⁸ A nemzeti szuverenitás védelméről szóló 2023. évi LXXXVIII. törvény [Act LXXXVIII of 2023 on the protection of national sovereignty], translated in Act LXXXVIII of 2023 on the protection of national sovereignty, CDL-REF(2024)006 (Venice Commission 2024), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2024\)006-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2024)006-e).

²⁹ A külföldről támogatott szervezetek átláthatóságáról szóló 2017. évi LXXVI törvény [Act LXXVI of 2017 on the Transparency of Organisations Receiving Support from Abroad].

³⁰ Hungary: Opinion on the Draft Law on the Transparency of Organisations Receiving Support From Abroad, CDL-AD(2017)015, Venice Commission (June 20, 2017).

³¹ Judgment of the Court in Case C-78/18, ECLI:EU:C:2020:476 (June 18, 2020). For the infringement procedure, see Hungary: Commission launches infringement procedure for law on foreign-funded NGOs, European Commission (Jul. 13, 2017), https://ec.europa.eu/commission/presscorner/detail/es/ip_17_1982. Act LXXVI of 2017 on the Transparency of Organisations Receiving Support from Abroad was repealed by Act XLIX of 2021 on Transparency of Civil Society Organisations whose Activities may Influence Public Opinion [a közélet befolyásolására alkalmas tevékenységet végző civil szervezetek átláthatóságáról szóló 2021. évi XLIX. törvény].

³² Egyes törvényeknek a jogellenes bevándorlás elleni intézkedésekkel kapcsolatos módosításáról szóló 2018. évi VI. törvény [Act VI of 2018 amending certain laws in relation to measures against illegal immigration].

³³ Judgment of the Court in case C-821/19, ECLI:EU:C:2021:930 (Nov. 16, 2021). For the infringement procedure, see Hungary: Commission launches infringement procedure for law on foreign-funded NGOs, European Commission (Jul. 13, 2017), https://ec.europa.eu/commission/presscorner/detail/es/ip_17_1982.

³⁴ Hungary: Joint Opinion on the Provisions of the so-called "Stop Soros" draft Legislative Package which directly affect NGOs, CDL-AD(2018)013, Venice Commission (June 25, 2018).

the most intrusive provisions of the “Stop Soros” law, among others the ones criminalising assistance to asylum-seekers.³⁵

The enactment of the Protection of National Sovereignty Law serves as a testament to the Hungarian government’s continuous efforts to undermine the credibility of critical civil society organizations, thereby increasing reputational risks and administrative burdens for these groups. Unsurprisingly, in its report, the Venice Commission articulated serious criticism in connection with the Protection of National Sovereignty Law. Concerns resulted from the failure to “provide sufficient guarantees of the [Sovereignty Protection] Office’s independence”, making the Venice Commission conclude that as a “State administration organ” whose President is appointed and dismissed by the executive branch of government, the “[Sovereignty Protection] Office cannot be considered as an independent organ”. Furthermore, the Venice Commission noted that the Sovereignty Protection Office was “provided extremely broad – and vaguely defined – competences” enabling it to “interfere with the privacy of any legal or natural entity and engage in naming and shaming of this entity without being subject to any control and without any review mechanism ... which risks leading to arbitrary and politically motivated application of the law”. The Venice Commission found that there was “a high risk that the establishment and activities of the [Sovereignty Protection] Office will have a chilling effect on the free and democratic debate in Hungary”.³⁶

Equally concerned was the European Commission, which in February 2024 commenced an infringement procedure against Hungary for violating EU law by the adoption of the Protection of National Sovereignty Law.³⁷ In this case, the European Commission considered that the Hungarian legislation was in violation of primary and secondary EU laws that included: “the democratic values of the Union; the principle of democracy and the electoral rights of EU citizens; several fundamental rights enshrined in the EU Charter of Fundamental Rights, such as the right to respect for private and family life, the right to protection of personal data, the freedom of expression and information, the freedom of association, the electoral rights of EU citizens, the right to an effective remedy and to a fair trial, the privilege against self-incrimination and the legal professional privilege; the requirements of EU law relating to data protection and several rules applicable to the internal market.”³⁸ This shows how the European Commission has moved from a narrow towards a more systemic approach to rule of law violations in Hungary, at least in the sense that it is ready to launch an infringement procedure in a complex case of defiance of rule of law and core values of the European Union, although this tool was designed to address sectoral breaches of the union law.

It appears that the Hungarian government is deliberately attempting to provoke various European institutions by presenting new challenges to human rights and democracy. In this very case, however, both the European Union and the Council of Europe consistently demonstrate vigilance and take a firm stance to uphold the principles violated by the Hungarian government. If all parties adhere to this approach, the Hungarian government is likely to face yet another conviction by the CJEU.

³⁵ Amendments were introduced by Act LX of 2022 on Amending Certain Criminal and other Related Laws [egyes büntetőjogi tárgyú és ehhez kapcsolódóan egyéb törvények módosításáról szóló 2022. évi LX. törvény].

³⁶ Hungary: Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty, CDL-AD(2024)001, Venice Commission (Mar. 18, 2024).

³⁷ INFR(2024)2001; *May Infringements Package: Key Decisions*, European Commission (May 23, 2024), https://ec.europa.eu/commission/presscorner/detail/EN/inf_24_2422 (relating memo by Commission).

³⁸ See *February Infringement Package: Key Decisions*, European Commission (Feb. 7, 2024), https://ec.europa.eu/commission/presscorner/detail/en/inf_24_301 (Point No. 4).

4. The substance of the Protection of National Sovereignty Law

The Protection of National Sovereignty Law introduces Hungary's Sovereignty Protection Office (SPO), a standalone state organ devised to implement the law. As an autonomous state agency, the SPO shall not be overseen by any other state organ, save for the Parliament, whose oversight is, however, formal, and is practically limited to fiduciary control, which manifests in the approval of the SPO's annual budgets.³⁹ The selection and the appointment of the SPO's leadership is largely politicised, with the SPO's president being nominated by the prime minister and appointed by the president of the republic and the two vice-presidents being appointed by the SPO's president. The SPO's president can only be removed in the occasion of failing to meet the requirements for appointment, *ergo*, the Protection of National Sovereignty Law does not provide any procedure or mechanism to cases of misconduct or breach of professional obligations, offering no solutions to control the leadership's conduct.

The SPO's numerous competences cover four main areas, which include analytical activities (i), assessment activities (ii), proposal-making activities (iii) and investigative activities (iv). The SPO's main task within the purview of analytical, assessment and proposal-making activities relates to the development of a sovereignty risk assessment methodology which serves to substantiate the National Sovereignty Report to be published annually by the SPO.

The SPO's broadly defined investigative activities encompass multiple tasks. The SPO is empowered, *inter alia*, to investigate interest representation activities, disinformation activities and activities aiming at the manipulation of information, as well as activities whose aim is to influence democratic discourse and state and social decision-making processes, on condition that such activities are carried out in the interest of another state or, irrespectively of its exact legal status, of a foreign organ or organisation or of a natural person provided that any of the activities concerned represents harm to or may otherwise jeopardise the sovereignty of Hungary. Besides, the SPO investigates organisations whose activities are funded with supports from abroad, if such activities may exert influence on the outcome of elections. Moreover, the SPO investigates organisations which use supports from abroad to perform or support activities aimed at influencing the will of voters.

The extensive material scope of the SPO's jurisdiction corresponds to the broadly defined personal scope of the Protection of National Sovereignty Law, which covers practically all individuals and legal entities, except for the members of the diplomatic corps.

While performing investigative activities, the SPO is empowered among other things to request the investigated organisation to provide information and access to data and to provide copies of documents. In addition to publishing the annual National Sovereignty Report, the SPO examines and investigates individual incidents and publishes related findings and conclusions in separate reports.⁴⁰

The SPO cannot impose sanctions, at least not in the traditional sense, which means that in case of non-compliance, the SPO may not impose fines or other pecuniary sanctions, nor may it order operational restrictions or impose injunctions. However, it has the power and the possibility to do 'naming & shaming' by publicly labelling any person or legal entity failing to provide information as 'non-compliant', and it may suggest the summoning of the leadership of any entity concerned by the Parliament's Committee on National Security. Although these sanctions seem to be soft in nature, they serve much more to further discredit these organisations and to exert a chilling effect instead of aiming to deter non-compliance. More disturbingly, the SPO's reports are exempted

³⁹ Nonetheless it needs to be noted that albeit the SPO is in place since February 1, 2024, Hungary's law on the national budget does not provide for the new office's allowances. Instead, the government of Hungary arranges for monthly allowance of the SPO in individual resolutions, which makes the SPO reliant on the government.

⁴⁰ The SPO's first report of this kind is available on the SPO's Facebook account: Jelentés az X közösségi platformon megjelent felvételek vizsgálatáról [Report on the examination of recordings published on social platform X], Szuverenitásvédelmi Hivatal [Sovereignty Protection Office] (May 22, 2024), <https://tinyurl.com/3r6keer3>.

from any legal remedy, i.e., no complaint or appeal can be submitted against any finding or conclusion made by the SPO or contained in any of its reports. The possibility of the SPO to publish reports with potentially libellous or defamatory content without having to risk an appeal process or a court litigation equates to a form of verbal / rhetorical sanctioning, whose chilling potential is beyond doubt. Moreover, the immunity from legal remedies clearly contradicts the due process requirement expanded by Hungary's Fundamental Law to not just to courts of law, but to the procedures of any state organ.

The SPO's power to initiate a hearing process by the Parliament's Committee on National Security and to have the leadership of entities it investigates summoned by this Committee's president carries the potential to deter both individuals and organisations from asserting critical contents in order to avoid the risk of being called upon to give a testimony to the committee. The chilling effect that follows from this possibility is yet another form of sanctioning, but the organisations concerned may find potentially vexatious processes and smear campaigns that aim to throw their credibility into disrepute even more prominently burdensome.

The lack of the possibility to appeal against sanctions imposed by the SPO, the general lack of oversight over the SPO, and the exclusion of legal remedies, beyond invoking profound concerns from a rule of law perspective, effectively prevent the development of court standards and precedents that would outline what is acceptable and what is forbidden. Without external control, the SPO may arbitrarily restrict the extent to which individuals and entities can enjoy fundamental freedoms such as the freedom of expression, the freedom of speech, or the freedom of assembly. The potentially arbitrary character of its actions and operations and the lack of judicial review makes the SPO's functioning unforeseeable and prevents any person from being able to define if his or her conduct is going to remain in line with legal expectations or not. In the absence of predictability, external control and judicial oversight, the SPO's functioning threatens to become entirely unaccountable, which is incompatible with the principle that in a system of rule of law, state organs shall not have unlimited powers and may not exercise their functions in a way that threatens public equilibrium.

Regarding the complexity of challenges following from the Protection of National Sovereignty Law, it is safe to conclude that this regulation violates the freedom of speech and the fair trial principle, both of which are inherent rights defined in Hungary's Fundamental Law.

5. Comparing Hungary’s Protection of National Sovereignty Law to FARA

Even though arguments presented by government apologists suggest that Hungary’s Protection of National Sovereignty Law follows an example set by the United States and explicitly invoke, among others, FARA to substantiate their reasoning, there is little in common in these two regulations.⁴¹

Though under Hungary’s Protection of National Sovereignty Law, registration is not required, the SPO may “identify and investigate organizations that receive funding from abroad... aimed at influencing the will of voters.”⁴² The scope and language of the Protection of National Sovereignty Law resembles FARA, with the law also using terms such as, “foreign interest”, “foreign support”, “foreign influence”, “foreign interference” and “political activities”.⁴³ Unlike the DOJ, the SPO cannot impose sanctions such as fines or operational restrictions, nor can it impose an injunction following a violation of the law. Instead, the SPO has the power to “name and shame” those that violate the law by publicly labelling such violators as “non-compliant”. The SPO may also suggest summoning the leadership of a violating entity before the Parliament’s Committee on National Security.

This legislation also amended Hungary’s criminal code, making it a felony offense for a candidate to use “prohibited foreign support” with a punishment of three years imprisonment.⁴⁴ Additionally, it amended the criminal code to disqualify anyone guilty of illegally influencing the will of voters from becoming “a responsible person in a non-governmental organization or holding an office in a political party.”⁴⁵ With regard to the broad interpretation of the concept of criminal complicity under courts’ jurisprudence in Hungary, criminal sanctions threaten anyone who instigates, aids or abets the candidate who uses “prohibited foreign support”.

Hungary’s law was met with concern because it allows the SPO to publish libellous or defamatory content, with no legal remedies for due process available for affected parties to seek a correction. Additionally, there is concern over the level of oversight applied to the SPO and the inability for the court to provide standards and precedents that would define what constitutes a violation of this law.

Overall, despite sharing much of the same language, FARA and Hungary’s Protection of National Sovereignty Law will be applied much differently, likely providing persons and entities falling under the jurisdiction of Hungary’s SPO with less transparency and predictability in how the Protection of National Sovereignty Law will be enforced. In fact, with no right to appeal foreign influence designations and a focus on public labelling rather than criminal prosecution, Hungary’s law may more closely resemble Russia’s controversial foreign influence law.⁴⁶

Even though the SPO has not exhibited much activism with only one report so far, interviews by its president leave just little doubt that primary focus will go to the government’s domestic critics

⁴¹ See, e.g., Láncki, Tamás – Kiszelly, Zoltán: *A szuverenitásvédelmi törvény nem orosz, hanem éppen amerikai példa alapján született* [The Protection of National Sovereignty Law follows a US model, not a Russian one], Magyar Nemzet (Dec. 15, 2023), <https://magyarnemzet.hu/belfold/2023/12/a-szuverenitasvedelmi-torveny-nem-orosz-hanem-eppen-amerikai-pelda-alapjan-szuletett-video> and Lomnici, Zoltán: *Az amerikai és magyar szuverenitásvédelmi normák átfedései* [Overlaps between American and Hungarian norms to defend sovereignty], ALAPTÖRVÉNY (Dec. 15, 2023), <https://alaptorvenyblog.hu/az-amerikai-es-magyar-szuverenitasvedelmi-normak-afedesei.html>

⁴² *Hungary passes contested laws against foreign influence*, EURACTIV (Dec. 13, 2023), <https://www.euractiv.com/section/elections/news/hungary-passes-contested-laws-against-foreign-influence>.

⁴³ See Act LXXXVIII of 2023 on the protection of national sovereignty, *supra* note 28, at Preamble, § 3; See also Előterjesztői indokolás, A nemzeti szuverenitás védelméről szóló 2023. évi [LXXXVIII.] törvényhez [Explanatory note to the Act LXXXVIII of 2023 on the Protection of National Sovereignty], Országgyűlési Hivatala [Parliamentary Office] (Dec. 11, 2023), <https://www.parlament.hu/irom42/06222/06222ind03.pdf>.

⁴⁴ Act C of 2012 on the Criminal Code, § 350/A.

⁴⁵ Act C of 2012 on the Criminal Code, § 52(5).

⁴⁶ See ALEMANNO & SAMES, *supra* note 8; ROBINSON, *supra* note 18, at 10.

instead of uncovering real threats to Hungarian sovereignty. At least Mr Láncki, president of the SPO asserted in an interview he gave to Bloomberg just nine days from the SPO's inauguration that "probing potential Russian and Chinese influence via classified nuclear and rail contracts worth billions of dollars won't be a priority now."⁴⁷ Mr Láncki succinctly summed up his opinion by stressing that "just because its classified isn't necessarily an issue of sovereignty," a disquieting introductory statement on behalf of an authority devised to protect national sovereignty.⁴⁸

⁴⁷ Zoltan Simon, *Orban Loyalist Who Ran 'Soros List' Targets Foreign Influence*, BLOOMBERG (Feb. 9, 2024), <https://www.bloomberg.com/news/articles/2024-02-09/orban-loyalist-who-ran-soros-list-targets-foreign-influence?sref=rOHF391B>.

⁴⁸ *Id.*

6. Conclusion

The U.S. Foreign Agents Registration Act (FARA) and the Hungarian Protection of National Sovereignty Law ostensibly share similar objectives and broad applications in monitoring the activities of foreign agents. However, their enforcement is likely to differ significantly due to the distinct powers of the respective governmental agencies involved, the way each law creates requirements and exemptions and the varying due process and fundamental rights protections, particularly those related to free speech and transparency in administrative proceedings, available in each country.

FARA requires individuals acting on behalf of foreign principals to self-register and disclose their relationships and activities involving foreign principals. Its enforcement is handled by the U.S. Department of Justice through a trial and eventually a verdict that can be appealed in court. Violating FARA, by either making a false statement or omitting information, may result in criminal and civil penalties, including a fine of up to \$10,000, imprisonment for up to five years, a temporary or permanent injunction, and/or a restraining order. Since 2016, the DOJ has increased the number of cases brought to court against thirty individuals and organizations on a mixture of criminal and civil charges based on fines or additional requirements that are non-burdensome to ensure compliance rather than prison sentences.

Under the Hungarian Protection of National Sovereignty Law, the government through the Sovereignty Protection Office (SPO) has the power to investigate and identify organizations that have received foreign funding aimed to influence voters, but individuals and organizations are not required to register. Rather than a mandatory registration, the SPO enforces the law by assigning a label to organizations believed to be non-compliant with the law. The law also makes it a criminal offense punishable up to three years in prison for candidates, political parties and associations participating in elections to use foreign funding to influence or attempt to influence the will of voters for the elections in question. Individuals and organizations targeted by the SPO's investigation or receive a non-compliant label are not entitled to due process or transparency surrounding the investigation and may not appeal the label. The only possible judicial review of the Hungarian law could happen through the infringement proceedings initiated by the European Commission for several violations of European Union law, the Charter of Fundamental rights and the European Convention of Human Rights.⁴⁹

However, in their respective application, these two laws differ because, while the U.S. government, through FARA, encourages a non-burdensome and voluntary disclosure of foreign agents, it is not intended to create chilling effects in the democratic debate over national policies, nor does it attempt to discredit government-critical organisations. The goal of FARA is to disclose who is influencing public debates over national policies while a different set of U.S. laws on campaign financing prohibit any foreign national from giving money to political parties, including involvement in decisions over advertising in electoral campaigns.⁵⁰

Hungary's Protection of National Sovereignty Law seeks to investigate the activities of individuals and organisations that might circumvent the prohibition on using foreign funding to influence electoral processes. By creating a *sui generis* investigative process within the Sovereignty Protection Office (SPO) and allowing for the possibility of criminal sanctions, this law has created chilling effects for NGOs and any individual or corporation receiving foreign funding for activities that extend beyond campaign financing. Rather than FARA's generous exemptions geared to foster democratic debates over public policies, Hungarian legislation achieves the opposite result by targeting activities that "may infringe and threaten national sovereignty", including lobbying, disinformation, and influencing democratic decision-making on behalf of a foreign organization.

⁴⁹ See AMNESTY INTERNATIONAL & HUNGARIAN HELSINKI COMMITTEE, HUNGARY'S ACT ON THE PROTECTION OF NATIONAL SOVEREIGNTY IN BREACH OF EU LAW (2024), https://helsinki.hu/en/wp-content/uploads/sites/2/2024/02/Sovereignty_Protection_Act_breaches_EU_law_2024.pdf

⁵⁰ See Prohibition on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals, 11 C.F.R. § 110.20.