

TRANSPARENCY VS. DELEGITIMIZATION?
SHRINKING SPACE FOR FOREIGN-FUNDED ORGANIZATIONS IN DEMOCRACIES:
HUNGARY AND ISRAEL

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DEDICATION

I dedicate this thesis to
students with the interest in global philanthropy,
researchers focusing on international giving,
practitioners working with foreign-funded NGOs, and
policy-makers seeking to create enabling environment for philanthropy.

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The shrinking space for civil society and the increasing number of unfavorable legislation affecting the work of non-governmental organizations continue to be burning issues for global philanthropy. Using a case study approach, this thesis explores how democracies regulate the operation of foreign-funded non-governmental organizations in Hungary and Israel. This thesis examines what the presumed and real motivations of democratic governments are to adapt such regulations and how the political, economic and socio-cultural environments might influence their enactment. This thesis also compares the Hungarian and Israeli regulations to the 1938 Foreign Agents Registration Act.

Catherine Herrold, Ph.D., Chair

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INTRODUCTION

Foreign agents regulations and laws affecting the operation of foreign-funded non-governmental organizations (NGOs) have increased in the last decade. Indeed, since 2012, 98 laws restricting freedom of association or assembly were adopted around the world (Rutzen, 2015), and countries like Hungary, India, Israel, Kyrgyzstan, Russia, Slovakia, and Ukraine, have implemented or planned to implement laws on foreign agents' registrations to make the operation of foreign-funded organizations more transparent. Several global indices, such as the Global Philanthropy Environment Index (IUPUI Lilly Family School of Philanthropy, 2018), Freedom in the World (Freedom House, 2018), State of Civil Society Report (CIVICUS, 2017), and comparative studies (Anheier, 2017, Laufer, 2017, Rutzen, 2015) have highlighted shrinking civil society and new restrictions on NGOs' ability to receive foreign funding in both developing and developed countries as emerging trends.

Numerous countries enacted foreign NGO laws to fight against illicit financial flows, defined as "money illegally earned, transferred, or used that crosses borders" (The World Bank, 2017). However, in the course of fighting against money laundering and financing terrorism, several developed Western democracies - such as France, Spain, the United Kingdom, and the United States - implemented regulations that directly or indirectly narrowed the operation of NGOs (European Parliament, 2017, p. 10-11). Most recently two member states of the Organization for Economic Co-operation and Development (OECD) - Hungary and Israel – enacted much stricter laws to monitor and control the operation of foreign-funded NGOs. The Hungarian and Israeli governments each claim that the enactment of foreign agents regulations was necessary to increase the transparency of NGOs and protect their country's national security. Both countries stated that the United States' 1938 Foreign Agents Regulation Act (FARA) served as the baseline for their own foreign agents regulations: the Act LXXVI of 2017 on

the Transparency of Organizations Receiving Support from Abroad in Hungary, and the Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016 in Israel.

Even though foreign agents regulations, and NGO laws in general, are only one part of the shrinking space challenge, they are an important indicator for the state of civil society. As new, cross-border challenges such as environmental disasters, refugee crises, and money laundering have emerged, civil society, and especially cross-border philanthropy, have become extremely important actors of the global arena. The United Nations aims to strengthen the engagement with civil society and its international role to successfully implement and monitor the 2030 Sustainable Development Goals (CIVICUS, 2017c). Additionally, the European Union developed policy tools to fight against restrictions on civil society because such restrictions “are intensifying in non-democratic but also democratic countries” (European Parliament, 2017, p. 5). As the closing space often targets human right organizations and civil society organizations focusing on democracy and accountability, it is time to pay closer attention to this phenomenon before democracy and democratic values are threatened across the globe. Last, but not least, we need to start a global conversation to enhance civil society and simultaneously find the right scale of necessary limitations to protect one of the universal human rights; the right to freedom of peaceful assembly and associations (Universal Declaration of Human Rights, Article 20).

Thus, proliferation of foreign NGO laws, especially in developed countries, urges researchers to better understand the phenomenon and raise awareness among political and philanthropic leaders to prevent the further shrinkage of civic space. While Western democracies seem to fight for a more enabling philanthropic environment worldwide that supports cross-border activities as well, two Western countries, Hungary and Israel enacted foreign agents regulations to monitor and control the operation of foreign-funded NGOs. This

thesis answers the questions: 1) what are the presumed and real public rationale of Western governments that have passed foreign agents regulations and 2) how might the political, economic and socio-cultural environments influence the enactment and implementation of such regulations.

To analyze the recently enacted foreign agents regulations in OECD countries, a scan of all 35 OECD countries was performed and Hungary and Israel were identified as the OECD member states that enacted such regulations in 2017 and 2016, respectively.

Then, the thesis compares the Hungarian and Israeli political, economic, and socio-cultural environment using international indices and cross-country comparative studies and provides two case studies about the Hungarian and Israeli foreign agents regulations.

The case studies focus on three main areas: first, they discuss the development of civil society in Hungary and Israel to see the significance and roles of NGOs in both countries. Then, to better understand the antecedent events and main rationales that led to the enactment of foreign agents regulations, government statements and interviews with government officials are analyzed. The case studies then analyze the most important parts of each new piece of legislation. Finally, the domestic and international criticism against the Hungarian and Israeli foreign agents regulations are discussed using local and international press releases.

Lastly, the two regulations – the Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad in Hungary and the Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016 – are compared to each other, using the 1938 Foreign Agent Registration Act as a model, due to the fact that both governments claimed that their laws copied the U.S. regulation. Finally, the study provides recommendations for policymakers to be able to balance between the protection of national security and the enhancement of civil society in future policy-making processes.

The findings show that both Hungary and Israel are economically healthy countries, but they have faced external as well as internal challenges, such as the European refugee crisis and the Israeli-Palestinian conflict, respectively. Both governments stated that they aimed to increase the transparency of civil society and protect the national interests by enacting foreign agent regulations, however, the phrasing and specific regulations of both laws drew international criticism for primarily targeting NGOs that openly oppose government programs or promote human rights and transparency. Some argue that these regulations have actually stigmatized and delegitimized the work of NGOs rather than protected national security. Indeed, we can conclude that both the Hungarian and Israeli foreign agents regulations were used to further strengthen the power and legitimacy of the current governments.

Additionally, the thesis also finds that the foreign agents regulations implemented by the Hungarian and Israeli governments are much stricter than the United States' Foreign Agents Registration Act. Unlike the U.S. law, the Hungarian and Israeli regulations target NGOs and do not take into consideration whether such NGOs act as agents of foreign principal as a consequence of receiving foreign funding. Therefore, we can conclude that the new regulations serve more as a political tool to strengthen the governments' nationalistic ideology and power than as a measure to increase transparency in the nonprofit sector. As a consequence, the spread of foreign agents regulations could be an indicator not only for the shrinking space of civil society, but also for a threat against Western democracies that seem to be more fragile than expected.

CHAPTER ONE: HAVING A CLEAR PERSPECTIVE – THEORIES, CONCEPTS, AND AREAS OF RESEARCH FOCUS

Numerous researchers have studied the supportive political, economic, and social roles of nongovernmental organizations (NGOs) in liberal democracies and in countries in transition (Diamond, 1994; Dodge and Ospina, 2016; Edwards, 2014) as well as the recent trends of shrinking civic space (Anheier, 2017; CIVICUS, 2016; Dupuy et al., 2016; Rutzen, 2015; International Center of Non-for-Profit Law, 2016). However, very few articles have analyzed the appearance of restrictive NGO laws in developed countries, such as Hungary, Spain, and the United States. In order to analyze the legislation targeting foreign-funded NGOs in member states of the Organization for Economic Co-operation and Development, it is important to understand the main concepts and theories related to the current research.

Section 1.1 defines the terms of nongovernmental organizations and civil society organizations. While these terms are used interchangeably, the thesis will use the former term due to the association between NGOs and foreign funding, since the Hungarian and Israeli regulations primarily target foreign-funded organizations and do not necessarily address other formal or informal institutions operating in the civic space. Section 1.2 briefly discusses the roles and development of NGOs to better understand the functions of the organizations targeted by anti-foreign NGO regulations.

Section 1.3 focuses on one of the main trends of the philanthropic sector internationally, which is the shrinking space for NGOs. As several reports and studies recently stated (Rutzen, 2015; Wilson, 2016; Dupuy et al., 2016; European Foundation Centre, 2016; Anheier, 2017; European Parliament, 2017), several governments challenged both the enabling political environment for and the freedom of associations. Indeed, 64 restrictive laws, regulations, and other initiatives were introduced around the world since 2015 (International

Center of Non-for-Profit Law, 2016) and more than 20 countries have implemented anti-foreign NGO laws targeting NGOs that receive international financial resources. Both developing and developed countries announced such legislation. Most recently two European Union member states, Austria and Hungary, limited the freedom of foreign-funded NGOs, and Slovakia might implement similar legislation in the future.

Section 1.4 explores how and why governments and other actors on the global stage often see the roles and values of foreign-funded, international NGOs differently. The section focuses on why governments feel the need to regulate the operation of foreign-funded NGOs and highlights some of the concerns of foreign-funded NGOs including their legitimacy and lack of accountability.

Section 1.5 focuses on countries that are members of the Organization for Economic Cooperation and Development, the geographic area of the current research. It analyzes the main characteristics of the cooperation and highlights that four of the member states have direct legislation on foreign-funded NGOs, or a subgroup of such organizations in the case of Austria. Simultaneously, several countries, including France, Spain and the United Kingdom, have introduced anti-money laundering laws that restrict the free operation of NGOs. Thus, we can infer that the shrinking space for NGOs is a relevant issue for developed, high-income countries as well. Finally, section 1.6 briefly discusses the main characteristics of two different types of legislation that affect international funding of NGOs: the international standards related to the fight against anti-money laundering and combating the financing of terrorism; and foreign agent laws.

1.1. Nongovernmental organizations vs. civil society organizations

The nonprofit literature uses a vast array of terms for organizations operating in civil society, such as civil society organizations (CSOs), charity organizations, nonprofit organizations,

nongovernmental organizations (NGOs), and philanthropic organizations. The different terms focus on these organizations' different aspects, such as legal, economical, functional, or structural, and the terms used in scholarship and practice also differ depending on the geographic area. Anheier (2014) argues that the terms, therefore, cannot capture the entirety of these organizations. Salamon (2002, p.4) states that the common denominator of these organizations is that they are "dedicated to mobilizing private initiative for the common good." NGOs are institutionalized, self-governing, non-compulsory organizations that are independent from the government and do not distribute their profit if they generate any (United Nations, 2003). These organizations are highly professionalized - officially established, run by employed staff, well-supported, relatively large, and well-resourced - and promote social and economic development (Mercer, 2002, Anheier, 2015) while serving as important political actors in democratization as pillars of civil society (Bratton, 1998), especially in developing countries (Dupuy et al., 2016).

Another term used by this study is civil society organizations. Anheier (2015) describes CSOs as organizations that emphasize the voluntary associations of citizens and operate outside of both the public and business sector. Several researchers, such as Habermas' (1991), Gellner's (1994), Hadenius and Ugglä' (1996) or Keane's (2009) defines CSO as involuntary, self-organized institutions, operating independently from the state while offering public space for interaction. Even though the definition and roles of CSOs are similar to NGOs, CSOs often refer to domestic organizations with a primary focus on social service provision, especially in Latin America and Eastern Europe where these organizations played a key role in rebuilding the public space outside of the autocratic government in the 1980s and 1990s. Carothers (1999) strictly differentiates between the roles of civil society and NGOs, underlining that NGOs are only a narrow subsector of civil society.

In the current international arena the term “NGOs” is often given a negative connotation by governments that use the term to refer to organizations that receive substantial funds from abroad and whose main activities are advocacy for and promotion of human rights, transparency, and other liberal values. As following chapters of this study shows, governments have used both terms to be able to distinguish foreign-funded CSOs (referred to as NGOs) from other CSOs, even if differences between these two types of organizations did not exist before the implementation of anti-foreign NGO regulations.

The thesis uses the terms NGOs and CSOs interchangeably to mean institutionalized, self-governing, non-compulsory, not-for-profit organizations that are independent from the government. The term NGOs primarily emphasizes those organizations that are attacked by anti-foreign NGO regulations. The general attributes of the organizations targeted by such legislation are the following: these organizations are not related to the government, but they are important policy actors; their activities include advocating for human rights, government transparency, and liberal values; and they receive substantial amount of charitable contributions from abroad.

1.2. The development of NGOs and their roles in democracy

Civil society and NGOs are important actors to support opposition to government and the democratization of countries across the world (Diamond, 1994; Dodge and Ospina, 2016; Edwards, 2014; Newton 2001). NGOs are able to pluralize both the domestic and international political arena by representing different interest groups in an institutional setting (Silliman and Nable, 1998), to widen and deepen the possibilities of citizen participation by supporting marginalized groups to engage with the government and creating relational and framing practices for individuals (Fisher, 1998, Dodge and Ospina, 2016), to serve as free schools of democracy by inspiring individuals to democratically express their interests and ideas and

recruiting and training future political leaders (Diamond, 1994); and to check the state power and enhance transparency by challenging its autonomy and developing alternative policies as well as disseminating information (Diamond, 1994, Diamond et al., 1995, Fisher, 1998, Anheier, 2017).

Despite the supporting role in democratization, NGOs can also weaken liberal democracies and civil society in general. Authoritarian regimes often use NGOs in order to maintain their own power. Governments that highly regulate and monitor the operation of NGOs can use these organizations as instruments of the state's social control and the so-called political liberalization only serves as part of the autocracy's survival strategy (Wiktorowicz, 2000). Government-related NGOs can legitimate authoritarian regimes by creating a relatively liberal political climate and answering Western governments' demand for creating a pluralized civil society, even though these NGOs are highly monitored by the government (Albrecht, 2015). Brumberg (2003) argues that liberalized autocracies often promote the growth of NGOs but only those that provide social services to the society that can further strengthen the legitimacy and power of the government itself. Additionally, government-related NGOs allow the government to monitor collective actions that discourage political participation and anti-government protests in general.

CSOs and NGOs are "the most rapidly growing organizational domain in the world" (Hall, 2016, p. 3). International NGOs show unprecedented growth: the total international NGO membership grew 78% between 1990 and 2010; 426% in Central and Eastern Europe and 77% in the Middle East and North Africa during throughout the same time period (Anheier, 2014, p. 463). According to the Union of International Associations (2017), there are more than 75,500 international NGOs even though we can infer that the growth of international NGOs became slower in the 21st century. International NGOs recently have shown a trend of repoliticization,

focusing on democracy and social justice (Anheier, 2014). In particular, foreign-funded NGOs have gained place in the political arena, and these organizations have been the focus of intense controversy as both the public and legislators try to better understand and regulate such organizations' operation and accountability.

NGOs' roles in mobilizing opposition, supporting multi-player elections, establishing new forms of accountability and transparency and advocating for public interest causes including human rights and anticorruption have been well-observed in countries in Africa, Eastern-Europe, and Latin-America, as well as in the international arena (Edwards, 2014, Carothers, 1999). While developed, democratic countries could support the development of NGOs because of shared values and common goals, member states of the Organization for Economic Co-operation and Development, such as Hungary, Israel, Mexico, or Turkey¹, have viewed NGOs as a potential threat and started to monitor and oppress these organizations.

NGOs in liberal democracies are usually not related to the government, but they are important policy actors: their activities include advocating for human rights, government transparency, and liberal values, and they receive substantial amount of charitable contributions from abroad. Thus, governments might see any NGO advocacy as a political threat in the given political environment, and the fact that many of these organizations receive foreign funding empowers these governments to argue for the necessity of regulations similar to the United States' 1938 Foreign Agents Registrations Act.

1.3. Shrinking civil society, a global phenomenon

In 2016, CIVICUS identified 93 countries that violated the freedom of associations, including the introduction of restrictive NGO regulations or laws. Dupuy and her colleagues

¹ According to CIVICUS' Monitor (2017) civic space in Mexico and Turkey is repressed, while in Hungary and Israel is obstructed. All of these countries are members of the Organization for Economic Co-operation and Development.

(2016) analyzed resource-scarce developing countries between 1993 and 2012, finding that the number of restrictive NGO finance laws in low and middle-income countries was on the rise. Indeed, more than 25 developing countries adopted new regulations to restrict locally operating NGOs from receiving cross-border donations or grants in the examined time period. Since 2007, more than 20 countries, including both low- and high-income countries, announced foreign NGO laws in order to regulate, monitor, or restrict the operation of foreign-funded NGOs (See Table One based on the Civic Freedom Monitor provided by the International Center of Not-for Profit Law, 2017). In the last decade high-income countries, such as Israel and Hungary, enacted restrictive foreign NGO laws, therefore the trend of monitoring and restricting NGOs to receive cross-border resources appeared in developed countries as well. We can infer that the trend of enacting restrictive NGO regulations has accelerated as the analysis conducted by the International Center of Not-for-Profit Law (2016) shows that 64 restrictive laws, regulations, and other initiatives were introduced around the world since 2015.

Even though statistics and quantitative data cannot provide recommendations, they can show that the implementation of restrictive foreign NGO laws have become a global trend and, therefore, it needs to be part of the international political and research agenda. “While the statistics are indeed worrying and useful in attracting interest to the problem, such figures are less helpful in designing strategies to address it” (Martinez and Dobichina 2016 in European Foundation Center, 2016). Martinez and Dobichina argue that statistics quantify and group countries with different level of restrictions from Ethiopia, where most foreign-funded NGOs are criminalized, to Spain, where questionable anti-money laundering laws have targeted NGOs through burdensome bureaucracy. Even though this thesis focuses on cases in which where one particular tool, the foreign agents legislation or similar regulation was implemented, it is important to see that governments across the world, including ones of developed countries,

have continued implementing a range of new restrictive NGO laws. Again, the implementation of restrictive NGO laws became a global trend as more than one hundred countries introduced such legislation (European Parliament, 2017), and more than 60 restrictive laws, regulations and other initiatives were introduced in the last 2 years (International Center of Not-for-Profit Law, 2016). Thus, it is important to first briefly summarize the global trends.

Restrictive NGO laws show different characteristics in different countries. In countries such as China, Hungary, and Ukraine, these laws often target only a subgroup of NGOs, such as human rights organizations or foreign-funded organizations. In other countries, including Angola, Egypt, India, Russia, and Turkey, these laws oppress civil society in general. We can infer that the state – civil society relations have weakened recently all over the world. Even though regulations are needed to control the borders between the state, NGOs, and corporations (Simon, et al., 2006), in several cases the legislative body went a step further and not only regulated, but restricted, the operation of NGOs.

The public rationale for restricting civil space as well as the free operation of NGOs varies across countries (Rutzen, 2015). Some of them, such as Spain and Mexico, use the argument of combating money-laundering and terrorism financing. Others, such as China, might prefer international sources to send their donations and financial aid through governmental channels to monitor and sometimes use these resources according to the government's own needs. Another reason, according to countries such as Egypt, could be to oppress NGOs, which focus on controversial political and human rights issues that might weaken the current regimes' status quo. These arguments show that not only foreign-funded NGOs, but also local, grass-roots organizations are threatened in numerous countries. However, it is important to keep in mind that a governments' reasons expressed in their public communication might differ from the public rationale for oppressing certain types of organizations.

Table One: Overview of OECD Member States

OECD Member States	GDP per capita (US\$)*	Income levels**	Human Development Index***	Human Development Index Rank***	Human development (hd) levels	Civic Space****	Enabling Philanthropic Environment*****	Member of FATF	AML/CTF Regulations	Foreign Agents Regulations
Australia	49,927.82	High income	0.939	2	Very high hd	Narrowed	4.17	X	X	
Austria	44,176.52	High income	0.893	24	Very high hd	Narrowed	4.41	X	X	2016 (partial)
Belgium	41,096.16	High income	0.896	22	Very high hd	Narrowed	NA	X	X	
Canada	42,157.93	High income	0.92	10	Very high hd	Narrowed	4.38	X	X	
Chile	13,792.93	High income	0.847	38	Very high hd	Narrowed	3.98		X	
Czech Republic	18,266.55	High income	0.878	28	Very high hd	Open	3.69	(X)	X	
Denmark	53,417.66	High income	0.925	5	Very high hd	Open	4.42	X	X	
Estonia	17,574.69	High income	0.865	30	Very high hd	Open	NA	(X)	X	
Finland	43,090.25	High income	0.895	23	Very high hd	Open	4.8	X	X	
France	36,854.97	High income	0.897	21	Very high hd	Narrowed	4.67	X	X	
Germany	41,936.06	High income	0.926	4	Very high hd	Open	4.73	X	X	
Greece	18,103.97	High income	0.866	29	Very high hd	Narrowed	3.59	X	X	
Hungary	12,664.85	High income	0.836	43	Very high hd	Obstructed	3.3	(X)	X	2017
Iceland	59,976.94	High income	0.921	9	Very high hd	Open	NA	X	X	
Ireland	61,606.48	High income	0.923	8	Very high hd	Open	4.33	X	X	
Israel	37,292.61	High income	0.899	19	Very high hd	Obstructed	3.83		X	2016
Italy	30,527.27	High income	0.887	26	Very high hd	Narrowed	4.67	X	X	
Japan	38,894.47	High income	0.903	17	Very high hd	Narrowed	4.37	X	X	
Korea, Republic	27,538.81	High income	0.901	18	Very high hd	Narrowed	4.37	X	X	
Latvia	14,118.06	High income	0.83	44	Very high hd	Open	NA	(X)	X	

Luxembourg	102,831.32	High income	0.898	20	Very high hd	Open	NA	X	X	
Mexico	8,201.31	Upper middle income	0.762	77	High hd	Repressed	3.47	X	X	
Netherlands	45,294.78	High income	0.924	7	Very high hd	Narrowed	4.8	X	X	
New Zealand	39,426.62	High income	0.915	13	Very high hd	Open	4.33	X	X	
Norway	70,812.48	High income	0.949	1	Very high hd	Open	4.4	X	X	
Poland	12,372.42	High income	0.855	36	Very high hd	Narrowed	4	(X)	X	
Portugal	19,813.31	High income	0.843	41	Very high hd	Open	3.65	X	X	
Slovakia	16,495.99	High income	0.845	40	Very high hd	Narrowed	3.62	(X)	X	2016 (rejected)
Slovenia	21,304.57	High income	0.89	25	Very high hd	Open	NA	(X)	X	
Spain	26,528.49	High income	0.884	27	Very high hd	Narrowed	3.97	X	X	
Sweden	51,599.87	High income	0.913	14	Very high hd	Open	4.3	X	X	
Switzerland	78,812.65	High income	0.939	2	Very high hd	Open	4.75	X	X	
Turkey	10,787.61	Upper middle income	0.767	71	High hd	Repressed	2.73	X	X	
United Kingdom	39,899.39	High income	0.909	16	Very high hd	Narrowed	4.18	X	X	
United States	57,466.79	High income	0.92	10	Very high hd	Narrowed	4.77	X	X	1938

Sources: * World Bank, 2015; ** World Bank, 2017; *** Human Development Index, 2016; **** Civicus, 2017; and ***** IUPUI Lilly Family School of Philanthropy, 2018.
Note: (X) member as a Member State of the European Union.

It is also important to acknowledge that some of the new restrictions in the civil space are linked to the types of challenges governments face in the 21st century, especially with regard to cross-border giving. Several risks that threaten national security – such as the flow of refugees around the world, the political and economic instability in the Middle East and in Sub-Saharan Africa, the increasing number of terrorist and cyber-attacks, and money-laundering among others – have made governments to regulate fields that have not been regulated before. It is a challenge to control CSOs to protect national security and promote an enabling environment for civil society at the same time, however, the potential of overregulation can weaken the sector and undermine the roles and responsibilities of CSOs to address both local and global issues (Anheier et al., 2018).

One of the new fields strictly regulated by governments is cross-border financial flows, including international charitable donations. Rutzen (2015) identifies ten different types of restrictions related to NGOs' international funding observed over 2004 to 2015 through almost 100 restrictive initiatives , such as:

- prior government approval;
- stigmatization of international funding through foreign agents legislation;
- caps on the amount of international funding;
- mandatory routing of international donations through government-controlled channels or agencies;
- burdensome reporting requirements for foreign-funded NGOs;
- restrictions on activities supported by foreign funding;
- restriction on funding sent by certain countries or donors;
- taxation of international funding;
- counterterrorism and anti-money laundering; and

- other laws that target foreign funding.

We can conclude that a variety of tools are available for governments to restrict foreign-funded NGOs from bureaucracy through taxation to stigmatization. Unfortunately, stigmatization and negative government statements might undermine the public trust towards not only foreign-funded NGOs, but also towards the sector in general.

Cross-border giving as well as foreign aid are important sources for locally-operating NGOs, even in several developed countries. Both in Hungary and Israel, numerous human rights organizations – as well as other CSOs focusing on social services, child and homeless care – receive funding from foreign individuals and organizations. Dupuy and her colleagues (2016) mention that governments worry about their authority and power, which might be influenced and challenged by foreign-funded NGOs. Therefore, “governments prioritize political survival over aid, international reputations, and norm compliance ... when they perceive serious threats to their rule” (Dupuy et al., 2016, p. 2). Wilson (2016) focuses on human rights-related NGOs and states that the rising number of restrictive NGO regulations pertaining to international funding was initiated by the global counterterrorism efforts after the 9/11 attacks in the United States. In several cases restrictive NGO regulations were adopted in response to directives from international organizations to implement anti-money laundering standards. Recently, laws attacking primarily foreign-funded NGOs have been also enacted worldwide. According to the governments of nations that implemented such regulations, the reasons behind these laws vary from the fight against the financing of terrorism (Russia and Malaysia), money laundering (Hungary and Jordan), and national self-determination (Venezuela).

Several countries have announced legislation on cross-border donations and foreign-funded NGOs, most recently two European Union member states. Austria restricted incoming cross-border donations by adopting the 2015 Federal Law on the External Legal Relationships of

Islamic Religious Societies that prohibits foreign funding for Austrian mosques and Islamic societies (Schmid, 2015). Hungary recently adopted the 2017 Law on the Transparency of Organizations Receiving Foreign Funds that forces NGOs receiving more than USD 26,930 a year in international donations to register as a “foreign-supported organization” and use this term in every publication related to their organization. Several governments, international organizations, and the European Union raised their voice against these laws. Indeed, the European Commission, the executive of the European Union (European Commission, 2017a), initiated legal proceedings against Hungary asserting that Hungary’s anti-foreign NGO Law violates the right of freedom of association and the protection of private life and personal data enshrined in the Charter of Fundamental Rights of the European Union, as well as breaching the principle of free movement of capital within the European Union by indirectly discriminating and disproportionately restricting donations from abroad (European Commission, 2017b). At this time, nor Austria neither Hungary have initiated any changes in their NGO legislation.

The number of media attacks against NGOs have also been increasing. Not only in developing countries, but in countries like Bulgaria, Greece, Hungary, Ireland, Poland and the United Kingdom, scandals and media attacks against NGOs have negatively affected the philanthropic environment in general. Although NGOs are still the most trusted institutions according to the 2017 Edelman Trust Barometer, the general population’s trust towards NGOs, as well as businesses, government, and the media is “in crisis” after declining broadly in 2016 (Edelman, 2017). The Edelman Trust Barometer found that from 2016 to 2017 public trust towards NGOs has decreased in 21 out of the 28 countries where the surveys were conducted, and in 8 countries NGOs became distrusted, including Russia, Sweden, Japan, Germany, Ireland, the Netherlands, the United Kingdom, and Poland (Edelman, 2017, p.14). Thus, it is understandable, and at the same time challenging, that one of the current concerns for

European NGOs is to gain and maintain public trust (European Fundraising Association, 2015, p. 15).

1.4. Foreign-funded NGOs, as unknown factors in the equation

Governments and other actors on the global stage often see the roles and values of foreign-funded, international NGOs differently. NGOs are often seen as “formal organizations outside the government and for profit sectors, advocating specific policies and/or providing services” (Dupuy et al., 2016, p. 299) and are considered crucial to the enhancement of democracy (Hadenius and Ugglä, 2016). However, NGOs have received criticisms, including prioritizing donor preference instead of the real need of citizens they serve (Carapico, 2012), being bureaucratic and business-like rather than diverse and innovative as traditional grassroots initiatives (Anheier, 2014), and undermining governments’ sovereignty by representing a global agenda developed by a small group of donors (Dupuy et al., 2016). The thesis hypothesizes that foreign-funded NGOs are important actors in addressing global challenges and enhancing democracies. However, it is important to acknowledge that such organizations’ roles and responsibilities are widely debated among policymakers and researchers. The lack of professional guidelines or a universal “bill of rights” for NGOs can undermine the legitimacy and credibility of foreign-funded NGOs in their country of operations. Different parties such as practitioners, donors, policy makers, and researchers need to address these questions and find joint solutions in order to improve the accountability and legitimacy of these organizations and strengthen the public trust towards cross-border philanthropy.

Foreign-funded NGOs that are targeted by regulations for cross-border financial flows are often human rights and advocacy organizations. While their work is crucial to enhance human rights and democratic values, the lack of accountability to the general public as well as their legitimacy raises some real questions. (Mercer 2002, Anheier, 2014, Winters, 2010). While

such organizations have an influential role in the political arena due to their resources and international policymaking circles, such organizations, as both the Hungarian and Israeli governments have argued, are not elected by the country's citizens and, therefore, their beneficiaries have no direct way to hold these orgs accountable.

Besides their legitimacy, countries have increasingly focused on issues of security. After the terror attacks on the U.S. on September 11, 2001, money laundering and terrorist financing became the center of international financial regulations. Several intragovernmental organizations, such as the International Monetary Fund, suggested improving the regulations of NGOs and cross-border financial flows, as terrorist groups had been exploiting the civil sector to “raise and move funds, provide logistical support, [and] encourage terrorist recruitment” (Financial Action Task Force, 2010, p.20). Thus, several governments implemented new regulations in order to protect their security. Indeed, as “border policing” is a “symbolic representation of state authority” (Andreas, 2000, p. 8), the regulation of cross-border financial flows – including charitable donations – seems to be a logical step from governments.

Additionally, as numerous foreign-funded NGOs address topics of an arguably political nature, such as minority rights and government accountability, governments often feel threatened by these organizations. Therefore, governments often regulate foreign-funded NGOs after re-election, as they “feel they have gained room and legitimacy for political maneuver” (Dupuy et al., 2016, p. 303) to fulfill the desire of their citizens. Several countries, such as Ethiopia, Israel, Hungary, or Russia, re-elected governments that had targeted foreign-funded NGOs to promote accountability and protect national security and sovereignty.

Finally, the accountability of foreign-funded NGOs also raises several questions. As the “chain of accountability relationships in an international development program can be long and complex” (Winters, 2010, p. 220), the accountability relationships among the stakeholders of

foreign-funded NGOs is long and complex. The plurality of stakeholders requires multiple dimensions of accountability (Anheier, 2014, p. 421): upwards (funders and supporters), downwards (members and beneficiaries), externally (government, media, and society as a whole), and internally (staff and volunteers). However, as foreign-funded NGOs often depend on limited number of funders, and relatively scarce funding, these organizations often prioritize the requirements of their funders. That could increase bureaucracy by switching the focus to reporting requirements instead of service provision. These organizations also display an isomorphic tendency as they imitate each other and try to follow global guidelines to work more effectively, which could in turn jeopardize the values and interests of host communities.

We can conclude that there are several arguments where governments feel the need to regulate the operation of foreign-funded NGOs. Even though it is not part of this study's research focus, it is crucial to acknowledge the numerous reasons for stricter regulations. However, it is important to find a balance between protecting national security, enhancing philanthropy, and promoting accountability, because restrictive regulations on cross-border financial flows and foreign-funded NGOs can be harmful for CSOs and civil society as a whole.

1.5. OECD countries under the microscope

The Organization for Economic Co-operation and Development (OECD) is an intergovernmental organization with 35 member states, established in 1960 by 18 European countries, Canada, and the United States to encourage economic development and promote policies that will improve the economic and social well-being of people around the world (OECD, 2017a). Member states are committed to a market economy and a pluralistic democracy (OECD, 2008, p. 8). Currently, OECD identifies the following four areas of interest (OECD, 2017b):

- Restore confidence in markets and the institutions that make them function;

- Re-establish healthy public finances as a basis for future sustainable economic growth;
- Foster and support new sources of growth through innovation, environmentally friendly 'green growth' strategies and the development of emerging economies; and
- Ensure that people of all ages can develop the skills to work productively and satisfyingly in the jobs of tomorrow.

Most OECD member states are high-income, developed countries with very high levels of human development (Table Two). Two exceptions are Mexico and Turkey that are upper middle income countries with high levels of human development. These two countries are outliers in other parameters as well, including the level of gross domestic product per capita as well as the freedom of their civil society.

As the number of NGOs has been growing worldwide, the grants by private agencies and NGOs has also increased. The total amount of grants by NGOs operating in OECD Development Assistance Committee's member states reached USD 39,890 million in 2016 (using 2014 as a base year) following a continuous increase from 2014 (OECD, 2018). This indicator shows that the amount of private international financial sources has been increasing and development funding from the private sector has become significant in the international arena. Thus, cross-border private philanthropy is becoming more significant and leads to an increasing level of foreign charitable contributions across the world.

Even though the OECD economically seems to be a homogenous group of member states, there is significant heterogeneity among these countries in terms of civic space. CIVICUS has conducted the CIVICUS Monitor – Tracking Civic Space (2017a), a worldwide analysis on civic space. CIVICUS defines civic space as “the set of conditions that allow civil society and individuals to organize, participate and communicate freely and without discrimination, and in doing so, influence the political and social structures around them” (CIVICUS, 2017b). Even though this index does not focus solely on the freedom of associations and the free operation of

NGOs, it is a useful starting point to examine the OECD countries' civic space. CIVICUS rates the state of civic space in every country of the world in a five-scale system: open, narrowed,

Table Two: Foreign-funded NGO Laws around The World

Country	Foreign-funded NGO Regulations	Year of implementation	Brief Summary
Azerbaijan	Registration Law (2014); Rules on Studying the Activities of Non-Governmental Organizations, Branches or Representative Offices of Foreign Non-Governmental Organizations (2015); Rules on obtaining the right to provide grants in the territory of the Republic of Azerbaijan by foreign donors (2015); Rules on registration of service contracts on provision of services or implementation of work by NGOs, as well as by branches or representations of foreign NGOs from foreign sources (2015); and Decree on Simplification of Registration of Foreign Grants in Azerbaijan (2016)	2014; 2015; 2016	In Azerbaijan, several new regulations and amendments affect the operation of foreign-funded NGOs such as legal representatives of foreign-funded NGOs must have a permanent residence in the country; foreign-funded NGOs need to acquire an agreement with the Ministry of Justice that must include a specific expiration day, foreign donors need to obtain prior government approval to provide grants to CSOs or NGOs in the country, and operation of unregistered foreign-funded NGOs are prohibited.
Bangladesh	Foreign Donations (Voluntary Activities) Regulation Act (2016)	2016	The Bangladeshi government established the NGO Affairs Bureau within the Ministry of Establishment to regulate and monitor the activities of foreign-funded NGOs. Foreign-funded NGOs need to obtain prior governmental approval, known as the FD Registration, from the Bureau. Additional approval for all projects is also required. The Bureau can withdraw the approval any time in case of the use of "malicious" or "derogatory" statements against the constitution and constitutional bodies of Bangladesh.
Belarus	Decree No. 5 of the President of the Republic of Belarus on Foreign Gratuitous Aid (2015)	2016	Decree No. 5 introduced several requirements that have negatively affected the operation of foreign-funded NGOs including vague terminology to ban the use of foreign donations in cases of extremist activities, political campaigns, and "other political propaganda work with the population."

China	Charity Law (2016); Law on the Management of Overseas NGOs' Activities in Mainland China (2016)	2016; 2017	The Charity Law requires foreign funding to be under surveillance by police and national security departments. The n the Management of Overseas NGOs' Activities in Mainland China requires CSOs to report international contacts to authorities and to seek approval for visits, international cooperation, as well as foreign donations. Foreign NGOs are required for office registration or filing of temporary activities.
Colombia	Law 1819 of 2016	2016	The law addresses tax issues and requires CSOs to register in the President's Agency of Cooperation. Those CSOs that are eligible for tax incentives must also disclose the information regarding their foreign donations.
Egypt	Law 70 of 2017 on Associations and Other Foundations Working in the Field of Civil Work	2017	The new law requires all CSOs and foreign-funded NGOs to register with the Ministry of Social Solidarity and informal or unregistered groups became prohibited. The law also imposes registration fees on foreign-funded NGOs seeking to operate in the country and introduces a regulatory committee to monitor both domestic and foreign donations.
Ethiopia	Proclamation to Provide for the Registration and Regulation of Charities and Societies (2009)	2009	To be considered an Ethiopian Charity or Society, a CSO may not receive more than 10% of its overall resources from foreign sources in order to engage in activities that advance human and democratic rights, promote the equality of nations and nationalities and peoples and that of gender and religion, promote the rights of disabled and children's rights, promote conflict resolution or reconciliation, and promote the efficiency of the justice and law enforcement services.
Hungary	Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad	2017	The act requires foreign-funded NGOs to disclose their status of "organization supported from abroad" on their online and printed materials and declare the information of their major sponsors whom donation is HUF 500,000 (US\$ 2,000) or more. The violation of the law may lead to involuntary dissolution of the NGO.
India	Foreign Contribution Regulation Act (2010, amended in 2015); Financial Bill (2017)	2017	Foreign-funded NGOs registered under the Foreign Contribution Regulation Act are required to have their accounts in either nationalized banks or in banks with capacity to

			provide core banking services that allows government security agencies to access the accounts of foreign-funded NGOs in real time. The act also requires foreign-funded NGOs report the amount of their foreign contribution, its source, the manner in which it was received, the purpose for which it was intended, and the manner in which it was used. The new Financial Bill prohibits CSOs from transferring funds to another CSO by way of corpus or a capital grant, and restricts cash giving to no more than INR 2,000,000 (USD 3,000) per person per event per day.
Indonesia	Government Regulation No. 2 of 2013 on the Amendment of Government Regulation No. 63 of 2008 on the Implementation of Law on Foundations	2013	The government regulation requires foreign-funded NGOs to obtain a permit issued by the Ministry of Home Affairs or the local government according to the level of their operation. Prior to the permit, foreign-funded NGOs must sign a written agreement with the Indonesian government regarding its scope of activities.
Israel	Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016	2016	The law requires burdensome reporting requirements from foreign-funded NGOs that receive more than half of their funding from foreign states – including the European Union as well. Such foreign-funded NGOs must also disclose their status of "organizations supported by foreign government entities" in official reports as well as their online and printed materials.
Jordan	Amendments on 2008 Law No. 51 on Societies issued by the Council of Ministers (2015)	2015	The amendments require CSOs to submit an extensive application form providing detailed information about the source and use of foreign funding in order to be able to receive donations from abroad.
Kazakhstan	Order No. 553 of the Ministry of Finance on Approval of the Rules, Form and Terms for Individuals and Legal Entities and (or) Structural Subdivisions of a Legal Entity to Submit Notification to the State Income Authorities about the Receipt of Funds and (or) other Assets from Foreign States, International and Foreign Organizations, Foreigners, and Stateless Persons	2016	The new legislation requires foreign-funded NGOs to submit burdensome documentation on the receipt and expenditure of foreign funds and/or assets, and disclose their status as "funded from foreign sources" in all publications produced with support from foreign donations. The legislation also introduces administrative and criminal penalties in case of non-compliance.

Kyrgyz Republic	Draft Law on Foreign Agents (2014)	It was rejected in 2016	The draft law targeted foreign-funded NGOs and would have required such organizations to disclose their status as "foreign agents" and prohibited them from "political activities."
Nigeria	Draft Bill to Regulate the Acceptance and Utilization of Financial/Material Contributions of Donor Agencies to Voluntary Organizations (2014)	It has not been enacted yet.	The bill imposes a number of restrictions on the ability of CSOs to receive foreign funding, such as mandatory registration to accept foreign funding and governmental approval prior to receiving foreign donations.
Pakistan	International Non-Governmental Organization (INGO) Policy (2015)	2015	The policy requires all INGOs working in Pakistan to apply for registration with the Ministry of Interior and to provide information about their sources of funding and how they utilize their funds.
Russia	Federal Law Introducing Amendments to Certain Legislative Acts of the Russian Federation Regarding the Regulation of Activities of Non-commercial Organizations Performing the Function of Foreign Agents (2012)	2012	The law requires all non-commercial organizations to register with the Ministry of Justice, prior to receive foreign-funding if they intend to conduct political activities. Such NCOs are called "NCOs carrying functions of a foreign agent". Since 2014, the Ministry of Justice has been authorized to register NCOs as "foreign agents" without their consent and to impose fines in case of non-compliance. Additionally, foreign-funded NGOs wishing to make tax-exempt grants to Russian citizens or NCOs must be on a list of organizations approved by the Russian Government.
Saudi Arabia	Law on Associations and Foundations, Royal Decree No. M/8, 19.2.1437H (2015)	2015	The law prohibits CSOs from receiving foreign funding unless they obtain an approval from the Ministry of Labor and Social Development.
Slovakia	Draft Amendment to the Law on Non-profit Organizations Providing Public Community Services (Law No. 213/1997 Coll.) (2016)	It was rejected in 2016.	The amendment proposed to introduce the term "foreign agent" labelling foreign-funded NGOs that "act on order, request, under influence or control of a foreign natural and legal person" and are "funded by a foreign agent." It also proposed a creation of a registry of foreign agents and would have required such organizations to disclose their status as "Attention! Foreign agent" during their activities and in all their information materials.

Sudan	Policy regarding the Voluntary and Humanitarian Work Act	2013	The policy issued by the Humanitarian Aid Commission (HAC) reinforces the rules of the Voluntary and Humanitarian Work Act, 2006. The policy requires CSOs to secure HAC approval for projects and individual activities before receiving foreign funding. The receipt of foreign funding without prior approval may lead to the CSO's involuntary dissolution.
Uzbekistan	Law on Introduction of Amendments to Some Legislative Acts, which introduced amendments to the Law on Non-Governmental Non-Commercial Organizations (2016); Regulation on the Procedure of Coordination of Receipt of Monetary and Other Assets by Non-governmental Non-commercial Organizations (NNOs) When Such Assets are Received from Foreign States, International and Foreign Organizations, Citizens of Foreign States, or From Other Persons, Authorized by the Mentioned Above Persons (2016)	2016	In general, the process of receiving foreign funding is burdensome in Uzbekistan. In order to receive a foreign grant, a CSO must receive a special conclusion from the Commission under the Cabinet of Ministers. The grant funding must be sent through a state-owned bank and after receiving the grant funding, the CSO must provide several reports to a special government body operating under the Ministry of Finance. In 2016, new regulations affected the work of foreign-funded NGOs. The law requires CSOs to notify the government about planned trips of their representatives to foreign countries, and requires organizations to obtain approval for the receipt of all funds and assets from foreign states, organizations, and citizens. The regulation requires CSOs to obtain an approval from the Ministry of Justice to receive foreign funding.
Venezuela	Law for The Defense of political Sovereignty and National Self-Determination (2010)	2010	The law affects the operation of CSOs dedicated to the "defense of political rights" or other "political objectives" as they are not allowed to possess assets or receive any income from natural foreign citizens or foreign organizations.

Sources: International Center for Not-for-Profit Law, 2017; and IUPUI Lilly Family School of Philanthropy, 2018.

obstructed, repressed, and closed. According to the most recent analysis (CIVICUS, 2017a), 15 member states of the OECD have open civic spaces, while 16 member states – including the United States - have a narrowed civic space. In Hungary and Israel, the civic space became obstructed, while in Mexico and Turkey civil society is repressed (See Table Two for country-specific information). It is clear that civic space has been shrinking not only in developing and emerging countries, but also in developed countries in North America and Western Europe.

One of the reasons for the low rating of the Hungarian and Israeli civic space is that both countries have implemented NGO laws that target foreign-funded NGOs. Additionally, Turkey, whose civic space is repressed, might initiate more restrictive NGO laws as a consequence of the 2016 coup attempt (International Center for Not-for-Profit Law, 2017), while the Slovakia has discussed the draft of a foreign-funded NGO laws, similar to the Hungarian and the Israeli ones. Besides, several OECD countries, such as France, Spain, the United Kingdom, the United States, have been reported to abuse NGOs by implementing anti-money laundering acts that unnecessarily overregulate the free operation of such organizations (European Parliament, 2017).

Both Hungary and Israel are high-income, developed, democratic countries, with very high-level human development indices. Additionally, both countries have introduced legislation to combat money laundering and terrorist financing. Both countries recently introduced foreign NGO laws that explicitly target foreign-funded NGOs. In addition, both governments seem to attack government critics and journalists. While international organizations as well as the European Union urged both Israel and Hungary to withdraw their legislation on foreign-funded NGOs, both countries have used the United States' Foreign Agent Registration Act as an example to justify their new foreign NGO laws (Laufer, 2017).

Several OECD member states were reportedly restricting the operation of NGOs directly by introducing foreign NGO laws or indirectly by implementing anti-money laundering acts. Developed countries with multi-player political systems, open market economies, advanced accountability and transparency standards, and significant international trade started to feel threatened by foreign-funded NGOs, according to the government statements. However, these new restrictions may have negative consequences on the international stage. Indeed, the international reputations of countries such as Hungary, Israel, as well as Austria suffered after enacting their foreign NGO laws. Hungary and Israel passed foreign agents regulations to closely monitor and label foreign-funded NGOs operating in their countries, closing the space for NGOs focusing primarily on human rights and government transparency. Before analyzing these two cases and comparing them to the United States' 1938 Foreign Agents Registration Act, the thesis briefly explains the main regulations for foreign financial flows.

1.6. Main regulations for cross-border financial flows

1.6.1. Legislation on illicit financial flows, anti-money laundering, and combating the financing of terrorism

Illicit financial flows are defined as “money illegally earned, transferred, or used that crosses borders” (The World Bank, 2017). The umbrella term emerged in the 1990s and it refers to cross-border movement of capital, including cross-border charitable donations. Two specific types of illicit financial flows are money laundering and terrorist financing. Both money laundering and the financing of terrorism are financial crimes with economic effects. Money laundering is “the processing of assets generated by criminal activity to obscure the link between the funds and their illegal origins,” while terrorism financing is “to raise money to support terrorist activities” (International Monetary Fund, 2017). The Financial Action Task Force on Money Laundering, an intergovernmental organizational body, was established in 1989

with the objectives “to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system”(Financial Action Task Force, 2017a).

The Financial Action Task Force currently includes 35 member states and 2 regional organizations, such as the European Commission and the Gulf Co-operation Council. Countries and intergovernmental organizations are working to restrict money laundering. Although compliance is positively associated with the quality of the domestic regulatory framework as well as the countries’ economic development, compliance with the standards of anti-money laundering laws remained low in OECD countries (Yepes, 2011). The work of the International Monetary Fund, the Financial Action Task Force, as well as other intergovernmental organizations has expanded and accelerated after the terror attacks in the United States on 11th September, 2001, and since then the fight against money laundering and combating the financing of terrorism together became the main goals of such organizations.

In October 2001, the Financial Action Task Force adopted eight special recommendations in connection with terrorist financing - one of them focusing on NGOs. Even though the Financial Action Task Force acknowledged the vital role of NGOs in the world economy as well as the national economies and social systems, they stated that terrorist groups had been exploiting the civil sector to “raise and move funds, provide logistical support, [and] encourage terrorist recruitment” (Financial Action Task Force, 2010, p.20). The Financial Action Task Force’s main arguments regarding the NGOs’ vulnerability were that these organizations have a global presence with access to the population, they enjoy a high level of public trust, they are not subject to general governmental oversight yet have access to considerable sources of funds, and they have large transitory workforces (Financial Action Task Force, 2010, 2014).

Therefore the Special Recommendation VIII on nonprofit organizations was established to ensure that NGOs will be not misused by terrorist organizations.

Numerous countries started to implement such legislation to ensure the due diligence and accountability of NGOs. Even though the Financial Action Task Force promoted effective supervision and monitoring of such organizations, governments often introduced laws that overstepped the recommendation's primary focus. More than 30 countries surveyed on the Index of Philanthropic Freedom (Hudson Institute, 2015) reported that illicit financial flows regulations have created barriers to legitimate nonprofit activities and therefore, such regulations have become one of the policies impeding philanthropic freedom across the world. Increased reporting requirements, stigmatization of organizations receiving foreign funding, and other legal tools damaged philanthropic activities in countries such as Russia and Turkey, where illicit financial flows regulations were used "to limit the autonomy of philanthropic actors, investigate and surveil groups critical of the government, and impede organizations attempting to access foreign funds" (Hudson institute, 2015, p. 10).

The Financial Action Task Force revised Special Recommendation VIII in particular. The revised Special Recommendation VIII states the following (Financial Action Task Force, 2017b):

"Countries should review the adequacy of laws and regulations that relate to non-profit organizations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organizations to protect them from terrorist financing abuse, including:

- (a) by terrorist organizations posing as legitimate entities;
- (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organizations."

After the 2012 revision was implemented, the Financial Action Task Force issued a revision in connection with the implementation of 49 of the recommendations in 2016 where it

stated that governments need to ensure the implementation of Special Recommendation VIII in line with a risk-based approach and “should not disrupt or discourage legitimate charitable activities” (Financial Action Task Force, 2017b, p. 53). Indeed, in 2016 the Financial Action Task Force released an interpretative note that says, “while [NGOs] are not immune from terrorist abuse, countries and donors should no longer view the entire sector as high risk” (Charities Aid Foundation of America, 2016). However, only 5 percent of the countries evaluated by the Financial Action Task Force in 2014 were fully compliant or largely compliant with Special Recommendation VIII. Several countries have used anti-money laundering and counter terrorism acts as a tool to control NGOs. Based on the European Parliament’s study (2017, p. 10-11) several developed countries, such as France, Spain, the United Kingdom, the United States, as well as numerous developing countries, as Chad, Egypt, Ethiopia, Jordan, Kenya, Oman, Sudan, and Uganda implemented regulations that directly or indirectly narrowed the operation of NGOs. Since 2012, 98 laws restricting freedom of association or assembly were adopted around the world (Rutzen, 2015), and the trend of restricting NGOs ability to receive foreign funding seems to continue in both developing and developed countries.

1.6.2. Foreign Agent Laws

One of the tools to stigmatize foreign-funded NGOs has been the anti-foreign NGO laws. In general, foreign agent laws or similar regulations require NGOs to report their foreign financial resources when foreign contributions exceeds a certain dollar amount, register as “foreign agents” to a central agency, and use the term “foreign agents” or “foreign-supported organizations” in all their publications. Several countries, including India, Israel, Hungary, Kyrgyzstan, Russia, and Ukraine enacted such legislation to monitor and often label those NGOs that receive international funding (Anheier, 2017, Laufer 2017). After harsh international criticism, several of these countries recently claimed that their laws follow the 1938 Foreign

Agents Registration Act enacted by the United States when they adopted their foreign agent legislation (Rutzen, 2015).

The 1938 Foreign Agents Registration Act has a “disclosure statute that requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts and disbursements in support of those activities” (fara.gov, 2017). However, in contrast to recent foreign agents legislation, the 1938 version did not target NGOs specifically, as such legislation in Hungary, Israel and other countries do today. Indeed, several exemptions are mentioned in the American legislation, including entities engaged in purely religious, scholastic, academic, artistic or scientific pursuits, as well as entities engaged in the solicitation or collection of funds for medical aid or “for food and clothing to relieve human suffering” (U.S.C.A. §613).

The 1938 FARA – and the 1945 Defense Regulations – did not target foreign-funded NGOs or the civil sector specifically, but it was intended to monitor political lobbying and propaganda (U.S. Department of Justice, 2017b). While it is hard to compare historic national security threats, such as the Nazi propaganda before and during the II World War, to current challenges, it is important to spotlight that even in the 1930s and 1940s the U.S. government did not have the intention to monitor or control the civil society in general. Furthermore, the labeling requirements set by these laws seem to be free of stigmatizing foreign-funded NGOs, therefore it is not to directly compare the 1938 FARA to the current Hungarian and Israeli regulations that target foreign-funded NGOs.

In order to better understand the similarities and differences between the 1938 Foreign Agents Registration Act and the recently enacted foreign agents regulations in countries that are member states of the Organization for Economic Co-operation and Development, the cases of Israel and Hungary will be closely analyzed and compared, focusing on the wording of the

legislation, the governments' reasoning, as well as the current economic, political, and social trends these countries face.

CHAPTER TWO: GENERAL OVERVIEW OF HUNGARY AND ISRAEL

In order to compare Hungary and Israel, it is important to understand the political and social-cultural environment for civil society that influences the operation of both Hungarian and Israeli CSOs. Thus, this section provides a general overview of Hungary and Israel focusing on the economic, political, and socio-cultural characteristics of these countries as well as the regulations implemented by the Hungarian and Israeli governments against foreign-funded NGOs.

Both Israel and Hungary are developed, democratic countries and members of the OECD. The Human Development Report (UNDP, 2016) characterizes both Hungary and Israel as countries with a very high level of human development. Both are high-income countries (World Bank, 2017), even though the Israeli per capita Gross Domestic Product (GDP) (US\$ 37,200) is almost three times larger than the Hungarian one (US\$ 12,800). According to *The Global Philanthropy Environment Index* (IUPUI Lilly Family School of Philanthropy, 2018, p. 15) a “favorable philanthropic environment is strongly linked with higher per capita GDP.” Thus, the countries’ different level of GDP might help to explanation why Israel’s (3.83) global philanthropy environment index² is higher than Hungary’s (3.30).

In terms of political environment, both Hungary and Israel are parliamentary democracies, with a well-supported prime minister in charge. The Hungarian Prime Minister Viktor Orban³ has been in office since 2010 and the government party has had 58% of the votes

² The Global Philanthropy Environment Index (2018) studied 79 countries and economies using scores (1 to 5) to classify 5 factors as enabling conditions for philanthropy: ease of operation of a philanthropic organization, tax incentives, cross-border flows, political environment and socio-cultural environment. The 79 countries and economies included in the report scored between 2.07 (Qatar) and 4.80 (Finland and the Netherlands and)

³ Prime Minister Viktor Orban (1963-) has served as Prime Minister of Hungary since 2010, winning two reelections in 2014 and 2018. He also served as Prime Minister between 1998 and 2002. Prime Minister Orban is the founding member of Fidesz (Alliance of Young Democrats) and has served as Chairman of Fidesz since 2003. In 1989 he served as a Member of the delegation to the Opposition Roundtable that prepared the peaceful transition to democracy in the country.

in the Parliament since. The political forces are similar in Israel, as Benjamin Netanyahu⁴ has served as the Israeli Prime Minister since 2009 and the government party has enjoyed 55% of the votes at the Knesset since 2015.

Both prime ministers have strong opinions about foreign-funded NGOs as a possible threat of their country's stability and security. Regarding the foreign agents regulation, Israeli Prime Minister Netanyahu stated in January 2016 that "[t]ransparency is the heart of democracy. When you hear about the use and abuse of NGOs here – transparency is the least we want and is much warranted and it is common sense" (Ravid, 2016). Hungarian Prime Minister Orbán used a very similar argument one year later: "who receive money from abroad to influence Hungarian politics should admit this fact and make it public: they should be transparent and should be accountable, just like political parties. Hungarians are right to demand this" (Website of The Hungarian Government, 2017n). Both the Israeli and the Hungarian governments, enjoying the absolute majority in the parliament, supported the enactment of the foreign agents regulations in 2016 and 2017, respectively. Soon after, Freedom House observed that both countries fostered a less favorable political environment for civil society. Both countries were ranked as free, although their score of civil liberties dropped due to the enactment of new regulations oppressing foreign-funded NGOs (Freedom House, 2018a).

Despite the similar economic and political environment, the countries differ from each other in regard to the size and scope of civil society as well as their socio-cultural environment.

⁴ Prime Minister Benjamin Netanyahu (1949-) has served as the Prime Minister of Israel since 2009, winning two reelections in 2013 and 2015. He also held the position between 1996 and 1999. Prime Minister Netanyahu has served as Chairman of the Likud party since 1993 and as the Leader of the Likud party since 2005. In the 1980s and early 1990s, Prime Minister Netanyahu has served in different positions – such as Israel's Ambassador to the United Nations or as a Deputy Minister of Foreign Affairs – to represent Israel in the international arena.

In 1995, the Israeli civil society sector represented a ten times larger share of the employment market than the Hungarian one, at 13.2% and 1.3% respectively. The difference was not as significant regarding the GDP produced by CSOs; Israeli CSOs produced 5.6% while the Hungarian CSOs produced only 2.8% of their country's total GDP (Salamon et al., 1999). In the last two decades, the civil society sector grew in both countries, but the Israeli civil society sector has continued to be one of the biggest in the world (Einolf, 2015, p. 514-515). In 2018, Israeli CSOs produce 5.8% of Israel's GDP and employ over 477,000 people, representing 13.7% of the Israeli workforce. By comparison, Hungarian CSOs produce over 4% of Hungary's GDP and employ over 150,000 people, representing 3.5% of the Hungarian workforce (Samson, 2018, KSH, 2018). The only indicator in which Hungary overtakes Israel is the number of CSOs. In Hungary there are over 61,600 CSOs, while in Israel this number merely reach 42,000 (Samson, 2018, KSH, 2018). Besides their size, the scope of Hungarian and Israeli civil society also differs in these two countries. Israeli CSOs primarily address social issues related to arts and culture, health care, social services, and religion. Hungarian CSOs also focus on health and social services as well as culture, but education and sport are dominant too (IUPUI Lilly Family School of Philanthropy, 2018).

Another important aspect of the socio-cultural environment is the influence of religion in the culture of giving. In this aspect, the two countries show very distinctive characteristics. In Hungary, 67% of the people are Christian, 51% of them identify themselves as Roman Catholic (U.S. Department of State, 2017), while more than 20% of the respondents report no religious affiliation. Even though the Christian roots of giving have influenced civil society in Hungary, giving and volunteering became secularized and less-practiced during the socialist era between 1949 and 1989. The government has been seen as the primary social service provider, even after the political and economic transition in 1989. On the other hand, religion is an important

component of the Israeli civil society and giving. Seventy-five percent of the Israeli population identify themselves as Jewish, 18% as Muslim and 2% as Christian. Religion has an important role not only to promote giving through the Jewish and Muslim traditions, but also to contribute to the cultural and national identity. Both Jews and Arabs consider being religious and religion to be a significant part of their identity (Cooperman et al., 2016). Thus, religious differences in Israel have influenced the social and political space as well as the civil sector. Despite the Muslim percentage of the population, only 12% of CSOs represent Arab-Palestinian citizens and those organizations are often targeted by the government and are left out from cross-sectoral cooperation (Almog-Bar, 2016, p. 240). The Transparency Law mainly affects the operation of pro-Palestinian organizations too, deepening the religious and political tension in the society.

The socio-cultural differences can be also observed through the results of the World Giving Index 2017 published by Charities Aid Foundation. The report analyzes giving behavior across the world by measuring three different indicators of giving: helping a stranger who needed help, donating money to a CSO, and volunteering to an organization. In terms of the overall score, Israel ranked the 35 out of 139 countries, while Hungary was only the 119th country (Charities Aid Foundation, 2017).

However, in terms of the rise of civil society, CSOs played a crucial role in building democracy in both countries. In Hungary, CSOs were important parts of the political and economic transition of the country in the late 1980s and early 1990s, while in Israel, CSOs provided tremendous resources to form the country economic and social policies since the 1970s. Both governments have acknowledged the importance of domestic CSOs as well as the contribution of volunteers, however, recently both Hungary and Israel targeted and labeled foreign-funded NGOs and accused them of representing foreign interests. The Hungarian government has identified the global, international capital – particularly the interests of the

Hungarian-American investor, Mr. Soros – as the driving force behind foreign-funded NGOs that try to interfere domestic policies including the ones related to the Syrian refugee crisis. The Israeli government, on the other hand, has claimed that NGOs funded by foreign governments might interfere with domestic issues by promoting pro-Palestinian values and criticizing the government’s policies.

The language used by both governments was influenced by the challenges Hungary and Israel have faced. In the case of Hungary, the 2015 refugee crisis put the country in a difficult situation and the government chose to close their borders and refused to offer governmental support to refugees arriving from Syria and other Middle-Eastern countries. The Hungarian government was criticized by foreign governments and international organizations because of the way the country handled the refugee crisis. Among other critics, the United Nations High Commissioner for Human Rights stated that the measures Hungary introduced in response to the migration crisis contravene international law; and the Secretary General of the Council of Europe expressed his concern about whether the Hungarian laws comply with the provisions of the Geneva Convention (Novak, 2015). As a consequence of international criticism, the Hungarian government attacks against foreign-funded NGOs have increased and the government communication changed to emphasize that foreign-funded NGOs aim to help illegal migrants and therefore threaten the security of the nation.

Simultaneously, Israel has faced the on-going Israeli-Palestinian conflict. Starting in September 2015, the conflict continued with an increased level of violence between the two nations. The “Wave of Terror” escalated the government’s anti-Palestinian statements and oppressed the left-wing, liberal NGOs that often raised concerns about the Israeli-Palestinian conflict and criticized the governmental responses. On several occasions, the government extended the state of emergency, which has been continuously in place since the country’s

establishment in 1948. The dichotomy of acknowledging and supporting domestic CSOs while simultaneously targeting and oppressing foreign-funded NGOs characterizes both governments' relationship with their civil society.

The case studies in Chapter 3 and 4 argue that the Hungarian and Israeli governments used similar arguments to introduce their own foreign agents regulation. One of those arguments was to increase transparency among CSOs. In the last two decades, the Financial Action Task Force (FATF) has encouraged countries to adopt legislation against illicit financial flows, including money laundering and terrorism financing. However, according to the 2015 Index of Philanthropic Freedom (Hudson Institute, 2015), legislation seeking to limit illicit financial flows has become one of the most common policies that hinders the operation of philanthropic organizations in countries all around the world. To analyze whether the transparency of civil society can be increased by the foreign agents regulations adopted by Hungary and Israel, it is important to analyze both the countries' legal environment, including the reason for enhancing transparency, and the organizations that have been affected by such laws.

In case of the legal environment, both countries grant the freedom of associations and assembly: Hungary in its Fundamental Law, and Israel through the implementation of the International Covenant on Civil and Political Rights. It is important that both countries have adopted pieces of legislation related to anti-money laundering and counter terrorism, but these laws explicitly do not regulate the work of CSOs. However, the general CSO regulations, such as the Act CLXXV of 2011 on the Freedom of Association, Public Benefit Status, and the Operation and Support of Civil Society Organizations in Hungary or the Amutot Law, 5740-1980 and the Companies Law, 5759-1997 in Israel, do require CSOs to submit their annual financial reports to the central Registrar as well as make these reports available for the public.

Transparency of CSOs is important for two reasons: to fight against illicit financial flows and to enhance the organizations' and therefore the sector's legitimacy. First of all, in terms of illicit financial flows, the FATF acknowledged that terrorist groups had been exploiting the civil sector to "raise and move funds, provide logistical support, [and] encourage terrorist recruitment" (Financial Action Task Force, 2010, p.20). However, as the FATF's Special Recommendation VIII on NGOs was adopted, several countries abused this legislation to go beyond oversight and actually narrow the freedom of CSOs. Therefore, even though transparency remained one of the most important tools against illicit financial flows, FATF highlighted that such legislation should not alter or prevent the work of legitimate CSOs (Financial Action Task Force, 2017b).

Besides the fight against illicit financial flows, transparency is also important to support CSOs' legitimacy. The lack of transparency can undermine the public trust towards CSOs, especially if the organization is attempting to influence the public policy (Lehr-Lehnardt, 2005). Transparency can be more relevant for international CSOs (Mertus, 1999), but as the role of CSOs has increased in the last two to three decades, stakeholders started to demand more transparency and accountability from all CSOs, especially when CSOs work on advocacy and might influence public policy (Brown and Jagadanada, 2007). Finally, as numerous organizations that have come under attack by the foreign agents regulations advocate for government accountability and transparency, it is important that they set the example.

It is clear that both Hungary and Israel introduced legislation to fight against illicit financial flows as well as to require a certain level of transparency from all CSOs prior to their foreign agents regulations. However, if the Hungarian and the Israeli governments had aimed to increase transparency among civil society organizations, they would have a much broader definition of those organizations that are affected by the foreign agents regulations. Through

these pieces of legislation, Hungary regulated the registration of and reporting requirements for foreign-funded organizations that receive HUF 7,2 million (US\$ 29,000) or more from foreign donors and Israel only targets organizations that receive funds from foreign government entities. Both segments are relatively small compared to the countries' entire civil society. Therefore, these laws cannot enhance the transparency of the sector in general. Indeed both foreign agents regulations were criticized as discriminative and having the potential to undermine the values of democracy (European Commission, 2017d, European Union External Action Service, 2016).

In addition to transparency, another argument used by both the Hungarian and Israeli governments was that the new laws helped protect state sovereignty and national security. Both countries argued that the implementation of such laws “protect the sovereignty of their states from foreign interference in domestic political affairs” (Rutzen, 2015, p. 24). The Hungarian Prime Minister Orban stated several times that foreign funded organizations “represent foreign interest” and their goal is “political interference” (Website of The Hungarian Government, 2017b). The Israeli Prime Minister Netanyahu said that the foreign agents regulation “prevents an absurd situation in which foreign countries interfere in Israel’s internal affairs” (Eglash and Booth, 2016).

Despite protecting state sovereignty, the enacted pieces of legislation not only enhanced the reporting requirements of foreign-funded organizations – that, in case of Hungary, often do not provide advocacy or lobbying activities at all – but also created a platform to stigmatize these organizations by creating a harsh, negative propaganda against them and labelling them publicly as foreign-funded organizations.

CHAPTER THREE: HUNGARY AND THE ACT ON THE TRANSPARENCY OF ORGANIZATIONS

RECEIVING SUPPORT FROM ABROAD

This chapter focuses on the Hungarian Foreign NGO Act. First, the chapter discusses the development of Hungarian civil sector briefly, focusing on the time period after the 1989 democratic transition. Next, the current legislation will be examined: the Act CLXXV of 2011 on the Freedom of Association, Public Benefit Status, and the Operation and Support of Civil Society Organizations (Civil Act), the new Act LIII of 2017 on Prevention of Money Laundering and the Financing of Terrorism (Anti-money Laundering Act). Then, the chapter analyses the Hungarian government's arguments for the establishment of the Foreign NGO Act and the language in Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad (Foreign NGO Act) before describing how the government campaign against foreign-funded NGOs intensified after the implementation of the Foreign NGO Act. Finally, as Hungary is a European Union Member State, the European Union's position is briefly presented.

Hungary is one of the OECD countries that most recently adopted an anti-foreign NGO law. The Freedom in the World 2018 report published by Freedom House draws attention to the "increasing intimidation of civil society groups" in Hungary. Even though Hungary's freedom status in the report remained free in 2017, this country experienced the tenth largest decline in civic freedom in the last decade (Freedom House, 2018a). NGOs receiving foreign charitable contributions have been under attack by the government and targeted through the adoption of the Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad (Foreign NGO Act). Hungary became the second OECD country, after Israel, to have labelled NGOs that receive foreign funding by requiring burdensome reporting activities and creating a new legal category for "organization support from abroad."

In Hungary the legal term “civil society organization” includes foundations, associations, public benefit organizations and other organizations established under the right of associations (Act CCXIII of 2013, Article 7.1). The term “nongovernmental organizations” (NGOs) has recently become the preferred legal term for foreign-funded civil society organizations that were described by the Hungarian government as organizations that “set up local offices in various countries, which recruit activists and also usually pay them, and which represent international interests – usually the interests of global, international capital”(Website of The Hungarian Government, 2017a). Therefore, the chapter uses the terms accordingly: CSOs refer to registered organizations under the Hungarian legislation, while NGOs refer to foreign-funded CSOs that became primarily targeted by the Foreign NGO Act.

3.1. The way towards “Hungarian illiberal democracy”

Hungarian CSOs were not allowed to operate independently during the socialist era. The 1949 Constitution granted the rights of freedom of assembly and associations: “in order to improve the social, economic and cultural activities of workers, the People's Republic of Hungary provides constitutional rights to the right of association” (Article 56). Despite the ruling, the Socialist Party “rejected the concept of independent organizations, asserting that independence from the ‘state of the people’ was a meaningless idea” (Cox & Wass, 1995, p. 160). There was no official registration procedure for independent civil society organizations; co-operatives and trade unions had to operate under the governmental umbrella organization.

In the 1980s Hungarian civil society started to gain power, especially through environmental and student movements, culminating in the 1989 transition to democracy. The role of both registered and unregistered CSOs was crucial to start a public discourse, engage different social groups and create an enabling environment to lead towards the democratic transition in 1989. In 1989 the Parliament revised the Constitution and adopted the Law II of

1989 on the Freedom of Association that allowed the existence and registration of independent, autonomous groups, as “social organizations.” The new legislation broadened the activities of civil society organizations stating that “social organizations can be established for the purpose of carrying out activities that are consistent with the Constitution and which are not prohibited by law” (Article 2.3.). Furthermore, the law stated that “registration of a social organization cannot be denied if its founders have fulfilled the requirements of this law” (Article 4.1), which led to a significant increase of registered associations: in 1989 there were 8,514 registered associations, while by 1992 their number reached 19,950, more than doubling in three years (Cox & Wass, 1995). The Hungarian society began to exercise its right of the freedom of associations immediately after the autocratic government began lose its power in the late 1980s. In 1989 Hungary experienced a transition to democracy: a political transition where multi-party, free and fair elections, parliamentary system, and the separation of powers were established and an economic transition from planned economy to market economy.

During and after the democratic transition, a heterogeneous civil society arose in Hungary (Csanády 1998). New pieces of legislation passed, such as the 1993 Civil Code that introduced new legal forms of CSOs including public law foundations, public benefit companies, and public law associations; the Act CXXVI of 1996 Law on the Use of a Specified Portion of Personal Income Tax (otherwise known as “1% Act”) that allows taxpayers to designate one or two percent of his/her paid personal income tax to qualified civil society and religious organizations; and the Act CLVI of 1997 on Public Benefit Organizations that provided tax incentives for both individuals and corporations, established two degrees of public benefit organizations, and required more transparency and accountability from public benefit organizations.

In addition, the Hungarian public administration of that time aimed to strengthen CSOs by providing financial support to these organizations. From 1990 through 1997 the total amount of central government support to CSOs increased by 10 times (Csóka, 2000). After the economic transition, the government heavily relied on CSOs to provide social services for those in need as the level of unemployment, poverty as well as homelessness increased dramatically in the early 1990s (Klaudt, 1995). Cooperation between the government and CSOs was increasing both in the decision-making process and policy implementations. The Hungarian government was willing to satisfy the standards established by the Western world in order to successfully join the Organization for Economic Co-operation and Development (joined on May 7, 1996), the North Atlantic Treaty Organization (joined on March 12, 1999), the European Union (joined on May 1, 2004), and other intergovernmental organizations.

While the Hungarian CSO legislation was established and the cooperation between the governmental and civil sector improved in the 1990s (Csanádi 1998, Csóka 2000), the sector still struggled to operate in the established political structure. Szabó (1991 in Lomax 1997) emphasized that the old elite remained in crucial positions that might have resulted in CSOs remaining relatively unknown to the majority of the society. Cox and Wass (1995) noted that associations and other CSOs were rather weak and fragmented with no effective links to the political sphere in the 1990s.

However, the positive changes in the legislation created an enabling environment for Hungarian civil society: the number of CSOs were increasing as well as the aggregate revenue of CSOs (KSH, 2016). In 2003 the Hungarian government increased the amount of government funding available to CSOs (Act L of 2003) and recognized and supported volunteering work (Act LXXXVIII of 2005). Simultaneously, the level of tax incentives for charitable contributions was decreasing in the beginning of 2000s, and by the end of the 2008 economic crisis, individuals

and private entrepreneurs were no longer entitled to tax incentives for charitable contributions as a government austerity measure. Thus, civil society has remained heavily dependent on government funding both politically (Dobszay 2014) and economically (KSH 2015). In 2012, for the first time after the democratic transition, all three macro indicators of the civil sector decreased: number of registered organizations, the aggregate revenue of CSOs, and the rate of employment in the civil sector. The number of registered CSOs has been decreasing since then due to the fact that the 2011 Civil Law initiated a cleansing process within the sector (Article 11).

Since 2013, intensifying government attacks against Hungarian CSOs have been observed. In August 2013, the government related newspapers published lists of CSOs that they suspected of serving foreign interests, and these sentiments were echoed by the governing party's spokesperson. Some of these organizations, such as the Okotars Foundation, received funds through the framework of the EEA/Norway Grants NGO Fund⁵. Two days after the 2014 Hungarian parliamentary election - where the victory of the governing parties preserved the power of Prime Minister Orban - the Prime Minister's Office claimed that Okotars Foundation had practiced political influence by being close to the opposition party. In May 2014, Norway suspended the Norway Grants NGO Fund because of the Hungarian government's accusation. The Government Control Office started an audit on the Fund by the Hungarian government's request. During the audit, the Government Control Office requested materials from 58 CSOs supported by the Fund with very short notice. In addition, the Okotars Foundation and DemNet – both receiving funds from the Norwegian Government – were raided by police. These CSOs' tax numbers, and by extension, their legal operations, were temporarily suspended by

⁵ The EEA Grants and Norway Grants are financial contribution of Iceland, Liechtenstein, and Norway to reducing economic and social disparities and to strengthening bilateral relations with 15 EU countries in Central and Southern Europe (EEA Grants, 2018). Since 2015, the EEA/Norway Grants have been partly suspended in Hungary. Please find more: <https://eeagrants.org/>

September 2014 (Eotvos Karoly Policy institute et al., 2014). It was the first government attack against foreign-funded CSOs and Hungarian civil society in general.

Hungary's largest newspaper supporting social-democratic values was closed down in 2016 while public media, which "generally adhere to progovernmental narratives" have enjoyed increasing government funding in the last years (Freedom House, 2016). Since 2015, Freedom House's "Nations in Transit" publication has classified Hungary's regime as semi-consolidated democracy and in 2017 Hungary had the lowest ranking in the Central European region as "the government has now snuffed out most of the critical media and built an efficient machine of state capture and grand corruption" (Freedom House, 2017).

According to the CSO Sustainability Index for Central and Eastern Europe and Eurasia published by USAID, the CSO sustainability index has been decreasing in Hungary since 1998. Between 2010 and 2016 the decline was significant, especially in the cases of legal environment, financial viability, and public image. According to USAID (2017), the government's continued "vilification campaign" has had a strong, negative affect on the public image of CSOs, while foreign-funded organizations came under government attacks that decreased both cross-border and domestic funding of such organizations. In 2017 the Hungarian government has consolidated its power by "uprooting democratic institutions and intimidating critics in civil society" as well as passing laws oppressing the activities of foreign-funded nongovernmental organizations (Freedom House, 2018c, p. 16.).

By 2017, Hungary became one of the countries whose democratic freedom has dramatically declined in the last decade, and scored the lowest in political rights and civil liberties within the European Union's Member States (Freedom House, 2018c). Before the chapter discusses the Foreign NGO Act and the related government campaign, it is important to

understand the legislation related to CSOs and anti-money laundering that went into action prior to the Foreign NGO Act.

3.2. Hungarian legislation to enhance CSO transparency and prevent money laundering

In Hungary, the legal framework for CSOs is the Act CLXXV of 2011 on the Freedom of Association, Public Benefit Status, and the Operation and Support of Civil Society Organizations (Civil Act) and the Civil Code V of 2013. The Act LIII of 2017 on Prevention of Money Laundering and the Financing of Terrorism (Anti-money Laundering Act) is also relevant to better understand how the government has fought against money laundering and financing terrorism.

The new Civil Act in 2011, which applied to foundations, associations, public benefit organizations and other organizations established under the right of associations (Article 1), “caused disappointments” within the sector (USAID, 2012). USAID (2012) stated that the unclear interpretation and dubious implementation of the legislation caused “uncertainty and confusion among CSOs.” However, the Civil Act was supposed to address several problems, such as simplified public benefit status for registered CSOs, well-established transparency and accountability policies, and clearly defined state funding. The Civil Act introduced the one-step qualification for public benefit organizations. Organizations applying for such status need to provide state tasks, have adequate resources, and demonstrate adequate level of public support (Article 32.1). The Civil Act also focused on the sector’s transparency and accountability. It created a unified, public electronic database – the Civil Information Portal – to introduce electronic registration and reporting for CSOs (Article 14), but the portal was only introduced in 2015, and online registration and reporting has been only mandatory for public benefit organizations – that, after a huge drop, is only 19% of registered CSOs (KSH, 2018). Furthermore, the Civil Act introduced a reporting system for CSOs in order to make the sector more transparent. CSOs need to submit an annual report about their operational, financial, and

income status (Article 28) and prepare a public benefit annex (Article 29) and make both documents available on their websites (Article 30). External audit is required of CSOs with annual incomes of HUF 300 million (US \$ 1,200 million) or more (USAID, 2015). The Civil Act also established a new government financing system: the National Cooperation Fund. Despite the aim of more transparent government funding, the Committee of the National Cooperation Fund is dominated by government-appointed representatives (Article 60) and the minister can allocate personally 10 percent of the funding (Article 56). Finally, even though the Civil Act reestablished corporate tax benefits for charitable contributions to CSOs with public benefit status, tax incentives for individuals have not been reintroduced since 2009.

The new Civil Code was adopted in 2013 and entered into force in 2014 also had several implications on CSOs. In terms of associations, the new Civil Code established new procedures for conducting general assemblies (Article 3:55) as well as an extension of a board's liability after a CSO's dissolution (Article 3:21 and 6:536). In regard to foundations, the Civil Code re-introduced the concept of private foundations (Article 3:376), established the extension of board liability, and mandated the involuntary termination of foundations if they do not engage in worthwhile activities for more than three years (Article 3:400). Furthermore, CSOs had to adapt their statutes to the provisions of the Civil Code by March 15, 2017 that created burdensome responsibilities for smaller CSOs. In the original text of the law, the deadline was March 15, 2016 which was modified by the Hungarian Parliament to provide more time for CSOs to adapt these requirements.

The third relevant legislation for the study is the Act LIII of 2017 on Prevention of Money Laundering and the Financing of Terrorism (Anti-money Laundering Act). The legislation was adopted after The Council of Europe's Committee of Experts on The Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (MONEYVAL) claimed that Hungary should

conduct a formal review of the entire civil sector in order to identify and monitor NPOs that could potentially pose a higher risk for financing terrorism (MONEYVAL, 2016). However, the Anti-money Laundering Act did not include CSOs among the organizations and service providers that are required to abide by the statutory provisions. The main intents of the Anti-money Laundering Act were to implement the provision of the 4th Anti-money Laundering Directive established by the European Union. The law outlines the new requirements for organizations and includes the possibility of electronic identity verification of clients/ customers who are part of any financial transactions (Article 7), the establishment of a central database (Article 25), and stricter and higher amount of penalties in case of unlawful activities (Article 69).

As the further analysis of the Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad will show, the regulations regarding the registration and reporting requirements of foreign-funded organizations are discriminative against the operation of such organizations and do not serve anti-money laundering purposes as only one segment of the civil sector is addressed by the Foreign NGO Act.

3.3. Foreign-funded NGOs under government attack

3.3.1. Government critics and government-related studies prior to the announcement of the draft law

Since early 2017, the Hungarian government introduced a negative campaign against foreign-funded CSOs, otherwise known as NGOs. While the government several times declared that the role of civil society is important and valuable for the Hungarian society, NGOs have increasingly been characterized as organizations that represent “foreign influence” whose goal is “political interference” (Website of The Hungarian Government, 2017b). Prime Minister Orban has underlined several times the importance of the regulation of foreign-funded NGOs, but as the subchapter shows, the political arguments for such legislation have shifted from

emphasizing transparency of the civil sector to positioning the legislation as a safeguard against Soros-funded organizations that threaten the country's stability. However, such foreign-funded NGOs often provide crucial social services, from mitigating corruption and promoting transparency and accountability in the public sphere of the decision-making processes (Transparency International, 2018), through promoting democracy and independent journalism (The Open Society Foundations, 2018) to human and minority rights (Helsinki Committee, 2018). Indeed, NGOs often support social services that a government may primarily be responsible for, including educational and health care programs, child and homeless care activities, and environmental initiatives.

The Hungarian government started to make a clear distinction between foreign-funded NGOs and CSOs in order to describe NGOs in negative terms. Allegedly, NGOs became a primary focus because of lack of transparency and accountability – even though they had to follow the same reporting requirements as other CSOs and prepare and publish an annual report, a public-benefit annex, and a report on donations. Prime Minister Orban described NGOs as “large-scale predators,” “Hungarian depots of international organizations ... [that] have been here, under our skin or under our nails as a thread,” and claimed that these organizations “represent international interests,” and therefore want to “hide behind the term of civil society organizations” (Magyarország Kormánya, 2017b)⁶. These terms clearly show that the Hungarian government used harsh, offensive criticisms to negatively influence the public image of foreign-funded NGOs in the country. Even though the campaign avoided inflammatory terms such as “foreign agents,” the wording of the campaign was clearly aimed at making foreign-funded

⁶ All quotations cited from Magyarország Kormánya is available in Hungarian and have been translated into English by the author.

NGOs appear as representatives of foreign interests that aim to attack Hungarian integrity and political stability.

The presence and activity of foreign-funded NGOs became one of the main issues to be addressed by the Hungarian government in 2017. In his address in Parliament before the start of daily business on February 20, 2017, Prime Minister Orban stated that foreign-funded international networks have attempted to influence internal politics in countries such as the United States and France. Thus, “transparency, accountability, and openness” are required from NGOs in order not to allow “global capital to make decisions instead of the Hungarian people” (Magyarország Kormánya, 2017c). By March 2017, the Hungarian government directly targeted NGOs, stating that such organizations could undermine the Hungarian value system as well as the country’s safety and stability. On March 15, the anniversary of the 1848 Revolution, Prime Minister Orban said that “either the past or the future of the Hungarian nation ..., the security of the European people, ... [or] whether or not we remain Hungarian does not matter to Brussels and international capital [referring to foreign-funded NGOs] (Website of The Hungarian Government, 2017g).

Since late March, NGOs were accused of being part of the “migrant business.” In 2015, over one million migrants and refugees crossed into Europe from the Middle East, resulting in one of the biggest refugee flows since World War II. Hungary was impacted by the inflow of refugees as a transit country, receiving the highest ratio of political asylum applications per population among all European countries receiving refugees in 2015 (Connor, 2016). The Hungarian government introduced anti-refugee policies such as planning to build a border fence along its borders with Serbia and Croatia, introducing a “zero refugee” policy, rejecting the proposed European Union quota system to resettling refugees, and adopting a law that allows the detention of migrants in temporary camps. The Hungarian government anti-immigration

campaign remained in the political agenda despite the fact that the number of migrants significantly dropped after physically closing the country's Southern borders. Since March 2017, foreign-funded NGOs have been portrayed as organizations that support illegal immigration and therefore, organizations that operate against the Hungarian public.

Statements of illegal immigration against NGOs increased after March 14, when the European Court of Human Rights (ECHR) gave its judgement in the case Ilias and Ahmed V. Hungary (no. 47287/15), The Hungarian Helsinki Committee represented two Bangladeshi nationals, Mr. Ilias and Mr. Ahmed, who applied for asylum immediately after arriving in Hungary, where they were held in a transit zone for 23 days. They complained that their detention conditions at the transit zone violated their human rights. The court found that the Hungarian authorities did violate several articles of the Convention for the Protection of Human Rights and therefore the Hungarian government was sanctioned by EUR 28,705 (US\$ 35,300) that includes the non-pecuniary damage caused to the applicants as well as their costs and expenses incurred before the Court (ECHR, 2017). After this case, the government started to use the terms "illegal migration" and "participation of migration business" to support the necessity of a Foreign NGO Act. The Government Spokesperson stated that there are problems with foreign-funded NGOs that are "concerned with 'the migrant business,' or with the protection of human rights which induces the violation of international law and the sovereignty of a country" (Website of The Hungarian Government, 2017h).

Simultaneously, the government-related Szazadveg Foundation released its survey on social trust in February 2017 and its study of NGOs as political actors in March 2017. The Szazadveg Foundation is "an independent think-tank organization, whose primary aim is to articulate and forward the issues and processes concerning Hungarian society and public interests, and to publish a clearly written and objective analysis of these processes" (ENOP,

2018). However, the Foundation received several critics in the last couple of years regarding its biased studies and strong connection with and financial dependence on the current ruling party. The Foundation was established by Fidesz members, and received several critics have stated that not only has the Foundation created “bogus studies” using taxpayer’s money (index.hu, 2012, hvg.hu, 2015, hvg.hu 2018), but it has also manipulated polls’ results to support the government’s ideology and goals (The Budapest Beacon, 2016) Therefore, the survey and study published by the Foundation in connection with foreign-funded NGOs might have been served directly the aims of the ruling party to provide an appearance of a professionally-grounded dialogue.

According to the Survey on Social Trust by the government-influenced Szazadveg Foundation, (Szazadveg Foundation, 2017a), “the majority of the [Hungarian] population does not trust foreign-funded NGOs, but they trust domestic civil society organizations.” The survey analyzed the level of social trust towards different public and nonprofit institutions, such as public schools, the military, the European Union, the United Nations, the Supreme Court, the media, and civil society organizations. According to the survey, 56% of the Hungarian population trust domestic civil society organizations, and only 29% of the Hungarian population trust foreign-funded NGOs. However, we can infer that the nonprofit sector in general has a low level of social trust, as domestic civil society organizations were ranked 14, and foreign-funded NGOs were ranked dead last among the 17 institutions the survey covered. The results emphasized the importance of NGO regulation, and provided evidence to support the government’s claim that public opinion is against the activities of foreign-funded NGOs.

The study of NGOs as political actors, published by the government-influenced Szazadveg Foundation (2017b), focused on foreign-funded NGOs and their political roles. The study discussed the political roles and power of foreign-funded NGOs, their democratic

legitimacy as well as their accountability. The study also drew attention to the fact that foreign-funded NGOs were strongly dependent on their donors, suggesting that these organization could easily become the lobbyists of their donors (Szazadveg Foundation, 2017b, p. 10). The study also issued recommendations such as the creation of NGO legislation to address the lobbying activities of foreign-funded NGOs. This recommendation was allegedly based on “Western regulatory trends,” due to the fact that the political role of NGOs on agenda setting and influencing the public opinion has increased recently in the West and around the world. We can infer that this study established the legal need for an anti-foreign NGO Law and indirectly authorized the government to introduce the Draft Law on the Transparency of Organizations Receiving Support from Abroad.

Based on the government language and the studies published by Szazadveg Foundation, the following arguments can be identified to support the implementation of a Foreign NGO Act:

- Transparency and accountability – since the public trust towards foreign-funded NGOs is low and such organizations’ activities might impact the country’s political stability, transparency might help stakeholders better understand and monitor the operation of NGOs;
- Fight against illegal immigration – as NGOs might support illegal immigration and therefore human trafficking, their operation might violate both international and national laws;
- Fight against foreign-funded lobbying – as NGOs might influence domestic politics and the 2018 election – as seen in the recent elections in the United States and in France – a possible legislation might prevent such unlawful activities.

3.3.2. Changing rhetoric and preliminary opinion of the Venice Commission

After an online media outlet, 444.hu, leaked the first version of the draft law on April 2, the ruling party’s members of Parliament submitted the Act T/14967 on the Transparency of Organizations Receiving Foreign Funds to the Hungarian Parliament on April 7, 2017. The draft

law required organizations receiving foreign funds over a certain yearly threshold to register themselves, and to label themselves as “organizations receiving foreign funds” on their website and in their publications.

On April 10, Peter Szijjarto, Minister of Foreign Affairs and Trade, became the first person in the current debate about NGOs to refer to the U.S. 1938 Foreign Agents Registration Act, stating that the Foreign NGO Act “is also required in the United States, “in a certain form”” (Magyarország Kormánya, 2017a). However, he did not elaborate on this claim or provide direct evidence for it. On April 16, during his Easter interview, Prime Minister Orban underscored again the difference between CSOs and NGOs. The latter were characterized as international lobbying organizations that want to influence public authority and political decisions. Additionally, he referred to the 1938 Foreign Agents Registration Act, without any further specification, highlighting that the Hungarian Foreign NGO Act would not be as strict as the American one (Website of the Hungarian Government, 2017i):

“In America these organisations are called ‘agent’ organisations, and so far Europe has not been required to face the question of how to regulate their activities. Now we have said that we could adopt the US model – but American legislation is too strict even for my liking. That won’t work for us. Here we have had a dictatorship or two in the past, and we don’t like things like that. So all we want – but this is something we have a right to – is for every Hungarian to be able to see and find out the identity and motives of those who fund organisations which voice their views on matters which are important in terms of public policy and the future of the community.”

Prime Minister Orban made it clear for the public that the legislation in the United States are much stricter without mentioning the name of the regulation itself. However, in accordance with the Russian and Israeli references, we can conclude that the comment referred to the 1938 Foreign Agents Registration Act, which primarily regulates NGOs that conduct lobbying activities.

In April, not only was the American legislation frequently mentioned by the ruling party, but also NGOs became identified as organizations supported by George Soros⁷. Mr. Soros' name and its possible influence in politics were often mentioned by the government as a possible reason to implement a Foreign NGO Act, and government statements started to focus on "harmful nongovernmental-organizations" that have been funded by Mr. Soros. Pal Vornér, Parliamentary State Secretary of Ministry of Justice, said that civil society organizations that criticize the new law do not keep in mind the country's interests (Magyarország Kormánya, 2017b), after several civil society organizations initiated a peaceful protest against the Foreign NGO Act in April 12, 2017. By the end of the month, Prime Minister Orbán mentioned that special legislation is necessary for NGOs, because "we want to see them, want to know them and we want to know who they are financially supported by, otherwise we cannot defend Hungary from them." (Magyarország Kormánya, 2017c). The creation of a common enemy by the government led to negative public opinion regarding foreign-funded NGOs, especially those who work in the areas of government transparency and human rights.

The government started to concentrate on the "Soros-organizations," those organizations that are directly or indirectly funded by Mr. Soros, and those that have actively participated in providing services during the peak of the migration crisis in Hungary. In May 2017, Parliamentary State Secretary Vornér said that immigration organizations attacked Hungary in all sorts of ways in accordance with the instructions of Mr. Soros. Further,

⁷ George Soros (1930-) is one of the world's foremost philanthropists. Mr. Soros founded the Soros Fund Management, LLC in 1969 and has worked as a hedge fund investor in the United States. In the 1970s, Mr. Soros began his global philanthropy, and since the 1980s he helped promote cross-border education, civil society and the combat against discrimination in Hungary. He established the Hungarian Soros Foundation (later part of the Open Society Foundations) and founded the Central European University in Budapest, Hungary. In 2018, after almost 35 years of operation, the Open Society Foundation's Budapest office announced to move their operations and staff to Berlin, Germany because of the worsening political environment.

Parliamentary State Secretary Volner claimed that attacking the Law on Transparency of Organizations Receiving Foreign Funds is just one of Soros-funded NGOs' "routine tactics" to criticize the Hungarian government (Magyaroszag Kormanya, 2017d). Several statements were released, where NGOs were identified as collaborators of the migration crisis and human trafficking in order to support the necessity of the Foreign NGO Act.

The government statements as well as the government-related studies published by Szazadveg Foundation clearly shows how the reasoning that supports the necessity of Foreign NGO Acts has changed through the examined time period. While in January the main reason was to enhance transparency and accountability among CSOs in general, in February the focus was on NGOs that are active in lobbying activities. However, the emphasis on international and foreign-funded NGOs became more conspicuous, especially after the Szazadveg Foundation released its survey stating that the Hungarian population does not trust foreign-funded NGOs. The government started to make clear differences between NGOs and CSOs, and on April 1, 2017 the Hungarian Government launched a national consultation ("Let's Stop Brussels"). One of the questions of the consultation was related to foreign-funded organizations, aka NGOs:

"More and more foreign-supported organizations operate in Hungary with the aim of interfering in the internal affairs of our country in an opaque manner. These organizations could jeopardize our independence. What do you think Hungary should do? (a) Require them to register, revealing the objectives of their activities and the sources of their finances. (b) Allow them to continue their risky activities without any supervision."

By May 31, 1,688,044 people had sent back the survey, which was a record high participation rate in the history of national consultations introduced by the current government in 2010 (Website of the Hungarian Government, 2017o). According to the results published by the Hungarian government, the majority of respondents supported the government to require NGOs to register, revealing the objectives of their activities and the sources of their finances.

As the proposed legislation garnered international attention, Hungarian leaders frequently mentioned the 1938 Foreign Agents Registration Act as the basis for the Hungarian proposal. Simultaneously, the so-called Soros-rhetoric had been increasing, and Mr. Soros, the “illegal migration-business” and NGOs were often associated to each other. Within six months the government changed its reasoning from enhancing accountability and transparency in the civil sector to fighting against foreign-funded – mainly “Soros-funded” – NGOs that are threatening Hungary and Hungarian politics.

The Parliament made a decision to invite the Venice Commission of the Council of Europe⁸ to comment on the draft law on foreign-funded NGOs. Its preliminary opinion, published on June 2, 2017, noted that the Draft Law “pursues legitimate aim of ensuring transparency of civil society organizations [and] may also contribute to the fight against money laundering and the financing of terrorism” (Venice Commission, 2017c, Art. 62). However, the Commission also acknowledged that “the neutral label ‘organization receiving support from abroad’ used in the draft, placed in the context of a virulent campaign carried out by some Hungarian authorities against foreign-funded NGOs, risks to adversely affect their legitimate activities and may raise a concern of discriminatory treatment” (Venice Commission, 2017a).

The Venice Commission also raised four main concerns regarding the reporting and labeling requirements as well as the deregistration procedure proposed by the Foreign NGO Act (Venice Commission, 2017c, Art. 63):

- The rationale behind the exclusion of a number of associations and organizations from the scope of application of the Draft law is not entirely clear;

⁸ The Venice Commission of the Council of Europe, or officially the European Commission for Democracy through Law, is the Council of Europe's advisory body on constitutional matters. The role of the Venice Commission is “to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures into line with European standards and international experience in the fields of democracy, human rights and the rule of law” (Venice Commission, 2017b).

- The period of three years during which a civil society organization may not receive any foreign funding in order to be entitled to initiate a deregistration procedure is quite long and appears arbitrary;
- The data included in the register and made public should be limited to the major sponsors in order to ensure that no excessive obligation is imposed on organizations receiving foreign funding;
- The obligation that the relevant organization should mention that it qualifies as an organization receiving support from abroad on all its press products and publication appears to be excessive.

Finally, the Commission recommended to the Hungarian government that a public consultation inviting all civil society organizations be conducted before the Hungarian Parliament discussed the final adoption of the law.

Despite the fact that the Venice Commission stated that transparency of civil society organizations could support the fight against money laundering and the financing of terrorism; these aims became questionable for the following reasons. First, the Hungarian Parliament enacted the new Anti-money Laundering Act in May 2017 in order to comply with the European Union’s legislative obligation, but, even though the law became stricter, its scope was not extended to civil society organizations. Second, the Hungarian parliament felt the need to create and enact a new law focusing on CSOs’ transparency and accountability, but the findings of the Venice Commission clearly shows that the draft law was targeting only NGOs in an excessive way.

The experts of the Office of the United Nations High Commissioner for Human Rights accentuated the fact that financial transparency of CSOs is already ensured by the Civil Act and the Government Decree 50/2011 (XII. 30) on Certain Issues of CSO Financial Management, Fundraising and Public Benefit Status and urged the Hungarian government to withdraw the draft law because it would “severely curtail the rights to freedom of expression and freedom of peaceful assembly and association in Hungary” (OHCHR, 2017). Despite the domestic and

international concerns raised against the draft law, the Foreign NGO Act – with some modifications – was adopted in June, 2017.

3.3.3. Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad

On June 13, 2017, the Hungarian Parliament adopted the Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad (Foreign NGO Act) with minor changes in accordance with the preliminary opinion of the Venice Commission. This subsection briefly discusses the Act, focusing on its controversial sections. The opposition parties submitted several amendments to the law that were in line with the Venice Commission’s preliminary opinion, but the ruling government party voted against all amendments presented by the opposition. The Law on the Transparency of Organizations Receiving Support from Abroad was adopted by 130 votes to 44, with 24 abstentions. The government party, FIDESZ - KDNP coalition, typically has 133 votes in the Parliament (orszaggyles.hu, 2017), and there was not one opposition party vote to support the Foreign NGO Act.

The Foreign NGO Act justifies the need for such a law based on three reasons: special public interest, the possibility of endangering the political and economic interests of the country, and the prevention of money laundering. According to the language of the law, “transparency of these organizations is of special public interest due to the societal engagement of associations and foundations” and these organizations might “endanger the political, economic interests of the country as well as the operation of statutory institutions” and participate in “money laundering”. The Act creates a new legal category of “organizations receiving foreign funding” for associations and foundations which receive foreign funding that exceeds HUF 7,200,000 (US\$ 29,000) (Article 1). Article 1.4 states that the Act shall not apply to associations and foundations which are not regarded as civil society organizations, nor sport associations, associations pursuing religious activities, or ethnic minority organizations or

political parties. This section clearly shows that the Act does not aim to increase the transparency of the whole civil sector, and it is not clear why sport, religious and ethnic organizations - or particularly, political parties - are less likely to endanger the political or economic interest of the country or participate in financing of terrorism than other organizations.

Article 2 states that organizations receiving foreign funding shall declare, within 15 days, that they have become organizations receiving foreign funds to the competent Regional Court and disclose their status of “organization supported abroad” immediately in their online and printed materials. The Foreign NGO Act was to be enforced on the 8th day following its publication (June 19, 2017). Therefore the time-period of the implementation of the Act was extremely short, and created administrative burdens for these organizations.

Due to the preliminary opinion of the Venice Commission, several amendments were approved regarding the legislation. The data that organizations receiving foreign funds need to declare and make public has been limited to major sponsors who donate HUF 500,000 (US\$ 2,000) or more (Article 2.3) instead of all donations independently of the amount. The sanction system became more proportionate and it does not include the possibility of automatic dissolution of the organization as it was framed in the draft law (Article 3); and the time period during which an organization may not receive any foreign funding in order to be entitled to initiate a deregistration procedure was decreased to 1 year from 5 years (Article 4).

According to the Annex no.1 to the Act, the data organizations receiving foreign funds need to submit are the following: sum per transaction and the exact source (in case of the donation exceeds HUF 500,000 (US\$ 2,000)) which might negatively affect cross-border donations in Hungary. Furthermore, as the term “support from abroad” is not clearly defined,

the Act has created uncertainty among donors as well as NGOs in terms of reporting and labeling requirements.

The European Center for Not-for-Profit Law drew attention to five concerns in relation to the Foreign NGO Act including the relatively high fines and possible dissolution of civil society organization if they fail to register and meet the requirements, and negative consequences of the new categorization and labelling of foreign-funded organizations (ECNL, 2017). In order to protest against stigmatizing any group of civil society organizations, several civil society organizations, including the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union declared a boycott against the law while Amnesty International Hungary stated that they planned to bring the case to the Constitutional Court on the same day the law was adopted by the Parliament (hvg.hu, 2017).

3.3.4. Intensifying negative government campaign, legal consequences, and an opaque future

As the Foreign NGO Act was adopted, the negative campaign against NGOs has continued and focused more on the so-called undemocratic, Soros-funded NGOs. Peter Szijjarto, Minister of Foreign Affairs and Trade stated that NGOs have “never been elected to do anything, and accordingly the image that they are representing society in face of the government is a false one” (Website of The Hungarian Government. 2017k). Mr. Trocsanyi, Minister of Justice argued that civil disobedience is not recognized by the Hungarian legal system (Magyarország Kormánya, 2017e) in response to the boycott initiated by several foreign-funded civil society organizations as a response to the adoption of the Foreign NGO Act. Prime Minister Orban also discussed the foreign NGO Act during his usual radio interview. He not only questioned the concerns raised by the Venice Commission, the governments of Germany and the United States of America, but repeatedly highlighted that the United States of America has much stricter regulations – not mentioning the laws or decrees directly - for foreign-funded organizations. Prime Minister

Orban characterized these American regulations as “harsh,” and “several times stricter” than the Hungarian regulation. (Website of The Hungarian Government. 2017m)

On June, 20 the Venice Commission released its Opinion on The Draft Law on The Transparency of Organizations Receiving Support from Abroad. The Venice Commission underlined that the language against foreign-funded civil society organizations that were used during the national consultation (“Let’s Stop Brussels”) can harm the reputation and activities of such organizations. Although Hungary did not choose to use the stigmatizing term of “foreign agent” in its legislation as it appears in the Russian and Israeli legislation, the negative campaign using the term “foreign-funded NGOs” connoted political interference, illegal immigration, and undemocratic organizations that might lead to the same result as using the term “foreign agent”: stigmatization and negative public image of NGOs. The Commission raised concern that the Hungarian government avoided any public consultation that might have included civil society organizations. The Commission maintained its concerns published previously, on June 2, 2017. Even though the Commission recognized that “some of these amendments represent an important improvement,” it underscored that “some other concerns were not addressed and the amendments do not suffice to alleviate the Venice Commission’s concerns that the Law will cause disproportionate and unnecessary interference with the freedoms of association and expression, the right to privacy, and the prohibition of discrimination” (Venice Commission, 2017d, Art. 68.) The Venice Commission acknowledged that the law was constitutional in nature, but identified the interference with the freedom of association as their main concern with the regulation (Fundamental Law of Hungary, Section VIII).

After June, the government’s communication slightly changed and became more negative, using terms like “Soros-funded organizations” and “mafia-like network.” Prime Minister Orban said that these organizations are “financed by George Soros ...; [t]hey support

activities related to the illegal crossing of borders, and they rescue criminals and terrorists.” (Website of The Hungarian Government. 2017j). The government issued communication that accused the NGOs that protested against the Foreign NGO Act of wanting the government to stop controlling the Southern borders. These statements were never proved by the government, however the stigmatization of NGOs was increasing as NGOs became painted as anti-government organizations that might jeopardize the safety and stability of the country.

In July of 2017, the National Election Committee refused the proposal for a referendum submitted by Barnabas Kadar, an opposition party board member, regarding the annulation of the Foreign NGO Act. The opposition party was stigmatized as a Soros-related party, who worked to prevent transparency of “pro-migration organizations” (origo.hu, 2017). On November 8, the Curia, the highest judicial authority in Hungary, reviewed the proposal and deemed it to be valid. Therefore the opposition party had 120 days to collect 200,000 signatures in order to hold a national referendum in the question.

Meanwhile, the Hungarian government launched a new national consultation (“About The Soros-Plan”) in October 2017. Even though the consultation focused on the so-called Soros-plan, one of the questions mentioned the Hungarian Helsinki Committee and Amnesty International Hungary, as Soros-funded organizations that assist immigration and defend migrants who have committed unlawful acts (Question 5, National Consultation about The Soros-Plan):

“George Soros would also like to see migrants receive lighter sentences for the crimes they commit. George Soros, with significant amounts of funding, supports numerous organizations that assist immigration and defend immigrants who have committed unlawful acts. One example, the Hungarian Helsinki Committee, with regard to the prohibited crossing of the border argued that ‘the application of strict legal consequences with regard to unlawful entry may be considered concerning’. Another Soros organization, Amnesty International, on several occasions demanded the release of the Ahmed H., who attacked Hungarian police defending the border with rocks and was convicted

for this reason. Amnesty would even have the Hungarian state pay compensation.”

On October 1, the Hungarian Helsinki Committee went to court because the “misleading statements of the national Consultation questionnaire that misrepresents facts” violates the organization’s right to good reputation (Helsinki Committee, 2017a). The Hungarian Helsinki Commission drew attention to the fact that the truncated citation was moved from one of their studies without any context. Bence Tuzson, Minister of State for Government Communication stated that the Helsinki Committee was only trying “to restrict the freedom of the Hungarian people to express their views” and framed the lawsuit as another attack from “the Soros empire.” The government refused to make any correction as Mr. Tuzson underlined that “the Hungarian Government is continuing to stand up for the National Consultation, Hungary’s interests and the freedom of the Hungarian people to express their opinions” (Website of The Hungarian Government. 2017l). Thus, the Hungarian Helsinki Committee asked for an interim measure before the judgement that requires the defendant (Cabinet Office) to suspend any activity that may be presumed to cause irreversible damage to the plaintiff during the lawsuit. The Budapest Court of Appeal decided to implement the interim procedure to suspend the dissemination of the statement referring to the Helsinki Committee in Question 5, but planned to implement the suspension on November 29, two days before the national consultation officially ended (Helsinki Committee, 2017b). Therefore, despite the interim procedure, the Hungarian public became misinformed by the government. According to the results of the national consultation, more than 2.3 million Hungarian citizens did not agree with question 5, rejecting this “particular point of the Soros plan” (nemzetikonzultacio.kormany.hu, 2018). This data shows that the general public discourse has a negative attitude towards foreign-funded NGOs, and they might associate NGOs with organizations that aim to threaten the Hungarian sovereignty by representing the illegal immigration-related “Soros-plan.”

The government's communication changed again after the adaptation of the Foreign NGO Act, featuring that such regulation is needed because:

- NGOs are not democratically elected, but they aim to influence the political arena in Hungary;
- NGOs, especially those that are part of the "Soros empire," are dangerous to Hungary's sovereignty.

The negative government campaign with the purpose of undermining the legitimacy of any Soros-related individuals and organizations is not clear except for the fact that – according to the Hungarian government – Mr. Soros supports illegal immigration and interference in Hungarian politics.

Besides the increasing tension at the national level, the European Union also paid particular attention to the Foreign NGO Act. On July 13, 2017, The European Commission - the executive arm of the European Union - launched infringement procedure⁹ for the Law on the Transparency of Organizations Receiving Support from Abroad, sending a letter of formal notice to Hungary. During the European Union's infringement procedure, First Vice-President Frans

⁹ According to the European Union's treaties, the European Commission may take legal action – the infringement procedure – against a European Union Member State that fails to implement the European Union law. The steps of an infringement procedures are the followings: 1) the Commission sends a letter of formal notice requesting further information to the country concerned, which must send a detailed reply within a specified period, usually 2 months; 2) if the Commission concludes that the country is failing to fulfil its obligations under EU law, it may send a reasoned opinion: a formal request to comply with EU law. It explains why the Commission considers that the country is breaching EU law. It also requests that the EU country inform the Commission of the measures taken, within a specified period, usually 2 months; 3) if the EU country still doesn't comply, the Commission may decide to refer the matter to the Court of Justice. Most cases are settled before being referred to the Court; 4) if an EU county fails to communicate measures that implement the provisions of a directive in time, the Commission may ask the Court to impose penalties; and 5) if the Court finds that a country has breached EU law, the national authorities must take action to comply with the Court judgment (European Commission, 2017a). Despite the fact that it is a significant formal procedure, the Court of Justice can impose only financial penalties in case of non-compliance. In 2017, there were 482 active cases initiated by the European Commission. (Please see at: http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en.)

Timmermans said: “We have studied the new law on NGOs carefully and have come to the conclusion that it does not comply with EU law” in three main areas: the law interferes the right to freedom of associations, the law introduces unjustified and disproportionate restrictions to the free movement of capital, and the law also raises concern in terms of the right to protection of private life and of personal data (European Commission, 2017b). The Hungarian government responded to the European Commission, and its official document stated that the restrictions that were objected by the European Commission are necessary and proportionate in the Foreign NGO Act (kormany.hu, 2017r).

As a second step in the infringement procedure, the European Union issued a reasoned opinion on October 4, where the Commission confirmed that they “had decided to start a legal proceeding against Hungary for failing to fulfil its obligations under the [European Union] Treaty provision” (European Commission, 2017c). The European Commission argued that the Foreign NGO Act was indirectly discriminative and disproportionately restricted charitable contributions from abroad that offend the free movement of capital within the European Union. On October 5, Janos Lazar, Minister of Prime Minister’s Office said regarding the infringement procedure that “they (the Hungarian government) are not planning to amend the law. ... It transpires from the report (conducted by Hungary’s Permanent Representation in Brussels) that the Hungarian NGO legislation prescribes obligations for non-governmental organizations operating here which the European Commission itself has employed for years.” (Magyarország Kormánya, 2017f).

Despite the government’s argument, the study referred to in the statement cannot be accessed, and the Hungarian government did not specify the regulations. Finally, the European Commission referred Hungary to the Court of Justice for its Foreign NGO Act on December 7 after concluding that “its serious concerns had not been addressed” by Hungary as the Hungarian government was given one month to take the necessary amendments to meet the

European Union regulations (European Commission, 2017d). As of June 2018, the Court of Justice is in the process of examining the case of Hungary related to its Foreign NGO Act.

To conclude, the Hungarian government adopted an anti-foreign NGO law without thorough public/inter-sectoral consultation or political consensus that is often expected before enacting new laws. Further, the law is discriminative and therefore cannot serve anti-money laundering purposes within the civil sector. The government's communication has changed through the year 2016 as the purpose and importance of the law evolved: early arguments focused on increasing the civil sector's transparency and accountability, then shifted to preventing the "illegal operation" of Soros-funded organizations that threaten the country's sovereignty and national security. Even though several national and international organizations raised their voices against the law for being unconstitutional and discriminative, there were no real effect on the legislation. The negative government campaign has continued from the adaption of the law and even though Hungary does not use the term "foreign agent" to stigmatize their NGOs, the term NGO and foreign-funded organizations have gained a negative connotation in the public discourse. Thus, the Foreign NGO Act adopted and implemented by the Hungarian government could negatively influence NGO's ability to raise and receive both domestic and cross-border donations, and public trust towards the civil sector in general has likely been damaged in the process.

CHAPTER FOUR: TRANSPARENCY REQUIREMENTS FOR PARTIES SUPPORTED BY FOREIGN

STATE ENTITIES LAW, 5776-2016

Israel is the other OECD country whose government recently passed an anti-foreign NGO law in order to tighten restrictions on foreign-funded nongovernmental organizations (NGOs). Freedom House considered Israel's freedom status as "free" in 2017, but the rating for civil liberties decreased due to the laws that have been proposed and implemented to restrict the operation of NGOs and their access to cross-border funding (Freedom House, 2018b). Israel scored higher than Hungary – 79 and 72 respectively in a score system where 0 represents "the least free" and 100 "the most free" countries studied in the report however both countries are characterized by a less free environment for civil liberties (Freedom House, 2018c). In Israel, NGOs receiving charitable contributions from foreign state entities have been under attack by the government since 2011 and targeted by the Transparency Requirements for Parties Supported by Foreign State Entities Law, 5777-2016, which was enacted in 2016. Israel was the first OECD country that passed a foreign agents regulation, claiming that the law was inspired by the 1938 FARA, though according to Justice Minister Ayelet Shaked "the requirements ... are less stringent than those imposed by the United States upon similar types of activity" (Shaked, 2016).

This chapter discusses the Israeli anti-foreign NGO law in order to provide a detailed picture about the environment of the Israeli civil society and the possible impacts of the law. First, the development and crucial role of Israeli civil sector is discussed briefly, focusing on the time period from 1970 to the present. Then, the chapter will explore the regulations that aim to increase CSO transparency and accountability, highlighting the disproportionate regulations that apply to NGOs receiving funding from foreign government entities. The current legislation, the transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016, is examined afterwards, and it explains how government statements and several amendments led

to enact the final version of the law. Finally, the chapter catalogues the responses that international entities to the new Israeli law, especially the statements made by the United Nations and the European Union.

In Israel, the term “civil society organization” includes associations, public benefit companies and public benefit foundations, associations, public benefit organizations and other organizations established under the right of associations (Amutot Law, 5740-1980, the Companies Law, 5759-1999). Similarly to Hungary, the term nongovernmental organizations (NGOs) has often been used to connote foreign-funded civil society organizations. Therefore, the chapter uses these terms accordingly: CSOs are registered organizations under the Israeli legislation, while NGOs are those foreign-funded CSOs that became primarily targeted by the 2016 Israeli Foreign NGO Act.

4.1. The Israeli nonprofit sector

Since the 1970s, civil society has become a significant part of Israel’s history, including the formation of the basic economic and social policies (Gidron et al.,1999). Katz and Greenspan (2015) describe the current age of Israeli civil society as the pluralist era. During the pluralist era, from the mid-1970s to the present, civil society has grown as the Israeli government were challenged by economic, political, and social changes. As the roles and responsibilities of the civil society became more relevant, legal institutions were created to regulate the sector. In 1980, the Israeli Knesset adopted the Amutot Law, 5740-1980, otherwise known as the Law on Associations and in 1977, the Companies Law, 5759-1999 was enacted to regulate public benefit companies and public benefit foundations. Additionally, the International Covenant on Civil and Political Rights – signed by the Israeli government in 1966, but ratified only in 1992 – guarantees the freedom of peaceful assembly, expression and association (Article 21).

The Amutot Law established the legal framework of associations and regulates their registration, operation, and reporting requirements. According to the law, an amuta, or association, needs to be registered at the Registrar of Amutot, however the registration can be declined if any of the association's objectives are against the existence or democratic character of the State of Israel (Amutot Law, Article 3). Additionally, an amuta cannot use a name that is likely to mislead or offend public policy or the feelings of the public (Amutot Law, Article 4). The Amutot Law, as a transparency and monitoring tool, also requires associations to file several reports to the Registrar of Amutot, including their annual financial report (Amutot Law, Article 38). The Companies Law regulates public benefit companies and public benefit foundations. It also states that the objectives of a company or foundation cannot be immoral or in conflict with the public (Companies Law, Article 2) and that the organizations under this law also need to submit their annual financial report to the Companies Registrar (Companies Law, Article 141). It is important to review the requirements of these laws to establish the fact that ensuring transparency of NGOs, one of the most important reasons for the new foreign agents registration act in 2016, is already clearly and thoroughly addressed by the Amutot Law and the Companies Law. However, the regulations on registration and incorporation do not create clear frameworks and the use of terms such as the "democratic character of the State of Israel" or "immoral objectives" that are subject to interpretation. The Israeli government can therefore dispute the legality any left-wing or pro-Palestinian organization by positing that the goals of such organizations are "immoral" because they go against official government mandates.

Israel has one of the largest civil society sectors in relation to its economy with more than 600,000 registered CSOs (Gidron et al.,1999, Einolf, 2015, p. 514-515.). By the year 1995, CSOs produced 5.6% of the Israeli GDP providing employment for 13.2% of the national workforce (Gidron et al.,1999). As a comparison, American CSOs produced 6.9% of the United

States' GDP and provided 7.8% of the national employment, while the Hungarian results were much lower, 2.8% and 1.3% respectively in the same year (Salamon et al., 1999). According to the comparative research on 22 countries' civil society sectors, conducted by Salamon and his colleagues (1999), the average of the GDP contribution of the sector was 4.6% and the level of employment reached 4.8% in 1995, excluding volunteers. The most important subsectors of Israeli philanthropy are children and youth, food security, and health (Katz and Greenspan, 2015, p. 329). The data of registered Israeli CSOs are sometimes different and often incomplete because of the inadequate data collection, but according to the Registrar of Associations, the number of registered associations increased by more than 50% between 2004 and 2012 (Limor, 2004 and 2012). However, as civil society has developed, the Israeli government tried to increase government supervision and limit the operation of civil society organizations. The National Council for Volunteerism and the Aridor Committee, both established by the Office of the Prime Minister, were created to increase the government control over the Israeli civil society (Katz and Greenspan, 2015).

Since the 1970s, not only has Israeli civil society increased, but also the Jewish Diaspora became an important actor and influencer of the Israeli nonprofit sector through cross-border charitable contributions. Diaspora philanthropy shaped the economic and social welfare of the state from the beginning (Bubis, 1969) and it remained significant in intervening decades. Israel is the only developed nation in which imports exceed exports of charitable contributions (Gidron et al., 2003). The importance of donations coming from foreign private foundations or individuals is shown on the Transparency Law, as only CSOs that receive donations from foreign state entities became subject to the legislation, although the regulation aimed to increase transparency and accountability among foreign-funded NGOs.

In the 2000s, the Israeli government started to strengthen the collaboration with CSOs. The Ministry of Social Welfare and later the Prime Minister's Office initiated several conversations to nourish the relationship between the public and nonprofit sectors. In 2008, the Israeli government acknowledged the sector and its contribution to Israeli society and started to host round-table discussions between government ministries, civil society organizations and businesses in order to create a more enabling environment for the nonprofit sector that continued to grow both economically and in terms of size (Almog-Bar, 2016). In the same year, the Israeli Prime Minister's Office published a report titled *Government of Israel, The Civil Society, and The Business Community: Partnership, Empowerment, and Transparency*. In this report, the government stated numerous goals, such as creating a platform for ongoing cross-sectoral dialogues, cooperating with CSOs in forming social service policies and implementing them, and increasing the level of transparency and accountability of the sector (Prime Minister's Office, 2008). The collaboration with CSOs – primarily with domestic, pro-government CSOs – seemed to be flourishing as round-table discussions and collaborations were initiated in fields such as public education.

While the relationship with domestic, pro-government CSOs has been improving, with many such organizations receiving public and governmental recognition (Almog-Bar, 2016 p. 253), that has not been the case with foreign-funded NGOs supporting human rights or the pro-Palestinian agenda. The Israeli-Palestinian relationship remained turbulent through the last several decades, and therefore, organizations supporting anything that was not in step with the Israeli government's agenda have been oppressed by soft policies and regulations. The Israeli government has often used the media to associate such organizations with anti-Israeli or terrorist organizations and enacted new regulations to closely surveil them.

4.2. Israeli laws to enhance NGO transparency and prevent money laundering

Israel implemented anti-money laundering legislation in 2000, anti-terrorist financing legislation in 2005, and counter-terrorism legislation in 2016 in accordance to the recommendations established by the Financial Action Task Force. The Prohibition on Money Laundering Law, 5760-2000, regulates primarily financial institutions and individuals including banks, money service providers, stock exchange members and portfolio managers, and dealers of precious stones. In 2014, the most recent amendment of the law extended its reach beyond explicitly financial institutions. The new amendment required that other professionals such as lawyers and accountants identify and register relevant information regarding their clients' financial or business transactions (Levush, 2014).

Even though NGOs' operations and accountability have been regulated in separate laws, these laws have impacted the NGOs as well. Based on the 1945 Defense (Emergency) Regulations, the Prohibition on Terrorist Financing Law 5765-2004, the Declarations on Terrorist Organizations in accordance with the Prevention of Terrorism Ordinance No. 33 5708-1948, and the Counter Terrorism Law 2016, the Israeli Government can declare organizations to be terrorist organizations, while the Ministry of Defense was given the authority to decide which organizations are unauthorized associations and illegal (Ministry of Defense, 2018a). According to the 1945 Defense (Emergency) Regulations, organizations, whether incorporated or unincorporated, are unauthorized associations if they recommend, instigate, or encourage in their constitution or propaganda one of the following immoral actions (Article 84):

- abrogation of the constitution of Israel or the Government of Israel by force or violence;
- causing Holocaust, contempt or incitement to hostility towards, the Government of Israel or its Ministers in their official capacity;
- destruction or damage to the property of the Government of Israel;
- acts of terrorism directed against the Government of Israel or against its employees.

Between 2010 and 2017, 94 organizations were declared as unauthorized associations or terrorist organizations and their property was confiscated by the Israeli government (Ministry of Defense, 2018b). Several organizations were pro-Palestinian, but the list also includes international aid and human rights organizations such as the Euro-Mediterranean Human Rights Monitor registered in Switzerland, or International Kandil Institute for Humanitarian Aid and Development registered in Turkey.

The transparency and accountability of NGOs have been regulated since 2008 when the government amended the Amutot Law to make reporting requirements stricter for NGOs. In 2008, besides the general annual reporting requirements, NGOs were required to publish all revenues coming from foreign government entities on their websites. In 2011, the Law on Disclosure Requirements for Recipients of Support from a Foreign State Entity, 5771-2011 (Foreign Funding Law) was enacted. The Foreign Funding Law required associations and public benefit companies to quarterly report the donations received from foreign state entities with an aggregate value over NIS 20,000 (USD 5,800) to the Registrar. In addition, associations and public benefit companies were required to disclose in relevant campaign materials if the donations from foreign government entities explicitly provided for public information campaigns (Foreign Funding Law Articles 1 and 2, Schriber et al, 2010, European Union, 2016). Based on the Amutot Law, 5740-1980, foreign state entities include a union, organization or association of foreign states; an organization, authority or representation of a foreign state or of a union of foreign states; a local or district authority, a government authority of a foreign state or of a state that is a member of a union of states in a foreign state; a union, organization or association of foreign bodies; the Palestinian Authority; and a corporate body established by regulations of one of the bodies detailed above (Article 36A). Thus, donations coming from the European Union, the United Nations, or other intergovernmental organizations need to be reported.

Associations and public benefit companies whose financial turnover exceeds NIS 300,000 (USD 86,600) must state in their Financial Statement whether they received donations from a foreign state entity in the reported year (Schriber et al, 2010).

The reporting requirements can be burdensome, as organizations need to fulfill their quarterly reporting, in addition to their general reporting requirements. The reporting requirements for foreign funding include the identity of the donor; the amount of the support; the goals or designation of the support; and the conditions of the support, including undertakings made by the recipient of support to the foreign state entity regarding the support, orally or in writing, directly or indirectly, if such exist (Foreign Funding Law, Article 2). Every amuta whose financial turnover exceeds NIS 300,000, must state in the Financial Statement whether it has received donations from “a Foreign State Entity” (see definition below) in the year to which the Statement relates.

Despite the aim of enhancing transparency and accountability for NGOs, this legislation has been challenged as it focuses only on cross-border donations coming from foreign states or state entities. Additionally, the Foreign Funding Law does not apply for the World Zionist Organization, the Jewish Agency for Israel, Keren Hayesod – United Israel Appeal, and the Jewish National Fund, as well as corporations controlled by these organizations. These exceptions might strengthen critics that state that this legislation has aimed to undermine the operation of pro-Palestinian and human rights organizations instead of to enhance the transparency of the nonprofit sector.

4.3. Foreign-funded NGOs under government attack

4.3.1. Government statements and amendments related to foreign-funded NGOs

From 2011 several members of the Knesset submitted amendments regarding foreign-funded NGOs to increase transparency and ensure the Israeli national security (The Association for Civil Rights in Israel, 2016). In 2013, Ayelet Shaked, Member of the Knesset introduced a law that sought to impose taxes on all donations from foreign state entities to Israeli NGOs that support certain actions such as boycotts, sanctions against Israel, or calling for the prosecution of Israeli soldiers at international tribunal. In 2014, Miri Regev, Member of the Knesset, introduced an amendment to the Amutot Law that stated that the government can deny the registration of any NGOs if any of its objectives contradict the definition of “Israel as a Jewish and democratic state.” However, the foreign-funded NGOs that have been affected by this law primarily provide human rights services (Yesh Din, 2018), promote cultural and educational activities (The Arab Culture Association, 2018), or support peaceful religious activities (Lis, 2016).

In 2015, the government released a proposed bill that required representatives of foreign-funded NGOs to wear a special identification tag. Despite the enhancement of transparency, these proposed amendments and laws show that the Knesset and the Israeli government have been willing to regulate and scrutinize NGOs that represent views and values that are contradictory with the Israeli government. Furthermore, from 2015 onwards, numerous proposed amendments sought to stigmatize foreign-funded NGOs, but only those that do not cooperate with the government (The Association for Civil Rights in Israel, 2016).

While new amendments and draft bills were proposed, government statements regarding the necessity of such amendments were also increasing. The Israeli government’s two main arguments were that the proposed legislation increased transparency and the protection

of state sovereignty, “as these organizations have no obligation of proper disclosure, in which they have to present themselves as clearly representing foreign interests that do not accord with Israeli interests”(Lis, 2014). Justice Minister Ayelet Shaked said that “foreign funding of organizations active within Israel undermine [the state’s] sovereignty and identity” (Lis, 2015). These statements clearly show that the government aimed to make NGO operations more transparent and protect the sovereignty of Israel through this legislation. Additionally, the Israeli government often declared that the amendments are based on the 1938 FARA, but “they are much less stringent than those imposed by the United States” (Raday, 2016).

After the adoption of the Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016, Justice Minister Ayelet Shaked claimed that foreign-funded organizations meddle in the country’s “internal affairs,” while Prime Minister Netanyahu said that the foreign agents regulation “prevents an absurd situation in which foreign countries interfere in Israel’s internal affairs” (Eglash and Booth, 2016). These examples shows that the government main reasoning has remained the protection of state sovereignty.

4.3.2. Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016

From 2015, the Israeli Government as well as the members of Knesset introduced several amendments and bills regarding foreign-funded NGOs: besides the government’s own proposal, four individual proposals were submitted by the end of 2015 (The Association for Civil Rights in Israel, 2016). On December 27, 2015 the Ministerial Committee approved the government’s proposed law as well as two individual amendments.

The proposal submitted by the government obligated NGOs to disclose that the majority of their funding is from foreign state entities in all their publications, to note in their minutes and other documents that most of their funding is from foreign state entities, including the

names of the countries that such entities represent, and to make their representatives wear a special identification tag. Noncompliance of any of the requirements result a fine of NIS 29,200 (USD 8,400) for each violation. The amendment submitted by Bezalel Smutrich, Member of the Knesset, proposed that NGOs that receive majority of their funding from foreign state entities be referred to as “organizations funded by foreign agents.” The amendment submitted by Yinon Magal, Member of the Knesset, proposed that NGOs that receive more than USD 50,000 from foreign countries be referred to as “foreign agents” except for health and education organizations. In addition, Mr. Magal’s amendment sought to forbid representatives of such organizations from having meetings with any government or security officials, and to tax donations received from foreign state entities at an increased rate of 38%, with an exemption for those organizations that also receive donations from the Israeli government. These proposals suggest that instead of transparency, such legislation would lead to stigmatization of foreign-funded NGOs and scrutinize the operation of such NGOs by setting burdensome reporting requirements and labelling them negatively. Furthermore, as the Foreign Funding Law also made exceptions for pro-government NGOs, Mr. Magal’s amendment would not apply for NGOs that receive government funding.

After several modifications, the final draft of the Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016 (Transparency Law) was published on June 22, 2016 and The Knesset approved it on July 11, 2016. The most important regulations are the following:

- organizations that receive 50 percent of their donations from foreign state entities must note the fact in all their publication, reports and other documents both online and on paper, including letters sent to public officials (Article 4 and 5);
- organizations need to declare the names of foreign state entities that have given donations to these NGOs (Article 5);

- Representatives of organizations funded by foreign state entities are required to inform the chair of any Knesset committee meetings or hearings that he/she represents such an organization (Article 5).

The reporting requirements take effect in June 2018, based on funding received since January 1 2017. It provided NGOs some time to get ready to meet all the requirements set by the law. In case of noncompliance the fine is up to NIS 30,000 (USD 8,700).

4.3.3. Domestic and international criticism

Both the domestic and international community raised concerns regarding the negative and disproportionate effects that the Transparency Law might have on NGOs. Despite the concerns articulated by the opposition party and NGOs affected by the law as well as the European Union and international organizations, the law hasn't been legally challenged since its enactment in July 2016.

During the hearings and after passing the Transparency Law, Israeli NGOs voiced their concerns regarding the Law. Since 2015, several politicians from the opposition party and NGO leaders addressed their concerns regarding the draft legislation, stating that the legislation could be a "symbolic attack on human rights organisations" and a "mark of shame ... like a scarlet letter for NGOs." (Rifai, 2015). Before the final vote, Nonprofits Registrar representative Yafit Shemer reported to the Knesset committee that the Transparency law would affect only 27 organizations. Then, the list of NGOs that will be targeted by the law was leaked. According to the list, 25 of the 27 targeted organizations were left-wing organizations, most of them focusing on human rights issues (Bob, Hoffman, and Harkov, 2016).

After the enactment of the Transparency Law, representatives of local NGOs criticized the law for being biased and leading to the stigmatization of left-wing NGOs. Several criticisms underlined the fact that the Transparency Law could lead to the delegitimization of particular NGOs rather than the increase of such organizations' transparency: "[t]he idea behind the bill

is ... public shaming of left-wing NGOs and the attempt to present them as foreign agents;” the regulation aims “to silence criticism on government policies;” and it only seeks to “delegitimise them (foreign-funded NGOs) in order to marginalise their impact in the country” (Tahhan, 2016).

The Transparency Law could stigmatize left-wing, foreign-funded NGOs rather than enhancing transparency in the overall sector. In addition, it is important that the regulation only targeted organizations that receive more than 50% of their funding from foreign government entities, because left-wing NGOs working for equality, human rights, and peace would be disproportionately affected by these new regulations. Meanwhile, right-wing groups and pro-settler organizations mostly receive foreign funding from private individuals or foundations, and therefore they are not fall under the Transparency Law (Strickland, 2016). The Association for Civil Rights in Israel stated that this regulation is more like a “redundancy bill” and an “another means of harassing and delegitimising human rights organisations in Israel” (Strickland, 2016).

After enacting the Transparency Law, the international community, including the European Union and the United Nations, also raised its concerns regarding its negative and disproportionate effects on NGOs. The European Union stated that “the new law goes beyond the legitimate need for transparency and seem aimed at constraining the activities of these civil society organizations working in Israel” and argued that the law could undermine the values of the Israeli civil society, including its diversity and role in maintaining a vibrant democracy in the country (European Union External Action, 2016).

Ban Ki-Moon, then Secretary- General of the United Nations pointed out that the new Transparency Law is “increasingly delegitimized” as it mainly targets human rights organizations (United Nations Secretary-General, 2016). The Office of the United Nations High Commissioner for Human Rights (OHCHR) also expressed concerns in connection with the possible threat of

delegitimization of human rights and pro-Palestinian organizations, underscoring that the legislation could “disproportionately affect non-governmental organizations working on human rights and contribute to their de-legitimization” (OHCHR, 2016). Indeed, the OHCHR even used an assessment from the Israeli government in its critique: “[w]hile this new law has been described as an effort to increase transparency in the NGO sector, it will disproportionately affect NGOs working on human rights, as confirmed by recent research undertaken by the Israeli Ministry of Justice itself” (UN, 2016).

The statements from foreign governments and international organizations clearly show that, besides using the media to make criticisms widely known in Israel and throughout the world, foreign entities are not able to influence the regulations of international philanthropy. They expressed their concerns and formed their recommendations, such as calling upon Israel “to continue to promote its active NGO sector and to refrain from actions which may complicate the space in which civil society organisations operate” (European Union External Action, 2016) or “to listen to these extremely valid concerns and take them into consideration” (UN, 2016). But instead of spurring new legal changes, such statements often bounced back and seemed to serve as a reason for such regulations. Israeli Prime Minister Netanyahu wrote that the law aimed “to prevent an absurd situation, in which foreign states meddle in Israel's internal affairs by funding NGOs, without the Israeli public being aware of it” (BBC, 2016). Prime Minister Netanyahu’s statement implicitly suggests that international criticism of the law may be exactly the type of “meddling” by foreign states that the law seeks to guard against. Thus, such international statements without any real actions can be counter-productive when making efforts to support the work of international NGOs operating in a less favorable political environment.

CHAPTER FIVE: COMPARISON BETWEEN THE HUNGARIAN AND ISRAELI FOREIGN AGENTS

REGULATIONS

Even though Hungary and Israel differ from each other socially, politically, as well as economically, several similarities can be identified that lead to the implementation of the foreign agents regulations acts. First of all, governments in both countries justified these laws by emphasizing the importance of transparency of CSOs and of protecting state sovereignty. Second, both governments have argued that they used the 1938 Foreign Agents Registration Act as a model, following in the footsteps of the United States. Additionally, the pieces of legislation as well as the negative government propaganda in both countries seem to discriminate and stigmatize a certain group of CSOs, namely those who freely criticize the governments' policies, work to support human rights, or espouse any beliefs that run contrary to the governments'.

This chapter uses "foreign agents regulation" as an umbrella term to refer to the Hungarian Law on the Transparency of Organizations Receiving Support from Abroad and the Israeli Transparency Requirements for Parties Supported by Foreign State Entities Law. Both the Hungarian and Israeli governments have argued that the legislation is based on, but not as strict as, the 1938 Foreign Agents Registration Act adopted by the United States of America, therefore this term can be seen as a neutral term in order to avoid any prejudice during the analysis and comparison.

5.1. What is the truth about the relationship between the 1938 FARA and the recently adopted foreign agents regulations?

Both the Israeli and Hungarian governments mentioned several times that their legislation that placed restrictions on foreign-funded NGOs was based on the Foreign Agents Registration Act (FARA) enacted by the United States Congress in 1938. Indeed, both Hungary and Israel stated that their own foreign agents regulations are less strict than the one

implemented in the United States. This section compares the content of the Hungarian and Israeli foreign agents regulations and contrasts them with the 1938 FARA in order to be able to objectively analyze the foreign agents regulations and the Hungarian and Israeli governments' communication.

5.1.1. Foreign Agents Registration Act, 1938

The FARA was passed in 1938 as the response of U.S. Congress to the increasing German propaganda right before World War II. The act aimed to “insure that the U.S. Government and the people of the United States are informed of the source of information and the identity of persons attempting to influence U.S. public opinion, policy, and law” (U.S. Department of Justice, 2017a). After the amendments in 1966, the meaning of “foreign agents” was narrowed to focus on political lobbying rather than propaganda (U.S. Department of Justice, 2017b). The current legislation (22 U.S.C.A. §611 - §621.) requires a relationship between an agent and a foreign principal. The agent could be any “individual, partnership, association, corporation, organization, or any other combination of individuals” who acts under the direction or control of a foreign principal and engages in political activities; acts as a public relations counsel or political consultant; solicits, collects, disburses, or dispenses contributions, loans, money; or represents the interests of the foreign principal before any agency or official of the Government of the United States (22 U.S.C.A. §611.a and c). The foreign principal includes “a government of a foreign country and a foreign political party; a person outside of the United States; or a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country”(22 U.S.C.A. §611.b). Finally, it is important to mention that the meaning of “agent of a foreign principal” under the FARA has been interpreted with reference to the common law definition of agency. Thus, based on the 2006 Restatement (Third) Of Agency § 1.01 (c) the principle-agent

relationship occurs when an agent “acts as a representative of or otherwise on behalf of another person” and where “[t]he person represented has a right to control the actions of the agent.” Indeed, as the Audit of the National Security Division’s Enforcement and Administration of the Foreign Agents Registration Act emphasizes it, organizations, such as non-governmental and grass roots organizations, that receive funding from foreign governments are not required to register under FARA, when they claim that “they act independently of foreign control or are not serving a predominantly foreign interest” (U.S. Department of Justice, 2016).

FARA also includes several activities that are exempt from the requirements of the act including private and nonpolitical activities, solicitation of funds and religious, scholastic, or scientific pursuits among others. Thus any person who engages in the following activities are not required to register under FARA (22 U.S.C.A. §613. d and e):

- “in private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal;”
- “in other activities not serving predominantly a foreign interest;”
- “in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering;”
- “in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.”

In the case that a person does serve as an agent of foreign principle, he must fill out a registration statement with the Attorney General; file two copies of any informational materials “disseminated or circulated among two or more persons” to the Attorney General; include a statement in any informational material that “the materials are distributed by the agent on behalf of the foreign principal;” and if he “appears before any committee of Congress to testify for or in the interests of such foreign principal, he shall, at the time of such appearance, furnish the committee with a copy of his most recent registration statement filed with the Department of Justice as an agent of such foreign principal” (22 U.S.C.A. §614. a, b, and f). Finally, agents of

foreign principle need to keep records of their activities and present them in case of public examination.

5.1.2. Comparison between the Hungarian, Israeli, and the U.S. foreign agents regulations

As mentioned earlier, both the Hungarian and the Israeli governments claim that they used the FARA as the basis to create their own foreign agents regulations. This section will compare the three regulations by focusing on the following four aspects: the public rationale for enacting such regulation, the types of legal persons that are targeted by the regulations, the requirements laid out by the legislation for identified and registered “foreign agents,” and the time period given to legal persons affected by the regulation to meet the new requirements.

As Table Three shows, the foreign agents regulations in all three countries were enacted to fight against foreign influence that might threaten the national interest and security of the countries. Transparency and accountability were key reasons given to enact the law. All governments felt that national security had been threatened by different foreign forces: the United States was facing an increasing level of Nazi propaganda just before the beginning of World War II; Israel had been concerned about the Israeli-Palestinian conflict, which has intensified since 2015; and Hungary started the “war” against “illegal immigration” and against organizations – often foreign funded ones – that support migrants and refugees in the country after the 2015 Syrian refugee crisis that led to an unprecedented influx of refugees arriving to Europe.

In terms of the target group, both the Israeli and the Hungarian regulations’ primary group are NGOs (foreign-funded associations and foundations), while FARA does not specifically target NGOs. Indeed, receiving funding from foreign entities does not require an NGO to register

Table Three: Comparison between the Hungarian, Israeli, and U.S. Foreign Agents Regulations

Country	Hungary	Israel	United States of America
Legislation	Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad	Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016	Foreign Agent Registration Act, 1938
Target group(s)	Organizations (associations and foundations) receiving foreign funding that exceeds HUF 7,200,000 (US\$ 29,000)	Organizations that receive 50 percent of their donations from foreign state	Agent of foreign principal
Exemptions	Sport associations; Associations pursuing religious activities; Ethnic minority organizations; and Political parties.	Organizations receiving cross-border donations from private entities; and Organizations receiving less than 50 percent of their donations from foreign state.	Private and nonpolitical activities, solicitation of funds; Religious, scholastic, or scientific pursuits; and Etc.
Level of registration	Regional Court	Department of Justice	Attorney General
Reporting and other requirements	Disclose their status of “organization supported from abroad” immediately on their online and printed materials; and Declare the information of their major sponsors whom donation is HUF 500,000 (US\$ 2,000) or more.	Note the fact that the organization is supported by a foreign state entity all their publication, reports and other documents both online and on paper, including letters sent to public officials; Declare the names of foreign state entities that have given donations to these NGOs; and Inform the chair of any Knesset committee meetings or hearings that he represent such an organization.	Include a statement in any informational material that “the materials are distributed by the agent on behalf of the foreign principal”; File two copies of any informational materials to the Attorney General; and Inform the committee of the Congress when he testifies for or in the interests of such foreign principal by furnish the committee with a copy of his most recent registration statement.

Penalties in case of noncompliance	Proportionate sanction according to the Act LXXXI of 2011; and Dissolution, if necessary	Fine up to NIS 30,000 (USD 8,700)	Fine up to USD 10,000, depending on the violation; and Temporary or permanent injunction, restraining order or other order issued by the district court
Day the regulation took effect	June 19, 2017 (8 days after enactment)	January 1, 2017 (almost 6 months after enactment)	September 6, 1938 (almost 3 months after enactment)
Reason of enacting such regulations	Transparency; Protection of national interest; and Fight against money laundering.	Transparency; and Protection of national interest.	Transparency in case of political lobbying; and Fight against foreign propaganda.

Sources: Act LXXVI of 2017 on the Transparency of Organizations Receiving Support from Abroad; Transparency Requirements for Parties Supported by Foreign State Entities Law, 5776-2016; and Foreign Agent Registration Act, 1938.

as an “agent of foreign principal.” Furthermore, while the Israeli law only targets organizations that receive more than 50 percent of their donations from foreign government entities, the Hungarian law targets organizations that receive all types of foreign donations of HUF 500,000 (USD 2,000) or more including individual, foundation, and governmental donations, as well as European Union grants. The Hungarian regulation, as well as the American one, provide several exemptions such as religious organizations. The Israeli foreign agents regulation have a very narrow target group – affecting the work of only 27 NGOs (Laufer, 2017)—and raising the question of whether such regulations effectively promote transparency in the nonprofit sector.

After an NGO registers as “foreign agents,” they need to disclose their status in any informational materials, both printed and online. The term “foreign agent” is not used by either Hungary or Israel, but both governments instead used a related term throughout public communications both before and after the enactment of the regulations. In the case of Hungary,

the government created a negative connotation for the term, “organization supported from abroad;” in the case of Israel, the term “organization supported by a foreign state entity” was used by the government in a similar way. Both Hungarian and Israeli NGOs need to declare and make public the names of their major foreign donors, which constitutes burdensome administrative requirements and, simultaneously, could disincline both foreign and domestic donors from supporting such organizations. Even though Hungary does not require NGOs to inform parliamentary committees regarding their special status, Israel, as well as the United States, require “foreign agents” to do so before their hearings.

Finally, it is important to consider how much time NGOs had to prepare for the new requirements established by the foreign agents regulations in the countries analyzed in this study. The Israeli law took effect on January 1, 2017, giving a six-month time period for NGOs to get prepared for the new regulations, and the first reporting under the foreign agents regulation will happen in June 2018, almost two years after the law passed. The Hungarian law had a much shorter adoption period: the Hungarian law entered into force on the 8th day after the law’s official publication, creating an extremely short time period for foreign funded NGOs in Hungary to comply. It was widely criticized by NGOs as well as the Venice Commission.

5.2. Stigmatization and delegitimization instead of transparency and public trust

After receiving criticism from local NGOs and international organizations as well as foreign governments, it is important to see how the foreign agents regulations in Hungary and Israel have affected the public view towards foreign-funded NGOs operating in these countries. The concerns about labeling, stigmatizing, and delegitimizing the operation of NGOs appeared in both countries even though the countries do not use the term “foreign agent” to label such organizations.

In Hungary, the negative government rhetoric about NGOs intensified after the legislation was passed, with an uptick in the use of terms like “Soros-empire” and “mafia-like network” to describe NGOs and public statements that connect foreign funded NGOs with negative, often illegal activities such as “rescue[ing] criminals and terrorists” (Website of The Hungarian Government. 2017j). In Israel, the situation is similar: most recently, the government issued a statement that the activities of foreign-funded organizations harm the soldiers of the Israeli Defense Force (Harkov, 2017). Additionally, both the Hungarian and Israeli governments claimed before their national elections – in 2015 and in 2018, respectively, that foreign-funded NGOs tried to influence the election and attack the campaign of the governing parties by using millions of foreign funding. This type of accusation, without providing any evidence, could harm the public trust towards foreign-funded NGOs, civil society in general, and the government.

Unfortunately, there is no public data available about whether the level of public trust has increased or not towards foreign-funded organizations, but it is likely that both governments used the stigmatization of NGOs as a tool to strengthen their political power and their *raison d’être*. As was discussed in Section 1, liberal autocracies often create a relatively liberal political climate for CSOs that provide social services or support the government’s interest, while foreign-funded and opposition NGOs are highly monitored at the same time (Albrecht, 2015, Brumberg, 2003) While both Hungary and Israel support and promote civil society, their foreign agents regulations stigmatize NGOs that could undermine their legitimacy and the public trust towards the sector, and even be used as a tool to heighten public fear and strengthen the power of the current governments.

5.3. Recommendations for finding the balance between national security and flourishing civil society

As the study highlighted, both Hungary and Israel implemented the foreign agents regulations to protect their national security through transparency and accountability, however it is questionable whether the discussed regulations could meet those objectives. While both countries face different external threats to their national security, it is possible that such regulations disproportionately attack foreign-funded NGOs regardless of their roles in society.

In Hungary, the control of illegal migration remained one of the top priorities in the government agenda as several terrorist attacks occurred in Western Europe (Reuters, 2018) – even though the number of asylum-seekers has significantly dropped in the last 12 months (Eurostat, 2018). In Israel, the Israeli-Palestinian conflict intensified in Spring 2018, after the U.S. government relocated their embassy to Jerusalem (Halbfinger et al., 2018). Thus, it seems that transparency and accountability is more important than ever to protect national security in these countries, but the legal tools need to be thoroughly designed and implemented to avoid undermining civil society both in Hungary and Israel.

Thus, this study recommends the following options to achieve a balance between national security and the freedom of civil society, including the operation of foreign-funded NGOs:

- 1) Coordination and collaboration with civil society, including foreign-funded NGOs

Both governments have been criticized due to the lack of communication and coordination of foreign-funded NGOs. To plan and successfully implement any regulations, it is crucial to involve different actors, such as NGOs affected by the proposed regulations, members of the opposition parties, as well as the general public. Such coordination might clarify the

necessity of such regulations, lead to a consensus, and support the successful and effective implementation of the new policies.

2) Harmonization of existing and proposed laws and regulations

As the emphasis towards laws on illicit financial flows, anti-money laundering, and combating the financing of terrorism has increased in the 21st century, both Hungary and Israel have implemented regulations that enhance transparency and accountability and prevent money laundering and terrorism financing. Already there is evidence that such regulations can be harmful for CSOs (IUPUI Lilly Family School of Philanthropy, 2018), and special laws targeting foreign-funded NGOs might further undermine the roles and responsibilities of the sector. Thus, the thesis recommends harmonizing the existing regulations and if it is necessary, broadening the scope of illicit financial flow regulations rather than focusing legislation on labelling and therefore discriminate certain foreign-funded NGOs in the name of national security.

3) Enhancement of transparency and accountability across the sector

After analyzing the Hungarian and Israeli foreign agents regulations, there are several exemptions provided by law that might be, indeed, counterproductive to the goal of enhancing transparency and accountability in civil society, and may in fact pose a risk national security because the government does not monitor cross-border donations to these organizations. As a recommendation, the Hungarian regulation should include all CSOs, such as political parties, sport associations, religious and ethnic minority organizations, while the Israeli regulation should expand its scope to include organizations that receive cross-border donations from private entities. Such modifications can avoid unnecessary discrimination against certain types of foreign-funded NGOs and provide a more effective way to achieve the regulations' goals regarding transparency and national security.

4) Use of neutral categories instead of discriminative labels

Neither the Hungarian nor the Israeli legislation used the term “foreign agent”—instead, the governments used the terms “foreign-funded NGOs” or “organizations supported from abroad” respectively to refer pejoratively to organizations that receive funds from abroad. The continued negative connotations around these terms in each country mean that they are no longer neutral, and can be found discriminative. Thus, it is important to use neutral governmental communication during the discussion and implementation of any regulations affecting the sector in order to avoid possible stigmatization of foreign-funded NGOs. Furthermore, as such regulations aim to increase transparency and protect national security, the development of terminologies and categories should involve the main actors of the sector so that the sector and the government can both understand the advantages and necessity of using an agreed-upon term.

5) Governmental support for more effective implementation

Both the Hungarian and Israeli regulations provided a very short time period for foreign-funded NGOs to implement the requirements – 8 days and less than 6 months, respectively. Additionally, the new regulations have established new administrative and reporting requirements for NGOs that – especially for smaller NGOs – make their operation and their compliance extremely difficult. Therefore, we also recommend adding an adequate time period so that CSOs can be fully prepared for the implementation of such regulations. Additionally, the government or government agencies might provide administrative support for smaller CSOs in order not to jeopardize their operation while complying with new reporting requirements that promote transparency and accountability.

6) Positive incentives and collaboration to promote transparency

Finally, the thesis recommends using positive incentives to support transparency and accountability across the sector. Besides protecting national security, transparency could increase public trust towards CSOs and their activities. However, the current regulations offer extremely strong penalties in case of noncompliance that might negatively affect the level of public trust towards foreign-funded NGOs as well as the regulations' public support itself. Thus, besides a more proportionate penalty in case of non-compliance, we recommend creating positive incentives and supporting self-regulatory initiatives to increase the sector's transparency and accountability.

CONCLUSION

This thesis analyzes the foreign agents regulations enacted in two developed democracies: in Hungary and Israel. As several studies mentioned (Anheier, 2017, Laufer 2017, Rutzen 2015, European Foundation Centre, 2017), the number of countries that have implemented foreign NGO laws might threaten the operation of civil society around the world. Interestingly, it is not only developing countries, but also some developed countries that have enacted foreign NGO laws to monitor and control the operation of foreign-funded NGOs. As the emphasis towards laws on illicit financial flows, anti-money laundering, and combating the financing of terrorism has increased in the 21th century, CSOs started to be seen as a possible vehicle for terrorist organizations as they had global presence with access to the population, they enjoyed high level of public trust, had access to considerable sources of funds, and, crucially, were not subject of general governmental oversight (Financial Action Task Force, 2010, 2014). Thus, legislation on illicit financial flows started to indirectly discriminate against foreign-funded NGOs both in developing and some developed countries.

However, civil society and international NGOs have more important roles than ever. The new challenges that have emerged are global, affecting several countries at the same time such as the current environmental and refugee crises, money laundering, or terrorism. The United Nations emphasizes the importance of cross-sectoral and international collaboration to successfully face these challenges. Indeed, the United Nations started to strengthen the engagement with civil society and promote its international role in implementing and monitoring the 2030 Sustainable Development Goals (CIVICUS, 2017c). Additionally, the shrinking space of civil society might be an indicator for the shrinking space of democracies and democratic values, therefore, it is important to start a conversation among researchers, policy-makers, practitioners, and the general public to find the balance of simultaneously protecting

our civil society and national and international security. And while one of the universal human rights is the right to freedom of peaceful assembly and associations (Universal Declaration of Human Rights, Article 20), more and more countries have introduced restrictive regulations and practices towards civil society, particularly towards foreign-funded NGOs and human rights organizations.

The number of countries that passed foreign agents regulations has increased in the last decade. Most recently two OECD member states, Hungary and Israel, passed their own regulations. Both Israel and Hungary have a strong civil society that have had a crucial role in the countries' economic and political development. Both countries are high-income countries with high level of human development. However, according to Freedom House (2018a) both countries suffered a decrease in civil liberties due to the enactment of foreign agents regulations.

Both countries argued that the foreign agents regulation is necessary to increase the transparency and accountability of NGOs and protect the nations' internal security and interests and claimed that they used the 1938 FARA as a baseline. However, after analyzing all three regulations, we can infer that the Hungarian and Israeli regulations mainly target foreign-funded NGOs, and their regulation is indirectly discriminative and disproportionate towards NGOs working on specific fields such as human rights and transparency. In terms of requirements, both the Foreign NGO Law in Hungary and the Transparency Law in Israel mainly follow the requirements set by the United States' FARA. However, the Hungarian regulation does not require the representatives of NGOs to inform parliamentary committees regarding their special status in case of public hearings. Finally, none of the analyzed countries use the term "foreign agent" to label NGOs affected by the regulation, but the terms of "organization supported from abroad" and "organization supported by a foreign state entity" used in Hungary and Israel,

respectively, have already gained a negative connotation due to the intensive anti-NGO language used by the governments.

While both governments supported the foreign agents regulations to improve transparency and as well as national security, based on the domestic and international criticism, they have rather stigmatized a small but important group of civil society organizations by threatening and labeling foreign-funded NGOs working on human rights, protection of democratic values, and government accountability. The Hungarian government stated that such regulations are crucial for the “fight against illegal migrants,” while the Israeli government believes that such regulation is an important part of the protection of national sovereignty and security, especially in light of the Israeli-Palestinian conflict. It is important to acknowledge that both the refugee crisis and Israeli-Palestinian conflicts impact national security and therefore, it is important to be aware of how foreign-funded NGOs use their funding and resources. However, it is also important to find balance between national security and the freedom of civil society. One of the ways to find this balance might be including and collaborating with civil society in order to develop a more balanced legal environment for foreign-funded NGOs and CSOs as well. Additionally, governments should seek to use neutral labels and practice less biased communication regarding foreign-funded NGOs. It may increase the credibility and necessity of such regulations while avoid the possible perception and interpretation of these policies as tools to strengthen the current governments’ position and intensify the importance of their own agenda.

Therefore, we can conclude that the newly enacted foreign agents regulations in countries such as Hungary and Israel serve more as a political tool to strengthen the governments’ nationalistic ideology and power than as a tool to increase transparency in the nonprofit sector. As a consequence, the spread of foreign agents regulations could be an

indicator not only of the shrinking space of civil society, but also of the endangerment of Western democracies more broadly. Democracies seem to be more fragile than expected, and the excessive regulation of foreign-funded organizations could lead to weakening democracies.

EPILOGUE

This study focuses on foreign agents regulations that were enacted in Hungary (2017) and Israel (2016). As discussed, foreign agents regulation may lead to better transparency, which is especially important at this time due to the rise of money laundering and terrorist activities. However, both the Hungarian and Israeli regulations label and stigmatize foreign-funded NGOs – especially those that are against the government policies – rather than promote transparency in the sector or fight against money laundering, terrorism, or other national security threats.

While the number of first asylum applicants has decreased significantly since 2016 (Eurostat, 2018), more and more EU member states – such as Austria, Denmark, France, Germany, Sweden, and most recently Italy – have implemented new regulations to increase border control and prevent arrivals of immigrants in their countries (European Commission, 2018a, Borrelli, 2018). As the study states, while the immigration crisis is one of the biggest challenges to solve, the increasing level of populism and xenophobia in Europe might lead to implementing policies that would jeopardize human rights and the rule of law in European democracies. As an example, the Hungarian government enacted the “Stop-Soros legislative package” in June 2018 to support Hungarian sovereignty and national security by preventing Hungary from becoming a “country of immigrants” (Website of The Hungarian Government, 2018a). The Hungarian government named the legislative package as “Stop Soros,” as Prime Minister Orban believes that George Soros has supported and campaigned for mass immigration in order to undermine the stability of Europe as well as to make financial profits (Website of The Hungarian Government, 2018b). Therefore, even the name of the legislation itself seems to stigmatize organizations working with immigrants.

According to Prime Minister Orbán, the questions of immigration and the so-called Soros-plan were two of the most important issues in the 2018 Hungarian parliamentary election held on April 8, 2018. After the Fidesz-KDNP coalition won with absolute majority, Prime Minister Orbán said that “the ‘Stop Soros’ legislative package and the draft amendment to the Constitution would be submitted to Parliament as soon as the new Hungarian government is formed” (Website of The Hungarian Government, 2018c). The legislative package (Act VI of 2018 on amending certain laws related to measures to combat illegal immigration) amended several laws and regulations to criminalize any individual or organizational activities that support or promote illegal immigration, including assisting asylum-seekers or providing financial means for such activities. Additionally, in July 2018, the Hungarian Parliament also passed the amendments of the Tax Law that introduced a 25-percent special tax on aid groups that support migration (Act XLI of 2018 on amending certain tax laws and other related laws and the special tax on immigration).

Such regulations not only seem to make human rights organizations’ work impossible, but also raise questions about whether Hungary’s actions are in accordance with international and European laws. The European Commission has referred Hungary to the Court of Justice of the European Union for non-compliance of its asylum and return legislation with EU law (European Commission, 2018b). Simultaneously, the Hungarian government announced that “there is no choice but to leave the migration pact proposed by the United Nations” as the proposed pact seems to be “an invitation” for migrants (Website of The Hungarian Government, 2018d).

It is far too soon to evaluate the recent “Stop-Soros” legislative package and the recent governmental campaigns against NGOs supporting immigration, but it is important to carefully monitor the Hungarian case – as well as the cases emerging in other developed countries – in

order to further analyze the possible outcomes of foreign agents regulations and other laws that might undermine cross-border philanthropy instead of combating money-laundering, terrorism, or other threats against national security.

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Eötvös Loránd Science University, Hungary Law Studies	2011 – ongoing

Honors, Awards, and Fellowships

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McKinsey&Company Next Generation Women Leaders, special prize For women who thrive when working with other people and actively seek ways to maximize their own potential and to become outstanding female leaders	2017
Pallas Athene Domus Animae Foundation For Hungarian students and scholars with the aim to research Economics and related interdisciplinary fields awarded by the National Bank of Hungary	2017
Fulbright Student Program For Hungarian students and scholars with significant knowledge and/or educational experience with the aim to contribute a deeper and mutual understanding of U.S.-Hungarian relations	2016
Scientific Students' Associations Conference, 1st prize Co-production and performance management regarding the changes of the Homeless care system in Budapest in 2011	2015
Scholarship of the Hungarian Republic For students with excellent academic achievements as well as outstanding community and/or scientific work	2012, 2015

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- Write literature reviews and annotated bibliographies on international giving and global philanthropy
- Conduct and write methodology review for the Global Philanthropy Resource Flows Index
- Assist in successful proposal writing for research collaborations with USAID, Robert Bosch Stiftung, European Center for Not-for-Profit Law)
- Co-lead research teams of 3-10 people, manage project timeline, and deliver project milestones on time
- Work with international partners including Donors and Foundations Network in Europe and the Worldwide Initiatives for Grantmaker Support
- Co-present results of the 2018 Global Philanthropy Environment Index at several webinars and workshops
- Wrote regional summaries and analysed main trends in preparation for the publication of the 2018 Global Philanthropy Environment Index
- Fact checked approximately 60 country reports in preparation for the publication of the 2018 Global Philanthropy Environment Index
- Conducted country research and information gathering to build knowledge base and ensure timely completion of international project

Publications

Horvath, K. Zs. (2018). "Giving to International Affairs." In: Giving USA 2018: The Annual Report on Philanthropy for the Year 2017, a publication of Giving USA Foundation, 2017, researched and written by the Indiana University Lilly Family School of Philanthropy. Available online at www.givingusa.org.

IUPUI Lilly Family School of Philanthropy. (2018). Global Philanthropy Environment Index. Available <https://globalindices.iupui.edu/environment/index.html>

Professional Experience

The Generosity Commission: A National Conversation on Giving and Voluntary Action

Intern

September 2017 – October 2018

- Conducted preliminary literature review and assisted in research
- Prepared background information of current and prospective members for the Working Committee
- Participated in meetings and teleconferences and write notes to support committee members' work

Indiana State Museum and Historic Sites, Department of Development, Indianapolis, IN

Intern

October – December 2016

- Researched fundraising and stewardship programs

- Assisted in stewardship through writing solicitation letters and mailing annual reports
- Provided programming support, such as clearing database and preparing gift boxes for special events

Municipality of Budapest, Department of Culture, Sport, Public Education, Health Care, and Social Policy, Hungary

Scholar

February – June 2016

- Researched public homeless care system in Budapest, Hungary by analysing databases and interviewing approximately 10 service providers
- Monitored directives and official notices published between 2008 and 2013
- Analyzed weekly customer complaints concerning homeless care in Budapest

IFUA Nonprofit Partner, Hungary

Intern

November 2014 – May 2015

- Prepared and presented research, presentations, and executive summaries monthly to the program manager
- Organized monthly workshops for the Hallatlan Foundation by writing memos and leading group discussions regarding capacity-building and sustainable development

PwC Hungary Llc, Tax and Legal Services, Indirect Tax, Hungary

Intern

March – September 2014

- Prepared draft reports and contracts for tax consultancy work weekly
- Communicated weekly with clients and occasionally with the authority under the supervision of senior executive correspondence
- Analyzed and prepared monthly tax returns and intrastate reports for approximately 10 private clients

Civic Engagement

Philanthropic Studies Society, Indiana University Lilly Family School of Philanthropy

President

August 2017 – May 2018

- Organize monthly social gatherings and networking opportunities for graduate students of the IU Lilly Family School of Philanthropy
- Lead the preparation of a conference on global philanthropy collaborating with other student organizations after successfully applying for the International Programming Grant of USD 500 offered by the Office of International Affairs
- Initiate a charity run to raise at least USD 2,000 for the School's student scholarship funds

Vásáry Tamás Foundation, Hungary

Strategic manager

June 2017 – Present

- Lead strategic planning and budget development to improve the mental and social wellbeing of children living in foster care.
- Develop new fundraising methods focusing on online fundraising to increase available program funds

Közel Hozzáánk Charity Organization, Hungary

Vice-president, fundraising manager

January 2014 – July 2016

- Wrote successful grant proposal for grants between USD 700 - USD 5,000 to provide services to improve the conditions of homeless children and adults in the community as well as to contribute to their mental and social wellbeing
- Built external relations with corporations, such as Nestlé Hungary, PricewaterhouseCoopers Hungary, and Ernst & Young Hungary to increase capacity of the organization
- Co-led strategic planning and program development, and prepared annual budgets and reports

Rotaract Duna Club, Budapest, Hungary

Member

January 2013 – July 2016

- Organized one international event and monthly local events to support volunteering and civic engagement
- Developed external relations with donors and beneficiaries to be able to provide greater services

Languages

	Speaking	Reading	Writing
Hungarian (Mother Tongue)	Fluent	Fluent	Fluent
English	Fluent	Fluent	Fluent
Spanish	Advanced	Advanced	Conversational