

Note: The document is translated via eTranslation – The European Commission’s machine Translation system. The leading version of the document is the official text in Bulgarian language.



Republic of Bulgaria
ECONOMIC
AND SOCIAL COUNCIL

RESOLUTION

on the Proposed Foreign Agents Registration Act

(own-initiative act)

Sofia

November 2024

The Action Plan 2024 of the Economic and Social Council (ESC) includes an own-initiative Resolution on the Proposed Foreign Agents Registration Act.

The Resolution's drafting was allocated to the ESC's Presidents Board with rapporteurs the Vice-Presidents: Evgeniy Ivanov (Group 1), Plamen Dimitrov (Group 2) and Bogomil Nikolov (Group 3). The work of the rapporteurs was supported by the external experts Georgi Simeonov, Todor Kapitanov and Teodor Slavev.

At a meeting held on 11 November 2024, Presidents Board adopted the Resolution's draft.

At the ESC's plenary session on 20 November 2024 the Resolution was adopted.

The Economic and Social Council (ESC) of the Republic of Bulgaria expresses serious concerns about the proposal for a law on the registration of foreign agents submitted to the registry of the 51st National Assembly on 11 November 2024, as well as about similar bills presented in previous three National Assemblies,¹ and, as a consultative body of civil society, addresses the following key issues related to the bill:

1. CONTROVERSY WITH THE CONSTITUTION

The draft law does not comply with fundamental constitutional provisions, such as the right of association guaranteed by Articles 12, 44 and 49 of the Constitution of the Republic of Bulgaria. In addition, it may contravene Article 5(1) of the Constitution, which states that the Constitution is the supreme law and that other laws may not contravene it.

The ESC also stresses the importance of Article 5(4) of the Constitution, which introduces the binding effect of international treaties, such as Convention No 87 of the International Labour Organisation on Freedom of Association. The draft law introduces restrictions on organisations with international links, which is contrary to Articles 2, 3, 5 and 8 of the Convention.

2. PRINCIPLES OF LEGISLATION

The purpose of laws is to regulate certain social relations. In this case, they do not exist, they are invented to give legitimacy to the proposed regulation. This **is emergency legislation**.

Besides the danger to Bulgarian society, allowing such legislation could endanger not only the democratic foundations of the state, but also put it in international isolation. The very fact that such a law is allowed in one country suggests that it may be followed by other restrictive laws – confiscation, persecution of the rich, nationalisation, etc. This will also have the effect of dissuading foreign participation, investment and generally hindering normal international cooperation between people and business.

According to Article 26(1) of the Law on Normative Acts (LNA), bills must be based on the principles of necessity, justification, predictability, openness, and coherence. It **is not apparent from the grounds or the content of this draft law that those** principles have been observed. The ESC notes that there are no arguments as to why a new legal mechanism is needed to control externally funded organisations, given that there are already laws regulating

¹ Foreign Agents Registration Act (48-254-01-36/27.10.2022); Foreign Agents Registration Act (49-354-01-19/28.04.2023); Foreign Agents Registration Act (50-454-01-85/10.09.2024); Foreign Agents Registration Act (51-454-01-5/11.11.2024)

the financial transparency and accountability of these organisations, **including their registration.**

The bill does not address how the proposed new registration and publicity obligations comply with the principles of proportionality and stability enshrined in the LNA. Consultations with interested parties would have provided an opportunity to discuss these issues in the light of Article 26(1) of the LNA, but no such consultation has taken place.

3. EXISTING REGULATIONS

There are already a number of laws regulating the financing, tax residency and accountability of public organisations, including those with external funding. Such norms are laid down in the Non-Profit Legal Entities Act, the Labour Code (for trade unions and employers' organizations), as well as other laws regulating financial transparency.

The bill proposes the introduction of new, special registration procedures and obligations for organizations that are already subject to regulation. This creates a legal dubbing that is not justified either by the motives of the bill or by public necessity. These organisations are already subject to state control over their property status and activities, making the creation of new mechanisms unnecessary.

4. SPECIAL REGIME FOR DETERMINED ENTITIES

The bill creates a special regime for organizations that have external funding or links with foreign entities. This raises doubts about the legality of such special requirements only on the basis of their international contacts, with no evidence of violations of Bulgarian laws or the Constitution. The special regime suggests an impact on public opinion, which is however not supported by evidence of criminal activities or threats to national security.

5. Discrimination

The proposed law discriminates against organisations that receive funding from abroad by obliging them to register as 'foreign agents'. This violates Article 6(2) of the Constitution, according to which all citizens and organisations are equal before the law. Such a division is unacceptable as it is based on assumptions of foreign influence without evidence of concrete illegal actions.

Furthermore, EU Directive 2000/78/EC protects equality and the right to non-discrimination, and the draft law conflicts with these principles as it creates a special regime based on external financing, without evidence of public danger.

6. VIOLATION OF HUMAN DIGNITY

The term ‘foreign agent’ introduced by the bill has a negative meaning and undermines human dignity. Its use is laden with negative associations, such as treason or espionage, which violates the principles of the Preamble to the Constitution, which states that ‘the rights of the person, their dignity and security are supreme’.

Article 1 of the EU Charter of Fundamental Rights states that human dignity is inviolable and must be protected. The use of terminology that confers a negative character on certain entities without specific grounds is contrary to these principles.

7. INCOMPATIBILITY WITH INTERNATIONAL LEGAL STANDARDS

- 7.1. The European Convention on Human Rights (ECHR)** The bill on the registration of foreign agents violates a number of fundamental rights guaranteed by the ECHR:
- **Article 10: Freedom of expression** – The proposed legislation may limit the ability of organisations to express their ideas and positions freely, especially if they receive funding from abroad.
 - **Article 11: Freedom of assembly and association** – The bill introduces additional requirements and restrictions for non-governmental organisations, which may limit their right to associate freely.
 - **Article 8: Right to respect for private and family life** – Registration as a ‘foreign agent’ may violate the privacy of members of these organisations by requiring public information on their funding and activities.
- 7.2. The Charter of Fundamental Rights of the European Union (CFREU)** violates the following rights guaranteed by the CFREU:
- **Article 12: Freedom of assembly and association** – The introduction of a specific regime for the registration and supervision of foreign-funded organisations violates the right to freedom of association.
 - **Article 11: Freedom of expression and information** – The bill creates obstacles for organisations to inform the public about their activities and objectives.
 - **Article 16: Freedom to conduct a business** – Restrictions and additional requirements on organisations that are financed from outside may hinder their business activity and impair their free economic initiative.

- 7.3. Treaty on the Functioning of the European Union (TFEU)** The draft law runs counter to fundamental freedoms guaranteed by the TFEU:
- **Free movement of capital (Articles 63-66)** – The introduction of specific requirements for foreign-funded organisations may restrict the free movement of capital between Member States.
 - **Free movement of services (Article 56-62)** - The proposed regulations may hinder the provision of services by foreign-funded organisations, violating the free movement of services within the EU.
- 7.4. General Data Protection Regulation (Regulation (EU) 2016/679)** – The draft law does not respect fundamental rights and freedoms, in particular the right to the protection of personal data of natural persons.
- 7.5. The bill conflicts with international standards** of the United Nations, such as:
- **International Covenant on Civil and Political Rights (ICCPR)** – The restrictions and regulations put in place restrict the right to freedom of association and expression guaranteed by the ICCPR.
 - **Principles of good governance and transparency** – Although the explanatory memorandum of the draft law claims to seek greater transparency, it in itself creates disproportionate and unnecessary obstacles for organisations.

8. INCOMPATIBILITY WITH OTHER PROVISIONS IN NATIONAL LAW

- 8.1. The Personal Data Protection Act (PDPA)** The bill requires the provision of personal data to members and employees of organizations with foreign funding, which violates the rules on personal data protection.
- 8.2. The introduction of additional registration and reporting requirements contradicts the principles laid down in the Non-Profit Legal Entities Act**, which already regulate the activities of non-governmental organizations.
- 8.3. The Act on Measures against Money Laundering (AMLLA)** The existing legislation already provides for mechanisms to control the financing of organisations, which makes additional requirements redundant.
- 8.4. The Radio and Television Act (RTA)** Restrictions on foreign-funded organisations may violate the freedom and independence of the media guaranteed by the RTA.
- 8.5. The Investment Promotion Act (IPA)** The bill may hinder foreign investment, which is contrary to the objectives of the IPA.

- 8.6. The draft law establishes a de facto criminal regime** through administrative sanctions, without any grounds for infringement or proven guilt, which violates the principle of presumption of innocence and the rights of the defence.
- 8.7. Act on Restriction of Administrative Regulation and Administrative Control of Business Activity (ARARACBA).** The draft law on the registration of Foreign Agents introduces administrative regulation and control, which contradicts the objectives of administrative regulation and control set out in Articles 2 and 3 of the ARARACBA.

9. CONTROVERSY WITH ESTABLISHED JUDICIAL PRACTICE

- 9.1. Case against Hungary on restrictions on NGOs (C-78/18), Court of Justice of the European Union** In this case, the Court of Justice of the European Union ruled that such restrictions on NGOs based on external funding were contrary to EU law.
- 9.2. Ecodefence and others v. Russia (application no. 9988/13 and others), European Court of Human Rights** This case deals with violations of the rights of non-governmental organisations in Russia, following the introduction of restrictions on externally funded organisations. The European Court of Human Rights has ruled that such restrictions are in breach of the ECHR.

10. LIMITATION OF INFORMATION AND PUBLIC OPINION

The introduction of the bill, aimed at strengthening the control over organizations that inform the public and participate in the formation of public opinion, constitutes an unjustified restriction on the right to freedom of expression. The draftsmen identify these activities as a source of ‘increased public danger’ requiring strict state control, without providing concrete evidence or substantiated reasons for such regulation. This is contrary to the constitutionally guaranteed rights of free dissemination of information.

11. INTERFERENCE ON MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION

The controversial definitions and broad scope of the restrictions provided for in the draft law will limit the work and (self-)censorship of media involved in international partnerships or with international participation. This constitutes a blatant violation of the independence of the media, freedom of expression and an attempt at political interference in the work of the media. The adoption of such provisions creates tools for political influence on media content through

forms of punishment and stigmatisation and will suppress critical scrutiny and analysis of the work of public institutions.

12. LACK OF JUSTIFIED GROUNDS

The bill does not provide a clear answer to basic questions related to the necessity and justification of the proposed regulation. According to Article 28 of the Law on Normative Acts (LNA), the motives of each draft law must contain a detailed analysis justifying the need for new legal norms, as well as their compliance with the Constitution and the law of the European Union. The proposed reasoning lacks such analyses and data, and instead unsubstantiated claims and assumptions are found. The ESC notes that the draft law is contrary to fundamental legal rules, such as Articles 15 and 28(2) of the LNA, which require evidence of the compliance of the draft law with the Constitution of the Republic of Bulgaria and European Union law.

13. LACK OF PUBLIC DISCUSSIONS

Articles 18a and 26(2) of the LNA require that draft legislative acts, especially those of great public importance, be subject to public debate. In the case of this bill, there is no information on public consultations carried out. The ESC stresses that such a process is of key importance, as the bill directly affects the right of association (Articles 12 and 44 of the Constitution of the Republic of Bulgaria) and related civil organisations. According to Article 2 of the Economic and Social Council Act (ESCA), the ESC is a consultative body representing civil society structures and should be involved in the process of discussing draft laws of such importance.

The explanatory memorandum to the draft law states that ‘transparency of foreign-funded organisations is in the overriding public interest’, but lacks clarity on the definition of ‘transparency’ and why the petitioners link this to the public interest. Article 12(1) of the Constitution states that civil associations serve to protect the interests of their members and Article 49 emphasises the specific interest of employees’ organisations. It is not clear what the legal basis is for claiming that these organisations form public opinion and why new requirements are introduced for them.

14. UNJUSTIFIED BUREAUCRACY REQUIREMENTS

The bill introduces absurd and excessive requirements for reporting any financial receipts from foreign sources above BGN 1,000 (EUR 500), which puts organizations under a permanent regime of control and criminality. At the same time, there are no similar

requirements for national sources of funding, which creates discrimination. If transparency is to be achieved, these rules should apply to all sources of funding, regardless of their origin.

15. HUMILIATING LABELS FOR “FOREIGN AGENTS”

Requiring organisations designated as “foreign agents” to mark this status in large print on all published material creates degrading conditions that are reminiscent of historical marking and discrimination practices. This imposes a negative stigma on organisations and individuals cooperating with international partners without any evidence of violations of the law or public danger. This practice could lead to even more severe repressive measures, including forced wearing of symbols, differentiation and persecution.

16. STOP FOREIGN INVESTMENTS

The introduction of punitive regimes for organizations with foreign links and funding will discourage international investment and cooperation, especially in sectors that are key to the country's innovation and economic development. Any unlawful act with foreign influence is already criminalized in the Penal Code, and the new restrictions do not contribute to the rule of law, but undermine it.

17. MISLEADING COMPARISONS

Comparisons of this bill with foreign practices, especially U.S. law, are misleading. The U.S. Act of 1938 only requires the registration of organizations with foreign ties to the governments of other countries, with a direct relationship established, in the work of the natural or legal person, in the interest of the government of another country, without imposing criminal sanctions or administrative restrictions. The Bulgarian bill introduces penalties that are contrary to the basic principles of a democratic state and the right to freedom of association. These restrictions may hinder important international initiatives aimed at improving labour rights and working conditions.

18. POLITICAL PRESSURE AND UNTRANSPARENT CONTROL

The bill does not contribute to real transparency, but rather creates a mechanism for political pressure on civil organizations and individuals who defend the rights of business, employees, vulnerable groups and civil society in general. Limiting the activities of these organisations would have a negative impact on society and create a repressive environment that undermines the free exchange of ideas and information.

CONCLUSION

The Economic and Social Council concludes that the proposed bill on the registration of foreign agents is unfounded and contrary to Bulgarian law and international legal standards. There are no clear and justified reasons for the introduction of the new regulations, as well as enough public consultations to involve civil society in the process.

Existing laws already provide adequate control over the funding of organizations, making the new requirements unnecessary and duplicative. The bill violates key constitutional rights, such as freedom of association, expression and protection of privacy, and contravenes the principle of proportionality. From an international perspective, the project violates fundamental rights protected by the European Convention on Human Rights, the EU Charter of Fundamental Rights and UN international standards. The case law of the Court of Justice of the EU and the European Court of Human Rights confirms that such restrictions are unlawful and discriminatory.

The ESC is adamant that:

- The project is contrary to the Constitution of the Republic of Bulgaria.
- The bill was not drafted in accordance with the principles of the Law on Normative Acts.
- There is no public need for a special or extraordinary approach to regulation that would justify the bill.

If, for some conjunctural reasons, this bill is adopted, the ESC insists that the eligible entities refer the matter to the Constitutional Court for a declaration of its unconstitutionality.

An integral part of the Resolution is the Declaration of the ESC of 11 September 2024.

/signed/

Zornitsa Roussinova

PRESIDENT OF THE ECONOMIC AND SOCIAL COUNCIL