Hungary's response to the letter of concern submitted by Transparency International Hungary, TASZ, K-Monitor and Sunlight Foundation to the Open Government Partnership on 8 July 2015

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1. General remarks

The joint letter of Transparency International Hungary, TASZ, K-Monitor and Sunlight Foundation (hereinafter referred to as: letter of concern) seems to suggest that there is a general attack against civil society organizations, while in reality, the Government and the relevant public authorities only wished to examine the operation of a small group of civil society organizations against which a suspicion of mismanagement has risen.

It should be noted that the regulation on NGOs was re-codified in 2011 by the Act CLXXV on *the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organizations*. The Act provides a regulatory framework which is in line with the standards of the European Union and contains measures that are favourable to civil society organization as the Act, for example, simplifies certain administrative procedures, provides an electronic and transparent register, enables the electronic registration and the notification of relevant changes, and established Information Points for NGOs. Moreover, the amount earmarked for supporting civil society organizations from the central state budget has been growing steadily in the last few years and the procedure of providing grants and subsidies has been made more transparent.

Taking into account the abovementioned, we would find it unfortunate if the operation of and the cooperation with the civil society organizations would be judged based on measures concerning a specific group of NGOs. We believe that a balanced assessment on the legislative framework, the everyday operation of civil society organizations, the Government's approach, and the cooperation and relationship between the Government and civil society organizations can only be made through careful examination of the facts, the relevant legal provisions, and the opinions of all stakeholders. However, we also believe that judging the lawfulness of coercive or other legal measures ordered and executed during a criminal procedure is exclusively a question of legal interpretation and not one relating to public politics.

The annex of the letter of concern equates and mixes the procedural steps taken by the relevant authorities with statements made by politicians, and listing these in chronological order gives the undue impression there is a casual link between the remarks made by politicians and the administrative actions ordered based on the law by authorities. Moreover, the annex suggests that the quoted statements and administrative procedures concern civil society organizations in general, while they were made in relation to the organizations managing the Norway Funds, against whom well-founded suspicion emerged. This might question whether an audit launched regarding a specific and small number of civil society organizations – which considerably narrows down the affected NGOs - qualifies as measures "restricting the enabling environment for civil society", as stipulated in the response policy[1].

It should probably be noted here that Transparency International Hungary, TASZ and K-Monitor have all been receiving funds from the Norway Fund managed by the four organizations to whom the letter of concern and its annex often refer. Such connections have the potential to influence impartiality and are certainly an obstacle to present concerns in a factual manner.

[1] http://www.opengovpartnership.org/blog/joe-powell/2014/10/27/ogp-steering-committee-agrees-new-response-policy

As to the objections made by Norway against auditing the operation of the NGOs managing the Norway Fund, we found it very unfortunate that Norway refused to cooperate in the investigation of the suspicions that have emerged and took the Government's remarks as an offence. The Hungarian State is left to carry out the procedures concerning the relevant civil society organizations under its jurisdiction by the legal means at its disposal. We believe all states would act in a similar way should they have to face a situation similar to ours.

Norway - without a transparent procedure - chose a consulting company, called CREDA, to prepare a report on the management of the Norway Fund instead of examining and auditing it in cooperation with Hungary within the framework of an impartial procedure. Later it was found out that several employees of the CREDA have ties with the NGOs managing the Norway Fund, which questions the impartiality and independence of the CREDA and its examination. The report prepared by CREDA found no problems with the management of the Norway Fund but also offered no objective methodological foundation for its findings.

It is very unfortunate that the letter does not voice factual and concrete accusations but only implies undue treatment and non-existent casual links. The letter also falls short of recommending concrete and viable steps that should be taken by the Government and does not address the general situation of the civil society in Hungary.

The letter of concern asks the Steering Committee to call the Government of Hungary to „end any actions based on the findings and conclusions of the audit process launched by the Government Audit Office" (hereinafter referred to as: GCO). Moreover, it requests the Steering Committee to call the Government to "terminate the criminal investigations against the organisations which run the NGO Fund and others". Regarding these requests, we would like to highlight that the only on-going actions based on the GCO's findings are the court procedures relating the suspension of the tax identification numbers (during which the court suspended the implementation of the resolution of the National Tax and Customs Authority (hereinafter referred to as NTCA), thus the tax identification numbers are active at the present) and the criminal investigations. There isn't any other action against the NGOs managing the Norway Fund or receiving grants from it. Clearly, criminal investigations and court proceeding are subject to the law and the proceeding authority or court, and therefore, its termination cannot be ordered by the Government. Any attempt to influence the outcome of the investigation or the court procedure would mean a serious violation of the rule of law, the independence of the judiciary and other constitutional norms.

The letter also calls for the "harassment of watchdog NGOs by the GCO and NTCA to stop". The GCO did not "harass" any NGO, but it requested documents and cooperation during its audit (which is an obligation for any organization operating in Hungary as prescribed by the law), and when they weren't' provided, the GCO sought legal remedy regarding four of the 59 audited organizations. Moreover, the GCO's audit ended October 2014, and there has been no connection between the GCO and the NGOs managing the Norway Fund for 10 month. Furthermore, it is the investigative authorities' responsibility to carry out its investigations carefully and lawfully, and by no way can they be ordered in this regard by the Government or any third party.

We believe that the rule of law in this case would mean that organizations operating in a given country submit themselves to the examination or investigation of its administrative bodies, ensure cooperation, and comply with the general obligation to provide information to administrative bodies during an official procedure, as it is prescribed by the law.

We do not question that there is a strong need for the OGP's response policy but we believe that it should be put into use when the operation of the civil society as a whole is hindered and their general independence is threatened, and less when a limited number of NGOs are under audit or criminal investigation. It will also require careful deliberation from the Criteria and Standards Subcommittee and the Steering Committee to establish whether to OGP response policy can be applied if the concerns raised in fact arose before the response policy was adopted. In the present case, almost all of the concerns stated in the Annex of the letter of concern date back before the OGP response policy was adopted.

The Government of Hungary, as it has been before, is open and ready for a constructive dialogue but refuses to be depicted as an actor whose only aim is to squash civil society organizations.

2. The audit carried out by the Government Control Office

The audit carried out by the Government Control Office (GCO) has affected less than 60 of the 60 000 NGOs operating in Hungary and most of these organizations were cooperative during the audit. The tax identification number has been suspended in case of four organizations on the ground of not complying with the obligation to cooperate with the GCO as prescribed by the law (see Part 3 on *the suspension of the tax identification numbers of certain civil society organizations*).

GCO conducted the audit on the operation and the management of the Norwegian Funds, on the use of other national and international grants given its beneficiaries and on the organizations receiving grants from the Financial Mechanisms based on Section 11 (3) of Government Decree No. 355/2011 on the Government Control Office[2]. The order to conduct the audit was made on 23 May 2014, and its scope was extended on 31 July 2014.

The audit covered - besides the activities of the consortium managing the Norway Fund - 63 projects implemented by 55 supported civil society organisations, and some other projects of state bodies.

The reasons for ordering the audit were mainly the many notifications and warnings the Government received from non-governmental organizations in connection with how the consortium, headed by Ökotárs Foundation, is managing the Norway Fund and distributes grants. According to these notifications, public funds, to which each Hungarian NGOs should be entitled, are distributed amongst a specific group of NGOs who have close ties and connections with the management consortium, while most NGOs simply do not even get the chance to become beneficiaries. In addition to this, the suspicion also presented itself that Ökotárs, infringing the Memorandum of Understanding between Norway and Hungary, supports organisations with ties to political parties or involved in political activities. One of the

[2] Section 11
(3) The President of the GCO shall order an exceptional audit upon the decision of the Government and the order of the Prime Minister of the minister.

beneficiaries admitted more than once in public that it financed anti-government demonstrations from the Norwegian Funds. The Government of Hungary has notified the Government of Norway of these problems several times and made attempts to find a solution through negotiation and carry out a joint investigation in a cooperative manner, but the Norway refused the Hungarian proposal.

From the beginning of the audit, the members of the consortium managing the Norway Fund have taken the view that GCO has no power to pursue an audit regarding the management of the Norwegian Fund or the organizations managing it. The consortium has communicated its viewpoint several times during the audit, along with a demand that the GCO proves that the audit is lawful.

To comply with the abovementioned request, GCO informed the members of the consortium multiple times that in accordance with section 63 subsection (1) a), c) and h) of *Act CXCV of 2011 on Public Finance* (hereinafter: the Act on Public Finance)[3] and Section 6 of *Government Decree 355/2011 on the Government Control Office* (hereinafter: Government Decree), the GCO has the power to conduct the audit. The same information was given to the other organisations receiving funds from the Norway Fund who questioned the lawfulness of the audit.

Despite the above and the GCO's repeated requests, the members of the consortium refused to provide documents relating to the conduct of tendering, the assessment and evaluation of the submitted project proposals, the decisions on the projects to be implemented, and the monitoring of the implemented projects. These documents have been of particular importance for the purposes of the audit, but unfortunately, these documents still haven't been made available for the GCO. Moreover, some of the documents the GCO received were "produced" after the beginning of the audit and were falsely given an earlier date. Based on the documents the GCO managed to procure, it appears that the members of the consortium – in order to set back the criminal procedure - have deleted some of the data stored on their servers along with part of their e-mail correspondence relating to the management of the Norwegian Fund.

It should also be noted that most of the documents and data requested by GCO constitute - in accordance with section 1 subsection (1) c) and 3(1) of *Act CLXXXI of 2007 on the transparency of grants given from public funds*[4] - information of public interest. That is, not only the GCO's employees, but

[3] Section 63
(1) The GCO has the power to audit
(a) the implementation of the decisions of the Government
(c) the use of grants from the state budget and other subsidies from the central chapter of the state budget – including subsidies and aids received based on an international agreement – along with the use of national assets given for free of charge use for economic operators, public foundations, public bodies, foundations and associations.
(h) the contractual relationships linked a to subsection (a) – (f) and the contractual parties who directly or indirectly participated in the actualization of it

[4] Section 1
(1) The scope of the Act covers financial or material subsidies originating from
(a) the state budget
(b) the sources of the European Union
(c) other programs financed based on an international agreement granted by an individual decision with or without a tender to persons, legal persons and other organizations without a legal person - not including condominiums – that are outside of the general government sector.

every citizen has the right to have access to the information (for more details please refer to Part 5 on the *Right to information and the decision of the National Authority for Data Protection and Freedom Information)*. So while concerns were raised by NGOs that the Government does not fulfil the requirements relating to the freedom of information and transparency, members of the consortium operating the Norwegian Fund handle public funds in a way that seriously infringes the regulation on the freedom of information as they were not ready to show accountability neither towards the public, nor the authority conducting the audit.

The GCO has requested the National Tax and Customs Authority (NTCA) to suspend the tax identification number of the four organizations managing the Norway Fund, because these organizations, violating the law applicable to all organizations operating in Hungary, did not comply with the obligation to provide information and to cooperate with the authorities. The aim of the GCO's request was to enforce a culture of compliance as the rule of law does not make it acceptable that organizations deciding over billions of forints of public funds violate intentionally and persistently the law and do not cooperate with the authorities who act within their powers.

It is important to mention that two members of the consortium have sued the GCO for conducting an unlawful audit, yet, both claims were rejected by the court even without issuing a warrant to appear in court.

The GCO terminated its audit regarding the management of the Norway Fund on 15 October 2014, and, based on the Government's decision, subsequently published the audit report. In case of both the organizations managing the Norwegian Fund and the supported beneficiaries, the report revealed many irregularities.

The GCO found that the consortium had been chosen in a way that was not in compliance with the relevant requirements of the international agreements as the representative of the Hungarian state was not involved in the procedure. Moreover, with respect to the procedure of choosing the projects eligible for grants, it has been ascertained that the consortium members intentionally established such a mechanism for evaluation and decision-making that gave way for biased considerations. The director of Ökotárs Foundation also called her employees to exert influence on the decision, and, as a member of the evaluating board, she has multiple times modified the scores that the applications received without any explanation during the preliminary evaluation procedure, thus tampered with the original ranking.

The members of the consortium had also not respected the regulation on the conflict of interest; the GCO had observed multiple times that the project granted funding had close ties with either the members of the evaluating board or the person(s) who carried out the initial assessment of it. Personal connections were shown in 21 out of the 55 beneficiaries and a fund of the amount of 273 million HUF was granted in this manner.

Section 3
(1) Data relating to the tendering, the tendering procedure and the decision of eligibility handled by the person or organization preparing the tender, conducting the tendering, preparing the decision of eligibility or making the decision on eligibility that is not special data or data of public interest qualifies as „data public on the grounds of public interest".

In addition, the GCO found during its audit that irregularities surfaced in 61 out of 63 projects. For instance, costs incurred after the project terminated, costs with no connection to the goals of the project, and costs already declared in the framework of another project have been declared. It also occurred that projects– based on the specifications of the call for application – that should have been excluded from applying were given a grant. A common and general problem was the infringement of the regulation on the requirement of own financial contribution. The large number of breaches revealed suggests that the consortium, instead of endeavouring to promote the regular and effective use of funds, focused on helping beneficiaries to spend the total amount of the fund regardless of its lawfulness and rationality.

Section 171 (2) of *Act XIX of 1998 on the Criminal Procedure Act* (hereinafter referred to as CPA) provides that members of the authority, official persons, and public bodies shall be obliged to lodge a complaint concerning a criminal offence coming to their cognisance within their scope of competence. The GCO, fulfilling this obligation, filed criminal complaints for budget fraud, misappropriation of funds, and unauthorized financial activities based the findings of its audit. It proves that the suspicion was well-founded that investigations were ordered by the investigative authorities which are still on-going.

3. The suspension of the tax identification numbers of certain civil society organization

a) The suspension of the tax identification numbers

On 29 August 2014, the Governmental Control Office requested the suspension of the tax identification numbers of the four organizations from the National Tax and Customs Administration on the ground of Section 24/A subsection (1) (d) of *Act XCII of 2003 on the Rules of Taxation* (hereinafter: RoT)[5]. The GCO held that the four NGOs did not meet their obligation to cooperate and to provide information during the audit, which is an obligation for any organization as provided by Sections 64-65 of the Act on Public Finance, and therefore requesting the suspension of their tax number is well justified. Subsequently, the competent tax directorate ordered the suspension of the tax numbers of these organizations in the middle of September 2014.

The organizations concerned then submitted an appeal against the resolution suspending their tax number of the NTCA. The second instance tax authority upheld the resolution of the first instance tax directorate.

The law provides that within the statutory deadline, a petition for the judicial review of an administrative decision may be lodged if either of the persons entitled to appeal has exhausted the right of appeal in the proceedings of the proceeding authorities. The NGOs managing the Norway Fund petitioned for judicial review, and the court proceeding is still on-going. Thus a final decision regarding the suspension of the tax numbers will be made by the independent court.

[5] Section 24/A
(1) The NTCA suspends the tax identification number
(d) upon the request based section 65 subsection (2) b) of the Public Finance Act of the president of the government control office

It is also important to note that proceeding court has suspended the implementation of the NTCA's resolution ordering the suspension of the tax numbers until the legally binding completion of the court case. This means that – contrary the letter of concern – the tax numbers of the NGOs are valid and therefore they can continue their operations without any disadvantage or obstacle.

b) Inspections carried out by NTCA

Based on a letter from GCO, a tax audit aiming at examining the accomplishment of certain tax liabilities was ordered concerning the above-mentioned four NGOs. The audits concerned the returns on taxes and social security contributions as well as corporate income tax returns in connection with disbursements and allowances. The main purpose of the audit was to filter out suspected irregularities in connection with employment. The tax audit has not terminated yet.

c) Criminal investigations carried out by the National Tax and Customs Administration

The NTCA' Law Enforcement Directorate General is investigating organizations receiving funds from the Norway Fund on the suspicion of committing the offences listed above.

Section 71/B, paragraphs (1)-(2) of CPA unambiguously regulate the rules of collaboration between authorities proceeding in the criminal procedure and other organisations and authorities not participating in the procedure (these latter can either be national organisations or organisations established by an international convention promulgated by law as well as those established by legal acts of the European Communities).

With the exception of the case provided in the paragraphs (1)-(2) of Section 71/B of the CPA, there is a possibility based on the paragraph (5) of Section 74/B of the CPA for the public prosecutor to authorise, before the accusation is lodged, the provision of information to a third party if it is supported by a well-substantiated legal interest. That is, providing more information on a still ongoing investigation in which the accusation has not been made is only possible under special circumstances, and it would need to be authorized by the prosecution service. Therefore, the NTCA cannot provide more information on the on-going investigation at the present.

4. The role of the Prosecution Service and the Police in the investigations, the opposite court decisions on the lawfulness of the house search, and the general rules on revealing information or evidence related to an on-going investigation

a) Clarifying the prosecution service's role in the investigations

According to the Annex of the letter of concern, the Prosecution Service and the National Tax and Customs Administration had both started investigations against four civil society organizations which had received supports from the Norwegian Fund and that the names of the civil society organizations were not disclosed.

The Annex contains incorrect information in this regard since the President of the GCO filed criminal complaints concerning the civil society organizations supported by the Norwegian Civil Fund to the Police and the NTCA and the criminal investigations were not by the Prosecution Service in either case.

In compliance with Section 74/A (3) of CPA, disclosure of information to the press shall be refused if this would jeopardize the successful conclusion of criminal procedures in any way (see below). Therefore, we do not consider objectionable that names of civil society organizations concerned with the criminal complaints were not disclosed to the public by the authorities who had the criminal investigative interests as a priorities in view.

It should also be highlighted that that the prosecution service of Hungary is independent and not subject to the Ministry of Justice nor to the Government, and the Fundamental Law (the constitution) does not allow that orders be given to the prosecution service by the Government.

b) The investigation conducted by the Police

As explained above, the President of the GCO filed a criminal complaint to the Police regarding the management of the Norway Fund based the findings of its audit. During the investigation carried out by the Police, it was proven that Ökotárs did not cooperate with the GCO during its audit nor did it provide many of the requested documents. When documents were provided to the GCO, crucial information, such as the names of organizations and signatures, was redacted. Therefore, securing the documents necessary to carry out the investigation and gather evidence was only possible by ordering a house search. Section 8 of the Criminal Procedure Act (CPA) providing that "no one may be compelled to make a self-incriminating testimony or to produce self-incriminating evidence" also supports the ordering of the house search.

The house search was carried out by plainclothes officials of the Corruption and Economic Crime Department of the National Bureau of Investigation. Officials from the Riot Police were there as well, but only to protect the scene and hold off the press and bystanders. Taking into account the composition of the officials participating in the house search and the protection of the scene, the search was not carried out by riot police officials and it was not carried out as a "raid" nor was it threating or intimidating.

Moreover, the prosecution service monitoring the legal compliance with the provisions on investigative measures rejected the complaints made against the house search by the affected organizations.

The annex to the letter of concern also claims "(the Police) launched an investigation against Ökotárs on suspicion of fraud. Later on, the underlying criminal offence was altered to "fraudulent misuse of funds", i.e. embezzlement". We wish to note that the misappropriation of funds (Criminal Code Section 376), budget fraud (Section 373) and embezzlement (Section 372) are separate offences under the Hungarian criminal law. The CPA provides that as new evidence emerge during an investigation, the investigative authority can modify or complement the suspicion, therefore altering the criminal offence which the suspicion concerns or adding new investigated offences is a common and necessary practice and by no mean should it be seen us an arbitrary or faulty measure.

The National Bureau of Investigation handed over the investigation to the NTCA on 19 December 2014, thus the Police is not conducting an investigation to the management of the Norway Fund and the conduct of the consortium managing it.

c) Opposite court decisions on the lawfulness of the house searches

The letter of concern states that, according to a court decision, the house search conducted by the Police was unlawful because the suspicion of misappropriation of funds and of unauthorized financial activities could not be established at the time of the house search.

According relevant records and documents, the Police conducted a house search at the office of the Ökotárs Foundation in Budapest and in one of the advisory board members' residence in Csobánka on 8th September 2014, and they seized documentary evidence. After the prosecution service refused the complaints submitted by Ökotárs and the member of the advisory board concerned regarding the house searches, both parties turned to the court for legal remedy. (Each party submitted its motion to the local court having competence according to its residence.)

One of the proceeding courts refused the motion regarding the house search carried out at Csobánka on 16th October 2014, but the other proceeding court accepted the motion regarding the house search in the office of the Ökotárs Foundation on 23rd January 2015 and found that the house search was unlawful.

According to the written justification of the latter court decision, there was no evidence that the members of the advisory board of the Foundation had breached their trustee obligations at the time when the house search was ordered; therefore, the suspicion of misappropriation of funds cannot be established. The Court added that the Police did not formally decide the criminal complaint filed for unauthorized financial activities. As a result, at the time of the house search the scope of the investigation did not include the criminal offence of unauthorized financial activities.

In conclusion, two contradictory court decisions have been rendered regarding the lawfulness of the house searches; one judge refused the motion and found the house search at Csobánka lawful, while the other judge found the search at the Ökotárs's office to be unlawful.

In our view, opposite to the allegations of the letter of concern, judging the lawfulness of a coercive measure (such as a house search in this case) ordered and executed during a criminal procedure is exclusively a question of legal interpretation and not one relating to public politics. This question, as elaborated above, was decided differently by the proceeding investigative judges. We also wish to highlight that the one of the courts found the house search lawful, so it shared the prosecutorial standpoint based on which it refused the complaints submitted by the advisory board member and Ökotárs.

d) Revealing evidence related to an on-going investigation

A complaint is made in the letter of concern that evidence on the commission of crimes relating to the operation of the consortium and the management of the Norway Fund has not been revealed.

Regarding this complaint, we need to refer to Section 74/A (3) of the Criminal Procedure Act (CPA) once more, which provides that the disclosure of information to the press shall be refused if it would jeopardize the successful conclusion of criminal procedures in any way. It should also be noted that under Section 4 (2) of Joint Decree No. 26/2003. (VI.26.) of the Minister of Interior and Minister of Justice on the information that can be disclosed to the press in the course of criminal investigations and under Section 4 (1) a) of the Order of the Prosecutor General No. 19/2012. (X.9.) on the procedure of disclosing information to the press, information to the press should be restricted to the facts already established in the course of the criminal procedure.

In accordance with Section 74/B (3) of the CPA, the evidence supporting the facts are accessible only to those persons who are expressly authorized by CPA to have access to documents and records of the given criminal case. For information on the exception to this rule, please refer back Part 3 on *Criminal investigations carried out by the National Tax and Customs Administration.*

5. Right to information and decision of the National Authority for Data Protection and Freedom Information

The letter of concern refers to the decision of the National Authority for Data Protection and Freedom of Information (NAIH) that Ökotárs should provide at least the list of the rejected project applications for funds and the reasons for their rejection to the news channel "Hír Televízió".

Section 26 *Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information* (hereinafter referred to as Information Act) provides that "any person or body attending to statutory State or municipal government functions or performing other public duties provided for by the relevant legislation (hereinafter referred to collectively as "body with public service functions") shall allow free access to the data of public interest and data public on grounds of public interest under its control to any person, save where otherwise provided for in this Act"

Since the NGOs managing the Norway Fund are "actors" of an international agreement which was made part of the Hungarian law by the *Government Decree No. 236/2011 on Promulgating the Memorandum of Understanding on the Implementation of the Norwegian Financial Mechanism 2009-2014 between the Republic of Hungary and the Kingdom of Norway*, they "constitute a body performing other public tasks" in line with the above-cited Paragraph 26.

Article 10 Section (2) of the Memorandum of Understanding between Hungary and Norway provides the "the highest degree of transparency" as a governing principle regarding the implementation of the fund scheme. Ökotárs publishes reports and the supported projects on its website; however, disclosing rejected projects and the reasons for their rejection is necessary to meet the principle of transparency. The Ökotárs, a body performing public functions, decides on the distribution of billions of forints of public funds but in the meantime it violates intentionally and repeatedly the rules on transparency and publicity.

It should also be highlighted here that the National Authority for Data Protection and Freedom of Information is not under the control of the Government and thus its operation absolutely independent from the Government.

6. The amendment of Act CXII of 2011 on the Right of Informational Self- Determination and on Freedom of Information

The letter expressed concerns regarding the amendment of Act CXII of 2011 on informational self-determination and freedom of information (hereinafter referred to as Amendment) recently adopted by the Hungarian Parliament.

In line with the general rules on consultation, the draft amendment bill was submitted for public administrative consultation and at the same time had been made available on the Government's website for anybody to comment on it (public consultation). The public consultation, in order to ensure adequate time, started on 27 April 2015 and lasted until the bill was submitted to the Parliament in June. Despite the approximately one-month long public consultation, no organization outside the public administration availed itself of that opportunity and, unfortunately, not a single comment or suggestion had been submitted by civil society organizations despite the fact that the draft amendment bill made available for public consultation has contained all the elements that the letter of concern refers to.

It should also be mentioned that the Amendment contained several undisputedly positive amendments besides those that have attracted criticism. These amendments aimed at improving the data subjects' rights (e.g. rules on data breach notification), the further development of the powers of the independent data protection supervisory authority (e.g. corrective measures and sanctioning powers) or both of them concerning the revision of decisions to classify data as "classified".

I. Reimbursement of costs

The concerns seem to focus on the provisions on the reimbursement of the costs incurred by the requests for public information (hereinafter referred to as "public information request" or "data request") although such provisions are widely known and applied by not only the Member States of the European Union but other countries outside the EU as well.

The possibility to require the reimbursement of the costs incurred by the request for public information is in line with Article 7 of the Council of Europe Convention on Access to Official Documents which was signed and ratified by Hungary. The Convention has not yet entered into force, since the requirement for it, namely the ratification of at least ten states, has not yet been fulfilled.

The following provisions, translated into English, show the essential elements of the amendments and their relation to the regulation currently in force:

Regulation currently in force
Section 28 (…) (2) Unless otherwise provided for by law, the processing of personal data of the requesting party in connection with any disclosure upon request is permitted only to the extent necessary for disclosure,

including the collection of payment of charges for copies, where applicable. Following the disclosure of data and upon receipt of the said payment, the personal data of the requesting party must be erased without delay.
(…)

Section 29
(…)
(3) The requesting party may also be provided a copy of the document or part of a document containing the information in question, irrespective of the form of storage. The body with public service functions processing the data in question may charge a fee covering only the costs incurred in connection with making the copy, and shall communicate this amount to the requesting party prior to the disclosure of the requested information.
(4) If the document or part of a document of which the copy had been requested is substantial in size and/or volume, the copy shall be provided within fifteen days from the date of payment of the fee as charged. The requesting party shall be notified within eight days from the date of receipt of his request if the document or part of a document of which the copy had been requested is considered substantial in size and/or volume, as well as of the amount of the fee chargeable, and if there is any alternate solution available instead of making a copy.
(5) The items covered by the fee chargeable, and the highest amount that can be taken into account in determining the amount of the fee, and the aspects for determining whether a document is to be considered substantial in terms of size and/or volume shall be laid down by law.

Section 31
(1) In the event of refusal of the request or failure to meet the deadline for the compliance with a request for access to public information, or with the deadline extended by the data controller pursuant to Subsection (2) of Section 29, and - if the fee chargeable has not been paid - for having the fee charged for the copy reviewed the requesting party may bring the case before the court.
(2) The burden of proof to verify the lawfulness and the reasons of refusal, and the reasons for determining the amount of the fee chargeable for the copy lies with the data controller.
(3) Litigation must be launched against the body with public service functions that has refused the request within thirty days from the date of delivery of the refusal, or from the time limit prescribed for the compliance with the request or from the deadline for payment of the fee chargeable. If the requesting party notifies the Authority with a view to initiating the Authority's proceedings in connection with the refusal of or non-compliance with the request, or on account of the amount of the fee charged for making a copy, litigation may be launched within thirty days from the time of receipt of notice on the refusal to examine the notification on the merits, on the termination of the inquiry, or its conclusion under Paragraph b) of Subsection (1) of Section 55, or the notice under Subsection (3) of Section 58. Justification may be submitted upon failure to meet the deadline for bringing action.
(…)
(7) When the decision is in favour of the request for access to public information, the court shall order the data controller to disclose the information in question. The court shall have powers to modify the amount charged for making a copy, or may order the body with public service functions to re-open its proceedings for determining the amount of the fee chargeable.

Section 72

(1) The Government is hereby authorized to decree:

(…)

b) the items covered by the fee chargeable for copies provided in connection with requests for public information, and the highest amount that can be taken into account in determining the amount of the fee, and the aspects for determining whether a document is to be considered substantial in terms of size and/or volume;

The amended regulation to be applied from 1 October 2015:

Section 28

(…)

(2) Unless otherwise provided for by law, the processing of personal data of the requesting party in connection with any disclosure upon request is permitted only to the extent necessary for disclosure, for the inspection of the request based on the criteria specified in Subsection (1a) of Section 29, or for the collection of payment of charges for copies, where applicable. Following the expiry of the term specified in Subsection (1a) of Section 29, and upon receipt of the said payment, the personal data of the requesting party must be erased without delay.

(…)

Section29

(…)

(3) The requesting party may also be provided a copy of the document or part of a document containing the information in question, irrespective of the form of storage. The body with public service functions issuing the copy may charge a fee covering only the costs incurred by the compliance with the request, and shall communicate this amount to the requesting party in advance prior to the disclosure of the requested information.

(3a) Following the receipt of the information obtained on the basis of Subsection (3), the requesting party shall declare within 30 days from receipt whether he wishes to maintain his request. The period between the provision of information and the receipt by the data controller of the requesting party's declaration shall not be included in the above term. If the requesting party maintains his request, he shall pay the fee by an at least 15-day deadline set by the data controller.

(4) If compliance with the data request requires disproportionate efforts from the human resources engaged in performing the basic activities of the body responsible for undertaking the public responsibility, or if the document or part of a document of which the copy had been requested is substantial in size and/or volume, or if the charge payable for the copies exceeds the amount specified in the government decree, the copy shall be provided within fifteen days from the date of payment by the requesting party of the fee as charged. The requesting party shall be notified within eight days from the date of receipt of his request if compliance with the data request requires disproportionate efforts from the human resources engaged in performing the basic activities of the body responsible for undertaking the public responsibility, if the document or part of a document of which the copy had been

requested is considered substantial in size and/or volume, as well as of the amount of the fee chargeable, and if there is any alternate solution available instead of making a copy.
(5) When determining the amount of the charge, the following cost elements can be taken into account:
the costs of the media containing the requested data,
the costs of the delivery of the media containing the requested data to the requesting party, and
if compliance with the data request requires disproportionate efforts from the human resources engaged in performing the basic activities of the body responsible for undertaking the public responsibility, the cost of labour input relating to complying with the data request.
(6) The maximum amount of the cost elements specified in Subsection (5) are prescribed by law.

Section 31
(1) In the event of refusal of the request or failure to meet the deadline for the compliance with a request for access to public information, or with the deadline extended by the data controller pursuant to Subsection (2) of Section 29, and for having the fee charged for the compliance with the request reviewed the requesting party may bring the case before the court.
(2) The burden of proof to verify the lawfulness and the reasons of refusal, and the reasons for determining the amount of the fee chargeable for compliance with the request lies with the data controller.
(3) Litigation must be launched against the body with public service functions that has refused the request within thirty days from the date of delivery of the refusal, or from the time limit prescribed for the compliance with the request, or from the deadline for payment of the fee chargeable. If the requesting party notifies the Authority with a view to initiating the Authority's proceedings in connection with the refusal of or non-compliance with the request, or on account of the amount of the fee charged for complying with the data request, litigation may be launched within thirty days from the time of receipt of notice on the refusal to examine the notification on the merits, on the termination of the inquiry, or its conclusion under Paragraph b) of Subsection (1) of Section 55, or the notice under Subsection (3) of Section 58. Justification may be submitted upon failure to meet the deadline for bringing action.
(…)
(7) When the decision is in favour of the request for access to public information, the court shall order the data controller to disclose the information in question, specifying the deadline for compliance with the data request. The court shall have powers to modify the amount charged for compliance with the data request, or may order the body with public service functions to re-open its proceedings for determining the amount of the fee chargeable.

Section 72
(1) The Government is hereby authorized to decree:
(…)
b) the highest amount of the fee chargeable for the compliance with the request and the amount determined according to Subsection (4) of Section 29;
3. As mentioned above, the possibility to require the reimbursement of the costs incurred by the requests of access to public information is widespread in Europe. Some examples that have been taken into account during the preparation of the rules are to be find below.

a) International examples

Labour cost is often included in the fee charged for provided data request. Examples of this practice can be found in several countries of Europe, such as:

Czech Republic

The costs relating to the provision of information (copying and postage costs) are charged for providing a public information request, however, if the provision of the information was extremely complicated and labour intensive, the administrative body may charge an extra fee.

Estonia

The costs directly related to the provision of the data are charged, which may include the reasonable amount of amortization and depreciation required in relation to the sustainability of the service.

Croatia

The requesting party may be obliged to pay the costs relating to the issuance and delivery of the information.

Ireland

By virtue of the detailed ministerial regulations applicable to costs relating to public information requests, no procedural duty is charged, and under 101 EUR the costs relating to the collection, copying, and the provision of data need not be paid. However, over 101 EUR, the entire amount must be paid, provided that the amount of the cost refund may not exceed 500 EUR. If the foreseeable amount of the costs exceeds 700 EUR, the public body may require clarification and the narrowing of the scope of the request. In case of non-compliance with such refund requirements, the public body is entitled to refuse the request.

Latvia

Public information requests for the provision of generally accessible data and not requiring extra input are free of charge. In other cases, however, a fee may be charged for the cost of collecting, compiling and copying data. The requesting party can apply for cost exemption under the conditions specified in the related government decree.

Lithuania

Duty or fee may be charged for compliance with information requests as specified by a special law. The amount of the fee may not exceed the costs relating to the preparation and provision of data, including the value of resources used for providing the request.

Portugal

The costs of photocopying can be charged for providing a request for public information. It is a fixed amount and it includes the cost of materials, the costs of physical and human resources as well, but may not exceed the average market price of similar services.

b) The reasons behind the need of introducing reimbursement

When fulfilling public information requests, it is a legal requirement to ensure the unrecognizability of particular data (personal data, classified data) included in the documents (by anonymization or redaction), which often requires significant expertise and is time consuming as certain documents contain personal or classified data on every single page. Another element of providing public information requests that often require considerable human resources is the retrieval of the requested information, since requests often aim at information or data from many years ago.

The Government has made significant efforts to ensure the digitalization (electronic delivery of documents, digitalization of databases) of data but the administrative body fulfilling the request (referred to as "data controller" in the Information Act) must often handle cases where the requested information is still in printed form.

Moreover, not only large public agencies receive requests, but small public institutions performing public functions with very limited staff (e.g. small town Mayor's Offices) as well.

It is important to note that the person/organization who requested public information (so-called "requesting party") can question the amount of the reimbursement at the court and in this case the administrative body (the data controller) will have to prove that the amount was well-founded and just.

c) Detailed rules on establishing the amount of the reimbursement

In order to ensure the clarity and consistency of the application of the provisions on reimbursement, the Amendment lists and defines of cost elements that can be taken into account when establishing the amount to be reimbursed by the requesting party. Thus clear rules are provided in the law itself.

The Amendment only allows the costs that are directly related to the availability of the information requested and are actually incurred when fulfilling the request to be charged. In addition to the cost relating to the way the requested data is stored (e.g. copying printed documents) and postage, the legislative amendment only allows labour cost to be charged and only if the fulfilment of a request involves the disproportionate use of human resources necessary to carry out the basic activities of the organisation performing public functions. Accordingly, in cases where the amount of the requested data is small, easily accessible and can be provided by electronic means, the law will not allow for including the labour cost element in the reimbursement.

If the fulfilment of the public information request involves the disproportionate use of human resources necessary for carrying out the basic activities of the agency performing public functions, the agency can, only once, extend the deadline for fulfilling the request by 15 days and require the advance payment of the related costs.

The Information Act will be supplemented with a Government Decree which will set detailed rules on how the amount of reimbursement should be calculated and will serve as a further guarantee of the fair and justified application of reimbursement.

II. Anonymous public information requests

The Amendment provides that unless a public information request includes the minimum necessary data, that is the name and contact information (either a postal address or an e-mail address) of the person/organization requesting the information, the request does not have to be fulfilled. The regulation currently in force already prescribes the provision of contact information since otherwise sending the requested information to the requesting party would simply not be possible. It should therefore be noted that the Amendment only requires supplementing the contact information with a name.

Without knowing at least the name and contact information of the person or organization requesting information of public interest, certain procedural acts (requesting clarification, extending the deadline; providing information on the reimbursement that will be charged; denying the fulfilment of the request) cannot be completed and the requested data cannot be delivered to the person or organization who requested it. In the absence of name and contact information, the person or organisation requesting data of public interest could not ask for any legal remedies either.

Moreover, the data controller will not be authorised or enabled by law to verify whether or not the name and contact information is real. However, the person or organisation requesting data of public interest must take into consideration that in case of, for example, using a pseudo name, he/she/t will not be able to enforce his/her/its rights.

It should be also noted that most EU member states have similar regulations; that is the name and contact information must be included in the request.

III. Information that supports decision making

The regulation currently in effect provides that information compiled or recorded by a body with public service functions as part of or during a decision-making process for which it is vested with powers and competence, should not be made available to the public for ten years from the date it was compiled or recorded. Information or data not directly part of the decision-making process but underlying or supporting the decision, however, can be made public upon request once the decision is made. The Amendment clarifies this provision by providing that requests for the disclosure of data underlying the decision can be rejected, within the above-mentioned 10-year time limit, if the data will also underlie or support further decision(s). That is, if the same data are necessary for making two decisions and only one decision has been made, the data will not be made public until the second decision is made.

Actually, the same interpretation was derived and applied from the provisions currently in force, and the Amendment only spelled this interpretation out. Naturally, not all data serves as a basis for decision-making and if only part of the data set will support a future decision, the rest of the data will be disclosed upon requests. Moreover, if the data controller rejects the request on the grounds that it serves another future decision, it must be able to specify this future decision.

Another basic provision is also left unchanged, namely that both the fact that particular data serve to support a further decision and the nature of this future decision must be substantiated by the data

controller should remedy be sought at a court proceeding. Thus strong legal remedy is provided against arbitrary application of this provision.

7. The obligation for civil society organizations to submit an asset declaration

The letter of concern voices concerns regarding the provision of the recently adopted National Anti-Corruption Programme (*Government Resolution No. 1336/2015 (V.27.) on the adoption of the National Anti-Corruption Programme and the measures related to it for the period of 2015-2018*) which would oblige the heads of civil society organizations to declare their private assets. The Programme – to enhance the transparency of NGOs - actually prescribes the examination of the application of the regulations on the operation of civil society organisations currently in force, the international best practices in this field, and the possibility to extend the personal scope of the obligation to submit an asset declaration. This measure takes into consideration the tendency that civil society is getting increasingly involved in the decision-making in line with the principle of multilevel governance. Therefore, the transparent operation and the accountability of the utilization of state subsidies have to be ensured in the case of civil society organizations as well. It is a substantial and legitimate demand of the state and its citizens that the lawfulness and transparency of the use of the grants received, the proportion of the operational costs and the remuneration of managers and employees be ensured.

Chapter IX of *Act CLXXV of 2011 on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organizations* (hereinafter referred to as: Civil Act) regulates the transparency of subsidies received from the state budget. In accordance with the Act, the official of a civil society organisation receiving significant state subsidies authorised to represent that organisation shall submit a declaration of his/her assets in the cases stipulated by the law. Section 19 subsection (1) c) of the Civil Act provides that an organisation is deemed to receive significant state subsidies if - based on data held in the monitoring system - it receives an aggregate amount of more than HUF 50 million of subsidies from the central budget for one budgetary year. The Civil Act therefore already contained the obligation of submitting an asset declaration upon its promulgation in 2011. *Act CCXIII of 2013 on the Amendment of certain Acts concerning civil society organizations following the entering into force of Act V of 2013 on the Civil Code and other amendments* entered into force on 20 December 2013 and brought significant changes as it complemented the Civil Act with detailed rules on asset declarations (Section 53/A to 53/E).

Some NGOs show deficiencies in certain areas of budget management which lead from the infringement of the law to the lack of conditions that are not yet regulated by the legislations on transparency but can be reasonably expected. It is an actual risk that an organization's budget management is unlawful and the financial and material resources of the organization are used unlawfully and without authorization. Organizations like this are non-transparent not just for third parties, but for its members and employees as well. Similar abuses were revealed recently not only in connection with organizations receiving grants from the Norway Fund and caused a significant loss of public trust.

Using the ability to exert pressure in order to gain undue advantage or benefits is another problem that exist in Hungary as well as internationally and is considerably harder to detect than infringements

related to financial management. In this case, a civil society organization uses its constructive aims and agenda to put pressure on an economic organization and exert subsidies in order not to set up against the company. An example of this practice is the case of an Audi investment in the city Győr, where a NGO active in the field of environment protection made the withdrawal of its appeal against the resolution giving permit to the investment conditional upon receiving an economic benefit. The court decision sentencing the head of the NGO concerned for imprisonment of three years and prohibition from participation in public affairs for bribery is not yet final, however, this case is a good example of the phenomenon described above.

Therefore it is necessary to examine the existing legislative framework as well as the means of taking effective action against infringements, making the operation of NGOs – in accordance with international best practices –transparent and ensuring that their activities comply with the ethical and professional requirements. Many EU states had similar aim and ambition during the past few years.