

HUMAN RIGHTS,
DEMOCRACY
AND THE RULE OF LAW

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

DROITS DE L'HOMME,
DÉMOCRATIE
ET ÉTAT DE DROIT

CONFERENCE: Money in Politics in the Era of Globalization and Digitalization

LEGISLATION ON SO-CALLED FOREIGN AGENTS

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Categories:

- a) Laws on lobbying = entities acting at the direction or control of a foreign principal, e.g., US FARA or AUS FITSA
- b) Laws on foreign influence = entities receiving a part of their funding from abroad, e.g., Russian Federation, Hungary, Kyrgyzstan, Georgia

Content/Elements:

- a) FA Laws **prohibiting** foreign funding
- b) FA Laws **regulating** foreign funding:
 - Identification of FA + a title
 - Obligations to register + reporting obligations + disclosing obligations + prohibitions
 - Additional powers of state organs
 - Harsh sanctions

Legal Assessment:

- Subject to international standards (ECHR, ICCPR)
- Need to meet the three-part test of lawful restrictions (legality, legitimacy and necessity/proportionality)
 - a) Legality = usually unclear formulations + very large discretion granted to state organs
 - b) Legitimacy = unclear aims pursued + existence of ulterior purposes
 - c) Necessity/proportionality = rarely the least intrusive measure, disproportionate impact on the entities and the broader society

Conclusions:

- FA laws recently adopted in various countries are different from lobbying laws such as US FARA
- FA Laws usually fails in all the three parts of the human rights test
- FA Laws establish a trap-model for entities
- FA Laws can have a very negative consequences both for such entities and for the society more broadly

**THANKYOU
FORYOURATTENTION!**



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