

Analysis of the Impact of the Proposed Law on Foreign Agents on Civil Society and Montenegro's European Integration

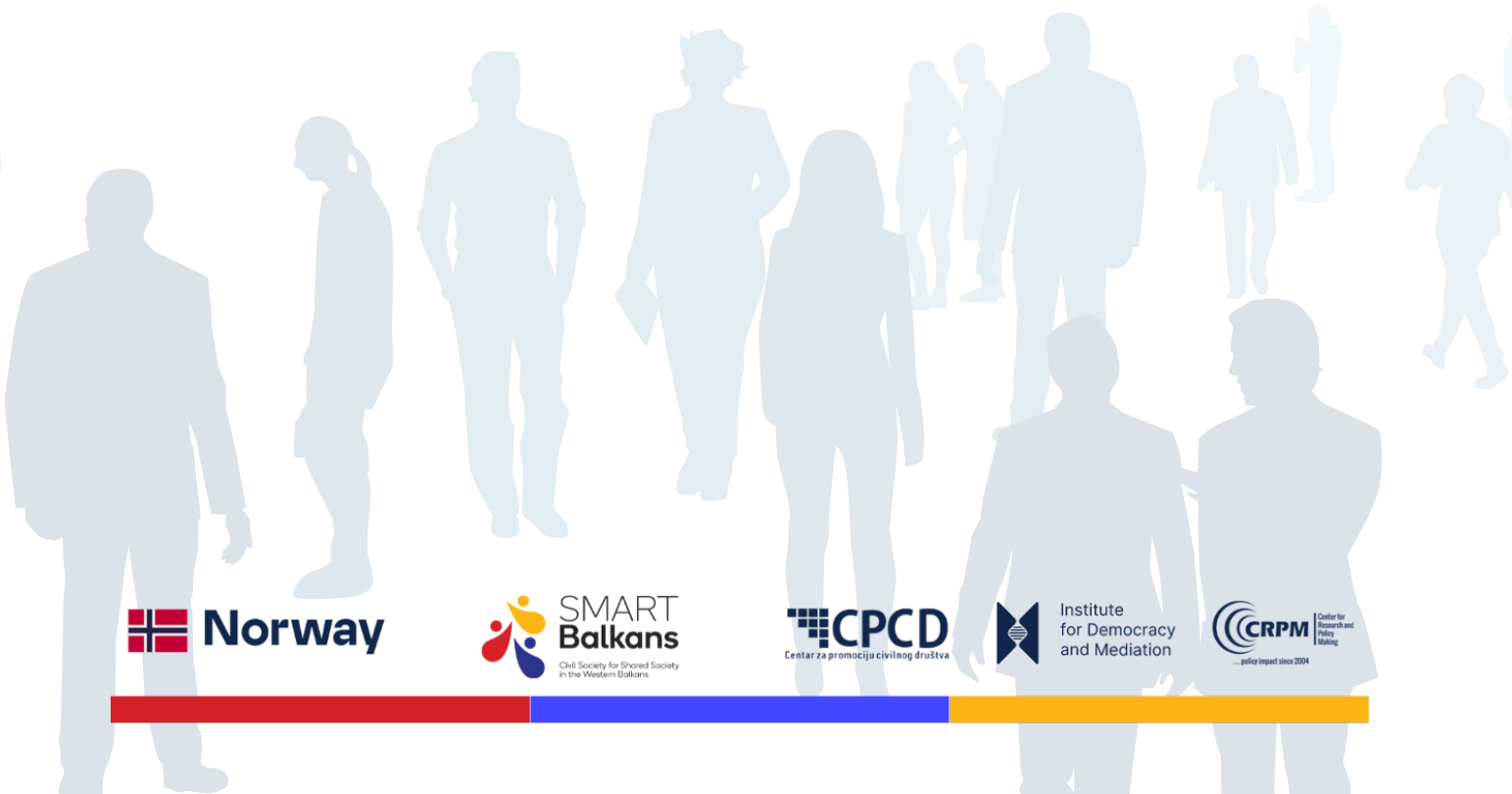


European Path vs. Authoritarian Ideas:

Facts About the Proposed Law on Foreign Agents

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Introduction

The idea of adopting a law on “foreign influence agents” in Montenegro has triggered strong reactions from progressive segments of society, as it potentially creates a mechanism for the repression of non-governmental organizations and critical voices. While inspired by the U.S. FARA law, the proposal shares many similarities with repressive legislation used by authoritarian regimes. This publication examines the real motives and consequences of the proposal, highlighting how its implementation could fundamentally compromise Montenegro’s democratic standards and European integration trajectory.

The first part of the publication analyzes the differences between the U.S. Foreign Agents Registration Act (FARA) and the proposed initiative in Montenegro. FARA is designed to identify individuals connected to foreign governments due to political activities, whereas the Montenegrin proposal targets non-governmental organizations and the civil sector, stigmatizing them as “foreign agents.” Experience shows that similar laws in Russia and Hungary have led to the closure of numerous organizations, while the European Court of Human Rights has ruled that such legislative solutions violate fundamental freedoms.

A section of this analysis is dedicated to addressing disinformation about the work of the non-governmental sector. Claims about a lack of transparency, tax evasion, and illegal activities are refuted with concrete data. Targeted organizations regularly publish all financial reports and operate in compliance with the law. The NGO sector contributes millions annually in tax obligations, conclusively invalidating claims of state responsibility evasion.

The publication also highlights the European Court of Human Rights’ three-part test, which mandates that any restriction on freedom of association must be lawful, legitimate, and demonstrably necessary within a democratic society. The proposed draft in Montenegro does not meet these criteria, relying on vague definitions, targeting civil society without evidence of actual threats, and introducing excessively restrictive measures inconsistent with democratic standards.

Particular emphasis is placed on analyzing the systematic targeting of non-governmental organizations and their activists. Public statements and media campaigns label organizations and individuals as “rabbits,” “mercenaries,” and “foreign agents.” Such rhetoric not only undermines democratic dialogue but cultivates an environment conducive to the potential physical and legal persecution of activists. Comparative examples from Russia and Georgia vividly illustrate how similar legislative approaches systematically suppress freedom of expression and civic initiatives. In the final part of the publication, CDT offers a democratic pathway for curbing malign foreign influence through a proposal to establish a Committee for Monitoring Foreign Influence, modeled on the European Parliament’s INGE Committee. This approach offers a nuanced mechanism for effectively countering systemic threats like disinformation and cyberattacks without compromising civil society organizations’ essential functions and integrity.

As an EU candidate country, Montenegro must reject repressive solutions and follow European values. Freedom of association and expression are fundamental pillars of democracy, and any legal attempts to restrict them are contrary to the constitutional order and the country’s international obligations.

Attempts to justify the proposal by comparing it to the U.S. FARA

Proponents of the proposed law, the coalition for Montenegro's future, and their supporters in the media and on social networks often cite the U.S. FARA (Foreign Agents Registration Act) as a model. However, such comparisons are not only unfounded but also potentially misleading. The objectives, context, and application of FARA in the U.S. significantly differ from the proposed legislation in Montenegro.

FARA was enacted in 1938, during a specific historical moment, as a response to Nazi propaganda in the lead-up to World War II. Its primary purpose was to ensure transparency of activities directly promoting the interests of foreign governments in the U.S. political and social sphere. FARA requires individuals or organizations acting on behalf of foreign governments to register and disclose the nature of their activities.

Proponents of this idea in Montenegro use FARA as justification for introducing stricter surveillance measures over the NGO sector and civil society. However, key differences reveal that this comparison is baseless:

- FARA does not target non-governmental organizations as such. NGOs in the U.S., including those funded from abroad, enjoy a high level of protection for freedom of expression and association.
- The term "foreign agent" under the FARA law does not necessarily carry a pejorative connotation. However, this term is used to stigmatize organizations and discredit their work in the Montenegrin context.
- FARA legislation has clear procedures and safeguards.
- The registration obligation imposed by FARA applies exclusively to political and lobbying activities to influence U.S. political decisions or public opinion. In contrast, proponents of the law in Montenegro seek to impose this obligation on the most influential NGOs, which are an essential part of any democratic society and have significantly contributed to democratic processes in the country.
- In democratic societies, laws like FARA serve a specific role—enhancing transparency without undermining fundamental rights. Conversely, the proposed law in Montenegro threatens to undermine freedom of association and expression, with serious consequences for civil society.

European values vs. repressive practices

The announcement of the law on “foreign influence agents” in Montenegro comes at a time when the country is striving to reaffirm its European perspective. However, the content and intent of this proposal represent a radical departure from the democratic values and standards Montenegro must adopt as a prerequisite for EU membership. Instead of strengthening the rule of law and transparency, the announcement of such legislation bears worrying similarities to the practices of authoritarian regimes like Russia and Hungary, which use legislation to suppress freedom of association and expression.

In Russia, the 2012 “foreign agents” act became a tool for stigmatizing non-governmental organizations and civic initiatives. This law requires organizations receiving foreign funding and engaging in “political activities” to be labeled “foreign agents.” In practice, the term “political activities” has been left to broad interpretation by authorities, leading to the closure of hundreds of organizations, including those focused on human rights, environmental protection, and the rights of marginalized groups. The European Court of Human Rights has repeatedly condemned such legislation, highlighting its incompatibility with fundamental rights guaranteed by the European Convention on Human Rights.

Hungary adopted a similar model in 2017 through a law targeting NGOs funded from abroad. This legislation required organizations to register as entities under “foreign influence” and publicly disclose details about their donors. The EU Court of Justice established that this law violated fundamental freedoms, including freedom of association and the free movement of capital, ordering its revision. Although the law was repealed in 2021 following the EU Court of Justice’s ruling that it was incompatible with EU law and the Charter of Fundamental Rights, the Hungarian government did not abandon its agenda. In December 2023, a new Law on Protecting National Sovereignty was passed, granting a state agency broad powers to collect information on all groups or individuals benefiting from foreign funding and influencing public discourse. In October 2024, the European Commission once again decided to refer Hungary to the EU Court of Justice, deeming the new law incompatible with EU law.

In 2023, Georgia, a country on the path to EU integration, attempted to introduce a law similar to Russia’s. This sparked massive citizen protests and international condemnation. The European Union made it clear that such legislation is inconsistent with democratic values and EU membership criteria. Adopting this law was one of the key reasons for halting negotiations between the EU and Georgia.

Instead of following examples from Russia, Hungary, and other authoritarian systems, Montenegro must reaffirm its commitment to European values. This entails strengthening the civil sector as a partner in democratization and transparency rather than targeting and stigmatizing it. Any deviation from this path would lead to isolation and a detour from the European trajectory.

The three-part test for restricting freedoms

The European Court of Human Rights has established clear standards for assessing compliance with the European Convention on Human Rights and the restrictions on fundamental rights and freedoms. Known as the three-part test, these criteria ensure that any measure infringing on fundamental rights is strictly justified, precisely defined, and proportionate. Freedom of association, a key right guaranteed by the Convention, may only be restricted if all elements of this test—legality, legitimacy, and necessity in a democratic society—are met.

The first criterion—legality—requires that any law restricting freedom be clearly formulated and predictable in its application. Citizens must know in advance what behavior is prohibited or regulated to align their actions with legal norms. The proposed legislation in Montenegro fails to meet this basic requirement. The terms “foreign agency” and “foreign influence agents” leave too much room for arbitrary interpretation. Those who drafted this initiative do not clearly define what constitutes “political activity,” opening the door to selective application of the law against organizations or individuals critical of the government.

The second criterion—legitimacy—requires that every restriction have a clear and justified aim, such as protecting national security, public order, health, morals, or the rights of others. In the case of the proposed law, the goal is not clearly specified. Although this initiative is nominally presented as a measure to protect state sovereignty and transparency, there is no evidence that NGOs in Montenegro pose a threat to these values. Quite the opposite, the civil sector plays a key role in promoting the rule of law, democratic standards, and European integration. Restricting and stigmatizing them through legislation is unjustified in a democratic society.

The third criterion—a necessity in a democratic society—implies that any restriction must be proportionate and represent the least harmful means of achieving a legitimate goal. This means that rights and freedoms can only be restricted to the extent absolutely necessary and with clearly established benefits for society. The proposed initiative in Montenegro significantly surpasses this principle. It effectively imposes a new legal regime for NGOs and stigmatizes organizations as “foreign agents,” directly undermining their ability to function. Instead of benefiting society, such a law introduces uncertainty, suppresses free thought, and restricts the work of those contributing to the democratization of society.

The application of the three-part test clearly shows that the proposed law does not meet any of the required criteria. European courts have consistently ruled against similar laws in Russia and Hungary, highlighting that they not only violate freedoms of association and expression but also threaten the foundations of democratic society. For Montenegro, which aspires to EU membership, adopting a law that fails the tests of legality and proportionality would set a dangerous precedent. Instead of following the example of authoritarian regimes, Montenegro must ensure that all legislation aligns with European values and standards.

Disinformation about the NGO sector

Non-governmental organizations in Montenegro have been the target of deliberate disinformation campaigns for years, aimed at delegitimizing their work and undermining their credibility in the public eye.

One of the most frequently repeated claims is that NGOs operate in a non-transparent manner and conceal their funding sources. These accusations are not only unfounded but also overlook the fact that the majority of leading organizations in Montenegro are among the most transparent actors on the public scene. Their financial reports are regularly published, including details on foreign donations, while they are under constant oversight by state institutions such as the Tax Administration. These organizations adhere to strict reporting rules set by both domestic and international donors.

Additionally, NGOs are often accused of not paying taxes, allegedly harming the state budget. However, data from the Tax Administration refutes these claims. In 2023 and 2024, NGOs in Montenegro paid over eight million euros in taxes and contributions, including income taxes and contributions for health and pension insurance. These figures clearly demonstrate that NGOs not only comply with the law but also significantly contribute to the state budget.

Another common narrative against the NGO sector is the claim that they act as “extensions of foreign interests.” This accusation is often used to discredit their work in the fields of human rights, environmental protection, transparency, and anti-corruption. A misconception that any international cooperation or financial support threatens state sovereignty lies at the core of such claims. On the contrary, thanks to this cooperation, NGOs have managed to initiate many reform processes in Montenegro, including improving the rule of law, combating corruption, and protecting citizens’ basic rights.

Targeting NGOs and activists

NGOs and their activists in Montenegro have long faced orchestrated campaigns of stigmatization and targeting, originating from various sources—ranging from certain state officials and media outlets to anonymous profiles on social media. These campaigns share a common goal: to delegitimize the work of the civil sector, weaken its influence, and discourage civic activism. The proposed law on “foreign influence agents” serves as an institutionalization of such attacks, providing a legal framework to continue pressures under the guise of promoting transparency.

At the forefront of these attacks are often high-ranking state officials who, through public statements and appearances, directly target NGOs and their representatives. Labels such as “mercenaries,” “foreign agents,” and “spies” have become part of the political discourse, especially regarding organizations addressing sensitive issues like anti-corruption, human rights, or the democratization of society. Such statements send a strong message to society—that NGOs are not allies in building a democratic society but potential adversaries that need to be controlled and restricted.

Pro-Russian media outlets, including some of the most widely read portals in the country, often use sensationalist headlines and manipulate facts to portray NGOs as “extensions of foreign interests.” Their reporting contains numerous insinuations that non-governmental organizations (NGOs) act against national interests, frequently overstating foreign funding while completely disregarding societal contributions. Such articles further polarize public opinion and reduce citizens’ trust in the civil sector’s work.

In addition to the media, a significant portion of these campaigns takes place on social media, where anonymous profiles and bots spread disinformation and conduct personalized attacks on activists. The targets of these attacks are often individuals recognized as leaders in the fight for human rights, anti-corruption, or public interest protection. Personal attacks, including insults, threats, and photo manipulation, aim to discredit individuals and demotivate them from continuing their work. The hostile environment fostered by these campaigns negatively affects both activists and the wider social climate, deterring public debate and civic participation.

What is particularly concerning is that these campaigns unfold in a broader political context that increasingly glorifies authoritarian values while portraying democracy and human rights as foreign-imposed concepts. In such an environment, NGOs become natural enemies because they advocate universal values, government accountability, and freedom of expression.

Such activities result in an increasingly hostile environment for the NGO sector, with heightened risks to activists’ safety and a shrinking space for public critique and debate. Instead of being recognized as partners in democratization and societal advancement, NGOs and their representatives become targets that the government and its allies seek to discredit and discourage. This approach not only undermines the fundamental values of democracy but also sends a dangerous message that criticism and civic engagement are unacceptable.

A democratic alternative: Establishing a Committee for Monitoring Foreign Influence

Instead of pursuing the authoritarian idea of drafting a law on “foreign influence agents,” the Center for Democratic Transition (CDT) proposed over two years ago that the Parliament of Montenegro establish a Committee for Monitoring Foreign Influence, modeled after the INGE Committee of the European Parliament.

The INGE Committee (Special Committee on Foreign Interference, Disinformation, and Protecting Electoral Integrity) was established in 2020 in response to growing challenges associated with malign foreign influences in EU member states. Its work focuses on identifying threats such as disinformation campaigns, cyberattacks, and the foreign financing of political actors. The INGE Committee neither targets non-governmental organizations nor infringes upon the freedom of association. It, rather, provides strategic recommendations for safeguarding democracy and the integrity of elections.

In Montenegro, the proposal to establish a similar committee was met with manipulative interpretations and attempts at discreditation. Instead of being recognized as a valuable mechanism for addressing real threats, the idea was misrepresented as a politically motivated initiative aimed at attacking specific political or ideological actors. Pro-Russian media and certain government-affiliated individuals seized the opportunity to obscure the essence of the proposal, equating it with the proposed law on “foreign influence agents” and misinterpreting its goals.

Nevertheless, the establishment of such a committee would bring multiple benefits to Montenegro. Firstly, it would enable precise monitoring and countering disinformation that threatens democratic processes and public discourse. Secondly, it would provide a transparent framework for investigating malign influences without compromising the freedoms of the NGO sector or the media. The implementation of such a mechanism would serve as compelling evidence of Montenegro’s commitment to European values and standards, particularly in light of the EU’s focus on democratization as a crucial element for accession.

Rather than adopting a law that infringes on fundamental rights, Montenegro could set an example of best practices in the region by establishing a Committee for Monitoring Foreign Influence. This would send a clear message that the country is prepared to confront modern threats in a way that strengthens, rather than undermines, the democratic order.

