



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

October 11, 2024

**Via E-mail**

[Requestor's Name and Contact Information]

Re: Request for an Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Requestor]:

We write in response to your September 11, 2024, letter (the "Letter") requesting an advisory opinion pursuant to 28 C.F.R. § 5.2(a) on whether [Individual] must register under the Foreign Agents Registration Act ("FARA") of 1938, as amended, 22 U.S.C. § 611 *et seq.*, for certain activities he may perform on behalf of your client, [Foreign Organization]. Based on the representations in the Letter, and for the reasons discussed below, [Individual] would be obligated to register for his proposed activities.

**I. Factual Background**

The Letter states that [Foreign Organization] is an international "non-governmental organization ("NGO") based in [Foreign Country]."<sup>1</sup> According to its website, [Foreign Organization's] objective is "[Redacted]."<sup>2</sup> [Foreign Organization's] website further states that [Foreign Organization] "[Redacted]," explaining,

[Redacted].<sup>3</sup>

The website adds, "[Redacted]."<sup>4</sup>

The Letter states that [Foreign Organization] receives funding from several private donor entities in the United States, the Netherlands, and Germany and is not directed or controlled by and does not receive funding from any foreign government or foreign political party.<sup>5</sup> Additionally, it asserts

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<sup>1</sup> Letter at 1. The Letter notes that [Foreign Organization] has "employees and contractors in [Foreign Country], Europe and the United States." *Id.*

<sup>2</sup> [Website Citation].

<sup>3</sup> *Id.*; [Website Citation].

<sup>4</sup> [Website Citation].

<sup>5</sup> Letter at 1.

that [Foreign Organization] “does not represent or promote the interests of any foreign government, including the [Foreign Country] government.”<sup>6</sup>

The Letter indicates that [Individual] is a U.S. citizen “who joined [Foreign Organization] in March 2024” as a U.S.-based consultant.<sup>7</sup> According to the Letter, in furtherance of [Foreign Organization’s] objectives, [Individual] plans to perform the following work in the United States on behalf of [Foreign Organization]:

- Advocating for the United States, the EU, and the UK to expand existing energy sanctions on [Redacted] fossil fuels and [Redacted]-controlled oil/[liquified natural gas] tankers to deprive [Redacted] of the windfall profits [Redacted];
- Encouraging the top 100 financial institutions in the United States to divest [Redacted] from the [Redacted] fossil fuels industry and prevent new investment; and
- Advocating for the United States to allocate a certain proportion of aid and investment to [Foreign Country] to renewable energy sources.<sup>8</sup>

The Letter adds that “[i]t is likely that [Individual’s] activities will involve outreach to U.S. policymakers, the U.S. media, U.S. civil society groups (e.g., NGOs, think tanks, advocacy organizations, local environment [or] climate groups), and/or other U.S. entities/organizations.”<sup>9</sup>

Further, the Letter explains that [Individual] would act “at his own direction or control, and/or at the direction and control of [Foreign Organization]” and that [Foreign Organization] would pay [Individual] for his consulting services through the U.K.-based private non-profit, [Redacted], which is a “fiscal sponsor for [Foreign Organization’s] activities in the United States.”<sup>10</sup> It also notes that [Individual’s] proposed activities would not be directed and controlled or paid for by any foreign government or foreign political party.<sup>11</sup>

The Letter indicates that [Foreign Organization] is “a foreign principal as defined under 22 U.S.C. § 611(b)(3)” of FARA because it is “a private NGO based in [Foreign Country].”<sup>12</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2. The Letter adds that “[Individual’s] U.S.-focused work has thus far been largely limited to research.” *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Letter at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5.

However, the Letter contends that to the extent [Individual] qualifies as an “agent of a foreign principal” under FARA, he would be exempt from registration either (1) under Section 613(d)(2) of FARA because “he [would] engage[] ‘in other activities not serving predominantly a foreign interest’” or (2) under 22 U.S.C. § 613(h) of FARA to the extent that he registers his “political outreach [and] lobbying activities” under the Lobbying Disclosure Act (“LDA”).<sup>13</sup> In support of these arguments, the Letter represents that [Individual’s] activities would be “focused on supporting [Foreign Organization’s] independent mission of accelerating the global transition to clean energy and moving away from the fossil fuels both within [Foreign Country] and around the world.”<sup>14</sup> It further argues that while the [Foreign Country] and other world governments may indirectly benefit from [Individual’s] activities, the “principal beneficiary” of such activities would be “[Foreign Country] society and, more generally, the global population as a whole.”<sup>15</sup> In addition, the Letter states that [Individual’s] activities would not be “directed or controlled by the [Foreign Country] government or . . . any other foreign government . . . or by a [Foreign Country] political party or . . . any other foreign political party” and would not “directly promote the interests of the [Foreign Country] government or any political party in [Foreign Country].”<sup>16</sup>

You have requested an advisory opinion “confirming that [Individual’s] contemplated activities on behalf of [Foreign Organization] would be exempt from registration . . . pursuant to [Section] 613(d)(2) and, in the alternative, [Section] 613(h).”<sup>17</sup>

## **II. FARA Analysis**

FARA defines a “foreign principal” as, among other things, “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.”<sup>18</sup> Because [Foreign Organization] is an organization whose principal place of business is in [Foreign Country], it is, as you acknowledge, a “foreign principal” within the meaning of FARA.

The term “agent of a foreign principal” under FARA, in relevant part, means:

- (1) [A]ny person who acts as an agent, representative, employee, or servant, or who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or

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<sup>13</sup> *Id.* at 2-5.

<sup>14</sup> *Id.* at 3, 5.

<sup>15</sup> *Id.*

<sup>16</sup> Letter at 3, 5.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> 22 U.S.C. § 611(b)(3).

subsidized in whole or in major part by a foreign principal and who directly or through any other person –

- (i) engages within the United States in political activities for or in the interests of such foreign principal;
- (ii) acts within the United States as a public relations counsel . . . for or in the interests of such foreign principal; [or]
- (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States . . . .<sup>19</sup>

FARA’s implementing regulations explain that the meaning of “control” as used in FARA includes “the possession or the exercise of the power, directly or indirectly, to determine the . . . activities of a person.”<sup>20</sup>

FARA defines the term “political activities” to include

any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party. . . .<sup>[21]</sup>

FARA also defines the term “public-relations counsel” as “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.”<sup>22</sup>

FARA’s “agency” determination, therefore, is a two-part inquiry that considers both the *relationship* between the agent and the foreign principal and the *activities* the agent performs in the principal’s interests.

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<sup>19</sup> 22 U.S.C. § 611(c)(1)(i)-(ii), (iv).

<sup>20</sup> 28 C.F.R. § 5.100(b).

<sup>21</sup> 22 U.S.C. § 611(o). FARA’s implementing regulations explain that the terms “formulating, adopting, or changing” include “any activity which seeks to maintain any existing domestic or foreign policy of the United States” but do not include “making a routine inquiry of a Government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question.” 28 C.F.R. § 5.100(e). They further explain that the term “domestic or foreign policies of the United States” relates to “existing and proposed legislation, or legislative action generally; treaties; executive agreements, proclamations, and orders; decisions relating to or affecting departmental or agency policy, and the like.” 28 C.F.R. § 5.100(f).

<sup>22</sup> 22 U.S.C. § 611(g).

[Individual] would have an agency relationship with [Foreign Organization] under FARA because, as you concede, he would act under [Foreign Organization's] direction and control. Furthermore, his proposed activities in the United States would be registrable. As described above, to further [Foreign Organization's] objectives of "cut[ting] off [Redacted] exports of fossil fuels" and "driv[ing] a global momentum for a clean energy future in [Foreign Country] and worldwide," [Individual] would engage in "outreach" to U.S. policymakers, media, and civil society groups, among others, to advocate for the United States to "expand existing energy sanctions on [Redacted] fossil fuels and [Redacted]-controlled oil/[liquified natural gas] tankers" and "allocate a certain proportion of aid and investment to [Foreign Country] to renewable energy sources."<sup>23</sup> He would also seek to encourage U.S. financial institutions "to divest [Redacted] from the [Redacted] fossil fuels industry and prevent new investment."<sup>24</sup>

Such activities are registrable for multiple reasons. First, they are "political activities" because they are intended to influence U.S. government officials and sections of the U.S. public "with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country."<sup>25</sup> Second, by engaging in such activities, [Individual] would be acting as a "public relations counsel" because he would be "informing, advising, or . . . representing a [foreign] principal in [a] public relations matter pertaining to political or public interests, policies, or relations of such principal."<sup>26</sup> Third, [Individual's] outreach to U.S. policymakers would constitute representing the interests of a foreign principal before U.S. government officials or agencies.<sup>27</sup>

For these reasons, [Individual] qualifies as an "agent of a foreign principal" under FARA and would be obligated to register for his proposed activities unless an exemption applies. "The burden of establishing the availability of an exemption," according to FARA's implementing regulations, "shall rest upon the person whose benefit the exemption is claimed."<sup>28</sup>

The Letter argues that the exemption at Section 613(d)(2) of FARA applies to [Individual]. That Section exempts from registration "[a]ny person engaging or agreeing to engage only . . . in . . . activities not serving *predominantly* a foreign interest."<sup>29</sup> According to FARA's implementing regulations,

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<sup>23</sup> Letter at 2.

<sup>24</sup> *Id.*

<sup>25</sup> 22 U.S.C. § 611(c)(1)(i), (o).

<sup>26</sup> 22 U.S.C. § 611(c)(1)(ii), (g).

<sup>27</sup> 22 U.S.C. § 611(c)(1)(iv).

<sup>28</sup> 28 C.F.R. § 5.300.

<sup>29</sup> 22 U.S.C. § 613(d)(2) (emphasis added).

a person engaged in political activities on behalf of a foreign corporation, even if owned in whole or in part by a foreign government, will not be serving predominantly a foreign interest *where the political activities are directly in furtherance of the bona fide commercial, industrial, or financial operations* of the foreign corporation, so long as the political activities are not directed by a foreign government or foreign political party *and the political activities do not directly promote the public or political interests of a foreign government or of a foreign political party.*<sup>30</sup>

However, [Individual's] proposed activities center on advancing [Foreign Organization's] objectives of "cut[ting] off [Redacted] exports of fossil fuels" and "driv[ing] a global momentum for a clean energy future in [Foreign Country] and worldwide."<sup>31</sup> Such activities would only incidentally serve domestic interests. Moreover, the proposed activities appear to directly promote the public or political interests of the [Foreign Country] government, including "[Redacted]" and supporting "[Redacted]."<sup>32</sup> In addition, these activities appear to promote [Foreign Organization's] political goals, rather than its "bona fide commercial, industrial, or financial operations."<sup>33</sup> For these reasons, [Individual's] proposed activities would *predominantly* serve foreign interests, and the exemption at Section 613(d)(2) would therefore be unavailable.

Alternatively, the Letter argues that [Individual] would be exempt under Section 613(h) of FARA. That Section, in relevant part, exempts from registration

any agent of . . . an entity described in [S]ection 611(b)(3) [of FARA] if the agent has engaged in lobbying activities and has registered under the [LDA] in connection with the agent's representation of such . . . entity.<sup>34</sup>

FARA's implementing regulations explain that the exemption at Section 613(h) will not apply in any case "where a foreign government or foreign political party is the *principal beneficiary*."<sup>35</sup>

As discussed above, [Individual] proposes to engage in lobbying activities in the United States to cut off [Redacted] fossil fuel exports and spur a global transition to clean energy.<sup>36</sup> As noted above, [Foreign Organization] describes its work as advancing [Foreign Country's] [Redacted],

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<sup>30</sup> 28 C.F.R. § 5.304(c) (emphasis added).

<sup>31</sup> Letter at 2.

<sup>32</sup> [Website Citation].

<sup>33</sup> 28 C.F.R. § 5.304(c). *See supra* notes 23-25 and accompanying text.

<sup>34</sup> 22 U.S.C. § 613(h).

<sup>35</sup> 28 C.F.R. § 5.307 (emphasis added).

<sup>36</sup> *See supra* notes 2-4, 8-9 and accompanying text.

characterizing it as “[Redacted]” and that it “[Redacted].”<sup>37</sup> [Foreign Organization’s] website further states, “[Redacted].”<sup>38</sup> These statements plainly demonstrate that the [Foreign Country] government would be the principal beneficiary of [Individual’s] proposed activities. As a result, the exemption at Section 613(h) would likewise be unavailable to [Individual].

Because [Individual] would qualify as an “agent of a foreign principal” and would not be exempt from registration, he would be obligated to register for his proposed activities. Therefore, please complete his registration within 10 days and before he performs any such activities.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). Please contact this office by e-mail to [FARA.Public@usdoj.gov](mailto:FARA.Public@usdoj.gov) or by telephone at (202) 233-0776, if you have any questions.

Sincerely,

/s/ Evan N. Turgeon

Evan N. Turgeon  
Chief, FARA Unit

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<sup>37</sup> See *supra* note 3 and accompanying text.

<sup>38</sup> See *supra* note 4 and accompanying text.