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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**GEORGIA**

**URGENT OPINION**

**ON THE LAW  
ON TRANSPARENCY OF FOREIGN INFLUENCE**

**issued on 21 May 2024 pursuant to Article 14a of the  
Venice Commission's Revised Rules of Procedure**

**on the basis of comments by**

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**Table of Contents**

I.	Introduction .....	3
II.	Background and context .....	3
III.	Domestic Legal framework .....	6
IV.	International standards .....	8
V.	Comparative law perspective .....	10
VI.	Analysis .....	12
A.	Legislative process and consultation .....	12
B.	Content of the Law .....	13
1.	Legality .....	14
2.	Legitimacy .....	15
3.	Necessity and Proportionality .....	17
4.	Prohibition of Discrimination .....	22
VII.	Conclusion .....	23

## I. Introduction

1. By letter of 15 April 2024, the President of the Parliamentary Assembly of the Council of Europe requested an urgent opinion of the Venice Commission on the draft Law of Georgia on Transparency of Foreign Influence (hereafter “the draft Law”, [CDL-REF\(2024\)021](#); see also the explanatory note [CDL-REF\(2024\)022](#)). In the meantime, the law was adopted; the final text of the law, with additional changes which seem to not have been made public immediately after the adoption on third reading,<sup>1</sup> was sent by the authorities to the Commission on 18 May 2024 ([CDL-REF\(2024\)026](#), hereafter “the Law”).
2. Ms Veronika Bílková, Mr David A. Kaye, Ms Herdís Kjerulf Thorgeirsdóttir, and Mr Zlatko Knežević acted as rapporteurs for this Urgent Opinion.
3. On 19 April 2024, the Bureau of the Venice Commission, acting on the basis of Article 14a of the Revised Rules of Procedure, authorised the rapporteurs to prepare an Urgent Opinion.
4. On 29 and 30 April and 2 May 2024 respectively, a delegation of the Commission composed of the four rapporteurs, as well as Ms Simona Granata-Menghini, Director, Secretary of the Commission, and Ms Delphine Freymann, Deputy Secretary of the Commission, held online meetings with the Public Defender, representatives of the diplomatic corps, civil society organisations, online media outlets and broadcasters, as well as Parliamentary factions and independent MPs in Parliament. The Commission is grateful to the Georgian authorities and the Council of Europe Office in Tbilisi for the organisation of the online meetings.
5. This Urgent Opinion was prepared in reliance on the English translation of the draft Law provided by the authorities on 25 April 2024. The translation may not accurately reflect the original version on all points.
6. This Urgent Opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings. In line with paragraph 10 of the Venice Commission’s Protocol on the preparation of Urgent Opinions ([CDL-AD\(2018\)019](#)), the draft Urgent Opinion was transmitted to the Georgian authorities on 20 May 2024 for comments. The authorities informed the Commission that there would not be any comments on 21 May 2024. The Urgent Opinion was issued on 21 May 2024 pursuant to Article 14a of the Venice Commission’s Revised Rules of Procedure. It will be submitted to the Venice Commission for endorsement at its 139<sup>th</sup> Plenary Session (Venice, 21-22 June 2024).

## II. Background and context

7. In March 2023, two parallel draft laws were submitted to Parliament respectively on “Transparency of Foreign Influence” and on the “Registration of Foreign Agents”. Following the mass protests organised in response to the legislative process, these two draft laws were withdrawn from the Georgian parliament. The Chairman of the Georgian Parliament had requested a Venice Commission opinion related to the two draft laws on 8 March 2023. On 23 March 2023, the Chairman informed the President of the Venice Commission that the draft laws had been withdrawn from the agenda of parliament. The Venice Commission therefore did not proceed with its assessment.
8. On 3 April 2024, the leader of the ruling Georgian Dream party, Mr Mamuka Mdinardze, announced the reintroduction of the Law on Transparency of Foreign Influence into the Parliament. He indicated that the content of the law had remained unchanged but the term “agents of foreign

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<sup>1</sup> <https://civil.ge/archives/607875>.

influence” had been replaced by the term “organisation pursuing the interests of a foreign power”.<sup>2</sup> The draft Law, formally registered on 8 April 2024, was endorsed by the Legal Issues Committee of the Parliament of Georgia on 15 April 2024 and adopted on the first reading in the Parliament on 17 April 2024. On 1 May 2024, the draft Law was adopted on the second reading in the Parliament. The Law was adopted on the third reading on 14 May 2024. Some substantive changes were made.

9. The draft Law attracted widespread and forceful criticism both inside Georgia<sup>3</sup> and internationally.<sup>4</sup> The discussions in Parliament and the adoption of the draft Law have been accompanied by mass protests and the draft Law has been strongly criticised by the Georgian opposition parties and civil society organisations.<sup>5</sup>

10. On 11 April 2024, the Public Defender of Georgia published a statement on the draft Law, expressing “full readiness to hold additional consultations with the authors of the draft law in order to bring the initiatives into compliance with human rights standards”.<sup>6</sup>

11. Following mass demonstrations against the adoption of the law on first and second readings, on 1 May 2024, the Public Defender of Georgia called on the Ministry of Internal Affairs of Georgia not to interfere with the citizens’ freedom of assembly and expression unnecessarily nor to allow physical retribution and violence against peaceful protesters by law enforcement officers, and further called on the Special Investigative Service of Georgia to carry out all legal and effective measures in order to investigate every case of alleged criminal conduct by law enforcement officers against protesters and representatives of the media on 30 April and 1 May 2024, to identify persons who may have committed criminal actions and to take legal measures against them.<sup>7</sup> A [statement](#)<sup>8</sup> by 10 Georgian civic society organisations called on Georgian authorities to investigate “cases of disproportionate use of force by law enforcement officers”.

12. The introduction of the draft Law raised concerns across the international community. On 11 April 2024, in a letter addressed to the Chairman of the Parliament of Georgia, the Commissioner for Human Rights of the Council of Europe expressed concerns about the compatibility of the draft law “On transparency of foreign influence” with the human rights standards in the field of freedom of association and expression, and the chilling effect its adoption may have on the work of media outlets and civil society organisations, including those working on human rights, democracy and the rule of law.<sup>9</sup> In his reply letter of 16 April 2024<sup>10</sup>, the Chairman argued that the Law was compatible with European human rights standards and that it was essential for increasing transparency; he pledged that the legislative process would go through “the weeks-long ordinary procedure”.

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<sup>2</sup> [Civil Georgia | BREAKING: GD Reintroduces the Draft law on Foreign Agents](#), 3 April 2024.

<sup>3</sup> [Joint statement by independent online media](#), 3 April 2024. On 25 April 2024, 126 non-governmental and media organisations issued a statement suspending cooperation with the government until the Draft Law is dropped. [Georgian president accuses government of ‘sabotaging’ EU bid in scathing public address](#), *OC Media*, 3 April 2024; 4.

<sup>4</sup> Felix Light, [EU criticises Georgian foreign agent bill, Kremlin defends it](#), *Reuters*, 4 April 2024; [International Reactions to Reintroduction of Draft Law on Foreign Agents](#), *Civil.ge*, 17 April 2024.

<sup>5</sup> Transparency International, *Transparency International Urges Georgian Government to Withdraw “Transparency of Foreign Influence” Law*, 18 April 2024, available at <https://www.transparency.org/en/press/transparency-international-urges-georgian-government-withdraw-transparency-of-foreign-influence-law>; Amnesty International, *Georgia: Stop the bill “On transparency of foreign influence” that threatens civil society*, 16 April 2024, available at <https://www.amnesty.org/en/latest/news/2024/04/georgia-stop-the-bill-on-transparency-of-foreign-influence-that-threatens-civil-society/>

<sup>6</sup> Public Defender (Ombudsman) of Georgia, *Public Defender’s Statement on Draft Law “On Transparency of Foreign Influence”*, 11 April 2024, available at <https://www.ombudsman.ge/eng/akhali-ambebi/sakartvelos-sakhalkhodamtsvelis-gantskhadeba-utskhour-i-gavlenis-gamchvirvalobis-sheesakheb-sakartvelos-kanonis-proektan-dakavshirebit>.

<sup>7</sup> [Public defender’s Initial Assessment of Events Developed at April 30 Rally](#).

<sup>8</sup> <https://socialjustice.org.ge/en/products/30-aprili-1-maisi-aktsiis-darbevis-samartlebrivi-shefaseba>.

<sup>9</sup> [Commissioner for Human Rights’ letter addressed to the Chairman of the Parliament of Georgia](#).

<sup>10</sup> [Reply of the Chairman of the Parliament of Georgia, Mr Shalva Papuashvili, to the Commissioner’s letter](#).

13. Following the adoption of the draft Law on the second reading, the Secretary General of the Council of Europe expressed her regrets concerning adoption on the second reading and called on the Georgian Parliament to wait for the Venice Commission opinion on the Law before proceeding further.<sup>11</sup> The PACE monitoring co-rapporteurs for Georgia called on the Georgian Parliament to ensure that any recommendations made by the Venice Commission were taken into account during the adoption procedure and urged them not to complete the second reading of the draft Law before considering this opinion.<sup>12</sup>

14. On 14 May 2024, the President of the Parliamentary Assembly of the Council of Europe issued a public statement, strongly condemning “the attacks on civil society activists, media representatives and members of the opposition, as well as the use of disproportionate force by the police against peaceful demonstrators who oppose the controversial law on transparency of foreign influence, that was adopted today by the Georgian Parliament in an unnecessarily hasty fashion”. He also “urged the Georgian legislators to fully take into account the recommendations of the Venice Commission before this law is enacted”.<sup>13</sup>

15. On 15 May 2024, the Secretary General of the Council Europe issued a further public statement, expressing her view that “[t]he adoption at third reading of the draft law ‘on transparency of foreign influence’ by the Parliament of Georgia, without waiting for the opinion of the Venice Commission, is very disappointing and does not reflect the spirit of constructive dialogue.” She regretted that “international partners’ concerns regarding the draft law’s incompatibility with European democratic and human rights standards were ignored, while the lack of genuine parliamentary deliberations is not in accordance with an inclusive democratic process.” She further indicated that “[a]s the Venice Commission is to issue its opinion soon, its legal recommendations should provide the basis for meaningful dialogue and allow a way forward in line with Council of Europe norms and values.”<sup>14</sup>

16. The European Commission’s opinion on Georgia’s application for membership of the European Union from 16 June 2022 critically assessed certain developments regarding illicit surveillance of civil society activists and journalists and other issues in the domain of freedom of expression that it found created a chilling effect on critical media reporting. It also drew attention to the need to make the legislative process more open and transparent and to avoid the exclusion of civil society organisations from policy consultation, emphasising the importance of civil society in the Georgian context. On 16 April 2024, the High Representative of the European Union for Foreign Affairs and Security Policy and the EU Commissioner for Neighbourhood and Enlargement issued a joint statement urging “Georgia to refrain from adopting legislation that can compromise Georgia’s EU path, a path supported by the overwhelming majority of Georgian citizens”.<sup>15</sup> On 1 May 2024 the High Representative also condemned the violence against protesters. On 25 April 2024, the European Parliament adopted a Resolution in which it strongly condemned the reintroduction of the draft Law.<sup>16</sup> The President of the European Commission also expressed her concerns regarding the adoption of the Draft Law and condemned the violence occurring within the

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<sup>11</sup> Council of Europe, *Situation in Georgia: Statement by the Secretary General*, 2 May 2024, available at [Situation in Georgia: Statement by the Secretary General - Portal \(coe.int\)](https://www.coe.int/en/web/portal/-/situation-in-georgia).

<sup>12</sup> <https://pace.coe.int/en/news/9455/georgia-s-law-on-the-transparency-of-foreign-influence-should-take-account-of-council-of-europe-expert-legal-opinion-say-pace-rapporteurs>.

<sup>13</sup> <https://pace.coe.int/en/news/9463/georgia-pace-president-condemns-violence-against-politicians-civil-society-activists-media-representatives-and-peaceful-protesters>.

<sup>14</sup> <https://www.coe.int/en/web/portal/-/situation-in-georgia>.

<sup>15</sup> [Georgia: Statement by the High Representative and the Commissioner for Neighbourhood and Enlargement on the adoption of the “transparency of foreign influence” law | EEAS \(europa.eu\)](https://eeas.europa.eu/press-room/2024/04/15-georgia-statement-by-the-high-representative-and-the-commissioner-for-neighbourhood-and-enlargement-on-the-adoption-of-the-transparency-of-foreign-influence-law-20240415).

<sup>16</sup> European Parliament, [Resolution on Attempts to reintroduce a foreign agent law in Georgia and its restrictions on civil society - Thursday, 25 April 2024 \(europa.eu\)](https://www.europarl.europa.eu/press-room/en/16-2024-04-25-resolution-on-attempts-to-reintroduce-a-foreign-agent-law-in-georgia-and-its-restrictions-on-civil-society-20240425).

demonstrations following the legislative process.<sup>17</sup> On 15 May 2024, the High Representative declared that “[t]he intimidation, threats and physical assaults on civil society representatives, political leaders and journalists, as well as their families is unacceptable. We call on the Georgian authorities to investigate these documented acts”. He further urged Georgia to withdraw the law.<sup>18</sup>

17. Other international organisations also voiced their concerns.<sup>19</sup> On 2 May 2024, the United Nations High Commissioner for Human Rights, Volker Turk, urged the Georgian authorities to “conduct prompt and transparent investigations into all allegations of ill-treatment” and urged Georgian authorities to withdraw the bill, [which] “... poses serious threats to the rights to freedom of expression and association.”

### III. Domestic Legal framework

18. The 1995 Constitution of the Republic of Georgia guarantees the right to freedom of association in its Article 22. This provision moreover stipulates that “an association may only be dissolved by its own or a court decision in cases defined by law and in accordance with the established procedure” (para 2). It also guarantees the right to freedom of opinion, information, mass media and the internet (Article 17). In its Article 11, the Constitution prohibits any form of discrimination and in Article 15, it enshrines the rights to personal and family privacy, personal space and privacy of communication. The Constitution of Georgia also stipulates in Article 78 that “the constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization”.

19. A number of domestic laws regulate the registration and reporting obligations of civil society and media organisations (the list below is not exhaustive but provides examples of the different existing processes and procedures in this regard).

20. The Civil Code of Georgia provides for non-entrepreneurial (non-commercial) legal persons to register in the Register of Non-entrepreneurial (Non-commercial) Legal Entities,<sup>20</sup> which is further regulated by the Law of Georgia on the Public Registry.<sup>21</sup> The so-called non-entrepreneurial entities are obliged to submit information about hired employees to the Register of Hired Employees, administered by the Revenue Service.<sup>22</sup> The non-entrepreneurial entities must also submit monthly declarations to the Revenue Service related to the salaries of their employees.<sup>23</sup> Specific obligations apply in cases related to the VAT exemption. To avail itself of tax benefits (including VAT exemption) as per an international agreement ratified and enforced by the Parliament of Georgia, the sponsoring (donor) party of a programme/project shall furnish the programme/project implementer's information to the Revenue Service, including details of participating individuals, and update this information when necessary. Within 10 working days of receiving the information, the Revenue Service shall ensure that the programme/project implementer's and participating

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<sup>17</sup> European Commission, Directorate-General for Neighbourhood and Enlargement Negotiations, *Statement by President von der Leyen on the situation in Georgia*, 1 May 2024, available at [Statement by President von der Leyen on the situation in Georgia - European Commission \(europa.eu\)](https://www.europa.eu/eas/georgia-statement-high-representative-josep-borrell-with-european-commission-adoption_en).

<sup>18</sup> [https://www.europa.eu/eas/georgia-statement-high-representative-josep-borrell-with-european-commission-adoption\\_en](https://www.europa.eu/eas/georgia-statement-high-representative-josep-borrell-with-european-commission-adoption_en).

<sup>19</sup> UNDP Georgia, *Statement of the United Nations in Georgia*, 9 April 2024, available at <https://www.undp.org/georgia/press-releases/united-nations-statement>. Commission on Security and Cooperation in Europe, *Helsinki Commission House Leadership Statement on Reintroduction of Foreign Agent Bill in Georgia*, 25 April 2024, available at <https://www.csce.gov/statements/helsinki-commission-house-leadership-statement-on-reintroduction-of-foreign-agent-bill-in-georgia/>

<sup>20</sup> Article 28 para. 1 of the Civil Code of Georgia, [Civil Code of Georgia | სსიპ "საქართველოს საკანონმდებლო მაცნე" \(matsne.gov.ge\)](https://www.matsne.gov.ge).

<sup>21</sup> Law of Georgia on the Public Registry, [On the Public Registry | სსიპ "საქართველოს საკანონმდებლო მაცნე" \(matsne.gov.ge\)](https://www.matsne.gov.ge), namely Article 20.

<sup>22</sup> Articles 12 and 288<sup>5</sup> of the [Tax Code of Georgia](https://www.matsne.gov.ge).

<sup>23</sup> Article 135 para. 2 of the [Tax Code of Georgia](https://www.matsne.gov.ge).

individuals' data are recorded in the unified electronic register of beneficiaries of tax benefits.<sup>24</sup> The register is published on the official website of the Ministry of Finance of Georgia.

21. This [register](#), managed by the Revenue Service, is open to the public and contains information detailing the project, the implementing organisation, and its commencement and conclusion dates. Furthermore, for the purpose of obtaining VAT refunds, organisations are required to provide the tax office with pertinent agreements on donor grants and project financial plans. In addition, a special database ([e-aims](#)) has been developed and is operated by the Ministry of Finance and the Ministry of Foreign Affairs, which contains information about funded projects and grants provided on a voluntary basis by the recipients of the grants.

22. Media outlets that do not pertain to the non-entrepreneurial domain are registered as limited liability companies. According to the Law of Georgia on Entrepreneurs, such a registration is obligatory and publicly available in the Public Registry.<sup>25</sup> Article 2(1)b) of the Law refers to the Law of Georgia on Broadcasting that regulates the activities in the field of media services and video-sharing platform services. The Law on Broadcasting does not apply to printed and electronic media. Activities carried out through electronic communication networks and associated facilities are regulated by the Law of Georgia on Electronic Communications.

23. Broadcasters must register in the Register of Broadcasters<sup>26</sup> and are subject to the control of the National Communication Commission, which is in charge of the issuance of licences.<sup>27</sup> To obtain a broadcasting licence, the broadcasters are obliged to submit “*a plan for financing the activities to be carried out and information about sources of financing*”.<sup>28</sup> The broadcasters are also obliged to submit and make public a yearly report on the fulfilment of the legislative requirements and on the sources of financing.<sup>29</sup> The Law on Broadcasting stipulates that a licence holder and/or authorised person in the field of broadcasting may not be a legal person registered offshore, a legal person, the shares or stocks of which are directly or indirectly owned by a legal person registered offshore and a person, the beneficial owner of which is a person of another State.<sup>30</sup> In general, media outlets subject to legislation related to entrepreneurial entities have to submit monthly tax returns to the Revenue Service, including the declaration of income.<sup>31</sup>

24. Media outlets providing paid services through public electronic communication networks within the scope of the Law of Georgia on Electronic Communications, either of entrepreneurial or non-entrepreneurial nature,<sup>32</sup> are registered in the departmental registry of authorised persons administered by the National Communication Commission.<sup>33</sup> Such entities are obliged to provide financial and economic documentation to the National Communication Commission.<sup>34</sup>

25. There are several laws in Georgia related to the transparency of entrepreneurial and non-entrepreneurial organisations. The Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism sets out the obligation for the accountable persons, namely financial institutions, auditing firms, lawyers, notaries, and public institutions<sup>35</sup> to carry out verification of clients, determine the basis and goals of relevant operations, and implement other preventive measures.<sup>36</sup> The accountable persons are further required to submit reports on

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<sup>24</sup> Article 71 of the order of the Minister of Finance of Georgia No. 996 of 31 December 2010 on tax administration,

<sup>25</sup> Article 8 of the [Law of Georgia on Entrepreneurs](#).

<sup>26</sup> [Law of Georgia on Broadcasting](#).

<sup>27</sup> Article 36<sup>1</sup> of the [Law of Georgia on Broadcasting](#).

<sup>28</sup> Article 41 para. 1g) of the [Law of Georgia on Broadcasting](#).

<sup>29</sup> Article 70 para. 4 of the [Law of Georgia on Broadcasting](#).

<sup>30</sup> Article 37 subsections e), f), g) of the [Law of Georgia on Broadcasting](#).

<sup>31</sup> Article 135 para. 2 of the [Tax Code of Georgia](#).

<sup>32</sup> Article 2(f) of the [Law of Georgia on Electronic Communications](#).

<sup>33</sup> Article 18 para. 2 of the [Law of Georgia on Electronic Communications](#).

<sup>34</sup> Article 19 para. 2 of the [Law of Georgia on Electronic Communications](#).

<sup>35</sup> Article 3 of the [Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism](#).

<sup>36</sup> Article 10 of the [Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism](#).

suspicious transactions to the relevant state institutions, such as the Financial Monitoring Service.<sup>37</sup> These preventive measures include the submission of reports on operations conducted by non-entrepreneurial entities.

26. The Law of Georgia on Lobbying stipulates that anyone who exercises influence on a representative or executive body for the purposes of introducing legislative changes shall be registered in the registry of lobbyists.<sup>38</sup> The registry entry includes the name, surname, place of residence, contact address, place of work and position, and telephone numbers of the person who wishes to be registered as a lobbyist, as well as details related to the normative act to which the lobbying activity refers to.<sup>39</sup> Lobbyists are obliged to monthly report on their activities including the identification and details of monetary and asset transfers related to a specific lobbying assignment.<sup>40</sup> Such reports are public.<sup>41</sup>

#### IV. International standards

27. Georgia is a state party to major international human rights instruments, including the European Convention on Human Rights (hereafter: ECHR) and the International Covenant on Civil and Political Rights (hereafter: ICCPR). By means of Article 4(5) of the Constitution, “an international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia”.

28. The right to freedom of association is a cornerstone of a vibrant, pluralistic and participatory democracy and underpins the exercise of a broad range of other civil and political rights.<sup>42</sup> The Venice Commission has stressed in a number of previous opinions<sup>43</sup> that civil society organisations play an important role in modern democratic societies. They enable citizens to associate in order to promote certain goals and/or pursue certain agendas. As a form of public engagement parallel to that of participation in the formal political process, civil society organisations have to cooperate with public authorities while at the same time maintaining their independence. Members of non-governmental organisations and other civil society groups, along with the organisations themselves are endowed with human rights guaranteed by the respective treaties, including the right to freedom of association (Article 11 ECHR, Article 22 ICCPR), the right to freedom of expression (Article 10 ECHR, Article 19 ICCPR) and the right to respect for private life (Article 8 ECHR, Article 17 ICCPR), as well as the right to be free from discrimination (Article 14 of the ECHR and Protocol 12 to the ECHR, Article 26 of the ICCPR). In addition, states are endowed with positive obligations related to these rights and are thus obliged to respect, protect and facilitate the exercise thereof.<sup>44</sup>

29. Likewise, freedom of expression, as secured in Article 10 § 1 of the ECHR, “constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress.”<sup>45</sup> It is “a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.”<sup>46</sup>

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<sup>37</sup> Article 25 of the [Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism](#).

<sup>38</sup> Article 5 para. 6 of the [Law of Georgia on Lobbying](#).

<sup>39</sup> Article 5 para. 1 section a) of the [Law of Georgia on Lobbying](#).

<sup>40</sup> Article 13 of the [Law of Georgia on Lobbying](#).

<sup>41</sup> Article 14 of the [Law of Georgia on Lobbying](#).

<sup>42</sup> ODIHR and Venice Commission, [CDL-AD\(2023\)016](#), *Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations*, para. 16.

<sup>43</sup> See, for instance, [CDL-AD\(2017\)015](#), *Opinion on the Hungarian Draft Law on the Transparency of Organisations Receiving Support from Abroad*, para. 15; [CDL-AD\(2014\)025](#), *Opinion on federal Law N. 121-FZ on non-commercial organisations (“law on foreign agents”), on Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the criminal code (“law on treason”) of the Russian Federation*, paras. 16-28, 62, 73 and 90.

<sup>44</sup> *Ouranio Toxo and Others v. Greece*, no. 74989/01, § 37, 20 October 2005.

<sup>45</sup> *ECtHR Manole and Others v. Republic of Moldova*, app. no. 13936/02, 17 September 2009, para. 96.

<sup>46</sup> UN Human Rights Committee, General Comment 34, paras. 2-3.



While these principles equally apply to protect the rights of all individuals, whether acting as individuals or in concert with others in civil society organizations, they are especially pertinent and vital in the field of the media, whether broadcast, print or online, or in any other form. The European Court of Human Rights (hereafter: ECtHR) has repeatedly stressed the importance of the media in a democratic society, acting as a “public watchdog”.<sup>47</sup> Furthermore, the authorities have a particularly restricted ability to determine whether there is a “pressing social need” in situations where the freedom of the media is under threat.<sup>48</sup> In this context, the ECtHR has emphasized on various occasions the significance of the existence of media pluralism, of which the state is a guarantor.<sup>49</sup>

30. The ECHR and ICCPR provide for strict conditions for limitation from the right to freedom of association, right to freedom of expression and right to respect for private life. Any such restriction must be prescribed by law in a clear and foreseeable manner, in the pursuit of one of the exhaustively listed legitimate aims, and necessary in a democratic society, which presupposes the existence of a “pressing social need” and respect for the principle of proportionality.

31. The Commission has previously concluded “that such a drastic measure, as “public disclosure obligation” (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of political parties and entities formally engaging in remunerated lobbying activities.”<sup>50</sup>

32. In its judgment in the case of *Ecodefence and Others v Russia*,<sup>51</sup> the ECtHR assessed the Russian Foreign Agents Act 2012, holding that the introduction of a new category of “foreign agent” organisations, along with the onerous auditing and reporting obligations and the imposition of excessive and arbitrary fines, have resulted in the applicant organisations being subjected to measures that were not deemed necessary in a democratic society.

33. At the level of the Committee of Ministers of the Council of Europe, according to the Recommendation Rec(2007)14 on the legal status of non-governmental organisations in Europe, NGOs should be free to solicit and receive funding [...] not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.<sup>52</sup> Recommendation Rec(2007)14 further provides that, while allowing for reporting obligations, NGOs should not be subject to search and seizure without objective grounds for taking such measures and without appropriate judicial authorisation.<sup>53</sup> In addition, NGOs should generally be able to request suspension of any administrative measure taken in respect of them. Refusal of a request for suspension should be open to prompt judicial challenge.<sup>54</sup>

34. Similarly, according to Committee of Ministers Recommendation Rec(2018)1[1] on media pluralism and transparency, any restrictions on the extent of foreign ownership of media should be

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<sup>47</sup> ECtHR, *Bladet Tromsø and Stensaas v. Norway*, app.no. 21980/93, § 59, 20 May 1999; ECtHR, *OOO Informatsionnoye Agentstvo Tambov-Inforn v Russia*, no. 43351/12, § 84, 18 May 2021.

<sup>48</sup> ECtHR, *Stoll v. Switzerland* [GC], no. 69698/01, §105, 10 December 2007.

<sup>49</sup> ECtHR, *Manole and Others v. Moldova*, no. 13936/02, § 99, 17 September 2009; ECtHR, *Informationsverein Lentia and Others v. Austria*, no. 13914/88 and others, § 38, 24 November 1993.

<sup>50</sup> Venice Commission, [CDL-AD\(2019\)002](#), Report on Funding of Associations, para. 106.

<sup>51</sup> ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14.06.2022.

<sup>52</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe, para. 50, available at <https://rm.coe.int/recommendation-of-the-committee-of-ministers-to-member-states-on-the-l/1680a1f502>.

<sup>53</sup> Recommendation CM/Rec(2007)14, *op. cit.*, paras. 68-69.

<sup>54</sup> Recommendation CM/Rec(2007)14, *op. cit.*, para. 71.

implemented in a non-arbitrary manner and should take full account of States' obligations under international law and, in particular, the positive obligation to guarantee media pluralism.<sup>55</sup>

35. Associations and media providers may receive funding for their activities from public or private sources, including foreign and international funding. "The right of associations to freely access human, material and financial resources – from domestic, foreign, and international sources – is inherent in the right to freedom of association and essential to the existence and effective operations of any association".<sup>56</sup> While the Venice Commission has accepted that "it is justified to require the utmost transparency in matters pertaining to foreign funding"<sup>57</sup> and that some associations, typically political parties, may be prevented from receiving foreign funding, it has also stressed that freedom to seek, receive and use resources, including resources from foreign and international sources, belongs among the 11 guiding principles in the area of the right to freedom of association.<sup>58</sup>

36. In 2023, Georgia was granted candidate status with the European Union and it committed to various democratic reforms. Two of the priorities identified by the EU relate to "efforts to guarantee a free, professional, pluralistic and independent media environment" (Priority 7) and to "ensuring the involvement of civil society in decision-making processes at all levels" (Priority 9).<sup>59</sup> As a candidate country for accession to the European Union, Georgia should approximate relevant state legislation to the EU *acquis communautaire*. Thus, in the process of drafting new legislation, it is necessary to take into account EU primary legislation as well as the EU Charter on Fundamental Rights. In this vein, Articles 7 (Respect for private and family life), 8 (Protection of personal data), 11 (Freedom of expression and information), 12 (Freedom of assembly and of association) and 21 (Non-discrimination) of the latter are of relevance.

37. Furthermore, the judgement of the Court of Justice of the European Union (hereafter: CJEU) in the case C-78/18 is highly relevant in this regard. Having assessed the Hungarian Law on the transparency of organisations which receive support from abroad, the CJEU held that the legislation requiring certain civil society organisations receiving support from abroad beyond a certain threshold to register, declare, and publish their funding sources and allowing for penalties in case of non-compliance was discriminatory and unjustified, resulting in violation of the EU primary law.<sup>60</sup>

## V. Comparative law perspective

38. In recent years, the Venice Commission has assessed legislation on foreign agents which was enacted in the Russian Federation, Hungary and Kyrgyzstan and considered for adoption in the Republika Srpska of Bosnia and Herzegovina.<sup>61</sup> These laws present numerous similarities with this Law of Georgia.

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<sup>55</sup> Council of Europe: Committee of Ministers, Recommendation CM/Rec(2018)1[1] of the Committee of Ministers to member states on media pluralism and transparency of media ownership, item 3.7 of the Annex, available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680790e13](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13).

<sup>56</sup> UN Doc. A/HRC/50/23, *Access to Resources. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Nyaletsossi Voule, 10 May 2022, para 9.

<sup>57</sup> [CDL-AD\(2013\)023](#), Interim Opinion on the Draft Law on Civic Work Organisations of Egypt, para 43.

<sup>58</sup> [CDL-AD\(2014\)046](#), *Joint Guidelines on Freedom of Association*, para 32.

<sup>59</sup> SWD(2023) 697 final, *Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy*, Brussels, 8.11.2023

<sup>60</sup> Court of Justice of the European Union, C-78/18 - *Commission v Hungary (Transparency of associations)*, 18 June 2020, available at

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=227569&pageIndex=0&doclang=EN&mode=lst&ir=&occ=first&part=1&cid=2842204>.

<sup>61</sup> See for example [CDL-AD\(2023\)016](#), *Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations*; [CDL-AD\(2013\)030](#), *Joint Interim Opinion on the Draft Law amending the Law on Non-commercial Organisations and other Legislative Acts*

39. At the same time, the Explanatory Note attached to the Law refers to the legislation and practice existing in the USA, Australia and Israel as examples of similar legislation. Without endorsing the laws of these countries, which are not the subject of this opinion, the Venice Commission would like to stress at the outset several key differences between some of these laws and the Georgian Law.

40. As concerns the US Foreign Agents Registration Act (FARA), the Venice Commission in particular has previously<sup>62</sup> explained that the FARA was originally enacted in 1938 with a view to registering individuals or entities acting at the direction and control of a foreign government; its scope was broadened in 2016 to focus on countering foreign interference in elections.<sup>63</sup> Under the FARA, one does not have to register simply because one receives funds from a foreign source. Rather one must be an agent of a foreign principal, meaning that one acts at the specific direction and control, and on the behalf, of a foreign principal. In addition, the FARA was not enacted to regulate specifically civil society organisations or media representatives but any entity, non-profit or commercial, or individual acting as a legal agent on behalf of a foreign principal,<sup>64</sup> requiring a very high degree of control between the foreign entity/individual and the agent. While many US NGOs and media organisations receive foreign grants and support, the US does not generally require them to register as foreign agents under FARA. Only a small proportion, around 5%, of those registered under FARA are non-profit organisations, primarily branches of foreign political parties.<sup>65</sup> In sharp contrast to FARA and similar laws, the Georgian Law presupposes that anyone receiving foreign support will act in pursuit of the interests of the foreign funder (referred to as “foreign power”), by triggering an automatic, unevicenced and irrebuttable presumption of some form of influence or control of the work of the recipient by the donor.

41. As concerns Israel’s “foreign agent” legislation, the Venice Commission has previously<sup>66</sup> noted that under such legislation, while no evidence of an actual agency relationship is required like the US FARA, only NGOs that receive more than half of their funds from foreign governments or state agencies are required to disclose that fact in their public reports, advocacy material and interactions with government officials.<sup>67</sup> In contrast, the threshold in the Georgian Law is much lower. Moreover, Israel’s foreign agent legislation relates only to donations from a “foreign political entity”, that is,

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of the Kyrgyz Republic; [CDL-AD\(2014\)025](#), Russian Federation - Opinion on Federal Law N. 121-FZ on non-commercial organisations (“Law on Foreign Agents”), on Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the Criminal Code (“Law on Treason”) of the Russian Federation; [CDL-AD\(2017\)015](#), Hungary - Draft Law - On the Transparency of Organisations Receiving Foreign Funds; [CDL-AD\(2021\)027](#), Russian Federation - Opinion on the compatibility with international human rights standards of a series of bills introduced by the Russian State Duma between 10 and 23 November 2020 to amend laws affecting “foreign agents”.

<sup>62</sup> See [CDL-AD\(2023\)016](#), Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations, para. 7

<sup>63</sup> See 22 U.S. Code § 611 - Definitions.

<sup>64</sup> See further elaboration in Venice Commission, [CDL-AD\(2019\)002](#), Report on Funding of Associations, footnote 134.

<sup>65</sup> [https://ecnl.org/sites/default/files/2023-02/EWMI%20CSEP\\_ICNL%20Briefer%20of%20the%20Georgian%20Draft%20Law%20on%20Transparency%20of%20Foreign%20Influence\\_ENG\\_0.pdf](https://ecnl.org/sites/default/files/2023-02/EWMI%20CSEP_ICNL%20Briefer%20of%20the%20Georgian%20Draft%20Law%20on%20Transparency%20of%20Foreign%20Influence_ENG_0.pdf).

<sup>66</sup> Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”, adopted by the Venice Commission at its 127th Plenary session (Venice and online, 2-3 July 2021), [CDL-AD\(2021\)027](#), para. 21

<sup>67</sup> Specifically, an association whose main financial support is received from a foreign political entity must publish this information in its publications and in any application to a public employee or elected. A representative of an association whose main financial support is received from a foreign political entity, when appearing actively in a Knesset committee meeting, must advise the chairman of the committee of this representation. In Israel, any association whose annual turnover exceeds 300,000 NIS must declare in its financial report whether it received a donation or donations exceeding a total of 20,000 NIS. If it received such donations, it should specify the identity of the donor, the amount received and the objective for which it has been received, and any condition or obligation attached to it. This information should be published also in the association’s internet site (if there is one) and will also be published in the internet site of the Ministry of Justice. If a donation is given for a special public campaign, this information should be mentioned in this campaign.

foreign states or state related institutions.<sup>68</sup> In contrast to the Georgian legislation, it does not relate to donations from individuals, legal or private entities or organisational formations under national or international law.

## VI. Analysis

### A. Legislative process and consultation

42. In line with its consistent practice, the Venice Commission assesses not only the content of the legislation but also the legislative process related to its adoption. The Explanatory Note, in the section dealing with consultations (section d), merely notes that a comparative analysis was carried out (based on the legislation adopted in the USA, Australia and Israel) and indicates “none” as far as consultations with public, non-state or international institutions and experts are concerned. Various interlocutors confirmed during the online meetings that no consultations had taken place prior to or following the resubmission of the legislation to the Parliament.

43. In addition, the Law was adopted in the third and final reading within five weeks from its submission to Parliament. There was thus only limited time reserved for parliamentary discussions over the draft Law as well as for any public debate, even though formally the ordinary – not accelerated – legislative procedure was followed. Some representatives of opposition parties, of civil society and media representatives, informed the Commission in particular that in committee and plenary meetings insufficient time was devoted to opposition MPs and civil society organisations and that they had not been able to express themselves freely.

44. The Venice Commission’s Rule of Law Checklist provides for the need for “the process for enacting law [to be] transparent, accountable, inclusive and democratic”. This includes the adequate justification of the legislative proposal, the availability of the public debate, enabling the public with a meaningful opportunity to provide input and carrying out a preliminary impact assessment where appropriate. “The Rule of Law is connected with democracy in that it promotes accountability and access to rights which limit the powers of the majority”.<sup>69</sup> Further, in its checklist related to the Relationship between the Parliamentary Majority and the Opposition in a Democracy, the Venice Commission stressed that “complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on which some kind of consultation takes place. The public should have a meaningful opportunity to provide input [...]. Allocation of additional time for public consultations increases the ability of the opposition to influence the content of the legislative proposals by the Government or the majority. The majority should not manipulate the procedure in order to avoid such public consultations”.<sup>70</sup>

45. The Venice Commission does not consider that the procedure of adoption of the Law, which undoubtedly qualifies as a complex, comprehensive and controversial one, corresponded to these standards.

46. Further, it appears that the additional, substantive changes which were made to the law during the third reading were not made public immediately. The Venice Commission cannot but express deep concern about such absence of transparency.

47. The Venice Commission expresses deep concerns about the fact that this human-rights sensitive Law was adopted in a rushed way (very little time separated the three readings in Parliament), with no meaningful consultation process. This is all the more unfortunate, as the

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<sup>68</sup> A “foreign political entity” is defined as a foreign state, including a union or an organization of foreign states, an organ, authority or representation of foreign states, the Palestinian Authority and derivatives of these.

<sup>69</sup> Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, para. 50.

<sup>70</sup> Venice Commission, [CDL-AD\(2019\)015](#), Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, para 74.

reactions to a similar draft law in 2023 had shown the polarization regarding its adoption and there was thus a particular and demonstrable need to carry out meaningful consultations with the stakeholders affected by the Law, notably civil society organisations, online media outlets and broadcasters.

## **B. Content of the Law**

48. The Law is not an amendment to previous existing legislation. It is an independent piece of legislation, which is to operate as a self-standing Act. The Law invokes the need to ensure transparency of foreign influence as the reason for the new legislative initiative. The Law creates a new category of organisation “pursuing the interests of a foreign power”: a) non-commercial legal entities, except for sports federations and blood institutions (subject to specific regulations), which receive more than 20% of their total annual income from a foreign power; b) broadcasters, which receive more than 20% of their total annual income from a foreign power; c) legal persons owning alone or jointly printed media of mass information in Georgia, which receive more than 20% of their total annual income from a foreign powers; and d) legal persons owning and/or using alone or jointly an internet domain or internet media of mass information in Georgia, which receive more than 20% of their total annual income from a foreign powers.

49. Entities meeting the definition of an “organisation pursuing the interests of a foreign power” have the obligation to register with the National Agency of Public Registry of the Ministry of Justice of Georgia, as an “organisation pursuing the interests of a foreign power”. The Law regulates the procedure of registration, the publicity given to the registration, the subsequent yearly obligation to provide a financial declaration and other related obligations, the procedure for the cancellation of the registration. It also gives the Ministry of Justice the task to monitor the implementation of the law, and provides for fines in case of non-compliance.

50. As outlined above, a law that requires public reporting of foreign donations and public registration or labelling interferes with the enjoyment of several human rights, including the right to freedom of association (Article 11 ECHR, Article 22 ICCPR), the right to freedom of expression (Article 10 ECHR, Article 19 ICCPR) and the right to respect for private life (Article 8 ECHR, Article 17 ICCPR), as well as the right to be free from discrimination (Article 14 of the ECHR and Protocol 12 to the ECHR, Article 26 of the ICCPR).

51. The rights to freedom of association and expression may be restricted only under the conditions set out in international human rights instruments and in the Constitution of the Republic of Georgia. These conditions are threefold and encompass the conditions of legality, legitimacy and necessity/proportionality. The condition of legality is met, when the restriction is prescribed by law, i.e., it has a legal basis and this legal basis is precise, certain and foreseeable, making it possible for natural and legal persons to understand which acts are expected or prohibited to them.<sup>71</sup> Under the condition of legitimacy, restrictions need to pursue one of the legitimate aims indicated in the relevant instruments. Under the condition of necessity/proportionality, restrictions must be necessary in a democratic society to achieve the legitimate aim and they also have to be proportionate to that aim.<sup>72</sup> All the three conditions need to be met cumulatively. At the same time, restrictive measures must not be discriminatory in nature or effect.

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<sup>71</sup> ECtHR, *Hasan and Chausch v. Bulgaria*, Application No. 30985/96, Judgement (GC), 26 October 2000, para 84; *Aliyev and others v. Azerbaijan*, Application No. 28736/05, Judgement, 18 December 2008, para 35.

<sup>72</sup> “To meet the condition of necessity, authorities must demonstrate that the measure can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective.” UN Doc. A/HRC/50/23, Access to Resources. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, 10 May 2022, para 14.

## 1. Legality

52. The Venice Commission recalls that the legality standard pertains not only to the existence of a law but to the quality of the law itself: it requires that any law be sufficient clear, precise and foreseeable in order to guide the subjects to be regulated (the organisations in this case) and limit the discretion of the state to impose arbitrary rules. Individuals should have a clear indication of the circumstances and conditions under which public authorities are authorised to implement the measures in question. Thus, it is insufficient, standing alone, that the restrictions imposed on entities receiving foreign funding are provided for by the Law.

53. The Venice Commission notes that the Law lacks precision and is of very wide scope as well as leaving excessive discretion to state organs, especially the Ministry of Justice. A number of terms used in the legislation illustrate these points. The notion of what may constitute a “foreign power” encompasses a wide range of entities, from a constituent entity of the government system of a foreign state to a natural person who is not a citizen of Georgia. An “Organisation pursuing a foreign interest” is identified by reference to its legal nature (a non-commercial legal entity, a broadcaster or a legal entity owning a printed mass media, a legal entity owning and/or using an internet domain) and the sources (“foreign power”, which includes any public or private sources from outside Georgia, including any individual) of “more than 20 percent” of its income (“income” is understood broadly as referring to any financial or other material revenue<sup>73</sup>). As a result of the combination of these broad and vague terms, the category of entities qualifying as “organisations pursuing a foreign interest” is potentially very large and undetermined. Moreover, the income may come from a so-called foreign power regardless of whether the latter passes it to the entity directly or through some intermediary; as a result, it may be difficult for many entities to know whether they qualify as “organisations pursuing a foreign interest”. To this end, they would need to have a very good knowledge and understanding of their sponsors’ sources of funding, which may require extensive material and human sources, exceeding the possibilities of many if not most of the entities subject to the legislation’s restrictions.

54. This creates a situation of significant uncertainty, where even a limited donation from abroad may lead the authorities to classify a Georgian civil society association or media entity as pursuing the interests of a foreign power. Due to this vague and ambiguous wording, it is impossible to anticipate with sufficient foreseeability what funding and other assistance would trigger the qualification of “pursuing the interests of a foreign power” and the related obligations and prohibitions.

55. The Law entitles the Ministry of Justice and/or the Agency to carry out “examination and study” of the annual financial statement (Article 6) as well as “investigation and study” of the grounds for the de-registration (Article 7). Article 8 permits the Ministry of Justice to conduct monitoring of the situation of legal entities and broadcasters “to identify an organisation pursuing the interests of a foreign power.” Further to the latest amendments, the information which needs to be provided to the Ministry by “every person, body, organisation, entity” now includes “the data listed under Article 3(b) of the Law of Georgia on Personal Data Protection”. According to the information provided to the Commission, Article 3(b) of the Law on Personal Data Protection provides a definition of “special categories of [personal] data”, which, inter alia, may be the data connected to a person’s racial or ethnic origin, political views, religious, philosophical or other beliefs and one’s “sexual life”.<sup>74</sup> The Venice Commission stresses that there is no justification whatsoever for requiring this kind of information. Revised Articles 4, 6 and 8 of the Law also require to provide “other personal data or secret-containing information (except for state secret provided for in the legislation of Georgia)”. This concept is vague and undetermined, with no link being established between such information and the aim of the law.

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<sup>73</sup> The original exclusion in Article 2 of the Law of income received from “commercial advertising by an entrepreneurial company or an individual entrepreneur” was removed from the text adopted on the third reading.

<sup>74</sup> (პერსონალურ მონაცემთა დაცვის შესახებ | სსიპ “საქართველოს საკანონმდებლო მაცნე” (matsne.gov.ge).

56. The Law provides this power without reference to any clear or objective standards as it only requires a “decision of the relevant authorized person in the Ministry of Justice” and “written statement submitted to the Ministry of Justice of Georgia containing the appropriate reference to a specific organisation pursuing the interests of a foreign power.” It would enable such monitoring to take place twice annually. This draft article also does not provide any standards for such monitoring, nor is it connected to any sort of constraint on the discretion of government agents, on the criteria that may be applied to written statements submitted to the Ministry, nor criteria as to what entities or individuals may submit such statements to trigger monitoring. The provision is unlimited in its scope and, as such, involves a manifest failure to meet the principle of legality.

57. The Law foresees that the Ministry of Justice will adopt the implementing legislation within 60 days after its entry into force. The Law contains no explicit guidance in relation to these procedures, thus leaving large discretion to the Ministry of Justice in the interpretation and application of the regulation. Such large discretion is incompatible with the principles of legality and legal certainty. This contravenes the Rule of Law Checklist’s benchmark<sup>75</sup> according to which “a basic requirement of the Rule of Law is that the powers of the public authorities are defined by law. In so far as legality addresses the actions of public officials, it also requires that they have authorisation to act and that they subsequently act within the limits of the powers that have been conferred upon them, and consequently respect both procedural and substantive law.”

58. In view of the above, the Venice Commission is of the view that the Law fails to meet the condition of legality (prescribed by law)

## 2. Legitimacy

59. The stated purpose of the Law, as articulated in Article 1, is to ensure transparency regarding foreign influence. The Explanatory Note also identifies transparency as the sole purpose of the Law. In this respect the Venice Commission stresses that publicity or transparency of association work is not listed as such among the legitimate aims outlined in Article 11(2) of the European Convention on Human Rights (ECHR) (or in Article 22(2) of the International Covenant on Civil and Political Rights (ICCPR)) for allowing restrictions of the exercise of the freedom of association. These legitimate aims include national security, public safety, the prevention of disorder or crime for Article 11(2) of the ECHR or the public order (*ordre public*) for Article 22(2) of the ICCPR, the protection of public health or morals, and the protection of the rights and freedoms of others. Only in relation to the pursuit of these legitimate aims could transparency of funding be invoked as legitimate ground for restricting the freedom of association. The Law, however, makes no claim to be in furtherance of such objectives. In their exchanges with the rapporteurs, the Georgian authorities argued that several associations had been acting against state interest, including by spreading disinformation, and that such positions were influenced by foreign actors; they considered that it was a priority to put an end to this situation which was detrimental to democracy.

60. The ECtHR has acknowledged in principle, that the objective of increasing transparency with regard to the funding of civil society organisations may correspond to the legitimate aim of the protection of public order,<sup>76</sup> it has also specifically referred to the receipt of “substantial foreign funding” in connection with identified risks of foreign involvement in some “sensitive areas – such as elections or funding of political movements” and to the objective of preventing money laundering and terrorism financing.<sup>77</sup> It has, however, also emphasised that “[t]he scope of these legitimate aims shall be narrowly interpreted”.<sup>78</sup>

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<sup>75</sup> Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, para. 45.

<sup>76</sup> ECtHR, *Ecodefence and Others v. Russia*, no. [9988/13](#), 14 June 2022, para. 122.

<sup>77</sup> ECtHR, *Ecodefence and Others v. Russia*, no. [9988/13](#), 14 June 2022, paras. 139 and 165

<sup>78</sup> [CDL-AD\(2014\)046](#), Joint Guidelines on Freedom of Association para. 34.

61. In this respect, as underlined in Venice Commission's previous opinions and reports,<sup>79</sup> enhancing transparency does not *by itself* constitute a legitimate aim as described in the above international instruments, although there may be circumstances where this may constitute a means in the pursuit of one or more of the legitimate aims recognised as allowing restrictions on this right, such as public order or the prevention of crimes such as money-laundering and terrorism financing.

62. Enhancing transparency and accountability is an essential component of good public governance applicable to the public sector but not to private associations, unless they are funded from public sources or performing essential democratic functions, as is the case with political parties, which may justify the imposition of specific reporting or disclosure requirements as underlined in Recommendation CM/Rec(2007)14.<sup>80</sup> In any case, the reporting and transparency requirements that may be imposed on political parties may be justified in light of their specific role and status and should not be as such extended to apply to all associations.

63. In the Report on Funding of Associations, the Venice Commission identifies "ensuring transparency in order to prevent foreign political influence" as one of the grounds for restrictions imposed on associations frequently advanced by States. It notes that "the identification of "foreign funding" with "foreign intervention into domestic affairs" seems to be based on the idea that foreign funding generates "dependency" because other, economically stronger countries can employ funding to exploit the NGO sector for their own political interests and purposes. Consequently, foreign funding would promote the interests of the external forces at the expense of the domestic constituency".<sup>81</sup> While seeking to prevent foreign political influence might fall under the legitimate aims of protecting the interests of national security or public safety, the automatic presumption that any foreign funding, however limited and dispersed, equals foreign influence seems hard to sustain and is of itself insufficient to justify restrictive measures imposed on civil society organisations, online media and broadcasters.

64. The Venice Commission recalls that in the proceedings concerning the Hungarian legislation referenced above, the Court of Justice of the EU held that "the objective of increasing the transparency of the financing of associations, although legitimate, cannot justify legislation of a Member State which is based on a presumption made on principle and applied indiscriminately that any financial support paid by a natural or legal person established in another Member State or in a third country and any civil society organisation receiving such financial support are intrinsically liable to jeopardise the political and economic interests of the former Member State and the ability of its institutions to operate free from interference".<sup>82</sup> Based on this consideration, the CJEU held that the declared objective of increasing the transparency of the financing of associations did not appear capable of justifying the Hungarian law. In circumstances where the Law under scrutiny in this opinion relies on the same presumption, this conclusion also applies to it.

65. As concerns the authorities' argument that the aim of this law is to protect democracy from disinformation spread under the influence of foreign actors, the Venice Commission would like to stress that freedom of expression is a cornerstone of democracy; in a democratic society, freedom of expression must be protected, supported and promoted irrespective of whether it is critical of the government, and even if it is influenced by international discourse. The Council of Europe in fact promotes free discussion and debate at the international and transnational level about the values

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<sup>79</sup> See e.g., [CDL-AD\(2018\)006](#), Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance, para. 35; and Venice Commission, [CDL-AD\(2019\)002](#), [Report on Funding of Associations](#), paras. 61 and 80.

<sup>80</sup> See Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), adopted on 10 October 2007, paras. 62-65. See also [CDL-AD\(2014\)046](#), [Joint Guidelines on Freedom of Association](#), paras. 225-226.

<sup>81</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 98.

<sup>82</sup> CJEU, European Commission v Hungary (Case C-78/18), Judgment (GC), 18 June 2020, para 86.



that it promotes: democracy, the rule of law, respect of human rights, and it is welcome that these discussions are reflected in domestic discussions. Stifling dissent by undermining civil society and independent media cannot be considered as a measure to protect democracy. States have a positive obligation to create a favourable environment for participation in public debate. The Venice Commission would recall that in a democratic society, criticism of the government cannot and should not be qualified as such as disinformation. The targeting, silencing and causing the de facto shutting down of foreign funded associations and media as voices critical of the government is not readily characterised as countering disinformation: such measures are, instead, likely to undermine pluralism and free speech, in a manner which is contrary to international standards and harmful to democracy, both in the abstract and particularly in a context of forthcoming elections. In view of the above the Venice Commission is of the view that the Law fails to satisfy the condition of legitimacy.

### 3. Necessity and Proportionality

66. The Venice Commission has accepted that foreign funding of associations “may give rise to some legitimate concerns”<sup>83</sup> and that restrictive measures other than a blanket ban may be applied to it. It has however, in line with international standards, always stressed that such measures have to be strictly necessary and proportionate to the legitimate aim. In the Report on Funding of Associations, the Venice Commission describes several different measures that States take in this respect (special taxation rules, the need to transfer foreign funds via specific bank account, the need to use foreign funding for specific purposes, etc.).<sup>84</sup> It also identifies measures that are particularly problematic and where an enhanced burden of proof lies on the State to prove that such measures are truly necessary: the so-called foreign agents legislation is one of such measures.

67. According to the United Nations Special Rapporteur on Freedom of Association and Peaceful Assembly,<sup>85</sup> “to meet the condition of necessity, authorities must demonstrate that the measure can truly be effective in pursuing the legitimate aim and be the least intrusive means among those which might achieve the desired objective.” Further, there must be proof “that the measure is necessary to avert a real and not a hypothetical threat to one of the grounds for limitation”.

68. Restrictions on the freedom of association and expression can only be justified if they are necessary to avert a real, and not only hypothetical danger.<sup>86</sup> The ECtHR held that “[a]ny interference must correspond to a “pressing social need”” and the reasons adduced by the national authorities to justify it should be “relevant and sufficient”, with “evidence of a sufficiently imminent risk to democracy”.<sup>87</sup> As also stated by the ECtHR in the Ecodefence case, an approach considering as “suspect and a potential threat to national interests” any external state scrutiny of the work of civil society organisations in any matters, including human rights or rule of law, “is not compatible with the drafting history and underlying values of the Convention as an instrument of European public order and collective security: that the rights of all persons within the legal space of the Convention are a matter of concern to all member States of the Council of Europe.”<sup>88</sup>

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<sup>83</sup> [CDL-AD\(2014\)046](#), Joint Guidelines on Freedom of Association, para 221.

<sup>84</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, paras 47-51.

<sup>85</sup> The United Nations Special Rapporteur on Freedom of Association and Peaceful Assembly issued a report and a set of guidelines concerning access to resources in 2022 based on research, consultations, and the input of 14 States, 67 civil society organizations, two national human rights institutions and three international organizations. See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clement Nyaletossi Voule, UN Doc. A/HRC/50/23 (10 May 2022), para 3.

<sup>86</sup> See e.g., UN Human Rights Committee, Mr Jeong-Eun Lee v. Republic of Korea, Communication No. 1119/2002, U.N. Doc. CCPR/C/84/D/1119/2002(2005), para. 7.2.

<sup>87</sup> See e.g. ECtHR, Partidul Comunistilor (Nepeckeristi) and Ungureanu v. Romania, no. 46626/99, 3 February 2005, para. 48; and Gorzelik and Others v. Poland, no. 44158/98, 17 February 2004, paras. 95-96.

<sup>88</sup> ECtHR, Ecodefence and others v. Russia, nos. 9988/13 and 60 others, 14 June 2022, para. 139.

69. The Explanatory Note fails to justify its development by referring to any concrete threat or any actual risk assessment. During the online meetings, interlocutors confirmed that such a risk assessment had not been carried out. Hence, no explanation has been offered justifying the necessity to adopt the said legislation specifically targeting organisations receiving funding and other kinds of assistance from abroad. The Venice Commission notes in this respect that the existing Georgian law already contains provisions requiring organisations concerned by the Law to register and report, including on their sources of funding; no convincing explanation has been given on why the existing obligations would be insufficient for the purpose of ensuring transparency.

70. With respect to proportionality, “States must examine whether the measure is excessively burdensome, and whether the nature and severity of the sanctions imposed in case of non-compliance are proportionate to the gravity of the wrongdoing. Restrictions should not impair the essence of the concerned right or be aimed at discouragement and casting a chilling effect to deter its enjoyment.”

a) Category (and label) of organisations pursuing the interests of a foreign power

71. The Law introduces a specific category of, and label for, entities receiving some portion (20%) of their income from foreign sources. The term foreign agent, which was also contemplated in Georgia in the past (2023 Draft Law) is the most common term used in this context but it is not the only one. Hungary, for instance, used the term “organisations receiving support from abroad” in its 2017 Draft Law assessed by the Venice Commission (and later on adopted and then abolished). In its assessment of the Hungarian draft legislation, the Venice Commission noted that “although the highly stigmatising term “foreign agent” is not, and wisely so, used by the Hungarian legislator, it is doubtful whether in the current situation, marked by strong statements directed against civil society organisations funded from abroad, the expression “organisations receiving support from abroad” could be perceived in a neutral, descriptive way. This rhetoric has contributed to the controversy surrounding the debate about the merits of the Draft Law”.<sup>89</sup> The situation in Georgia is largely similar to that of Hungary, as singling out certain entities as “organisations pursuing the interests of a foreign power” on the mere ground of their receiving foreign funding has a potential of tarnishing the reputation of such entities and creating an atmosphere of mistrust towards them.

72. The Law defines any organisation that receives foreign income as one that is subject to “foreign influence”, although receipt of funds does not logically require a conclusion of influence. Moreover, the draft repeatedly refers to organisations “pursuing the interests of a foreign power” based solely on a finding that the organisation receives more than 20% of its funding from foreign sources. The objective effect of this approach is to stigmatise an organisation and to separate it from those organisations only funded by domestic (i.e., Georgian) donors. While the Law provides no basis to presume that funding is tantamount to influence, the mere label would be sufficient to stigmatise and so undermine the organisation without any evidentiary basis.

73. The term “foreign influence” moreover is largely imprecise, first, because it suggests, without any grounds, that relatively limited foreign funding automatically makes an entity pursue the interests of a foreign power, and second, because it speaks about “a foreign power” where in reality several different foreign donors might feature (and conflicting influence could ensue). The Venice Commission furthermore notes that the threshold of 20% seems low and arbitrary; there is no explanation provided in the Law or in the Explanatory Note why this threshold has been selected. In meetings with the Rapporteurs Georgian authorities were unable to explain why an entity’s receipt of 20% of its funding from abroad necessarily translated into “foreign influence” and the Commission has been provided with no other evidence in this regard. This absence of explanation or evidence underscores the legislation’s failure to demonstrate its necessity or proportionality.

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<sup>89</sup> [CDL-AD\(2017\)015](#), Hungary - Draft Law - On the Transparency of Organisations Receiving Foreign Funds, para. 24.

74. Finally, the Venice Commission also notes that there is no distinction made between various foreign sources. In the Report on Funding of Organisations, the Commission stressed that “a distinction should be made between foreign States and international organisations: if a risk of inappropriate political influence in the pursuit of foreign interests may at times be argued with respect to financial contributions to associations by the first, the same may not be said to be true in respect of international organisations to which the recipient State is a party or of which it is actively seeking membership. By joining an international organisation, a State proclaims to share its values and objectives and participates in the definition of the strategies and actions, including possibly through financing of eligible NGOs. Allocations of funds by an international organisation to a domestic NGO cannot therefore be seen, in this context, as pursuing “alien” interests”.<sup>90</sup>

75. The Explanatory Note asserts that this legislative act is solely intended for informational purposes and does not impede the activities of organisations registered as pursuing the interests of a foreign power. This assertion is explicitly stated in the second paragraph of Article 1 of the Law, which provides that the activities of entities registered as “organisations pursuing the interest of a foreign power” is not restricted based on this Law. The difficulty with this approach is that pays no regard to the stigmatising effect of the labelling of civil society organisations, online media and broadcasters, which inherently restricts their activities from the outset. This undermines their public trust and access to financial resources.

76. Further, the Commission considers that the mere labelling of an organisation as “pursuing the interests of a foreign power” will inevitably jeopardise funding from domestic sources. This is in the Commission’s view an obviously foreseeable result of the stigmatisation of an organisation as subject to foreign influence, as domestic organisations may not themselves wish to be associated with such organisations for fear of adverse consequences. Article 4(d) requires that the organisation provide information about “the source, amount and purpose of any money and other material benefits” it receives. As such, domestic sources may be unwilling to provide funding because of the potential of being identified by the organisation in such a filing. In this sense, even though the draft legislation may appear to be focused on foreign funding, its potential effect is that organisations with even such minimal foreign funding will be unable to survive as entities in Georgia, so directly undermining both freedom of expression and freedom of association.

77. There is no information in the Explanatory Note regarding whether any of the entities potentially affected by the Law would be able to secure alternative funding, such as a reasonable level of domestic funding on a transparent and non-discriminatory basis. During online meetings, a number of interlocutors explained in this regard that if the Law were to be adopted, many organisations receiving funding from abroad, including some which are active in the area of election observations, would refuse to register because that would imply admitting that they pursue the interests of a foreign power, which they do not. They would thus no longer be able to receive foreign funding and would be seriously hampered in their pursuit of domestic funding, as explained above. It was contended that the result would be that they be driven to cease their activities. The absence of realistic and concrete availability of such alternative funding is a determining factor in assessing the proportionality of the Law as it threatens the very existence of these organisations.

b) Registration and deregistration of organisations pursuing the interests of a foreign power

78. Entities meeting the criteria of an organisation pursuing the interests of a foreign power have the obligation to register as such in a special register run by the Agency (within the Ministry of Justice). The Register is public as are the applications, statements made by the entities under Article 4 of the Law, the charter or other founding documents as well as “the latest information” about the entity (Article 5 of the Law). It is not clear what this “latest information” shall encompass. It is also not clear which information and data are included in the application and the statements

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<sup>90</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 98.

and whether they for instance include the complete lists of members of the entities and/or the complete list of their (domestic or foreign) funders. Yet, based on article 5, the most sensitive documents of a registered organisation will be subject to publicity. This could threaten the very existence of organisations of human rights defenders or media organisations covering, for instance, corruption. Few would be willing or able to provide detailed documents that could lead their members, or the members of organisations that support them, to be identified and thereby subject to public stigma and harassment.

79. The Venice Commission recalls that “associations should not be under a general obligation to disclose the names and addresses of [their] members, since this would be incompatible with both their right to freedom of association and the right to respect for private life”.<sup>91</sup> It also recalls that “such a drastic measure, as “public disclosure obligation” (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of political parties and entities formally engaging in remunerated lobbying activities”.<sup>92</sup> Thus, the more extensive the disclosure obligations are under the Law, the more difficult it is in principle for the Georgian authorities to justify the necessity of such measures in light of the right to freedom of association, and the right to private and family life, encompassing the protection of personal data.<sup>93</sup>

80. While the process of filing with the relevant domestic Agency may appear, on its surface, to be a straightforward bureaucratic requirement, the organisations will undoubtedly need to be prepared with legal and accounting support in order to meet such requirements, in addition to the time required to make such filings. Moreover, if they provide any information that is incorrect or incomplete – a requirement that itself fails to meet the legality test, given the lack of definition or standards around such a rule – the Agency at its broad discretion may require the organisation to resubmit within ten days. Based on repeated examples in similar situations under similar laws,<sup>94</sup> there is a risk of abuse of such provisions to impose lengthy, harassing and costly audits on subject organisations.

81. Article 7 of the Law makes it possible for an entity registered as an organisation pursuing the interests of a foreign power to deregister. The conditions for a deregistration are not clearly stipulated in the Law and while it may be expected that the mere information that the entity no longer receives more than 20% of its income from abroad should be sufficient, the references to “investigation and study” suggests that this is not so. The Venice Commission welcomes that the procedures of registration and deregistration are tied to specific terms and deadlines applicable both to the entities and to the Agency/Ministry of Justice. It is at the same time concerned by the right of the Agency/Ministry of Justice/the relevant person acting on their behalf to “seek the necessary information, including personal data” (Articles 4(4) and 7(1) of the Law). While this right is limited by the requirement that it be exercised “in accordance with the law”, the general way in which it is described still provides the relevant organs with what the Commission considers to be an unacceptably wide discretion in such a sensitive context.

c) Obligations imposed on organisations pursuing the interests of a foreign power

82. Entities registered as organisations pursuing the interests of a foreign power have certain additional obligations. One is to submit the annual financial statement foreseen by Article 6 of the Law. Another is to cooperate with the Agency/Ministry of Justice and provide any necessary information that these bodies have the right to receive.

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<sup>91</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 167.

<sup>92</sup> [CDL-AD\(2014\)046](#), Joint Guidelines on Freedom of Association, para 165.

<sup>93</sup> As noted in the Report on Funding of Associations, “public disclosure obligations of receipt of foreign funding /are/ often designed to subject associations receiving such funding to public opprobrium and to increase the difficulties for the organizations in achieving their intended work”. [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 85.

<sup>94</sup> See footnote 61.

83. In the Report on Funding of Associations, the Venice Commission drew a clear line between reporting obligations, directed to the state authorities, and disclosure obligations, directed to the public. It noted that “the reporting obligations imposed on associations concerning the origin of their financing can be considered as pursuing the legitimate aim [...]. To the contrary, the obligation to make public the information about the source of the funding (public disclosure obligation) does not appear to be capable of pursuing the same objective”.<sup>95</sup> It however also noted that reporting obligations must not be designed in such a way as to become a true burden on the relevant entity and prevent it in engaging in other activities. “The required level of detail and the existence of unrealistically short and strict deadlines for submitting the information are other examples of onerous reporting obligations”.<sup>96</sup> The cumulative effect of all reporting obligations (the standard ones and the additional ones) also has to be considered to determine whether the legal regulation “is likely to create an environment of excessive State monitoring over the activities of NGOs, which could hardly be conducive to the effective enjoyment of freedom of association”.<sup>97</sup>

84. The Law only establishes the general obligation; the details are to be provided by implementing legislation adopted by the Ministry of Justice, which however is not yet available. The Law does not clearly establish what this obligation entails and how burdensome it is for the relevant entities to abide by this obligation. As already highlighted in previous Venice Commission opinions,<sup>98</sup> the introduction of additional reporting requirements may be extremely burdensome, in particular for small associations. Not only may the reporting obligations contemplated by the Law impose a significant financial and organisational burden on the organisations and their staff and undermine their capacity to engage in their core activities, but it is also unclear how such new requirements contribute to more transparent and complete information to the public, which is the alleged aim of the Law, let alone serving a legitimate aim from the perspective of international standards.

d) Monitoring of organisations pursuing the interests of a foreign power

85. Article 8 of the Law authorises the Ministry of Justice to proactively monitor (research and study) the situation of legal entities and broadcasters, to find out those entities that meet the criteria of organisations pursuing the interests of a foreign power but which have failed to register as such. Monitoring may take place as often as every 6 months (twice a year) and can be triggered by the Ministry of Justice or by an external initiative.

86. The Venice Commission recalls that the first guiding principle identified in the Joint Guidelines on Freedom of Association enshrines the presumption in favour of the lawful formation, objectives, and activities of associations.<sup>99</sup> The Law seems to start from a very different standpoint, that of general mistrust towards legal entities and broadcasters. Article 8 of the Law may easily be turned into a tool of harassment, through which anyone might, repeatedly, denounce certain entities, for instance their competitions and ask that these entities be monitored as often as twice a year. There is no doubt that such repeated monitoring may make the life of the entities quite difficult, both because it would require their cooperation, thus imposing additional obligations on them, and because it would undoubtedly have a negative effect on their reputation.

87. Moreover, as is the case in the course of registration and deregistration, the Ministry of Justice enjoys a broad discretion when carrying out “appropriate research and study”. The Ministry also again has the right to seek the necessary information, including personal data. The comments applicable to this regulation made above are fully applicable here as well and the Commission

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<sup>95</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 95.

<sup>96</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 110.

<sup>97</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 111.

<sup>98</sup> See for example ODIHR and Venice Commission, [CDL-AD\(2023\)016](#), Joint Opinion of the Venice Commission and the OSCE/ODIHR on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations

<sup>99</sup> [CDL-AD\(2014\)046](#), Joint Guidelines on Freedom of Association, para 26.

considers the breadth of discretion in such a sensitive context to be incompatible with international standards.

e) Sanctions Imposed on Organisations Pursuing the Interests of a Foreign Power

88. Under Article 9 of the Law, harsh administrative sanctions are foreseen for those entities which violate some obligations under the Law, especially the obligations to register and the obligation to submit the annual financial statement. The latest amendments have further introduced fines of 5,000 GEL for “Failure to provide the information requested in accordance with this law by a person authorised by the Ministry of Justice of Georgia”. The administrative procedure resulting in the imposition of a sanction is further regulated in the Code of the Administrative Offences.

89. The system of sanctions seems very rigid, with no discretion granted to the administrative body to determine the fine depending on the individual circumstances of each case. During the online meetings, a number of interlocutors stated that the amount of the fines foreseen by the Law is so high that some organisations might face considerable difficulties if such fines were imposed on them. The Venice Commission recalls that “sanctions amounting to the effective suspension of activities, [...] are of an exceptional nature. They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles”.<sup>100</sup> More broadly, the Venice Commission notes that the sanctions foreseen by the Law do not seem to be proportionate to the seriousness of the breaches.

90. In addition, the article does not indicate how the Agency would evaluate what it means to “avoid” registration, which could potentially be because of error, misapprehension of funding source, or any other ground that should not, in principle, be subjected to such a substantial fine. The implication is that the draft legislation expands its reach to cover not only organisations that clearly do receive foreign funding but also those that, though they receive little foreign funding, could be worried about attracting fines.

#### 4. Prohibition of Discrimination

91. The Law targets certain types of entities (non-commercial organisations, media and certain legal persons) which receive more than 20% of their income from abroad. It does not, on the contrary, target other entities (businesses, sports organisations, etc.) and entities which receive less than 20% of their income from abroad. Such differentiated treatment may raise an issue under Article 14 of the ECHR and Protocol 12 to the ECHR, and Article 26 of the ICCPR. In the Report on Funding of Associations, the Venice Commission noted that “unequal treatment between the civil society sector and other legal persons/non-state entities, for instance, the business sector, may raise issues when the State fails to provide specific justification for it and demonstrate that there are legitimate grounds for imposing for example additional reporting obligations only to associations”.<sup>101</sup>

92. Concerning the first differentiations, neither the Law nor the Explanatory Note explain what has made the Georgian authorities conclude that certain types of entities are more likely to pursue the interests of foreign powers.

93. Concerning the second differentiation, the Venice Commission recalls its previous conclusion that “in the Moscow Branch of the Salvation Army v. Russia Case, the ECtHR was reluctant to accept the foreign origin of a non-commercial organisation as a legitimate reason for a differentiated treatment; and the same reluctance would a fortiori be in place in case of mere foreign

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<sup>100</sup> [CDL-AD\(2014\)046](#), Joint Guidelines on Freedom of Association, para 239.

<sup>101</sup> [CDL-AD\(2019\)002](#), Report on Funding of Associations, para 125.

funding.”<sup>102</sup> In the case concerning Hungarian legislation referred to above, the Court of Justice of the EU concluded that “ differences in treatment depending on the national or ‘foreign’ origin of the financial support [...], constitute indirect discrimination on the basis of nationality”.<sup>103</sup>

## VII. Conclusion

94. At the request of the Parliamentary Assembly of the Council of Europe, the Venice Commission has assessed the Law of Georgia on Transparency of Foreign Influence through its urgent procedure. The Venice Commission regrets that the Georgian parliament did not wait for its opinion before adopting the law, despite the calls by the President of the Parliamentary Assembly and by the Secretary General of the Council of Europe.

95. The Venice Commission regrets at the outset that this Law, which is human-rights sensitive but is also highly controversial in Georgian society, as is demonstrated by the massive reactions in the country, was adopted in a procedure which left no space for genuine discussion and meaningful consultation, in open disregard for the concerns of large parts of the Georgian people. This is all the more unfortunate as the reactions to a similar draft law in 2023 had shown the polarization regarding its adoption and there was thus an obvious and demonstrable need to carry out meaningful consultations with the stakeholders affected by the Law, notably civil society organisations, online media outlets and broadcasters. This manner of proceeding does not meet the European requirements of democratic law-making.

96. The Venice Commission has analysed the compatibility of the Law with the applicable international and European standards, based on principles developed in its numerous previous opinions on a similar matter. It concludes that the restrictions set by the Law to the rights to freedom of expression, freedom of association and privacy are incompatible with the strict test set out in Articles 8(2), 10(2), and 11(2) of the ECHR and Article 17(2), 19(2) and 22(2) of the ICCPR as they do not meet the requirements of legality, legitimacy, necessity in a democratic society and proportionality, as well as with the principle of non-discrimination set out in Article 14 of the ECHR.

97. Being designated as an entity pursuing the interests of a foreign power under the Law has serious implications as it undermines both the financial stability and credibility of the organisations targeted as well as their operations. The combined impact of burdensome registration and reporting requirements (including disclosure of financial information), which limit access to funding options for stigmatised associations, along with severe administrative fines they may incur, constant surveillance, will with no doubt complicate and threaten the effective operation and existence of the organisations concerned. The persistent and stigmatising obstacles concentrated in the hands of the state create a chilling effect.

98. The Law, under the alleged aim of ensuring transparency, has the objective effect of risking the stigmatising, silencing and eventually elimination of associations and media which receive even a low part of their funds from abroad. A strong risk is created that the associations and media which come to be affected will be those who are critical of the government, so that their removal would adversely affect open, informed public debate, pluralism and democracy.

99. The Venice Commission strongly recommends that the Georgian authorities abandon the special regime of registration, reporting and public disclosure requirements for civil society organisations, online media and broadcasters receiving foreign support, including the administrative sanctions. While the existing Georgian legislation already contains provisions

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<sup>102</sup> [CDL-AD\(2014\)025](#), Russian Federation - Opinion on Federal Law N. 121-FZ on non-commercial organisations (“Law on Foreign Agents”), on Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the Criminal Code (“Law on Treason”) of the Russian Federation, para 59.

<sup>103</sup> CJEU, *European Commission v Hungary* (Case C-78/18), Judgment (GC), 18 June 2020, para 62.

requiring organisations concerned by the Law to register and report, including on their sources of funding, no convincing explanation has been given on why the existing obligations would be insufficient for the purpose of ensuring transparency. In case the existing provisions proved insufficient, the Georgian authorities should consider amending the existing laws in compliance with European and international standards. In particular, genuine representation (lobbying) activities on behalf of foreign countries could be regulated in line with European standards, should the current legislation not be adequate.

100. In conclusion, the Venice Commission strongly recommends repealing the Law in its current form, as its fundamental flaws will involve significant negative consequences for the freedoms of association and expression, the right to privacy, the right to participate in public affairs as well as the prohibition of discrimination. Ultimately, this will affect open, informed public debate, pluralism and democracy.

101. The Venice Commission remains at the disposal of the Georgian authorities and of the Parliamentary Assembly for further assistance in this regard.