
Warsaw, 30 May 2024
Opinion-Nr.: NGO-GEO/506/2024 [NR]

URGENT OPINION ON THE LAW OF GEORGIA “ON TRANSPARENCY OF FOREIGN INFLUENCE”

GEORGIA

This Urgent Opinion has benefited from contributions made by the members of the [ODIHR Panel of Experts on Freedom of Assembly and Association](#) and was peer reviewed by Antonina Cherevko, Senior Adviser to the OSCE Representative on Freedom of Media.

Based on an unofficial English translation of the Law as adopted in third reading on 14 May 2024 informally provided by the USAID Civil Society Engagement Program.



OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw
Office: +48 22 520 06 00, Fax: +48 22 520 0605
www.legislationline.org

EXECUTIVE SUMMARY

The main purpose of this Urgent Opinion is to analyze the Law “On Transparency of Foreign Influence” of Georgia, adopted on 28 May 2024, after overriding the veto of the President of Georgia, is to provide an overview of the key human rights concerns and lack of compliance with international human rights standards and OSCE human dimension commitments, primarily the rights to freedom of association and freedom of expression, but also other rights, including to respect for private life, participate in public affairs, and freedom from discrimination. The opinion also highlights similarities and differences to legislation in other countries that has been associated with the legislation at hand.

The rights to freedom of association and freedom of expression are a cornerstone of a vibrant, pluralistic and participatory democracy and underpins the exercise of a broad range of other human rights. Access to funding, including international and foreign funding, is an essential element of the right to freedom of association. As underlined in the ODIHR-Venice Commission Joint Guidelines on Freedom of Association, the right to freedom of association would be deprived of its meaning if groups wanting to associate did not have, or would be unduly restricted, in their ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international.

The Law introduces new registration, reporting and public disclosure requirements for non-profit organizations, media actors, owner or user of an Internet domain hosting Internet media that receive more than 20% of their non-commercial revenue from foreign or unidentified sources, as well as special oversight/monitoring and sanctions in case of non-compliance with the new legislative provisions. Pursuant to the Law, recipients of foreign funds are defined as and should be registered as “organizations pursuing the interests of a foreign power”.

As analysed in greater details below, overall, the new obligations introduced by the Law fall short of the strict requirements provided in international human rights law governing the imposition of restrictions on the right to freedom of association - namely, that they must be prescribed by law, pursue one of the legitimate aims recognized by international standards, be proportionate and necessary in a democratic society, and be non-discriminatory.

Per the Explanatory Note accompanying the Law, the stated *rationale* for introducing the Law is to enhance the transparency of so-called “foreign influence”. As underlined by ODIHR in previous opinions, enhancing transparency does not *by itself* constitute a legitimate aim for restricting the right

to freedom of association as described exhaustively in international instruments. There may be circumstances where transparency may be a mean in the pursuit of one or more of such legitimate aims, such as to protect national security, ensure public order or the prevention of crimes including corruption, embezzlement, money-laundering or terrorism financing. Yet, no mention of such aim(s) is stated in the Explanatory Note, nor could the mechanism envisaged by the Law be considered as strictly required or proportionate to such legitimate aims.

The Law is not based on any risk assessment or its potential impact on civil society organizations or other stakeholders, while the process of the adoption of the Law was marked by lack of meaningful consultations with organizations affected and the wider public. The reasons adduced by national authorities to justify the Law are generally not relevant and sufficient, failing to demonstrate why the existing legal framework and registration/reporting obligations are insufficient and/or ineffective. Moreover, no proper justification is provided for the difference in treatment of organizations on the mere basis of origin of funding.

The proposed registry of “organizations pursuing the interests of a foreign power” and new obligations applicable on the basis of the mere receipt of funding or of other tangible or intangible assets of foreign origin, will also be stigmatizing or likely have an indirect discriminatory impact on certain categories of associations. This is particularly the case for those associations that may not be able to secure domestic or public funding because they pursue objectives or activities that are not necessarily congruent with the thoughts and ideas of the majority of society or, indeed, may run counter to them. There is a risk that the organizations and media which will be affected by this Law, may very well be those who are critical of a government, so that their potential reduced or impaired functioning would adversely affect open, informed public debate, pluralism and democratic discourse.

Moreover, the term “foreign power”, due to the breadth of its meaning, would also encompass international or inter-governmental organizations, including those which Georgia is part of and contributes to, and potentially qualify them as foreign powers. Consequently, organizations receiving funding (for example from the United Nations) for relief or developments activities would be defined as representative of interests of foreign power. The legal drafters have also not shown that they have assessed the potential negative impact of the proposed legislation on human rights or considered other legal or non-legal alternatives and selected the least intrusive measures with regard to the protection of fundamental rights.

Alternative and less intrusive means could include regulating of remunerated (lobbying) activities performed on behalf or under the instruction of a foreign

entity, enacting robust political party and electoral campaign financing rules, anti-corruption and money laundering, or anti-terrorism laws, promoting more open, transparent and accountable public decision-making processes. This should be clearly distinct from not-for-profit organizations’ ordinary activities implemented in accordance with their mandates (including, for example, human rights or rule law advocacy). At the same time, any such measures must be in full compliance with international human rights and rule of law standards, and do not specifically target the civil society organizations and media.

There are a number of requirements that can be imposed on civil society organizations and are justifiable from a human rights perspective. These include some forms of notification or registration to acquire legal personality, tax and customs declarations or certain reporting requirements when receiving public support. These obligations already exist in the domestic legal framework, and while these could be assessed to identify possible improvements, the approach chosen with this Law reinforces the concerns that the contemplated measures may not be necessary nor proportionate.

Further, the powers of the monitoring authority to search and request any legal persons or individuals and any personal or confidential information, including personal data of a very sensitive nature – such as on the ethnic origin, political views, religious or other beliefs, are overbroad and infringe excessively into the right to privacy.

The references made in Explanatory Note, namely to the United States Foreign Agents Registration Act (FARA), and the more recent Australian Foreign Influence Transparency Scheme Act, are fundamentally different in light of their very distinct purpose and scope, are not relevant comparative examples to justify the introduction of legislative initiatives targeting organizations/associations based on the mere receipt of funding from abroad.

As a consequence, in light of the analysis contained in more details hereinafter, the Urgent Opinion concludes that the Law “On the Transparency of Foreign Influence” **contains serious deficiencies that renders it incompatible with international human rights standards and OSCE human dimension commitments and should be rescinded.**

ODIHR, while calling on authorities to rescind the Law and to contemplate steps that would bring the legislative framework in line with the international standards, remains at the disposal of the authorities for further assistance in this matter, especially with respect to the identification of possible legislative or other alternatives to address genuine, concrete concerns that correspond to the legitimate aims provided by international human rights law.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

TABLE OF CONTENTS

I. INTRODUCTION	7
II. SCOPE OF THE OPINION	7
III. LEGAL ANALYSIS AND RECOMMENDATIONS	8
1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments	8
2. Domestic Legal Framework and Background.....	8
3. Analysis and Key Recommendations	10
3.1. Objective Pursued by the Law	11
3.1.1. “Foreign Influence” and “Transparency” as Key Justifications	12
3.1.2. Absence of Demonstration of Ineffectiveness or Gaps of the Existing Legal Framework and Absence of Impact Assessment	16
3.1.3. References to Other Country Examples.....	17
3.1.4. Discriminatory Approach and Potential Impact	18
3.2. Scope of the Law	20
3.3. Registration and Public Disclosure of Information	22
3.4. Reporting Requirements.....	24
3.5. Powers of the Monitoring Authority.....	25
3.6. Liability and Sanctions.....	27
4. Recommendations Related to the Process of Preparing and Adopting the Law	29

I. INTRODUCTION

1. On 20 May 2024, the Deputy Chairpersons of the Defense and Security Committee and of the Committee on Procedural Issues and Rules of the Parliament of Georgia requested the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to review the Law “On Transparency of Foreign Influence” of Georgia (hereinafter “Law”). The Law was adopted in third reading on 14 May 2024 and then submitted to the President for promulgation. On 18 May 2024, the President returned the Draft Law to the Parliament with remarks. On May 28 2024, the Parliament finally adopted the Law, overriding the presidential veto.¹
2. On 23 May 2024, ODIHR Director held a series of meetings with the Prime Minister of Georgia, the Speaker of the Parliament, the President, the Minister of Foreign Affairs, representatives of the majority and opposition political parties as well as civil society organizations and the media to discuss the Law. ODIHR is grateful to the public authorities and civil society of Georgia for organizing these meetings at short notice.
3. On 24 May 2024, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal analysis on the compliance of the Law with international human rights standards and OSCE human dimension commitments. Given the evolving situation and the resulting urgency, ODIHR decided to prepare an Urgent Opinion on the Law, which does not provide a detailed analysis of all the provisions of the Law, but primarily focuses on the most concerning issues relating to the exercise of the rights to freedom of assembly and freedom of expression. The absence of comments on certain provisions of the Law should not be interpreted as an endorsement of these provisions.
4. The present Urgent Opinion is based on ODIHR’s *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards* published in July 2023 upon the request of the Public Defender of Georgia.²
5. This Urgent Opinion was prepared in response to the above request. ODIHR conducted the present legal analysis within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.³ While ODIHR recommends to rescind the Law, the analysis offered in this Urgent Opinion aims to inform the discussions on this matter by providing legal reasoning for the human rights concerns posed by the Law.

II. SCOPE OF THE OPINION

6. The scope of this Urgent Opinion covers only the Law submitted for review. Thus limited, the Urgent Opinion does not constitute a full and comprehensive review of the entire legal

¹ See Article 46 of the [Constitution of Georgia](#) and Article 122 of the [Rules of Procedure of the Parliament of Georgia](#).

² ODIHR, [Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards](#) (25 July 2023).

³ In particular, [CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, para. 10; and [Charter of Paris for a New Europe](#) (1990).

- and institutional framework regulating the exercise of the right to freedom of association and freedom of the media in Georgia.
7. The Urgent Opinion raises key issues and provides indications of areas of concern and is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.
 8. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*⁴ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*⁵ and commitments to mainstream gender into OSCE activities, programmes and projects, the Urgent Opinion integrates, as appropriate, gender and diversity perspectives.
 9. This Urgent Opinion is based on an unofficial English translation of the Law, which is attached to this document as an Annex. Errors from translation may result. Should the Urgent Opinion be translated in another language, the English version shall prevail.
 10. In view of the above, ODIHR would like to stress that this Urgent Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Georgia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

11. For a detailed overview of relevant international standards and OSCE commitments pertaining to the right to freedom of association, ODIHR hereby refers to its *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards* from July 2023.⁶

2. DOMESTIC LEGAL FRAMEWORK AND BACKGROUND

12. The right to freedom of association is guaranteed in Article 22 of the Constitution of Georgia. Article 17 guarantees the rights to freedom of opinion, information, and mass media and the Internet. The rights to personal and family privacy, personal space and privacy of communication are provided in Article 15. Any discrimination on any ground is prohibited (Article 11 of the Constitution). Article 78 also stipulates 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*”.

4 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Georgia acceded to the Convention on 26 October 1994.

5 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

6 ODIHR, *Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards* (25 July 2023).

13. Non-entrepreneurial (non-commercial) legal entities and the media, depending on their type, are subject to some forms of registration, reporting and other requirements.⁷ In addition, such entities are subject to legislation of general application on taxation, the prevention of money laundering and financing of terrorism⁸ or the Georgia’s Law on Lobbying,⁹ among others. Furthermore, these non-entrepreneurial (non-commercial) legal entities are required to report their income and expenditures to tax authorities on a monthly basis, while the legislation also provides circumstances when donor institutions have to inform tax authorities about the allocated grants.
14. The Law “On Transparency of Foreign Influence” aims to create a register for non-profit organizations (non-entrepreneurial [non-commercial], broadcasting, print media and owner or user of an Internet domain or one hosting Internet media) operating within Georgia and which received more than 20 % of their gross non-commercial revenue in a calendar year from a “foreign power”. An earlier version of the present Law was withdrawn by the Parliament of Georgia on 6 March 2023 after the first reading. In April 2024, the Law was reintroduced, with no significant substantial changes compared to the Law withdrawn in March 2023, except for replacing the references to “agent of foreign influence” with the wording “organization pursuing the interests of a foreign power”.¹⁰
15. The Law registered with the Parliament of Georgia on 8 April 2024, was adopted in first hearing in the Parliament on 17 April 2024 and then in second reading on 1 May 2024. On 14 May 2024, the Law was adopted in third and final reading by the Parliament and was then submitted to the President for promulgation. On 18 May 2024, the President returned the Law to the Parliament with remarks. On 28 May 2024, the Parliament put the President’s remarks to a vote and, after rejection, adopted the initial version of the Law in accordance with Article 46 of the Constitution of Georgia and the Rules of Procedure of the Parliament of Georgia.¹¹ The Law shall then be submitted to the President within three days and the President shall sign and promulgate the Law within

7 These include registration in the Register of Non-entrepreneurial (Non-commercial) Legal Entities as per Article 28 of the Civil Code (the data mentioned in the Register and that is publicly available include: name and purpose of activity; legal address; identification data of founders/partners; identification data of the person authorized for management and representation; identification data of the members of the governing body; such legal entities are obliged to prepare financial statements established by law without the obligation to publish or submit these reports to the accounting, reporting and audit supervision service of the state subsidiary institution); for those registered non-commercial legal entities wishing to register as “charitable organizations” pursuant to Article 32 of the Tax Code, after one year of carrying charitable activity, it may register in the Unified Register of Charitable Organizations (those organizations are subject to annual reporting to the tax authorities, including a program report with description of activity, including economic activity and a financial report with sources of income and purposes of expenditures; and prior year financial documents (balance sheet and income statement), certified by an independent auditor, the report being publicly available on the website of the Revenue Service); some information on aid provided by foreign donor organizations and projects financed (project description, donor, implementing entity, recipient, annual costs, etc.) is provided on the website managed by the Government of Georgia, in the information management system of foreign aid - <https://eaims.ge/>. Media are generally registered as limited liability companies, unless they fall within the scope of non-entrepreneurial (non-commercial) legal entities; according to the Law of Georgia on Entrepreneurs, such a registration is obligatory and publicly available in the Public Registry; the Law on Broadcasting applies to all media except printed and electronic media and provides rules on registration and licencing. In addition, the following legislative acts are also relevant for reporting and monitoring purposes: Law of Georgia about “accounting, reporting and auditing”; Order N1 of the Head of the Financial Monitoring Service of Georgia from June 5, 2020; Order N2 of the Head of the Financial Monitoring Service of Georgia dated June 5, 2020; Order N48/04 of the President of the National Bank of Georgia dated March 30, 2021; Order No. 9 of June 26, 2018 of the head of the accounting, reporting and audit supervision service. Order N996 of the Minister of Finance of Georgia dated December 31, 2010.

8 See <[Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism](#)>.

9 Articles 5, 13, and 14 of the Law of Georgia on Lobbying. See: [on Lobbying | სსიპ “საქართველოს საკანონმდებლო მაცნე” \(matsne.gov.ge\)](#), which provide 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, which 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; lobbyists are obliged to report their activities on a monthly basis, including the identification and details of monetary and asset transfers related to a specific lobbying assignment; these reports are public.

10 An earlier version of the re-introduced Draft Law initially referred to ‘organization pursuing the interest of a foreign influence’, though the version of the Draft Law as adopted in third reading, refers to ‘organization pursuing the interests of a foreign power’, which is the term used in this Urgent Opinion to ensure consistency.

11 See Article 46 of the [Constitution of Georgia](#) and Article 122 of the [Rules of Procedure of the Parliament of Georgia](#).

five days; if the President does not sign the Law, the Speaker of the Parliament shall sign and promulgate the Law.

3. ANALYSIS AND KEY RECOMMENDATIONS

16. The Law regulates the definitions of an “*organization pursuing the interests of a foreign power*” and of a “*foreign power*”; such organizations’ obligation to register as an “*organization pursuing the interests of a foreign power*”; the public disclosure of the application for registration, other appropriate documents and the register for such organizations; the requirement to submit annual financial declarations; the de-registration of an entity registered as an “*organization pursuing the interests of a foreign power*”; the monitoring to identify these organizations or to check the fulfilment of the requirements defined by the Law; and the administrative responsibility/sanctions in case of evading registration or non-fulfilment of the relevant requirements defined by the Law.
17. At the outset, it must be underlined that there are a number of requirements that can be imposed on civil society organizations and are justifiable from a human rights perspective. These include some forms of notification or registration to acquire legal personality, tax and customs declarations, compliance with labour regulation, or certain reporting requirements when receiving public support or having special status, such as of “charitable organization” (see para. 13 above).
18. By introducing new, additional registration, reporting, public disclosure and other requirements for non-profit organizations and media actors, the Law introduces restrictions to the exercise of the rights to freedom of association and freedom of expression, which must be assessed in terms of their compliance with international human rights standards.
19. The right to freedom of association encompasses the right of associations to seek, secure and utilize financial and other resources, as otherwise freedom of association would be deprived of all meaning.¹² Principle 7 of the ODIHR-Venice Commission [Joint Guidelines on Freedom of Association](#) states that in order to subsist, associations must have the means to pursue their objectives, meaning that they should have the ability to access different types of resources (including financial, in-kind, material and human resources), and also be able to obtain such resources from different sources of their choice, including public or private, domestic, foreign or international.¹³ In the [Ecodefence](#) case, the European Court of Human Rights has also underlined the fundamental importance of ensuring that NGOs are “*free to solicit and receive funding from a variety of sources*” in order for them to perform their role as the “*watchdogs of society*”, further underlining that “[t]he diversity of these sources may enhance the

12 See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, [A/HRC/23/39](#), paras. 8 and 81(d), which specifies that “*associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities*”; and 2022 Report on [Access to resources](#), [A/HRC/50/23](#), 10 May 2022, para. 22. See also e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 102; and 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, para. 50.

13 *Ibid.* (ODIHR-Venice Commission Joint Guidelines on Freedom of Association (2014)), para. 102. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, [A/HRC/23/39](#), para. 82 (b), which likewise specifies that “*associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities.*”

independence of the recipients of such funding in a democratic society”.¹⁴ Recommendation CM/Rec(2007)14 also underlines that “*NGOs should be free to solicit and receive funding – cash or in-kind donations – 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”*.”

20. Restrictions on the right to freedom of association must be compatible with the strict test set out in Article 22 (2) of the ICCPR and Article 11 (2) of the ECHR, requiring any restriction to be:
- (i) prescribed by law, meaning clear, precise and foreseeable;
 - (ii) in the pursuit of one of the legitimate aims listed exhaustively in the treaty/convention;
 - (iii) necessary in a democratic society, which presupposes the existence of a “pressing social need” and respect for the principle of proportionality;¹⁵
 - (iv) in addition, the restriction must be non-discriminatory (Article 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR).
21. As the media also fall within the scope of the Law, it is important to stress that the freedom of expression may be legitimately restricted in exceptional cases as laid out in Article 19 (3) and Article 20 of the ICCPR and Article 10 (2) of the ECHR. Any restriction of freedom of expression must have a basis in the law of the country where it is imposed (test of legality), be in pursuit of one of the legitimate aims listed exhaustively in international instruments¹⁶ (test of legitimacy) and be the least intrusive measure possible among those effective enough to reach the designated objective (test of necessity and proportionality). In addition, laws that impose restrictions on freedom of expression must not violate the non-discrimination principle. Moreover, administrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body and subject to appeal before an independent court or other adjudicatory body.

3.1. Objective Pursued by the Law

22. In the Explanatory Note to the Law,¹⁷ the drafters note that the “...*purpose of the draft law is to ensure the transparency of foreign influence... In addition, it is important that this legislative act serves only the purpose of informing, and it does not restrict the subjects registered as organizations pursuing the interests of a foreign power from carrying out their usual activities...*”. It also makes references to laws in the United States

14 See e.g., European Court of Human Rights (ECtHR), [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para. 169.

15 See e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), Principles 9 and 10.

16 i.e., “(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals” (Article 19 (3) of ICCPR); “national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary” (Article 10 (2) of the ECHR). Restrictions on other grounds are not permissible under international law. A legitimate ground for restriction must be demonstrated in a specific and individualized fashion, in particular by establishing a direct and immediate connection between the expression and the specific ground. Furthermore, the grounds must be narrowly interpreted and the necessity for restricting the right to freedom of expression and to impart or receive information must be convincingly established to be compatible with international human rights standards.

17 See <[Georgia - Explanatory Note on the Draft Law of Georgia on Transparency of Foreign Influence](#)>.

of America, Australia and Israel for comparative purposes, suggesting that similar legislation exists in those countries.

23. In order to be in line with the above international human rights instruments, the Law needs to pursue one or several of the legitimate aims listed exhaustively in international instruments,¹⁸ and to be narrowly interpreted.¹⁹

3.1.1. “Foreign Influence” and “Transparency” as Key Justifications

24. The Explanatory Note refers to “foreign influence” as a concern though not elaborating whether this refers to concrete, real threats to national security or to public order, or to the commission of crimes, which are reflected in international human rights instruments, or whether this targets more generally the issue of foreign influence in the political or public sphere and/or potential disinformation campaigns.
25. Depending on the final aim, some alternative, less intrusive means to address the so-called “foreign influence” could be considered. These could include regulating (clearly defined) professional, remunerated lobbying or interest representation activities aimed at influencing public decision-making processes carried out under the control or direction of a foreign principal, that should be clearly distinct from ordinary advocacy activities of not-for-profit organizations and designed in compliance with international human rights standards.²⁰
26. Other regulatory initiatives could address the prevention of corruption, money laundering and financing of terrorism, aim at improving corporate governance and transparency of beneficial ownership of legal persons,²¹ and/or consist of enacting robust political party and electoral campaign financing rules,²² specifically with respect to third party

18 The legitimate aims mentioned in Article 22(2) the ICCPR and Article 11(2) of the ECHR include national security, public safety, public order (*ordre public*) for Article 22(2) or the prevention of disorder or crime for Article 11(2) of the ECHR, the protection of public health or morals, and the protection of the rights and freedoms of others.

19 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 34. See also e.g., ECtHR, regarding political parties, *Parti nationaliste basque – Organisation régionale d’Iparralde v. France*, no. 71251/01, 7 June 2007, para. 46, where the Court reiterated that “the exceptions set out in Article 11 are to be construed strictly; only convincing and compelling reasons can justify restrictions on the freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, States have only a limited margin of appreciation”.

20 See e.g., CoE *Recommendation CM/Rec(2017)2 of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision making*, 22 March 2017, para. 4, which emphasizes that legal regulation of lobbying should not, in any form or manner whatsoever, infringe the democratic right of individuals to express their opinions and petition public officials, bodies and institutions, whether individually or collectively; campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively; PACE Committee on Economic Affairs and Development, Report “Lobbying in a democratic society (European Code of conduct on lobbying)” (Doc. 11937, 5 June 2009). As underlined in the 2019 Venice Commission *Report on the funding of associations*, “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”; and “lobbying as a professional remunerated activity should be clearly defined in the legislation and be clearly distinguished from ordinary advocacy activities of civil society organisations, which should be carried out unhindered”.

21 See especially MONEYVAL, Anti-money laundering and counter-terrorist financing measures – *Georgia - Fifth Round Mutual Evaluation Report (2020)*, especially Recommendations 24 and 25; and OECD, *Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the Istanbul Anti-Corruption Action Plan | READ online (oecd-ilibrary.org)* (2022), Section 8 on Business Integrity. See also FATF, Guidance on Beneficial Ownership of Legal Persons, para 44. See: *Guidance-Beneficial-Ownership-Legal-Persons.pdf.coredownload.pdf (fatf-gafi.org)*.

22 See ODIHR, *Georgia - Local Elections - ODIHR Election Observation Mission Final Report (2021)*, para. 13 on p. 37, recommending to enhance the legal and institutional framework, including by ensuring that anonymous in-kind donations and third party campaigning are properly identified and accounted for, followed by effective actions taken to enforce the law. See also GRECO, Third Evaluation Round – *Second Addendum to the Second Compliant Report on Georgia* (Incrimination and Transparency of Party Funding) (19 December 2018), noting that some of its recommendations remain partially unaddressed, including with regard to a more uniform and consistent legal framework for political finance (para. 11), the need to enhance financial reporting requirements applicable to persons with “declared electoral goals” (para. 16) and to strengthen the institutional and legal framework pertaining to the monitoring of any financing of political parties and campaigns of electoral subjects, along with the imposition of effective, proportionate and dissuasive sanctions (paras. 31 and 36).

financing,²³ also depending on the objectives being pursued. Regarding the latter, the European Court of Human Rights has acknowledged as legitimate and not disproportionate, the imposition of certain requirements entailing transparency limited to political parties, providing that they did not entail significant disclosure or reporting obligations.²⁴ Measures to promote transparency of media ownership and more open, transparent and accountable public decision-making processes²⁵ could also be considered. Any such initiatives should be compliant with international human rights and rule of law standards and should not specifically target the civil society sector.

27. During the ongoing public debate on the Law, references to the risk of “disinformation” has been raised, although not featuring explicitly in the Explanatory Note. It must be underlined that while domestic laws addressing the propagation of falsehoods are permissible in relation to matters such as fraud, perjury, false advertising and defamation, the general prohibition of expressions of an erroneous opinion or an incorrect interpretation of past events is not permitted, as specified by the UN Human Rights Committee in General Comment No. 34.²⁶ Similarly, the International Mandate-Holders on Freedom of Expression stated with regard to the issue of disinformation and “fake news” that: “*general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “fake news” or “non-objective information” are incompatible with international standards for restrictions on freedom of expression [...]and should be abolished*”.²⁷ Any measure pursuing this objective should thus be approached with caution, ensuring full compliance with international human rights standards.²⁸ Certain states have adopted alternative means of countering disinformation by focusing on promoting transparency of online platforms, carrying out robust public information campaigns and ensuring access to information, protecting free and independent media and dialogue with communities and building digital, media and information literacy.²⁹ Some states also require, through legislation, that audio-visual outlets using terrestrial broadcasting establish an independent committee tasked with assisting them to ensure the honesty of the information they disseminate.³⁰ In this respect, it should be underlined 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. States have a positive obligation

23 See ODIHR and Venice Commissions, [Guidelines on Political Party Regulation \(2nd ed., 2020\), para. 218](#), which acknowledge the legitimacy of certain regulations with respect to the third-party financing in relation to election campaigns, such as “[c]ampaign expenditures made independently of a candidate or party with the aim of promoting or opposing a candidate or party, either directly or indirectly”, which “may be subject to reasonable and proportionate limitations” - See also European Court of Human Rights, *Bowman v. United Kingdom*, no. [24839/94](#), 19 February 1998.

24 As in European Court of Human Rights, *Parti nationaliste basque – Organisation régionale d’Iparralde v. France*, no. [71251/01](#), 7 June 2007 (as regards political parties).

25 See GRECO, Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, [Addendum to the Second Compliance Report](#) for Georgia (13 July 2022), paras. 11-12. See also, for reference, ODIHR [Assessment of the Legislative Process in Georgia \(2015\)](#). See also ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024).

26 *Op. cit.*, footnote 8, para. 49.

27 See [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), International Mandate-Holders on Freedom of Expression, 3 March 2017, para. 2 (a).

28 See [Report on Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), UN Secretary General, A/77/287, 12 August 2022, para. 10, where it is stated: “*state responses to disinformation must themselves avoid infringing on rights, including the right to freedom of opinion and expression*”; see also para. 42, which underlines that not all inaccurate information is harmful, and only some harms – such as those that in fact implicate public health, electoral processes or national security – may warrant state intervention.

29 [Report on Countering disinformation for the promotion and protection of human rights and fundamental freedoms](#), UN Secretary General, A/77/287, 12 August 2022, see para. 24 and following for further information and state examples. See also [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#), International Mandate-Holders on Freedom of Expression, 3 March 2017, para. 3.

30 See for example [Loi n° 2016-1524 du 14 novembre 2016 visant à renforcer la liberté, l’indépendance et le pluralisme des médias](#), Republic of France, 14 November 2016, Articles 6 and 11.

to create a favourable environment for participation in public debate. Burdensome reporting requirements, together with labelling media organizations receiving foreign funding as representatives of interests of foreign power, poses significant risks to media freedom and open debate, is excessive and creates particular challenge to small and medium-sized media organizations. Eventually, the Laws could result in their silencing and are likely to be considered as a disproportionate measure to counter disinformation.

28. Regarding the stated goal of ensuring “transparency”, it must be underlined that the need for transparency in the internal functioning of associations is not specifically regulated in international and regional treaties, owing to the right of associations to be free from interference of the state in their internal affairs. The Joint Guidelines on Freedom of Association provide that, while openness and transparency are fundamental for establishing accountability and public trust, “[t]he state shall not require but shall encourage and facilitate associations to be accountable and transparent”.³¹ As underlined in ODIHR and/or Venice Commission’s previous opinions and reports,³² enhancing transparency does not *by itself* constitute a legitimate aim as described as an exhaustive list in the international human rights instruments,³³ although it may be a mean in the pursuit of one or more of the legitimate aims recognized that may, in case other requirements are also fulfilled, allow restrictions on this right, such as national security, public order or the prevention of crimes, including corruption, embezzlement, money-laundering or terrorism financing.³⁴ While the European Court of Human Rights has acknowledged, in principle, that the objective of increasing transparency with regard to the funding of civil society organizations (CSOs) may correspond to the legitimate aim of the protection of public order,³⁵ it has specifically only 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.³⁶ Imposing transparency obligations on non-profit organizations solely due to the foreign funding received fails to meet criteria established by ECtHR.
29. As underlined in previous ODIHR’s legal reviews, generally speaking, enhancing transparency and accountability is an essential component of good *public* governance applicable to the public sector.³⁷ In specific cases, transparency requirements can be applied to private, not-for-profit organizations or associations, for example when they are

31 See e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 224.

32 See e.g., ODIHR and Venice Commission, ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 25; [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](#), CDL-AD(2018)006-e, para. 35. See also ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 107; and Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), paras. 61 and 80.

33 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 25; ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 107; and Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, paras. 61 and 80.

34 *Ibid.*

35 ECtHR, [Ecodefence and Others v. Russia](#), no. 9988/13, 14 June 2022, para. 122.

36 ECtHR, [Ecodefence and Others v. Russia](#), no. 9988/13, 14 June 2022, paras. 139 and 165

37 ODIHR, [Note on Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad or So-called “Foreign Agents Laws” and Similar Legislation and their Compliance with International Human Rights Standards](#) (25 July 2023), para. 54. See also ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 26.

funded from domestic public sources³⁸ or performing essential democratic functions, such as political parties. The latter can be regulated by enacting robust political party and electoral campaign financing rules and may justify the imposition of specific reporting or disclosure requirements as underlined in the *Joint Guidelines on Freedom of Association* and in Council of Europe’s Committee of Ministers’ *Recommendation CM/Rec(2007)14*.³⁹

30. It is important to recall that “transparency” is or was used as a justification for the laws adopted by the Russian Federation⁴⁰ and Hungary⁴¹ (the latter – repealed in 2020 – even including reference to transparency in the title of the law), but also for the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations,⁴² and the recently adopted amendments to the Law of the Kyrgyz Republic on Non-Commercial Organizations pertaining to “foreign representatives”, all of which target civil society organizations, human rights defenders and media actors.⁴³ In 2020, the CJEU, having regard to the content and the purpose of the provisions of the Hungarian legislation, assessed that it was based “*on a presumption made on principle and applied indiscriminately that any financial support [from abroad] and any civil society organisation receiving such financial support are intrinsically liable to jeopardise the political and economic interests*”.⁴⁴
31. The Explanatory Note to the Law does not refer to any other objective(s) but transparency. At the same time, references to abstract “public concern” and “suspicions” about the legality and honesty of financing of the NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering, or concrete, well-evidenced threats to national security, cannot constitute a legitimate aim justifying restrictions to this right.⁴⁵ Restrictions to the freedom of association can only be justified if they are necessary to avert a real, and not merely a hypothetical danger.⁴⁶

38 The *Joint ODIHR-Venice Commission Guidelines on Freedom of Association* acknowledge that the receipt of public support may justify the imposition of reporting requirements, though they should not be too burdensome and, at the very least, should be proportionate to the level of public support received (see ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 214). See also ECtHR, *Vörður Ólafsson v. Iceland*, no. 20161/06, 27 April 2010, paras. 81-82, where in light of the public functions of a trade union to promote the specific industry under public supervision in exchange for the allocation of the funds derived from the industry charge to this single organization, the Court noted the need for transparency and accountability regarding the use of the revenues from the industry charge vis-à-vis non-members of the trade unions.

39 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 225-226. See also 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.

40 *Federal Law N.121-FZ introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organisations performing the function of “foreign agents”* adopted in July 2012 and subsequent amendments, see <[Federal Law No. 20-FZ of 07.2012.121 · Official publication of legal acts \(pravo.gov.ru\)](#)>.

41 *Law on the Transparency of Organisations Receiving Support from Abroad* adopted in 2017.

42 See <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2023\)024-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)024-e)>.

43 The Explanatory Statement refers to the objective of ensuring the “openness” and “publicity of activities” of non-profit organizations, including subdivisions of foreign non-profit non-governmental organizations.

44 CJEU, *Commission v. Hungary* Case C-78/18, 18 June 2020, paras. 86-87.

45 See e.g., ODIHR-Venice Commission, *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*, [CDL-AD\(2018\)006-e](#), para. 36.

46 See e.g., European Court of Human Rights, *Partidul Comunistilor (Nepeceristi) 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, where the Court has specifically 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*”; see also Court of Justice of the European Union (CJEU), *Commission v. Hungary* Case C-78/18, 18 June 2020, para. 91, where the CJEU also underlined the need to establish “*a genuine, present and sufficiently serious threat to a fundamental interest of society*”;⁴⁶ and 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. See also e.g., ODIHR-Venice Commission, *Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure*

32. In general, legislation on “transparency” or publicity of associations receiving funding from abroad or so-called “foreign agents” legislation pose serious threats to the reputation, functioning or even existence of associations in a country and are harmful for the civil society sector as such. The broad definitions used in such laws, coupled with the stigma associated with the special status for associations receiving foreign funds and the often quite burdensome registration, labelling, reporting, accounting and publication/disclosure requirements, as well as oversight, inspections and sanctions in case of non-compliance, constitute undue restrictions to the exercise of the right to freedom of association and other human rights. International and regional human rights monitoring mechanisms have all raised alarms against such legislation or legislative initiatives that aim to target associations funded from abroad,⁴⁷ given their impact of such laws on civil society more generally.

3.1.2. Absence of Demonstration of Ineffectiveness or Gaps of the Existing Legal Framework and Absence of Impact Assessment

33. From the Explanatory Note, it does not appear that the authorities have carried out a proper assessment of the existing legal framework to determine whether the stated goal could be achieved by other less intrusive means, including by strengthening existing obligations, whether provided for by law, including financial or tax-related ones, or practices which exist on a voluntary basis. Nor is it apparent that authorities have sought to review other existing legislation to identify potential ineffectiveness of existing provisions or gaps that, if addressed, would contribute to achieving the stated goal. As a key element of democratic lawmaking, different legislative options to address a determined (legitimate) objective should be debated and weighed up, along with their respective impacts, advantages and disadvantages, and how easy or difficult it may be to implement them.⁴⁸
34. This would have demonstrated that the drafters considered other effective alternatives and selected the least intrusive with regard to the protection of fundamental rights. Together with questions relating to necessity and the availability of such alternatives, these are important factors in the assessment of the proportionality of the proposed legislative choice (see also Sub-Sections III.3.3 and 3.4).⁴⁹
35. In addition, the Explanatory Note does not provide an in-depth assessment of the impact of the Law on the exercise of the right to freedom of association or freedom of expression

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, CDL-AD(2018)006-e, para. 36; and Venice Commission, CDL-AD(2019)002, *Report on Funding of Associations*, para. 81, where ODIHR and the Venice Commission have observed, “[a]bstract ‘public concern’ and ‘suspicions’ about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right”.

⁴⁷ See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *General principles and guidelines on ensuring the right to civil society organisations to have access to resources*, HRC/53/38/Add.4, 23 June 2023, para. 40; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *2013 Report*, /HRC/23/39, 24 April 2013, paras. 29-30; *Joint Letter* of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders regarding the Russian Foreign Agents Law and subsequent amendments, 30 November 2022; Council of Europe, *Commissioner for Human Rights* Third party intervention before the European Convention on Human Rights in Application n° 9988/13 Ecodefence. See also the various Opinions published by ODIHR for the Kyrgyz Republic, Hungary, Ukraine, Romania, among others, available at <[Legal reviews | LEGISLATIONLINE](#)>; and Venice Commission, *Report on Funding of Associations*, 18 March 2019, CDL-AD(2019)002, and several opinions.

⁴⁸ ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para 141.

⁴⁹ See 2023 [ODIHR Note](#), para. 75.

including freedom of the media or other rights, nor does it look at the potential adverse differentiated impact it may have on different genders, minorities or vulnerable groups. Additionally, there was also no indication in the Explanatory Note that the drafters considered the practical impact on organizations which face these new requirements, such as those who may not be willing to disclose their funding sources and thereby having to register as an organization under the influence of a foreign power or whether organizations would have alternatives in seeking funding through domestic sources.

36. In the absence of a proper regulatory impact assessment and meaningful consultations with civil society during the process of developing the Law, it appears that there has been no genuine attempt to assess the potential impact of its adoption.

3.1.3. References to Other Country Examples

37. **It is also important to underline that the legislation from other countries mentioned in the Explanatory Note are fundamentally different and have very distinct purpose and scope,⁵⁰ and therefore may not be relevant comparative examples to justify the introduction of the Law.**
38. **The US Foreign Agents Registration Act (FARA)⁵¹** was originally enacted in 1938 with a view to register individuals or entities acting *at the direction and control* of a foreign government and its scope was broadened in 2016 to focus on countering foreign interference in elections.⁵² 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.⁵³ In addition, the FARA was not enacted to regulate specifically civil society organizations or media representatives but any entity, non-profit or commercial, or individual acting as a legal agent on behalf of a foreign principal.⁵⁴ In contrast, in the Law, the determining criteria is the mere receipt of funding from abroad, irrespective of any evidence of direction and/or control from a foreign government.⁵⁵ Of note, the scope of the FARA has been significantly narrowed by amendments over time; it does *not* apply to news or press organisations that are not owned or controlled by a foreign entity and contains exceptions, such as for private and non-political activities, including solicitation of funds, and religious, scholastic, or scientific pursuits and requires a very high degree of control between the foreign entity and the agent.⁵⁶ Overall, it primarily focuses on the activities of lobbyists and publicity agents acting on behalf of foreign governments and individuals.⁵⁷
39. As regards the **2018 Australian Foreign Influence Transparency Scheme Act**,⁵⁸ it obliges organizations undertaking activities *on behalf of* foreign governments and foreign principals to disclose details of such activities and relationships, particularly during elections and if the organizations make statements on behalf of a foreign government,⁵⁹

50 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 27.

51 See <[Foreign Agents Registration Act | Foreign Agents Registration Act \(justice.gov\)](#)>.

52 See [22 U.S. Code § 611 - Definitions](#).

53 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 27. See also for further elaboration: Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, footnote 134.

54 *Ibid.* Venice Commission’s [Report on Funding of Associations](#), CDL-AD(2019)002, footnote 134.

55 [22 U.S. Code § 611 - Definitions](#).

56 See Venice Commission’s [Report on Funding of Associations](#), CDL-AD(2019)002, footnote 134.

57 *Ibid.* Venice Commission’s [Report on Funding of Associations](#), CDL-AD(2019)002, footnote 134.

58 [Australian Foreign Influence Transparency Scheme Act 2018. No. 63, 2018](#).

59 *Ibid.*, Section 4.

and to make some of that information public. While CSOs were initially included in the scope of the original draft Act, they were explicitly excluded in a later draft due to a last-minute amendment prior to adoption. In general, the Australian Foreign Influence Transparency Scheme Act also primarily focuses on regulation of lobbying.⁶⁰

40. In the ongoing public debate in Georgia, the recent EU Defence of Democracy Package, in particular, the Proposal for Directive establishing harmonised requirements in the internal market on transparency of interest representation carried out on behalf of third countries and amending Directive (EU) 2019/1937 is referred to as an initiative similar to the Law. The Directive’s objective is to “*introduce common transparency and accountability standards in the internal market for interest representation activities carried out on behalf of third countries*” thereby also targeting activities “on behalf” of foreign countries and not organizations merely receiving foreign funding. While a full analysis of the human rights compliance of the proposed EU Directive goes beyond the scope of this Urgent Opinion, it is noted that its scope is narrower than the Law.

3.1.4. Discriminatory Approach and Potential Impact

41. The Law introduces measures whereby organizations that receive funds from foreign powers are treated differently from organizations receiving funds that are of non-foreign origin and others, such as businesses and those that receive less than 20 % of their funding from foreign sources. Hence, the main criteria for differentiating the associations subject to new requirements under the Law is the foreign origin of their funding and other tangible or intangible assets. The Explanatory Note to the Law does not provide any objective and rational justification for such a differential treatment between the associations receiving foreign funding and other legal entities.⁶¹ The contemplated restrictive framework will thus result in unequal treatment of civil society actors.
42. It is also important to underline the potential indirect discriminatory impact that the Law may have in practice. Indeed, it will likely primarily have negative consequences on associations that do not receive public funding nor donations/contributions from domestic sources and heavily rely on contributions from abroad, including the funding from international and intergovernmental organizations. This may be the case for associations promoting human rights, for instance the rights of persons with disabilities, or those involved in service delivery (such as disaster relief, health-care provision or environmental protection), whose access to resources is important, not only to the existence of the association itself, but also to the enjoyment of other human rights by those benefitting from the work of the association. This may generally also be the case for associations whose objectives or activities may not be a priority for public funding or are not necessarily congruent with the thoughts and ideas of the majority of society or, indeed, may run counter to them, but are still protected by the rights to freedom of association and freedom of expression.⁶² Similar considerations will also concern

60 UNSW LAW Journal. 2020, Chris Draffen and Ng, Yee-Fui.: Foreign Agent Registration Schemes in Australia and the United States: The Scope, Risk and Limitations of Transparency.

61 See e.g., ODIHR and Venice Commission, [CDL-AD\(2018\)006-e, Ukraine - 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. 44; and the Expert Council on NGO Law’s [Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported from Abroad](#), para. 46. See also Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), paras. 122-127.

62 *Ibid.* [Joint Guidelines on Freedom of Association](#), para. 98.

independent media outlets, especially those representing minority voices and/or serving local communities.⁶³

43. Article 26 of the ICCPR and Article 14 and Protocol 12 to the ECHR prohibit all forms of discrimination understood as a differential treatment without objective and reasonable justification, meaning those that lack a legitimate aim, necessity and proportionality.⁶⁴
44. The CJEU expressly held that “*differences in treatment depending on the national or ‘foreign’ origin of the financial support in question [to associations and foundations from another Member State or third country], and therefore on the place where the residence or registered office of the natural or legal persons granting the support is established, constitute indirect discrimination on the basis of nationality*”.⁶⁵ As also underlined in previous ODIHR-Venice Commission joint opinions, the mere foreign origin of the funding of an association does not by itself constitute a legitimate reason for a differentiated treatment.⁶⁶ The UN Human Rights Council’s Resolution 22/6 on protecting human rights defenders urged States to ensure that “*restrictions are not discriminatorily imposed on potential sources of funding*”, and that “*no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto*”.⁶⁷ Without further justification for introducing such a difference in treatment, this would appear contrary to the prohibition on discrimination enshrined in international instruments.⁶⁸
45. The issue of discriminatory treatment of certain categories of associations/organizations on the basis of the foreign origin of their funding also needs to be analysed from the perspective of sectoral equity, meaning **that measures that apply to associations should not be more exacting than those generally applicable to business or**

63 *Ibid.* [Joint Guidelines on Freedom of Association](#), para. 182, and Access to Resources, para. 47. See also UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022 dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments](#), pp. 3 and 7, where the UN Special Rapporteur noted specifically the “disproportionate impact [of foreign agents legislation] on civil society organizations, especially those advancing human rights, democracy, accountability and the rights of marginalized groups, which are often highly dependent on foreign funds to support their activities”⁶³ as well as the “particularly acute chilling effect of the designation of ‘foreign agent’ of human rights defenders, activists and civil society organizations, including those protecting and promoting the rights of LGBTI+ persons.”

64 See e.g., [ODIHR Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region](#) (2019), para. 56. See also e.g., European Court of Human Rights, [Zhdanov and Others v. Russia](#), no. 12200/08, 16 July 2019, para. 178, on different treatment of and refusal to register associations, where the Court has considered that a difference of treatment of persons in relevantly similar situations “is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised”. See also CJEU, [Commission v. Hungary](#) Case C-78/18, where the CJEU considered that the “differences in treatment depending on the national or ‘foreign’ origin of the financial support in question, and therefore on the place where the residence or registered office of the natural or legal persons granting the support is established, constitute indirect discrimination on the basis of nationality [...] inasmuch as they establish differences in treatment which do not correspond to objective differences in situations” and concluded that “Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations”. See also e.g., Venice Commission, Hungary - [Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), CDL-AD(2017)015, paras. 33-34.

65 CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 62.

66 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 33; [Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#), CDL-AD(2013)030, para. 54, referring as a comparison to European Court of Human Rights, [Moscow Branch of the Salvation Army v. Russia](#), no. 72881/01, 5 October 2006, paras. 81-86, where the Court was reluctant to accept the foreign origin of a non-commercial organisation as a legitimate reason for a differentiated treatment. See also Venice Commission, [Russian Federation - 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”](#), CDL-AD(2021)027, para. 34.

67 A/HRC/RES/22/6, 21 March 2013, paras. 5 and 9.

68 See ODIHR and Venice Commission, [Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#), CDL-AD(2013)030, Section 3. In this respect, as the Joint Guidelines note, “while the foreign funding of non-governmental organisations may give rise to some legitimate concerns, regulations should seek to address these concerns through means other than a blanket ban or other overly restrictive measures”; see ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 219.

commercial entities.⁶⁹ As underlined in the ODIHR-Venice Commission Joint Guidelines on Freedom of Association, associations should not be required to submit more reports and information than other legal entities, such as businesses; equality between different sectors should be exercised.⁷⁰

46. In light of the above, **since the Law lacks proper justification for the difference in treatment on the basis of the mere foreign origin of the funding, it would likely be considered as being discriminatory.**

3.2. Scope of the Law

47. Article 2 of the Law refers to four types of organizations falling within its scope, namely, “a non-entrepreneurial (non-commercial) legal entity” with a number of exceptions⁷¹ mentioned in the Law, a broadcasting company, a legal entity owning a print media outlet and a legal entity owning or using an Internet domain and/or Internet hosting for Internet media. Such organizations will be viewed as ones pursuing the interest of a “foreign power” if 20 % of their total non-commercial income in a calendar year comes from a so-called “foreign power”.⁷² It is clear from this provision that the Law is not specifically directed at political parties.
48. The Law automatically links the foreign or international source of income to the pursuit of the interest of a “foreign power”. This seems arbitrary, as the fact that an organization receives funding from a particular non-Georgian entity cannot by itself indicate that it is pursuing that entity’s interests (or any foreign interest) or that an organization pursues certain interests only due to the foreign funding it receives for it . As underlined in the ODIHR-Venice Commission Joint Opinion on the Draft Law of Republika Srpska, the assumption “*that the mere receipt of funding by non-profit organisations or other forms of assistance from abroad triggers a presumption of some forms of influence or control of the work of the recipient by the donor, [...] is not justified.*”⁷³
49. Moreover, the Law creates a new category of legal entity, namely an “*organization pursuing the interest of a foreign power*” requiring it to be registered separately, in addition to any already existing registration requirements, and subject to additional financial annual reporting, public disclosure requirements and monitoring by public authorities. Such a qualification and additional obligations are based upon the mere receipt of at least 20% of their total income coming from foreign powers. Hence, the Law introduces restrictions directly linked to the receipt of funding and other resources from foreign and international sources, which is protected by the right to freedom of association. As underlined above in Sub-Section 3.1.4, the mere foreign origin of the funding of an association does not by itself constitute a legitimate reason for a differentiated treatment.

69 See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, [A/HRC/23/39](#), para. 24.

70 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), paras. 156 and 225.

71 The exceptions are those non-entrepreneurial (non-commercial) legal entity founded by an administrative body, national sports federations of Georgia provided in the *Law of Georgia on Sports* or blood banks provided in the *Law of Georgia on Quality and Safety of Human Blood and its Components*.

72 Article 3 of the Law defines a “foreign power” as “a) a constituent entity of foreign country’s state system; b) an individual who is not a citizen of Georgia; c) a legal entity not established under the legislation of Georgia; d) such an organizational formation (including a foundation, association, corporation, union, other type of organization) or other type of association of persons, which is created on the basis of the law of a foreign country and/or international law”.

73 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 27.

50. The term “foreign power”, due to the breadth of its meaning, would also encompass “international organizations”. For example, organizations receiving funding from the United Nations for relief or development activities would also qualify as a representative of interests of foreign power. As underlined in the ODIHR Note, referring to Venice Commission’s Report on Funding of Associations, “[b]y 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.”⁷⁴
51. Article 1 (2) of the Law prohibits restriction of the activities of the organizations falling within the scope of the Law. While this is in principle welcome, this does not mitigate the risk of disproportionate interference the Law may have with the essence of the exercise of the rights to freedom of association and freedom of expression and of the media. This is especially so since the new registration and reporting obligations, and monitoring by public authorities, may trigger additional expenses and commitments of resources that divert an organization’s resources from the implementation of their activities. This may even endanger their very existence, especially when associations or media actors have to make a choice between either refusing part of foreign funding or being subject to new restrictions or obligations linked to the receipt of foreign funding, and facing the consequences of the subsequent allocation of resources to meet the new requirements. Such requirements can especially adversely impact associations promoting human rights or those involved in service delivery (such as disaster relief, health-care provision or environmental protection), or small media online outlets with limited institutional and financial capacity, for whom access to resources is important, not only to their existence itself, but also to the enjoyment of other human rights by those benefitting from the work of the association⁷⁵ as well as from pluralism of the media sources. These obligations also run the risk of having a stigmatizing effect, even when seemingly neutral on its face, especially when other associations are not required to register as an “organization pursuing the interest of a foreign power”. The consequences of adopting obligations of this nature could force organizations to choose between continuing their work while accepting foreign funding and the burdens and stigma associated with the label “organization pursuing the interest of a foreign power”, or significantly reducing their activities due to insufficient domestic funding or a complete lack thereof.
52. **The introduction of new obligations imposed on associations linked to the receipt of funding (money or other tangible goods) from foreign ‘powers’ constitutes limitations to the exercise of the right to freedom of association.** While such limitations do not directly prohibit the receipt of certain funding, the Law will inevitably restrict organizations’ ability to seek, receive and use resources, which as noted is a core aspect of the right to freedom of association. As such, the new registration, reporting, public disclosure and other obligations introduced by the Law, must comply with the strict requirements imposed by international human rights standards and the following sections elaborated further on the compliance with the principles of legality, necessity and proportionality.

74 See 2023 ODIHR Note, para. 63; see also Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), para. 98.

75 UN, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, para 9.

3.3. Registration and Public Disclosure of Information

53. Article 4 (1) of the Law describes the process for the registration as an “organization pursuing the interest of a foreign power”. In order to register, the said organization should fill out an application in electronic form, in line with the format established by the Minister of Justice Georgia, and submit it to the respective appointed body overseeing this process. This form should contain general information such as the identification data of the applying entity, and their residence address and webpage. It should also contain information about the source, amount and purpose of any monetary and other tangible benefits received by this organization during previous calendar year, along with the information on the amount and purpose of the funds spent in that time period.
54. It is assumed that some provision of information about sources and amounts of any monetary and other tangible income (or revenue), in addition to those from “foreign powers”, would be needed to assess whether the 20% threshold to register has been met. At the same time, there appears to be no justification for requiring information on the *purpose* of all single income, whether Georgian or from “foreign powers”. It also does not seem relevant for the body to be informed of the amount and purpose of the funds spent in the preceding calendar year. This information is not necessary to determine whether the entity making the application has passed the 20% threshold. It is questionable whether authorities should have access to information on how the funds are allocated by an organization and for which activities and what the need is for this information, if the mere objective is ascertaining which organizations receive at least 20 % of their income from sources outside of Georgia.⁷⁶
55. The requirement to inform the designated body about the purpose of either income or expenditure, whether from Georgian or non-Georgian sources, seems to imply that a broad monitoring exercise would be undertaken, which is fundamentally inconsistent with the freedom of associations to pursue their lawful objectives and activities. In addition, it is also inconsistent with the presumption in favour of the lawfulness of the activities of associations as underlined in Principle 1 of the ODIHR-Venice Commission Guidelines on Freedom of Association.⁷⁷
56. By contrast, regarding certain specific types of associations, in particular, political parties, in light of the fact that they perform essential democratic functions, the regulation and public disclosure of the source of funding and the identity of the donors is justified.⁷⁸ There could also be a legitimate need to ensure transparency of media ownership, in particular in the broadcasting sector, but this type of media regulation should never be limited to the outlets receiving foreign funding, while excluding those with domestic owners and should be construed in line with the established international standards.
57. The requirement to provide state authorities and/or the public with information on funds received and how they are spent may also be legitimate in the case of public funding allocated to associations. Some “public disclosure obligations” can be imposed on associations in relation to information on how the public funds obtained by the

76 Expert Council on NGO Law, [Opinion on the Law of Georgia on Transparency of Foreign Influence](#), adopted by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, 15 May 2024, paras 108-111.

77 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), Principle 1 (para. 26). See also 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, para. 67, which states: “The activities of NGOs should be presumed to be lawful in the absence of contrary evidence”.

78 See ODIHR and Venice Commissions, [Guidelines on Political Party Regulation \(2nd ed., 2020\)](#), para. 207-231.

association concerned are spent, but even in this case should not be extended to all financing, including from private donors. However, any such reporting requirements should not impose an undue and costly burden on associations and, at the very least, should be proportionate to the level of public support received.

58. The obligations contemplated in the Law apply to all “organizations pursuing the interest of a foreign power”, irrespective of their size and scope of operations, and appear *prima facie* burdensome and costly, especially taking into account the already existing obligations. As underlined in the Guidelines on Freedom of Association, “[t]he state shall not require but shall encourage and facilitate associations to be accountable and transparent”. Accordingly, the public authorities could further encourage self-declaratory practices of informing the public of their sources of funding.
59. When reading Article 4 together with Article 5 of the Law, all the information contained in the application and other undefined “relevant documents”, would become publicly accessible and will be published on a website. Such extensive public disclosure requirement runs the risk of unduly interfering with the right to respect for private life protected under Article 17 of the ICCPR, Article 8 of the ECHR and Article 7 of the Charter of Fundamental Rights of the EU, of members, founders, donors and potentially beneficiaries, as well as the right of the association to protect legitimate business confidentiality.⁷⁹ Moreover, regardless of whether reporting and/or disclosure obligations follow a legitimate aim or not, there is no apparent “pressing need” for the public to obtain detailed information with respect to private funding sources of the activities of all associations receiving funding from foreign or international sources, that are *prima facie* legitimate sources. Much less intrusive disclosure rules could be designed, for example, requiring only the publication of anonymous data or total figures.⁸⁰
60. Public disclosure obligations of receipt of foreign funding also **runs the risk of stigmatizing the recipient organization** even if not using a labelling requirement or using a more neutral terminology than the wording “foreign agent”, as in this case has been opted for as the Venice Commission has observed, “*public disclosure obligations of receipt of foreign funding were often designed to subject associations receiving such funding to public opprobrium and to increase the difficulties for the organizations in achieving their intended work. On occasion, they have even been accompanied by smearing campaigns against associations which receive foreign funding*”.⁸¹ Regarding the imposition of a more neutral label of “*organisation receiving support from abroad*”, the Venice Commission concluded that “*in the context prevailing in [the country], marked by strong political statements against associations receiving support from*

79 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), paras. 228 and 231, which state: “*the right to privacy applies to an association*” (para. 228) and “[l]egislation should contain safeguards to ensure the respect of the right to privacy of the clients, members and founders of the associations, as well as provide redress for any violation in this respect” (para. 231). See also CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 128, where the CJEU held that “*such data falls within the scope of the protection of private life guaranteed in Article 7 of the Charter of Fundamental Rights of the EU.*” See also 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, para. 64, which states: “[a]ll reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality”. See also Council of Europe, [Fundamental Principles on the Status of Non-governmental Organisations in Europe](#) and Explanatory Memorandum, para. 67, which provides: “[...] reporting requirements must be tempered by other obligations relating to the respect for privacy and confidentiality. In particular, a donor’s desire to remain anonymous must be observed. The respect for privacy and confidentiality is, however, not unlimited. In exceptional cases, the general interest may justify that authorities have access to private or confidential information, for instance in order to combat black market money transfers. Any exception to business confidentiality or to the privacy and confidentiality of donors, beneficiaries and staff shall observe the principle of necessity and proportionality”.

80 See e.g., ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 67.

81 See Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), para. 85.

*abroad, this label risks stigmatising such organisations, adversely affecting their legitimate activities and having a chilling effect on freedom of expression and association”.*⁸²

61. The qualification “organization pursuing the interest of a foreign power” although not as pejorative as “foreign agent” is still problematic as it also implies that organizations receiving funding from foreign sources act as the representatives of “foreign power(s)” and in their interests, irrespective of the activities pursued and/or any official authorization from such powers. In practice, this may impact their actual operation and exercise of their legitimate activities, as it may discredit their activities in the eyes of others, including their beneficiaries and the public,⁸³ and may cause safety and security risks for them and their beneficiaries, among others.
62. **In light of the foregoing, the extensive registration and public disclosure obligations envisaged in the Law, besides not pursuing a legitimate objective nor attesting to a particular necessity, are disproportionate and may also unduly impact the rights to privacy of the donors and beneficiaries, in addition to the right to associational privacy.**

3.4. Reporting Requirements

63. Article 6 requires financial declarations to be submitted by the designated organizations on an annual basis. These should, contain the information listed in Article 4 (3) of the Law, thus the information that is required for the registration application. The declarations would have to be completed electronically, under a procedure and in a form prescribed by the Minister of Justice, and then submitted to the designated body. There would then be a period of 30 working days within which the authorised person of the Ministry of Justice could request “*the necessary information, including the data listed under Article 3 (b) of the Law of Georgia on Personal Data Protection, other personal data, and information containing confidential data (except for the state secrets as prescribed by Georgian legislation)*” and seek any incorrect and/or incomplete completion of the statement.
64. As mentioned above, even for the purpose of registration, and even if the process as such appears to be a mere administrative requirement, the level of details and types of information required appear unnecessary for the stated purpose as well as burdensome and costly, especially for smaller organizations. This could in turn severely deplete their capacity to engage in their core activities. Furthermore, in the case of *Ecodefence and Others* the ECtHR established that the introduction of the labelling as a “foreign agent” for certain organisations, along with onerous auditing and reporting obligations, excessive and arbitrary fines, subjected organisations to measures that were not necessary in a democratic society.⁸⁴
65. The Joint Guidelines on Freedom of Association provide that reporting requirements, where these exist, should be appropriate to the size of the association and the scope of its

⁸² See Venice Commission, [CDL-AD\(2017\)015](#), *Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, para. 65.

⁸³ See Venice Commission, CDL-AD(2019)002, *Report on Funding of Associations*, para. 59. See also e.g., Venice Commission, [CDL-AD\(2017\)015](#), *Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, para. 65.

⁸⁴ See e.g., European Court of Human Rights (ECtHR), *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 160 and 170.

operations.⁸⁵ It is noted that “[e]xcessively burdensome or costly reporting obligations could create an environment of excessive state monitoring which would hardly be conducive to the effective enjoyment of freedom of association.”⁸⁶ To assess the proportionality of the proposed new reporting requirements, it is also important to look at the overlap of additional reporting obligations with other already existing reporting obligations (whether they are of a fiscal nature or otherwise).⁸⁷

66. It is not evident why any personal data should be required to shed light on whether an entity has been pursuing the interest of a foreign power in the sense defined by Article 2. Moreover, the type of personal or confidential information that may be requested appears overly broad, and may potentially include sensitive information about the donors or beneficiaries or other information covered by attorney-client privilege, or by commercial or bank secrets. Requiring the provision of any such data appears irrelevant and it would be interfering with the right to respect for private life of those individuals who would be affected.
67. The extent of the information also requires the organizations to be equipped with the necessary legal, financial and administrative support, and allocate time to collect this information. If the organizations provide any information that is incorrect or incomplete, the body in charge of the review has broad discretion to request resubmission. However, what would account for incomplete or incorrect is unclear. The procedures could risk becoming lengthy and costly audits on organisations.
68. **The parallel reporting obligations and their cumulative impact are excessive. The authorities should also clearly delineate reporting obligations from disclosure obligations, the latter of which are generally for the public. The Law does not sufficiently define the criteria based on which the Ministry of Justice will determine the exact rules for the proposed reporting requirements, which only adds to the Law’s lack of legal certainty and does not appear to meet any legitimate need or be proportionate to the stated purpose of the Law.**

3.5. Powers of the Monitoring Authority

69. Article 8 of the Law provides that in order to identify an “organization pursuing the interest of a foreign power” or verify compliance with any of the requirements of the Law, the Ministry of Justice of Georgia shall be authorized to conduct an appropriate examination and study of the issue at any time, by decision of the authorized person or an application submitted to the Ministry of Justice by any entity or person. There is not much detail as to the form that the monitoring would take, other than that the relevant authorised person of the Ministry of Justice being entitled “*to request the necessary information, including the data listed under Article 3(b) of the Law of Georgia on Personal Data Protection, other personal data, and information containing confidential data (except for the state secrets as prescribed by Georgian legislation)*”. The process by which this information or data is to be sought is to be established by the Minister of Justice.

85 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association \(2015\)](#), para. 225.

86 See ODIHR and Venice Commission, [CDL-AD\(2018\)006-e, Ukraine –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. 40](#).

87 See e.g. Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, para. 111.

70. Principle 1 of the Joint Guidelines on Freedom of Association enshrines the presumption in favour of the lawful formation, objectives, and activities of associations. As underlined by ODIHR and the Venice Commission in previous joint opinions, “*states have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation*”, but they must do so “*in a manner compatible with their obligations under the European Convention*” and other international instruments, meaning that “*state bodies should be able to exercise some sort of limited control over non-commercial organisations’ activities with a view to ensuring compliance with relevant legislation within the civil society sector, but such control should not be unreasonable, overly intrusive or disruptive of lawful activities.*”⁸⁸
71. The provision for monitoring in the Law is defined in a manner that could be used, in practice, to excessively interfere with and hinder the exercise of the right to freedom of association. Moreover, similar to the registration and deregistration provisions, the Ministry of Justice enjoys a broad discretion when carrying out the research and study. The Ministry also has the right to seek the necessary information, including any personal or confidential data, including sensitive personal information, except for state secrets.
72. **The width of the power to request information could allow for significant intrusion in the activities of any associations and media actors, regardless of whether they have been registered under Article 4 or not.** This is because the outcome of monitoring could be a requirement for an entity to be requested to register as an organization defined by Article 2. This means that they need not be registered when the monitoring is undertaken. In effect, the monitoring power would provide a means of monitoring any and every association or media actor as long as it does not come within the exceptions provided in Article 2 (1) (a) of the Law.
73. The possibility of searching or requesting any personal data, including confidential data is of doubtful relevance for the purpose of determining whether particular entities are pursuing the interest of a foreign power. Especially, the provision as amended during the third reading specifically allows the monitoring body to request sensitive personal data mentioned in Article 3(b) of the Law on Personal Data Protection - such as on the ethnic origin, political views, religious or other beliefs, status of trafficking or domestic violence victim – that are irrelevant to the purpose of the Law.⁸⁹ As stated in Article 6 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), to which Georgia is a State Party,⁹⁰ “[p]ersonal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards”. Indeed, such data are especially sensitive and should in principle require additional safeguards seeing the risks that the processing of sensitive data may present for the interests, rights and

88 See ODIHR and Venice Commission, [CDL-AD\(2018\)006-e](#), *Ukraine – 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. 40](#).

89 As per Article 3(b) of the [Law on Personal Data Protection](#): “data connected to a person’s racial or ethnic origin, political views, religious, philosophical or other beliefs, membership of professional unions, health, sexual life, status of an accused, convicted or acquitted person or a victim in criminal proceedings conviction, criminal record, diversion, recognition as a victim of trafficking in human beings or of a crime under the Law of Georgia on the Elimination of Violence against Women and/or Domestic Violence, and the Protection and Support of Victims of Such Violence, detention and enforcement of his/her sentence, or his/her biometric and genetic data that are processed to allow for the unique identification of a natural person”.

90 See Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 108), 28 January 1981, which entered into force in Georgia on 1 April 2006.

fundamental freedoms of the data subject, notably a risk of discrimination.⁹¹ Accordingly, the processing of such sensitive data should be approached with extremely high caution.

74. The possibility of instituting the monitoring process depends on a decision of the authorized person in the Ministry of Justice or anyone else making a written application to that person. There is, however, no criteria or specification of evidential standard for the institution of the process other than that the decision or the application must relate to “a specific organization pursuing the interest of a foreign power”.
75. **As it stands, the present provision would potentially allow vexatious and ill-intentioned claims to be made about certain associations or media actors, potentially subjecting them to intrusive although unwarranted investigation into their activities.** It must also be noted as for the discretionary powers accorded to the Ministry of Justice in establishing the procedures, that regarding the Russian “Foreign Agents Law”⁹² as amended, the UN Special Rapporteur noted with concern that “*the unchecked ministerial discretion to dictate the criteria, methods and conditions for NGO registration (articles 5 and 6) may give rise to the discriminatory and disproportionate targeting of NGOs and human rights defenders, particularly those with critical or dissenting views from the Government or working on what are perceived to be politically sensitive issues*”.⁹³
76. Monitoring is to be “allowed only once every 6 months”. Although introducing a limit on the possible frequency of the monitoring, it does not provide for a maximum duration of such monitoring, which may lead in practice to a process that could potentially be of continuous nature. Moreover, given that the criteria for becoming an organization falling within the scope of the Law is based on the annual income, the possibility of monitoring occurring every 6 months would appear not justified and excessive.
77. **Based on the above, the provision on monitoring and the powers of the monitoring authority are broadly defined and appear excessive, potentially leaving room to arbitrary, and potentially discriminatory, interpretation and application.**

3.6. Liability and Sanctions

78. Article 9 of the Law allows for imposition of liability for (i) evasion of registration, (ii) failure to submit a financial declaration, (iii) failure to fill out the electronic application form for registration, (iv) failure to correct or complete applications and annual financial declarations (v) failure to request registration following the outcome of the monitoring

91 Although Georgia has not yet signed nor ratified [Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#) (CETS No. 223) which aims at further enhancing personal data protection mechanisms, proposed new Article 6(1) and (2) of the Convention 108 underlines such risks; in addition, the See [Explanatory Report – CETS 223 – Automatic Processing of Personal Data \(Amending Protocol\)](#), 10 October 2018, further provides examples of the types of additional safeguards that could be considered alone or in combination regarding the handling of such sensitive data, including the data subject’s explicit consent, a law covering the intended purpose and means of the processing or indicating the exceptional cases where processing such data would be permitted, a professional secrecy obligation, measures following a risk analysis. Risk assessment prior to processing should assess whether data are protected against unauthorised access, modification and removal/ destruction and should seek to embed high standards of security throughout the processing; such an assessment should be informed by considerations of necessity and proportionality, and the fundamental data protection principles across the range of risks including physical accessibility, networked access to devices and data, and the backup and archiving of data; see Convention 108, [Guidelines on the Protection of Individuals with regard to the Processing of Personal Data by and for Political Campaigns](#) (2021), para. 4.3.5

92 Federal Law No. 121-FZ dated 20 July 2012 (“Foreign Agents Law”) as amended.

93 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022](#) dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 6.

process (vi) failure to provide information requested by the authorized official of the Ministry of Justice. The penalties in respect of (i) and (ii) are 25,000 GEL (8,600 EUR) and those for (iii)-(v) are 10,000 GEL (3,440 EUR), although continued failure after the imposition of the fines for (iii)-(v) concerned after one month can lead to repeated fines of 20,000 GEL (6880 EUR); the penalty in respect of (vi) is 5,000 GEL (1,720 EUR). Any appeal is not suspensive (Article 9 (8)).

79. In light of the observations in the previous sections that the Law does not pursue a legitimate objective as reflected in international human rights instruments, nor attests to a particular necessity, and unduly impacts the right to association and right to privacy, among others, the imposition of fines would only further aggravate the infringement of these rights.
80. In any case, even assuming imposing fines could be justified, these sanctions must always be consistent with the principle of proportionality, that is, they must be the least intrusive means to achieve the desired objective and their proportionality must be ensured. Imposition of even the minimum fine could be disproportionate if the breach concerned is not a particularly significant one, such as the unintentional submission of inaccurate information in the application. In this respect, the Joint Guidelines on Freedom of Association emphasized that when there is a breach of a legal requirement, the first response should be to request rectification of the omission and a fine or other small penalty should only be issued at a later date, if appropriate.¹
81. Compared to the average monthly nominal earnings in Georgia,⁹⁴ the amount of the contemplated sanctions corresponds to four to ten times the average monthly wages, which is clearly disproportionate. When assessing the proportionality of the sanctions, the ECtHR has looked at the nature, essentially regulatory, of the offences and compared the amounts with the monthly minimum salary (thirty to thirteen times), and concluded that such fines were liable to become an instrument for suppressing dissent, as it was the case in the Russian Federation, and could not be deemed proportionate.⁹⁵ Even in cases where the amounts of the fine⁹⁶ to the average gross monthly salary in Republika Srpska,⁹⁷ were ranging from 0.5 to 2.5 average monthly salaries, ODIHR and the Venice Commission have concluded that “*the range of fines that could be imposed could well be especially problematic for some entities treated as NPOs, especially if they have a small funding base*”.⁹⁸
82. The Law, whilst providing that proceedings can be initiated against an administrative offence based on the liability provisions, lacks provisions guaranteeing access to effective remedies in order to challenge or seek review of decisions taken in the context of its implementation that may infringe the right to freedom of association and freedom of expression.

94 GEL 2044.5 in the last quarter of 2023, see <[Wages - National Statistics Office of Georgia \(geostat.ge\)](https://www.geostat.ge/)>.

95 European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 181-185.

96 BAM 1,000 (approximately €511) to 5,000 (approximately €2,556).

97 For March 2023, the average gross monthly wage amounts to BAM 1910, see [Institute of Statistics - Republika Srpska \(rzs.rs.ba\)](https://www.rzs.rs.ba/).

98 See ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 72.

4. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING THE LAW

83. OSCE participating States have committed to ensure that legislation will be “*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*” (1990 Copenhagen Document, para. 5.8). Moreover, key commitments specify, “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1). As emphasized in the Joint Guidelines on Freedom of association:

*“Associations and their members should be consulted in the process of introducing and implementing any regulations or practices that concern their operations. They should have access to information and should receive adequate and timely notice about consultation processes. Furthermore, such consultations should be meaningful and inclusive, and should involve stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made. The authorities responsible for organizing consultations should also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected.”*⁹⁹

84. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically recommends to states to “*Meaningfully engage with civil society organizations when adopting any measures affecting their right to seek, receive and use funding*”.¹⁰⁰ In their statement of 15 May 2024, several UN experts, noted that “*...even in light of clear opposition by a significant segment of Georgia’s people, the law was expedited through Parliament with media and civil society representatives denied access to the proceedings,*” and that they “*...are seriously concerned at the speed of deliberations in Parliament, which appear to have taken place without inclusive, transparent and genuine consultations with civil society, society at large and opposition parties ...*”.¹⁰¹
85. It is concerning that a Law of this nature, touching upon core human rights obligations, has been rushed at certain core parts of the legislative process, and in a manner that does not do justice to the weight of this legislative initiative. It is recommended to the legal drafters to ensure that legislative initiatives impacting the right of associations to seek and receive resources, including from abroad, are not only subjected to inclusive, extensive and effective consultations, including with civil society and representatives of various communities, offering equal opportunities for women and men to participate and that sufficient time is provided for a meaningful parliamentary debate, but also to ensure that a proper feedback mechanism is in place. The concerns pertaining to the deficiencies in the processing of this Law are only exacerbated by the apparent lack of a regulatory impact assessment (see Sub-Section 3.1.2). Further, as an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the said

99 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015) para. 106.

100 See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2022 Report on [Access to resources, A/HRC/50/23](#), 10 May 2022, para. 64(f) and supplementary guidelines: *General principles and guidelines on ensuring the right to civil society organisations to have access to resources*, HRC/53/38/Add.4, 23 June 2023, para. 29.

101 <https://www.ohchr.org/en/press-releases/2024/05/georgia-un-experts-condemn-adoption-law-transparency-foreign-influence>

amendments and their impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Law, if promulgated in amended form.¹⁰²

86. ODIHR remains at the disposal of the authorities for further assistance in this matter, especially with respect to the identification of possible legislative or other alternatives to address genuine, concrete concerns that correspond to the legitimate aims provided by international human rights law.

[END OF TEXT]

¹⁰² See e.g., See ODIHR, [Guidelines on Democratic Lawmaking for Better Laws](#) (2024); see also OECD, *International Practices on Ex Post Evaluation* (2010).