

BRIEFER

Analysis of the Draft Law of Georgia on Transparency of Foreign Influence¹

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In February 2023, a group of parliamentarians introduced the draft Law of Georgia on Transparency of Foreign Influence #07-3/293; 14.02.2023 (the Draft Law) to the Georgian parliament. ICNL and ECNL prepared an Analysis of its compliance with international law and European standards (Analysis). Under the Draft Law, non-entrepreneurial (non-commercial) legal entities (NNLEs)² and broadcasters, owners of print media outlets, owners, or users of internet domains (mass media) receiving funding or other material support from foreign powers (foreign support) are to be called “agents of foreign influence” (hereinafter referred to as “FAs”), if such support constitutes over 20% of their total revenue in the previous year. The Georgian translation of the term “agent of foreign influence” carries a negative connotation and is usually interpreted as a synonym for a “foreign spy.” Further, the Draft Law introduces several new burdensome obligations on NNLEs and mass media receiving foreign support, expands the supervisory powers of the Ministry of Justice (MoJ) over all NNLEs and mass media, and introduces harsh penalties for violation of the Draft Law’s requirements. Many international and Georgian organizations expressed concern that, if adopted, the Draft Law will be damaging to Georgia civil society and will have a negative impact on Georgia’s European Union (EU) accession. Even more importantly, it will also harm the most vulnerable groups in Georgian society, such as people with disabilities, as they may be deprived of important social services and other critical support provided by civil society. Ultimately, civil society and independent mass media, which are crucial to preservation of democracy in Georgia, will be substantially weakened.

The Analysis shows that many Draft Law provisions are not compliant with Georgia’s obligations under international law and with EU standards.

As a signatory to the European Convention on Human Rights (ECHR) and the International Covenant on Civic and Political Rights (ICCPR), if the Draft Law is adopted, Georgia will fail to comply with Article 11 of the ECHR and Article 22 of the ICCPR on freedom of association and assembly; Article 14 of ECHR and Article 26 of the ICCPR on prohibition of discrimination; and potentially, Article 8 of the ECHR and Article 17 of the ICCPR on right to respect for private and family life. The draft law will violate its obligations under these treaties by:

- imposing limitations on the activities of NNLEs by requiring them to label themselves (therefore stigmatizing them) as FAs, thus limiting their access to funding support; imposing burdensome registration and reporting requirements; exposing them to unlimited government inspections and establishing harsh penalties for violations;

¹ Full Analysis is available at <https://www.icnl.org/post/analysis/draft-law-of-georgia-on-transparency-of-foreign-influence>.

² NNLE is the most common form of NGO in Georgia.

- establishing discriminatory treatment of NNLEs and mass media through burdensome requirements on NNLEs and mass media that receive foreign funding, but not applying the same treatment to individuals or other entities that also receive foreign funding; and
- requiring public access to personal data of NNLEs and mass media, as well as authorizing the MoJ to search for any necessary (as determined by the MoJ) information including personal data, which may be exposed to the public.

As with NNLEs, the Draft Law restricts activities of mass media and journalists by stigmatizing those who receive foreign funding, undermining the public's trust in such mass media, as well as restricting their access to financial resources and preventing them from carrying out their activities. Such approach contradicts the European Media Freedom Act, adopted by the European Commission in December 2022, which highlights the importance of independent mass media in the EU.

Further, the provisions of the Draft Law are in violation of the several EU laws, including the Treaty on the Functioning of the European Union (Article 63) and the Charter of Fundamental Rights of the EU (Articles 7, 8, and 12), creating additional obstacles for Georgia's EU accession. On June 18, 2020, the European Court of Justice (ECJ) ruled that Hungary's Law on Transparency of Organizations Supported from Abroad (Transparency Law), which had similar provisions to the Draft Law, was in violation of EU law. As a result of the ECJ ruling, Hungary repealed the law in 2021. No other European countries have legislation similar to the Draft Law.

The Draft Law is fundamentally different from the US Foreign Agents Registration Act (FARA), which cannot be compared with legislation specifically designed to restrict NGOs and mass media. Under FARA, registration is not required simply because one receives funds from a foreign source. Rather, one must be an agent of a foreign principal, including if one acts at the direction and control of a foreign government. Many US NGOs and media organizations receive foreign grants and other support, but the US has not required them to register as foreign agents under FARA. Only about 5% of those registered under FARA are non-profit organizations, mostly branches of foreign political parties.

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