

BRIEFER¹

The Review of the [second] Draft Law of Georgia on Registration of Foreign Agents and On Amendments to the Criminal Code of Georgia

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In March 2023, a group of Members of the Georgian Parliament introduced the draft Law of Georgia “On Registration of Foreign Agents and On Amendments to the Criminal Code of Georgia” # 07-3/296/10 (the Draft Law). This is the second draft law since the beginning of 2023, designed to impose restrictions on recipients of foreign funds, introduced by the same group².

The drafters claimed that they copied the US Foreign Agents Registration Act (FARA)³, but many of the provisions of the Draft Law are used out of context and many others are simply different. The draft law will create a sprawling surveillance apparatus that will capture many ordinary Georgians, making them “foreign agents”, and subject them to burdensome reporting requirements and potential criminal prosecution at the discretion of the government. It will also significantly undermine the Georgian economy, deterring both foreign investment and Georgian businesses. In addition, it will provide the Georgian government with almost unlimited discretion over whom to prosecute, putting in danger independent voices, civil society watchdogs, and political opponents.

Below we listed several scenarios which would be realistic if the Draft Law is adopted.

¹ The unofficial translation into English of the Draft Law has been used for the purpose of preparing this brief. Therefore, it is possible, that there might be some discrepancies in the use of terminology or interpretation of provisions of the Draft Law.

² The draft Law of Georgia “On Transparency of Foreign Influence” #07-3/293 was introduced on February 14, 2023.

³ https://www.fara.us/assets/htmldocuments/uploads/24375_foreign_agents_registration_act_of_1938_-_secured.pdf.

1. The Proposed Draft Law Would Require the Following:

Many businesses to register as “foreign agents.”

Under the Draft Law, one must register as a “foreign agent” with the Georgian government if it is “under the control, order or request of a foreign power, acting under the control, order or request of a person directly or indirectly, in whole or in major part controlled or financed by a foreign power,..”

This means that all credit card companies and banks, including local ones, with foreign capital, would have to register as “foreign agents” as they receive funding from a “foreign power” and provide funding and loans to persons in Georgia in the interest of the foreign power (for example, an investor or a foreign bank.) Similarly, all Georgian and foreign businesses, such as McDonald’s, Carrefour, Nestle, and Samsung, registered and operating in Georgia and benefiting from foreign investments, would have to register as “foreign agents” as they provide “assets” in the interest of the foreign power. This will undermine foreign investment and seriously impede the ease of doing business in Georgia.

Many members of Parliament and other government officials to register as “foreign agents.”

Under the Draft Law, one must register as a “foreign agent” if at the “request” of a foreign individual, corporation, or other entity, s/she acts as a “political advisor”, which is defined to include “informing” another person “on the issues of Georgia’s domestic or foreign policies.” Therefore, when a foreign corporation requests that a Member of Parliament or other government official provides information about the regulatory environment for foreign investment in Georgia, if the official provides that information, s/he must register as a “foreign agent.” Similarly, a government official would need to register as a “foreign agent” if a foreigner emailed him/her a request to answer a simple question such as whether women could vote in Georgia, and they were to respond “yes”. This is also true for any ordinary Georgian as they would be acting as a “political advisor” under the Draft Law.

2. Impact:

The Draft Law would not achieve its stated objective “to ensure transparency of the foreign influence”⁴. On the contrary, it would subject a large portion of the Georgian population to potential criminal liability and expose personal data violating the privacy of many people. The Draft Law would enable government officials in charge of its

E⁴ Section a.a.a) of the Explanatory Note to the Draft Law.

enforcement to use its provisions at their own broad discretion, facilitating unwarranted harassment of people and businesses as well as corruption.

Many ordinary Georgians would need to register and meet onerous and intrusive reporting requirements.

Under the Draft Law, many Georgians would need to register as “foreign agents” because they are employed by foreign-owned companies/organizations or because they fall under other cases listed in the draft law – from an employee at branches or representative offices of foreign companies/organizations, to local officials responding to a request from a foreign corporation about how to open a shop in their community, to regular Georgian citizens who receive support from overseas. Many Georgians have received citizenship of other countries to be able to live and work there. This Draft Law would seemingly apply to them as well. If so, when they send money to their family members in Georgia, they could be considered “foreign powers” and their family members could be considered “foreign agents”.

Under the Draft Law, within 10 days of engaging in covered activity, anyone covered by the Draft Law would need to register as a “foreign agent” with the Prosecutor General of Georgia. They would then need to provide extensive and personal information that includes their address, ID number, and details about the covered activity and their relationship with the “foreign power”. They must regularly keep this information updated with the Georgian government. This information will be made available to the public on a government website. If they fail to meet these reporting requirements, they will be in violation of the law and can face criminal prosecution.

Given that so many people would have to register under the Act, the Georgian government would be overwhelmed with registration statements. This would make it difficult to focus the government’s limited resources on ensuring compliance amongst the supposed real targets of this Draft Law, such as lobbyists for foreign governments.

[The Draft Law does not address the problem.](#)

While the Draft Law would require many ordinary Georgians to register with the Georgian government and impose burdensome reporting requirements on them, it is poorly suited to address the type of nefarious foreign influence its authors claim to target. For example, a Russian spy would be exempt from registering under the proposed Act as it exempts “any foreign public official.” For example, in the US, any person employed by and representing the government would be recognized as a public official. In Georgia, this would mean that the proposed Act would seem to exempt employees of foreign governments like spies.

3. Enforcement:

The Draft Law is vaguely drafted making it impossible to comply with.

The Draft Law is vaguely drafted, making both compliance and consistent enforcement impossible. Considering an extremely broad and vaguely defined circle of persons and companies/organizations which fall under the Draft Law's requirements, people and companies would have a hard time deciding when they are supposed to register.

The Draft Law provides the government with almost unlimited discretion against whom to apply its requirements.

The Georgian government would have to establish an extremely large and expensive apparatus for its enforcement, instead of dedicating these resources to the real protection of national interests and social protection of the Georgian people. It is likely that the government would choose instead to allow its officials to implement it at their own discretion, causing unwarranted harassment of people and businesses, and corruption. In particular, the Draft Law would allow the government to selectively prosecute those who are independent voices, watchdogs, and political opponents.

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