



BRIEF¹

Georgia: Review of the Implementing Regulation to the Law of Georgia on Transparency of Foreign Influence

AUGUST 9, 2024

Introduction

On August 1, 2024, the Ministry of Justice of Georgia (MoJ) adopted the “Rule for Registration, Financial Declaration Submission, and Monitoring of Organizations Acting in the Interests of Foreign Powers” (hereafter referred to as “the Regulation”²) in implementation of the Law of Georgia on Transparency of Foreign Influence (hereinafter “the Law”³).

The Regulation governs:

- registration and cancellation of registration of organizations as “implementing organizations of foreign power” (IOFP);
- submission of financial declarations by IOFPs;
- monitoring by the MoJ of organizations that may be subject to registration or have been registered as IOFPs; and
- administrative procedure on imposing penalties on violators of the Law.

¹ The unofficial translation into English of the Regulation has been used for the purpose of preparing this Brief. The authors bring apologies for any discrepancies in the use of terminology or in interpretation of the provisions of the Regulation caused by inaccurate transliteration and/or translation.

² Order No. 1019, “Approval of the Rule for Registration, Financial Declaration Submission, and Monitoring of Organizations Acting in the Interest of Foreign Powers,” Minister of Justice of Georgia, August 1, 2024 (hereinafter referred to as “the Regulation”).

See also Order No. 1016, “Regarding the Amendment to the Order No. 134 of the Minister of Justice of Georgia (dated May 3, 2016) on Approving the Bylaw of the Legal Entity of Public Law - National Agency of Public Registry,” Minister of Justice of Georgia, July 29, 2024.

Order No. 1016 governs the establishment of a new department within the National Agency of Public Registry (hereinafter referred to as “the Agency”): the Department of Financial Declarations. The new Department is responsible for overseeing the enforcement of the requirements stipulated by the Law.

Disclaimer: This Brief does not focus on the content of Order No. 1016.

³ “Overview of the Law on Transparency of Foreign Influence and Its Impact on Non-entrepreneurial (Non-commercial) Legal Entities and Media Organizations in Georgia,” ICNL and ECNL, May 2024, at https://www.icnl.org/wp-content/uploads/05.23.2024-Georgia_Implications_of_the_FR_Law_FV.pdf.

See also The Law on Transparency of Foreign Influence (hereafter referred to as “the Law”), Parliament of Georgia, at <https://parliament.ge/legislation/28355>.

The purpose of this Brief is to provide an overview of the key provisions in the Regulation that clarify the Law and/or are of special concern to civil society organizations (CSOs) in Georgia.

OVERVIEW OF THE KEY CLARIFICATIONS PROVIDED IN THE REGULATION

The key provisions clarifying the Law include:

- The Regulation clarified that the monitoring will not begin until after the IOFP registration deadline has passed (i.e., 30 days from the enactment of the Law).
- The Regulation places the burden of proof on the MoJ to demonstrate that an organization meets the criteria for registering as an IOFP. Once the registration deadline passes, the MoJ must send a written notification to organizations within 3 days, reminding them of the registration requirement. CSOs can then challenge this in court, requesting the MoJ to explain why registration or submission of financial information is requested.
- The MoJ is required to send a *written* notification of any MoJ inspection not less than 3 days prior to the monitoring activity. Prior to the issuance of the Regulation, CSOs questioned whether inspections of organizations could be initiated and conducted without their knowledge.
 - the written notification must include a request for the provision of information necessary to determine whether the entity meets the legal requirements of an IOFP; and
- Only *written* communication between the MoJ and the monitored organization is required, and the MoJ representatives are not permitted to physically visit an organization or question the organization's employees.
- The MoJ may request only information from any person/organization that is *essential* to assess whether the monitored entity meets the legal requirements of an IOFP. In contrast, the Law stated that the MoJ could request *any* information from any individual or organization without specifying that the information had to be relevant to the inspection subject.
- The Regulation clarifies that penalties will be executed according to the general law. This means that penalized organizations' accounts can only be frozen after penalties are activated, not when inspections are initiated.

UNANSWERED QUESTIONS REGARDING THE LAW'S ENFORCEMENT

The Regulation does not address many questions raised by CSOs regarding the enforcement of the Law. Specifically:

- The Regulation does not make clear whether requirements for an IOFP are applicable to foreign organizations (i.e., branches) operating in Georgia.
- The Regulation does not eliminate the concern that information submitted in a financial declaration would infringe one's constitutional right to privacy protection: on one hand, the Regulation (Appendix 1.2) states that "*the purpose of the expenditure must be described in a way that does not disclose personal data of a special category of the individual receiving the money.*" On the other hand, the financial declaration explicitly requires personal data, for example, the name and

surname of the natural person or the name of the legal entity, the personal or identification number, and a bank account number of a natural person or legal entity - income source (Appendix 1.1). The financial declaration requires similar information to be submitted for the natural person or legal entity receiving the funds, including employees of the CSO receiving salaries and CSO beneficiaries (Appendix 1.2).

- The Regulation does not require the MoJ to verify the information contained in the written statements sent to it by third parties that could be used to initiate an inspection. Considering that the Law does not establish measures of responsibility for third parties who provide false or misleading information to the MoJ to prompt the monitoring of an organization, there is a possibility that both authorities and malicious actors will unfairly target organizations for monitoring.
- The Regulation does not provide any additional details on the monitoring process. For example, it does not specify how the MoJ will verify if 20% or more of an organization's income came from a foreign source if the organization does not cooperate and submit the declaration, how it will ensure the accuracy of the information provided in the financial declaration, or the duration of the inspection process.

Furthermore, several provisions of the Regulation exceed the official legitimate aim of the Law (“to ensure transparency of foreign influence”) and establish new restrictive rules for organizations. For example, the Regulation requires the submission of information unrelated to foreign influence. In Appendix 1.2, CSOs are required to provide information on the amount of value-added tax (VAT) included in the price of any purchased goods or services, or on income tax withheld by a CSO on the cost of aid provided by this CSO to a beneficiary, details of office expenses (costs for purchase, installation, and maintenance of stationery, office equipment, and inventory), taxes, miscellaneous expenses, losses from exchange rate differences, amongst other information.

EXTREMELY BURDENSOME REQUIREMENTS IN THE CONTENT OF THE ANNUAL FINANCIAL DECLARATION

The key provisions of concern in the Regulation relate to the extremely burdensome requirements for completion of the annual financial declaration by IOFPs.

The Regulation requires the submission of information for the financial declaration by completion of 11 forms (1.1-1.11)⁴. Each form requires an exhaustive list of details on an IOFP's income, expenditures, balance sheet, bank accounts, cash-register operations, and non-financial assets; description of real estate, vehicles, and other leased/rented property; description of liabilities, loans, and credits, and summary of concluded contracts.

For example, in Form 1.2. on “Expenses incurred during the year,” IOFPs must report expenses per type, including expenses related to labor remuneration, the purchase of goods and services, information on the transfer of material and immaterial values to individuals, expenses incurred for auxiliary activities, social security, increase in non-financial assets, decrease in liabilities, other expenses, and consumption of fixed capital. Each expense must be reported by providing information on the recipient(s) of funds (including employees of an

⁴ Form 1.12 defines the terms used in the financial declaration forms.

IOFP), including the name and surname of the natural person or legal entity, personal or identification number, and a bank account number of the natural person or legal entity, amongst other details. In addition, IOFPs must describe the purpose of each expenditure.

Form 1.1., “Income received during the year” requires IOFPs to provide similarly detailed information.

This information is not requested as sums under each category; instead, individual transactions must be recorded and detailed, with no minimum threshold for these transactions. This means that even the income and expenses of 5 GEL must be recorded separately.

Such burdensome requirements raise major concerns:

- Those CSOs who qualify as IOFPs in 2023 and who must register as IOFPs before September 2, 2024, will only have 10 working days after gaining access to the website to complete the financial declaration. Many CSOs will not be able to fulfill this requirement as they have not been required to keep such detailed records prior to the adoption of the Law and the Regulation.
- The required type and amount of information to be collected by all organizations in practice introduces new accounting rules for CSOs and media. If these organizations are subject to IOFP registration, they must track all finances based on the requirements in the financial declaration form. This requirement severely disadvantages CSOs and the media compared to companies and other legal entities in Georgia, none of which must follow such stringent accounting and reporting rules. Recording and accurately reporting such information will be extremely burdensome.
- Failure to comply with the Law’s requirements is punishable by disproportionately high penalties, much higher than penalties for failure to submit financial reporting for businesses or public officials (10,000 - 20,000 GEL for an IOFP versus 500-1,000 GEL for category 4 businesses to which CSOs have been equalized under the Law of Georgia on Accounting, Reporting and Auditing).
- All data in financial declarations are disclosed to the public, in violation of the privacy of CSOs and all individuals or companies that have engaged in a financial transaction with the CSOs, and potentially, in violation of the Constitution of Georgia, the Law of Georgia on Personal Data Protection, and the General Administrative Code of Georgia.
- IOFPs are required to disclose not only their data but also data of their donors and beneficiaries, violating their rights to privacy and disincentivizing any cooperation with IOFPs.

CONCLUSIONS

There are several provisions in the Regulation which clarify and limit the authority of the MoJ as the body assigned to enforce implementation of the Law. However, many provisions in the Law and Regulation remain vague and confusing, while penalties imposed for any alleged violation of the Law are harsh. Those CSOs who qualify as IOFPs in 2023 and who must register as IOFPs before September 2, 2024, are in an especially difficult situation as they only have 10



working days after gaining access to the website to complete the financial declaration. The implementation of the Law must be monitored closely.