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OPINION ON THE LAW OF GEORGIA "FOREIGN AGENTS REGISTRATION ACT"

Adopted by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe

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EXECUTIVE SUMMARY

This Opinion examines the compatibility with European standards protecting freedom of association and related rights of the provisions in the Foreign Agents Registration Act adopted by the Parliament of Georgia on 1 April 2025.

It first outlines the rationale claimed for adopting the Act's provisions. Thereafter, it sets out the specific requirements and arrangements that the Act establishes or would make and then assesses their compatibility with relevant European standards before concluding with an overall evaluation of them.

The Opinion finds that the measures in the Act will have a very serious impact on the right to freedom of association and several other rights guaranteed under the European Convention on Human Rights.

It considers that many of its provisions do not fulfil the prescribed by law requirement applicable whenever any restrictions are imposed on those rights and freedoms.

Moreover, it has serious doubts as to whether the adoption of at least some of the provisions in the Act can be regarded as having a legitimate aim for the imposition of the restrictions concerned.

Furthermore, having regard to the inevitable effect of the Act's provisions in precluding NGOs from seeking access to foreign support for the pursuit of objectives entirely consistent with European standards, the excessive obligations to disclose personal data, the unrestricted scope of the demands for supplementary information that can be made, the burdensome record-keeping required and the excessive nature of the penalties that can be imposed, the Opinion considers that the measures contained in the Act are not ones that can be considered necessary in a democratic society.

In the circumstances, the Opinion concludes that the implementation of the Act will cause grave and unjustified damage to civil society in Georgia, will be inconsistent with a wide range of commitments that this member state of the Council of Europe has undertaken and will thus be entirely inappropriate. As a result, it finds that it would be appropriate to repeal the Act and to desist from any steps to enforce the implementation of its provisions.

A. INTRODUCTION

1. This Opinion examines the compatibility with European standards protecting freedom of association and related rights[1] of the provisions in the Law of Georgia "Foreign Agents Registration Act" ("the Act"), which was adopted by the Parliament of Georgia on 1 April 2025.

2. The provisions in the Act establish a range of requirements relating to persons and organisations falling within its definition of acting as an agent of a foreign principal , notably as regards obligations to register or submit information and to keep records, as well as the creation both of criminal offences and penalties connected to these obligations and of a publicly-accessible database and the establishment of arrangements for reporting on compliance with the obligations imposed and on the material disseminated by those defined as agents of a foreign principal.

3. The Act was accompanied by an Explanatory Note, which portrayed its adoption as necessary to ensure "the proper implementation of the will of the legislator", "to effectively limit the interference of external forces in the activities of the state institutions" and as an analogue of the Foreign Agents Registration Act of the United States of America ("the US FARA"). There was no public consultation relating to the Act's provisions prior to its adoption.

4. The relevant European standards are to be found in the European Convention on Human Rights ("the ECHR"), the Framework Convention for the Protection of National Minorities ("the Framework Convention"), Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe ("Recommendation CM/Rec(2007)14"), the Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making ("Recommendation on lobbying"), the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights ("the Joint Guidelines"), the Venice Commission's Check List on the Rule of Law and the case law of the European Court of Human Rights ("the ECtHR").

5. The Opinion first outlines the rationale claimed for adopting the Act's provisions. Thereafter, it sets out the specific requirements and arrangements that the Act establishes or would make and then assesses their compatibility with relevant European standards before concluding with an overall evaluation of them.

[1] The provisions in the Act are applicable to natural persons, groups of partners, corporations, organisations and any other combination of natural persons insofar as they come within the definition of an agent of a foreign principal. However, this Opinion only focus on their compliance with European standards to the extent that they apply to non-governmental organisations ("NGOs").

6. The analysis in the Opinion is based on an unofficial translation of both the provisions in the Act and the Explanatory Note.

B. THE RATIONALE

7. The Explanatory Note begins by asserting that the Law of Georgia "On Transparency of Foreign Influence" ("the 2024 Law") had failed "to adequately ensure the goal of transparency and the corresponding preventive function". The 2024 Law was the subject of a previous Opinion adopted by the Expert Council ("the 2024 Opinion").

8. The assertion in the Explanatory Note is backed up by a single example, namely, that the majority of the NGOs that "receive large amounts of funding from foreign powers" are refusing to register in the registry provided by the 2024 Law, preferring to be subject to the sanctions which it provides. No detail is given in it as to the "foreign powers", the actual size of the "large amounts of funding" or the purposes for which the latter is provided.

9. As a result, it is claimed that the 2024 Law has failed to effectively implement the will of the legislator.

10. The Explanatory Note further invokes unspecified statements by the new United States administration as confirming the "existence of facts of improper use of foreign aid", stating that this:

> often serves to destabilise, attempt to encroach on independence and support revolutionary scenarios in various countries around the world, including Georgia.

11. No substantiation is provided for this statement, either generally or as regards Georgia in particular.

12. Referring to the United States of America as a bearer of high democratic standards and the best example of combating external influence, the Explanatory Note claims, without elaboration, that introducing "an exact analogue" of the US FARA would be the best way to ensure transparency of foreign influence.

13. The Explanatory Notes indicates that the total amount of the fines imposed for evading registration and not complying with other requirements will depend on the number of offences committed and states that, in determining the amounts of individual fines, account will be taken of them having a preventive effect.

14. It also asserts – without referring to any relevant standards or treaties - that the Act does not contradict European Union law, Georgia's obligations related to its membership in international organisations or its bilateral and multilateral treaties and agreements.

15. In addition, the Explanatory Note refers to the unspecified experience of other countries in implementing similar laws having been considered in the preparation of the Act.

16. Finally, the Explanatory Note states that the draft which became the Act was not initiated by the Government of Georgia.

C. THE ACT'S PROVISIONS

17. There are ten substantive provisions in the Act that follow those in the US FARA and which deal, in order, with: definition of terms; registration statement; exemptions; classification/categorisation of political propaganda; documents and records; implementation of public monitoring of official records and transfer of records and information; liability of persons employed by a foreign principal; law enforcement and penalties; rules and regulations; and reports to the Parliament of Georgia. The eleventh provision fixed the date on which the Act entered into force, namely, 31 May 2025.

Definition of terms

18. Article 1 of the Act defines 13 different terms: person; foreign principal; agent of a foreign principal; an exclusion from the latter term; government of a foreign country; foreign political party; public relations counsel; publicity agent; information-service employee; registration statement; prints; political activities; and political consultant.

19. The term *person* includes associations and organisations but also "any other combination of natural persons" so that it is capable of embracing not only NGOs with legal personality but also ones of an informal nature since a "combination" need not be limited to entities that are legal persons and indeed the latter concept is not used in the definition.

20. A *foreign principal* includes not only the government of a foreign country and a foreign political party (as further defined[2]) but also (a) persons outside the territory of Georgia (other than Georgian citizens domiciled within its territory and those who are not natural persons who are established and organised in accordance with Georgian legislation and whose principal place of business is in its territory) and (b) a group of partners, an association, a corporation, an organisation or other combination of natural persons whose activities are regulated by a foreign country's law or whose principal place of business is in that country's territory,

21. As such, the Act would not treat an NGO established in Georgia as a foreign principal. However, that term would cover ones established outside Georgia, whether they are legal persons or informal entities. Moreover, the definition of foreign political party is, as will be seen, capable of embracing NGOs outside Georgia even though they would

[2] See below.

not be characterised as political parties under the legislation of the country where they are established.

22. Moreover, it seems unlikely that those offices or branches of NGOs established in other countries which have been authorised to operate in Georgia by its authorities would be viewed as sufficiently distinct from their parent entities for the purpose of being treated as established and organised in accordance with Georgian legislation and having their principal place of business in its territory. Rather their position would be governed by the definition of agent of a foreign principal.

23. The definition of an *agent of a foreign principal* is extremely broad and is comprised of two elements, namely, the relationship between a person and the foreign principal and the activities undertaken by that person.

24. As regards relationships with the foreign principal, Article 1 c) covers not only the relatively easily identifiable ones of being its agent, representative and employee or being in its service but also ones whose existence could well be – to say the least - quite debatable, namely, ones of (a) acting at its order, request or under its direction or control and (b) having activities which, in whole or in major part, it supervises, manages, controls, finances or subsidises directly or indirectly.

25. In addition, the necessary relationship is also considered to exist when a person:

> agrees, consents, assumes or purports to act as, or who is or holds himself/herself/itself out to be, whether or not under a contractual relationship, an agent of a foreign principal.

26. This wording is capable of covering not only situations where someone voluntarily chooses to act for a foreign principal but also ones where such a choice is imputed to the person concerned. In other words, it is probable that the burden of proof that one is not acting as an agent will lie on the person whom the authorities assert has assumed or purported to be one. This is especially so given the breadth of the activities that, if undertaken, will be treated as constituting a person an agent of a foreign principal.

27. There are three activities that are covered where they are conducted in Georgia and are ones for the benefit or in the interest of a foreign principal, namely: (i) participating in political activities, directly or through another person; (ii) acting as a public relations counsel, publicity agent, information-service employee; and (iii) soliciting, collecting, disbursing or dispensing contributions, loans, money or other thing of value. A fourth activity covered by Article 1 c) is representing the interests of a foreign principal before any state agency or official.

28. The first and third activities are particularly likely to catch ones undertaken by NGOs given both the definition considered below of "political activities" and the fact that any fundraising for a foreign principal – such as for an NGO or government of a foreign country tackling a natural disaster – or expenditure of a grant received from donors outside Georgia would be sufficient for this purpose.

29. However, the breadth of terms public relations counsel, publicity agent, etc.[3] and the undefined notion of "representing the interests" in the second and fourth set of activities are also sufficient to catch steps taken to promote, publicise or advocate solutions to particular problems in society that draw upon the approach followed in other countries even though the entity doing this has no links at all with any foreign principal.

30. Overall, the effect of the definition is to treat an agency relationship with a foreign principal as being established in circumstances where the connection with that foreign principal will often be at most tenuous and in many instances be something that is no more than supposed by the Georgian authorities rather than one that actually exists.

31. The limited *exclusion* from the term agent of a foreign principal relates to:

> a means of mass dissemination of news, an association of persons disseminating news, print media or association of persons disseminating print media
>
> and
>
> a newspaper, magazine, periodical or publication published in Georgia for the bona fide dissemination of news or the bona fide exercise of journalistic activity.

32. This exclusion might benefit certain NGOs but only if: 80% of their beneficial owners and managers or directors are Georgian citizens; they are not managed, controlled, financed, or subsidised by a foreign principal; and none their policies are determined by a foreign principal or an agent of a foreign principal.

33. Certainly, the first part of this exclusion would not apply to the dissemination by an NGO of material from print media published in a foreign country and it is very doubtful whether the inclusion of such material in the publications of an NGO would be seen as the "bona fide dissemination of news" if it were being used to promote a particular argument relating to public policy. Indeed, the latter could easily be seen as acting as public relations counsel, etc or as representing a foreign principal's interests.

34. The term *government of a foreign country* is also quite broad, covering:

> any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any foreign country or over any part of such country, or a subdivision of any such group, any group or agency to which such sovereign de facto and/or de jure authority or functions are directly or indirectly delegated, or any faction or body of insurgents within a foreign country assuming to exercise governmental authority, whether such faction or body of insurgents has or has not been recognised by Georgia.

35. As such, this term embraces not just entities which have *de facto* or *de jure* jurisdiction over all or part of a country but also both any form of regional or local authority established within it and any group assuming to exercise governmental authority.

[3] As to which, see further below.

36. The width of this term has the potential to catch within its scope any sharing by NGOs with others of the potentially useful experience of local and regional authorities in other countries with persons, organisations and institutions in Georgia.

37. Moreover, the phrase "assuming to exercise governmental authority" is somewhat imprecise and could embrace those who seek to preserve the traditions and culture of minorities and displaced persons – such as through unofficial schooling - which may not be recognised by the country concerned.

38. A *foreign political party* is not, as already noted, limited to ones formally constituted as such in a particular country since it covers:

> any organisation, any other combination of natural persons in a foreign country, or any unit or branch of an organisation or any other combination of natural persons in a foreign country, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of government bodies of a foreign country or subdivisions thereof, or the furtherance or influencing of the political or public interests, policies, or relations of government bodies of a foreign country or subdivisions thereof;

39. The main part of the definition undoubtedly covers the conventional notion of a political party in that the entity concerned is aiming to obtain some form of legislative or executive power, whether at the national or some other level.

40. However, an entity having as its aim or purpose "the furtherance or influencing of the political or public interests, policies, or relations of government bodies" would be sufficient to embrace any NGO that undertakes research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law, which does not mean that it should be characterised as a political party.[4]

41. The definitions of *public relations counsel*, *publicity agent* and *information service employee* are also very broad.

42. Thus, an NGO could be treated as a public relations counsel since it is sufficient for this purpose to be a person who engages:

> directly or indirectly in activities that involve informing, advising, or in any way representing a principal of a foreign country in any public relations matter pertaining to the political or public interests, policies, or relations of such principal of a foreign country

since it would be enough to come within this definition for an NGO to inform anyone in Georgia on the policies of a foreign country because of their potential relevance to matters relevant for Georgia without in any way seeking to promote the interests of that country.

[4] See *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, at para. 55 and Recommendation CM/Rec(2007)14, para. 13.

43. Similarly, a publicity agent is any person who engages directly or indirectly in any form of dissemination of information or matter of any kind,[5] which would capture any kind of report on a particular problem that contains any information relating to another country, no matter how limited that might be.

44. An information-service employee will be any person who is:

> engaged in collecting, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, facts, or conditions of any country (other than Georgia), or collects, disseminates, or publishes them in accordance with the interests of any government of a foreign country or of a foreign political party and/or a partnership, association, corporation, organisation, or other combination of natural persons, whose activities are regulated by the laws of a foreign country, or whose principal place of business is in a foreign country.

45. As such the definition is not limited to the collection, dissemination or publication in the interests of a government of a foreign country, etc. as it extends to any collection, etc, whatever the purpose.

46. It covers, therefore, any form of research that might be undertaken, regardless of the use made of the information concerned. An NGO that undertakes such research would not be viewed as an agent of a foreign principal unless this was treated as being done for the benefit of or in the interests of a foreign principal but, as that notion is both imprecise and may be broadly interpreted, there could well be uncertainty as to whether the duty of registration arises even where it is not intending to act for a foreign principal.

47. The *registration statement* refers to the statement to be filed with the Anti-Corruption Bureau ("the Bureau") by persons acting as an agent of a foreign principal for the purposes of the Act, as well as all other documents to be filed with that body under Article 2.

48. The term *prints* is defined in the broadest possible way,[6] with an exception made only for "impressions obtained by means of the copying press, stamps with movable or immovable type, and the typewriter".

49. Equally, *political activities* are defined very broadly as covering:

> any activity carried out or to be carried out by a person with the belief or intention to influence, in any way, the Government of Georgia, any state agency or any section of the public with reference to formulating, adopting, or changing the domestic or foreign policies of Georgia, as well

[5] Thus, the publication or dissemination can be "oral, visual, graphic, written, or pictorial" and will include, but not be limited to "publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or other means".

[6] Namely, as "newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogues, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions obtained on paper or other material assimilable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography".

> as any activity originating from the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

50. As such, this definition covers legitimate activities that can be undertaken by NGOs, as it is well-established that:

> NGOs should be free to undertake research, education and advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law[7]

51. Moreover, it should be noted that the Recommendation on lobbying also provides that the legal regulation of lobbying activities:

> should not, in any form or manner whatsoever, infringe the democratic right of individuals to: a. express their opinions and petition public officials, bodies and institutions, whether individually or collectively; b. campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively.[8]

52. Finally, the Act defines a *political consultant* as:

> any person who engages in informing or advising any other person with regard to the domestic or foreign policies of Georgia or the political or public interests, policies, or relations of a foreign country or of a foreign political party.

which clearly broadens the generally understood nature of the role as someone who advises and assists in party political matters into someone who merely provides information about such matters.

Registration statement

53. Article 2 of the Act imposes first an obligation on persons who will act as an agent of a foreign principal, as defined above, to file a statement with the Bureau before doing so. In addition, there is a further obligation for such persons to submit to that body any additional information that it may deem necessary. Such submissions will have to be made at least every six months but can also be more frequently. Furthermore, there is provision concerning the person responsible for making the submission, the means of doing so and the possibility of allowing certain exceptions from the obligations imposed.

54. The obligation to submit a registration statement must be complied within 10 days of a person becoming an agent of a foreign principal and this obligation continues for any period of being such an agent, even if the person concerned had ceased to be one.

[7] Recommendation CM/Rec(2007)14, para. 12.

[8] Paragraph 4.

55. The statement for this purpose must contain an extensive amount of information, namely:

- The registrant's name, principal business address, other such addresses within or outside Georgia and all residence addresses;
- The registrant's status, meaning her/his nationality if it is a natural person but the nationalities, residence addresses of a group of partners and their partnership agreement and the names, residence addresses and nationality of the directors and managers (or persons performing such functions) of an association, corporation, organisation or any other combination of natural persons, as well as copies of all their documents (including charters and similar documents) and any other instrument/document or written description of any oral agreement relating to their organisation, powers and purposes plus a complete statement on the owners and controllers thereof;
- The nature of a registrant's business, a complete list of employees and a description of the nature of their work, the name and address of each principal of a foreign country, the character of its business or activities, a statement of its ownership and control if other than a natural person, as well as a statement on any foreign principal which is fully or partially owned, supervised, directed, controlled or subsidised by any government of a foreign country and/or foreign political party and/or by any other foreign principal;
- Copies of written agreements and the terms and conditions of oral agreements, as well as modifications thereto, and the circumstances by reason of which the registrant is an agent where there is no contract;
- A comprehensive statement of the nature and method of performance of each contract and a detailed statement of any activity engaged in or to be engaged in which can be assumed a political activity;
- The origin and amount of income, contributions, money or thing of value that the registrant received within the preceding 60 days, either as compensation or for disbursement or otherwise, with the form and time of each payment, as well as the identity of the person making it, being specified;
- A detailed statement of each activity (including a political activity) which the registrant is performing or assuming or purporting or has agreed to perform for itself or for any other person (other than a foreign principal) and, as regards the latter, details relating to that person and the extent to which it is owned, supervised, directed, controlled, financed or subsidised, in whole or in part, by any government of a foreign country or foreign political party or by any other foreign principal and the origin and amount of income, contributions, money or thing of value that the registrant received within the preceding 60 days in connection with any of the activities concerned;
- A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding 60 days in furtherance of or in connection with activities which have been undertaken by it either as an agent of a foreign principal for itself and/or any other person or in connection with any other activities relating to its becoming an agent of the foreign principal, and a detailed statement of any contributions of money or other things of value made by it during the preceding 60 days (other than contributions the making of which is prohibited

under the legislation of Georgia) in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office;

- A copy of each written agreement and the terms and conditions of any oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for itself or for a foreign principal or for any person other than a foreign principal as described above;
- Such other statements or documents pertinent to the purposes of the Act as the Bureau, having due regard for national security and the public interest, may from time to time require; and
- Information, copies of documents and additional documents, required to demonstrate the accuracy of the information provided in the registration statement and supplements thereto.

56. In addition to the initial registration, there is a requirement to file on a six-monthly basis information which the Bureau may, having regard for national security and the public interest, deem necessary to make the information filed "accurate, complete, and current with respect to the period it describes".

57. In addition, the Bureau must be notified within 10 days of any changes concerning the information required in respect of the registrant's business, employees, foreign principals, agreements and activities.

58. Also, the Bureau can require supplements to the registration statement to be filled out at more frequent intervals in respect of all or particular items of information to be furnished, if, having due regard for the national security and the public interest, it determines that it is necessary to carry out the purposes of the Act. There is, however, no specific provision for the Bureau to conduct inspections of the premises of NGOs, although requiring supplements to be provided by them could have the same effect if the scope of such supplements is extensive.

59. Registration statements and supplements must be executed under oath and filled out in the case of associations, organisations and any other combination of natural persons by a majority of its directors, managers, members of the board of directors or persons performing their functions and duties. They should be submitted electronically.

60. There is, however, a possibility for a person referred to in a registration statement as a partner, manager, director or employee in the registration statement of an agent of a foreign principal filled out in accordance with the Act to be exempted from the obligation to register or submit information. Similarly, the agent of a foreign principal can be exempted from the obligation to submit information. Such exemptions can only be granted by the head of the Bureau where s/he determines that, depending on the functions or nature of the person's activities and with due regard to national security and the public interest, the registration or submission of additional statements may not be necessary to carry out the purposes of the Act.

61. It is specifically provided that the filling out and submission of a registration statement shall not necessarily be deemed compliance with Georgian legislation on the part of the registrant and that this does not preclude additional information being requested by the Bureau, let alone prosecution for:

> wilful failure to fill out a registration statement or supplement thereto when due or for a wilful false statement of a material fact therein or the wilful omission of a material fact required to be stated therein or the wilful omission of a material fact or a copy of a material document that is necessary to be submitted for the registration statement.

62. Given the extent of the information that can be required, there can be no doubt that fulfilling the obligation to submit registration statements and supplements to them is likely to be extremely time-consuming for the NGOs concerned.

Exemptions

63. Pursuant to Article 3, the obligation to submit a registration statement does not apply to diplomatic and consular officials, officials of a foreign government recognised by Georgia and personnel of diplomatic or consular officials.

64. In addition, there are certain exemptions in that provision for: private and non-political activities in furtherance of the bona fide trade or commerce of a foreign principal; activities not serving predominantly the interests of a foreign country; religious, educational or scientific activities; subject to certain conditions,[9] activities by a person or employee whose foreign principal is the government of a foreign country whose protection, in the opinion of the Government of Georgia, is important to the defence of Georgia; a person practising law who represents a foreign principal before the courts of Georgia or any government agency;[10] and an agent of a foreign principal involved in lobbying activities and registered as a lobbyist under the Law of Georgia on Lobbying.

65. Only those exemptions concerned with activities not serving predominantly the interests of a foreign country or ones of a religious, educational or scientific nature are likely to be of any potential relevance for activities undertaken by NGOs.

66. However, apart from the uncertainty as to whether any particular activities will be characterised as falling within these exemptions, their scope is very narrow as the activities of NGOs must be: "private and non-political"; concerned with "raising funds"; and limited to just those ones.

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[9] Such activities must serve the policy, public interests or national security of both the government of the foreign country in question and the Government of Georgia and do not contravene the domestic or foreign policy of the Government of Georgia.

[10] Legal representation does not include influencing a government agency of Georgia or persuading its personnel or officials, except for the administration of justice, the execution of criminal or civil proceedings, the course of an investigation, and the period of legal proceedings, when their implementation in an appropriate form is mandatory under the legislation of Georgia.

Classification/categorisation of political propaganda

67. Pursuant to Article 4, any person residing in Georgia who is an agent of a foreign principal and is required to register who distributes any information material among two or more persons must submit two copies of it to the Bureau no later than 48 hours after its distribution. The distribution covered relates to information material sent by mail or through the use of the means of interstate relations or foreign trade or other instruments, in printed or in such form which implies that it will be distributed or can reasonably be expected to be so distributed.

68. The only substantive limitation as to the content of the information material is that this must be "with due regard to the interests of the foreign principal", which might well be open to debate in particular instances. Certainly, dissemination of material suggesting that the approach to a particular matter in another country is preferable or might usefully be followed could well be characterised as serving the interests of the foreign principal even though the object of the dissemination is to enhance the knowledge of Georgian citizens as to the options in solving particular problems.

69. It is further provided in Article 4 that it is unlawful for such a person to transmit by mail or by any means or instrumentality of interstate or foreign commerce any informational materials unless such informational materials contains a conspicuous statement that the materials are distributed by the agent of a foreign principal on behalf of the foreign principal, and that additional information is on file with the Bureau. It is left to the latter's head to define what constitutes 'a conspicuous statement'.

70. Furthermore, this Article provides that it is unlawful for a person in Georgia who is an agent of a foreign principal and is required to register to provide information containing political propaganda with due regard to the interests of the foreign principal in any form to any government agency or official or to receive any information or consultation from any government agency or official, which concerns the political or public interests, politics or relations of a foreign country or political party, or is related to the foreign or domestic policy of Georgia, unless the request to provide information containing political propaganda or to receive information or advice is prefaced or accompanied by a true and accurate statement that the person in question is registered as an agent of a foreign principal in accordance with this Law.

71. In addition, an agent of a foreign principal who is required to register, must submit a committee/temporary investigative commission or other temporary commission of the Parliament of Georgia – when appearing before it to testify - its most recent registration statement, which shall be registered as part of its testimony.

Documents and records

72. Agents of a foreign principal who are registered are required by Article 5, while being such an agent, to keep books of account and other records with respect to all its activities.

73. Furthermore, the head of the Bureau can, within 3 years of the termination of the status of being an agent of a foreign principal, determine – with due regard to national security and the public interest – the procedure for submitting this documentation. Until the relevant regulations for this purpose enter into force, such agents are required to maintain the financial documentation specified in the Act and to keep all written records related to its activities.

74. The documentation and records shall be available at any reasonable time to the authority responsible for the enforcement of the Act, the Bureau.

75. Any intentional concealment, destruction, erasure, significant damage or falsification of documents required to be retained, or the attempt to commit such acts, will be considered an unlawful act.

Implementation of public monitoring of official records and transfer of records and information

76. A copy of all registration statements must be retained in permanent form by the head of the Bureau and must be made available for public monitoring (inspection) at reasonable times determined by her/him. The statements of an agent of a foreign principal who has been exempted from the obligation to submit a registration statement may, however, be withdrawn from public monitoring.

77. The head of the Bureau is required to create a public, electronic database – with search, sorting and downloading functions – which contains registration statements and updates and which is free to use. There is also a requirement that statements and updates be publicly available on the Internet within a reasonable time after submission.

78. Registrants can obtain copies of the documents made available for public monitoring on payment of a reasonable fee.

79. The head of the Bureau is required, promptly upon receipt, to submit copies of registration statements and any supplements to the Minister of Foreign Affairs of Georgia for the latter's use and, taking into account Georgia's foreign relations, for making such comments deemed necessary by her/him.

Liability of persons employed by a foreign principal

80. All managers and directors of an agent of a foreign principal, as well as persons performing those functions, are – if not a natural person -required under Article 7 to submit a registration statement and supplements thereto, as well as to comply with the provisions concerning classification/categorisation of political propaganda and documents and records.

81. Moreover, Article 7 provides that the dissolution of an organisation that acts as an agent of a foreign principal does not release its head or manager, or person performing those functions, from the responsibility for filling out of the documentation specified in the Act. Failure to comply with the requirements set forth in the Act by an agent of a foreign principal, any manager and/or director (or person performing those functions) will result in the imposition of liability as established by the legislation of Georgia.

Law enforcement and penalties

82. Article 8 provides criminal and other penalties for non-compliance with the requirements of the Act, as well as defining the nature of the offence relating to registration statements and supplements and establishing a number of other powers for the purpose of enforcing the Act's provisions.

83. Thus, subject to a limited exception, wilful violation of any provision in the Act or wilfully making a false statement of a material fact or wilfully omitting any material fact required to be stated therein or wilfully omitting a copy of a material document necessary to make the statements therein, can lead to the imposition of a fine of not more than GEL 10,000[11] or imprisonment for not more than 5 years. The exception applies to breach of the requirements under Article 4(2), (4) and (5) relating to classification/categorisation of political propaganda, for which a fine of not more than GEL 5,000[12] and/or imprisonment for not more than 6 months can be imposed.

84. In addition, any alien convicted of violating any provision of the Act or found to be attempting to violate the regulations provided for in it shall be subject to removal from Georgia in accordance with its legislation.

85. Moreover, a failure to submit the registration statement or the supplements thereto shall be considered a continuing offence for as long as such failure exists, notwithstanding any statute of limitations or other statute to the contrary.

86. Furthermore, the head of the Bureau is empowered to seek a permanent or temporary order from a court requiring a person to cease to violate any provision of the Act or of the regulations made thereunder, to cease to act as an agent of a foreign principal, or to comply with the Act or any relevant regulation whenever in her/his judgment that a person is engaged in or is about to engage in any acts which constitute or will constitute

[11] Approximately EUR 3,200.

[12] Approximately EUR 1,600.

a violation of any provision of this Law, or regulations issued thereunder or whenever any agent of a foreign principal fails to comply with any of the regulations.

87. Also, the head of the Bureau can, when s/he determines that a registration statement does not comply with the requirements of this Law or the regulations, notify the registrant in writing, specifying in what respects the statement is deficient. At any time 10 days or more following receipt of such a notification, it shall be unlawful for any person to act as an agent of a foreign principal, whether or not an amended registration statement has been submitted in full compliance with the requirements of the Act and the regulations.

88. Finally, it is provided that it shall be unlawful for any agent of a foreign principal to register as a party to any contract, agreement, or understanding (either express or implied) concluded with the foreign principal, pursuant to which the amount or payment of the compensation, remuneration or other thing of value for such agent of a foreign principal is contingent in whole or in part upon the success of any political activities carried out by such agent.

Rules and regulations

89. The head of the Bureau can, at any time, pursuant to Article 9, prescribe, amend, change and rescind such rules and regulations as s/he may deem necessary for the administration of the Act.

Reports to the Parliament of Georgia

90. The head of the Bureau is required by Article 10 to report every 6 months to the Parliament of Georgia concerning the administration of the Act, including information on compliance with relevant registration regulations by agents of foreign principals and concerning the nature, sources and content of political propaganda disseminated.

D. EVALUATION OF THE PROPOSED PROVISIONS

Introduction

91. The provisions in the Act have implications for the enjoyment of a wide range of rights applicable to the NGOs that will be affected by them, as well as of the directors and managers of those organisations and potentially of others who may be required to fulfil its requirements or be affected by compliance with those requirements.

92. The rights concerned are those relating to freedom of association, freedom of expression and respect for private life, all of which are guaranteed by the ECHR, and amplified by or elaborated in the Framework Convention, the Recommendation CM/Rec(2007)14, the Joint Guidelines and the case law of the ECtHR.

93. Thus, restrictions on freedom of association can arise from restrictions on those who can form them[13] and be involved in their management[14], as well as on access to funding from foreign sources[15] and the ability of national minorities to establish free and peaceful contacts across frontiers[16]. As the protection of opinions and the freedom to express them within the meaning of Article 10 of the ECHR is one of the objectives of the freedom of association enshrined in Article 11, interference with the latter freedom will inevitably have implications for the exercise of the former one.[17]

94. Moreover, there will be an interference with right of respect to private life by compulsion to disclose and an inability to prevent access to personal data[18].

95. All such restrictions on these rights can only imposed where they are prescribed by law, have a legitimate aim and are necessary in a democratic society.

96. In addition, both Recommendation CM/Rec(2007)14[19] and the Joint Guidelines[20] require that NGOs such as those that would be affected by the Act's provisions should be consulted during the drafting of primary and secondary legislation which affects their status, financing or spheres of operation.

97. Similarly, the Venice Commission's Check List on the Rule of Law emphasises that key elements of lawmaking involve both the provision of the public with a meaningful opportunity to contribute to the legislative process and the adoption of an impact assessment before adopting legislation, especially as regards its impact on human rights.[21]

Prescribed by law

98. It is not sufficient for provisions to be included in legislation in order to be regarded as "prescribed by law".

99. Such provisions must also be shaped by precision in the scope of powers conferred, i.e., the absence of any unfettered discretion allowing arbitrary interference with rights and freedoms.[22]

100. Such unfettered discretion is built into several of the provisions in the Act.

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[13] See, e.g., Article 11 of the ECHR and paragraph 16 of Recommendation CM/Rec(2007)14

[14] See, e.g., *Lovrić v. Croatia*, no. 38458/15, 4 April 2017, at para. 71.

[15] See, e.g., *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022.

[16] See Article 17 of the Framework Convention.

[17] See *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007, at para. 33.

[18] See, e.g., *Z v. Finland, no. 22009/93*, 25 February 1997.

[19] Para. 77.

[20] Principles 8 and 9 and para. 33 of the Explanatory Note to the Joint Guidelines.

[21] p. 25.

[22] See, e.g., *Rotaru v. Romania* [GC], no. 28341/95, 4 May 2000, at paras. 57-62.

101. Thus, many of the terms used in the Act are so broad that there will inevitably be uncertainty as to whether they are applicable to NGOs and thus whether there is a requirement to comply with the obligations that it establishes. This is especially so as regards "combination of natural persons", "public relations counsel, publicity agent, information-service employee", "government of a foreign country", "foreign political party", "political activities" and "political consultant".

102. Furthermore, the notions of whether activities can be regarded as "for the benefit of or in the interest of a foreign principal" or being "with due regard to the interests of the foreign principal", as well as whether someone "purports" to act as agent of a foreign principal, are extremely open-ended and could be applied in an entirely subjective manner regardless of the actuality of the situation and/or the intention of those concerned.

103. Moreover, the head of the Bureau has extensive freedom to decide what additional information is required to make the information in a registration statement "accurate" or what supplementary information may be required, as well as to determine that registration or supplementary statements are not required, being only constrained by a need to have regard to national security and public interest, concepts that are not only imprecise but whose applicability is invariably debatable. Equally, the head of the Bureau has unconstrained freedom to define what amounts to a "conspicuous statement" that information materials are being distributed by the agent of a foreign principal.

104. In addition, the head of the Bureau is empowered to prescribe, amend, change and rescind such rules and regulations as s/he "may deem necessary for the administration" of the Act.

105. Also, the use of "directly or indirectly" as a determinant as to whether a foreign principal supervises, manages, controls, finances or subsidises activities inevitably facilitates an arbitrary determination as to whether someone can be regarded as the agent of such a principal.

106. Thus, the lack of precision permeates the formulation of many of the provisions in the Act and, given their interconnectedness, the requirements which are imposed by it cannot be regarded as sufficiently prescribed by law for the purpose of restricting rights and freedoms under the ECHR and compliance with other relevant European standards.

Legitimate aim

107. Even if the provisions in the Act could be regarded as prescribed by law, not all aspects of them can be viewed as having a legitimate aim.

108. The Explanatory Note has underlined that the aim of the provisions in the Act is to implement the will of the legislator to ensure the goal of transparency.

109. However, there is no explicit requirement for transparency in the restrictions authorised by the right to freedom of association under the ECHR.

110. Nonetheless, the ECtHR has found that a prohibition on the funding of political parties by foreign States – which effectively gave rise to an obligation for them to publish donations through depositing them in a specified bank account - was necessary for the prevention of disorder.[23]

111. However, such funding is not the focus of the Act as its provisions deal only with political parties that are "foreign" - and then only in the context of defining a foreign principal – rather than with its provision to ones established in Georgia.

112. On the other hand, the ECtHR has recognised that the possibility for NGOs to participate in elections and accede to power might make it necessary to require some of them to register as political parties, so as to make them subject to, for instance, stricter rules concerning party financing, public control and transparency.[24]

113. Moreover, Recommendation CM/Rec(2007)14 provides that the fundraising undertaken by NGO should be:

> subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.[25]

and subjects their right to support a particular candidate or party in an election or a referendum to the need for them to be transparent in declaring their motivation with any such support also being subject to legislation on the funding of elections and political parties[26].

114. Yet, the provisions in the Act are not generally directed to activities relating to elections, with only Article 2.1 h) requiring that registration statements provide a detailed statement of contributions in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office.

115. Undoubtedly of potentially greater relevance is the fact that the ECtHR has accepted, in principle, that the objective of increasing the transparency with regard to the funding of NGOs may correspond to the legitimate aim of protection of public order.[27]

116. Nonetheless, the receipt of funding or other forms of support is again not the principal issue with which the Act is concerned since that is only one of a very wide range of factors that it invokes to assert that an entity is not just working in the interests of a

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[23] *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007.

[24] *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007.

[25] Paragraph 50.

[26] Paragraph 13.

[27] *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 122 and *Kobaliya and Others v. Russia*, no. 39446/16, 22 October 2024, at para. 69.

foreign principal but actually has some connection, whether tenuous or even supposed, with such a principal.

117. Whether seeking transparency in respect of foreign connections of some kind other than funding will be regarded by the ECtHR as corresponding to the legitimate aim of the protection of public order remains to be seen.

118. A legitimate aim for the imposition of transparency requirements relating to financial operations – whether involving the receipt or disbursement of funding as seen in some of the Act's provisions - might also be capable of being afforded to measures to deal with money laundering and terrorist financing, such as are those recommended in the Recommendations of the Financial Action Task Force ("the FATF Recommendations").

119. However, the FATF Recommendations, insofar as they are relevant for NGOs, only concern ones whose activities and characteristics specifically put them at risk of money laundering and terrorist financing abuse and there must first have been a clear and evidence-based risk assessment undertaken in that regard, which has not taken place in this instance.

120. In any event, the FATF Recommendations are not pertinent to the objectives being pursued by the Act's provisions as these are not linked to concerns about either money laundering or terrorist financing.

121. Moreover, notwithstanding the concern with limiting the interference of external forces in the activities of state institutions, the measures in the Act cannot generally be regarded as pursuing the legitimate aim of securing transparency in respect of lobbying, which the Recommendation on lobbying defines as:

> promoting specific interests by communication with a public official as part of a structured and organised action aimed at influencing public decision making.

122. The limited applicability of the Recommendation follows from the fact that its aim is the disclosure of information on lobbying activities in the context of public decision-making processes and the establishment of a public register of lobbyists[28] whereas the only provisions of the Act that have any connection with what might be regarded as lobbying activities for the purpose of the Recommendation on lobbying are those referred to in Articles 1 c.a.d.), 4.4 and 4.5.

123. These provisions relate, respectively, to representing the interests of a foreign principal before any state agency, providing information containing political propaganda to any government agency or official and appearing before committees and other commissions of the Parliament of Georgia.

[28] Section E.

124. However, much of the activities that are made subject to the requirements of the Act relate to the dissemination of information in various forms that is not specifically targeted at public officials or bodies.

125. Thus, only certain aspects of the provisions might be regarded as having a legitimate aim for the purpose of imposing restrictions on rights under the ECHR.

126. However, regardless of whether there can be said to be a legitimate aim for the provisions in the Act, the provisions in it must still be shown to be necessary in a democratic society in order to prevent a finding of a violation of the rights affected.[29]

Necessary in a democratic society

127. For the purpose of determining whether the measures in the Act can be regarded as necessary in a democratic society, the impact of them on the exercise of freedom of association and the other rights affected thus needs to be evaluated to establish whether this would be proportionate to any legitimate aim being pursued and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient".

128. The fact that the Act is an analogue of the US FARA is not in itself a reason to regard its provisions as necessary in a democratic society, not least since it has not been evaluated for compliance with the rights guaranteed by the ECHR.[30]

129. As already noted, the Act was adopted in order to ensure "the proper implementation of the will of the legislator" and "to effectively limit the interference of external forces in the activities of the state institutions", on the basis that the majority of the NGOs that "receive large amounts of funding from foreign powers" are refusing to register in the registry provided by the 2024 Law, preferring to be subject to the sanctions which it provides.

130. It is recalled that the requirements in the 2024 Law were considered in the 2024 Opinion to be disproportionate in many respects.

131. These included: the restrictions established affecting entities in an indiscriminate manner despite the activities of those subject to them being entirely legitimate; the imposition of registration and financial declaration when public awareness of the sources of income could be acquired simply through a requirement for the details to be published on the website of the entities concerned, something already occurring as regards many entities; the need to disclose personal data that had no conceivable link

[29] See, e.g., *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007, at paras. 40-42.

[30] There has, however, been concern expressed about the potential for the breadth of its provisions to be used in a politicised manner with a view to stifling dissent; see N. Robinson, '"Foreign agents" in an interconnected world: FARA and the weaponization of transparency', (2020) 69 Duke L.J. 1075. See also, ICNL, *The Danger of the Foreign Agents Registration Act to Civil Society.*

with the supposed object of securing the transparency of the sources of income coming from foreign powers; the establishment of an extensive and intrusive monitoring power, affecting all civil society organisations and not just those pursuing the interest of a foreign power; and the imposition of penalties that are manifestly excessive for a regulatory measure.

132. The requirements in the Act are much broader in scope than those in the 2024 Law, not only as regards the nature of the link with a foreign principal but also with respect to both the range of activities covered and the extent of the registration obligation, as well as having even greater scope for arbitrary action in view of the imprecise language used and the discretionary powers conferred.

133. At the same time, the nature of the measures envisaged in the Act - namely, registration requirements and sanctions for non-compliance – are no different from those found in the 2024 Law. This makes it difficult to see how those requirements will achieve the aim of implementing the will of the legislator simply by being more extensive and burdensome than the ones which the Explanatory Note claims are not being fulfilled.

134. Insofar as compliance with the requirements in the Act is effectively secured, the necessity for them in a democratic society is still problematic.

135. In the first place, the fact that they can apply to NGOs which, at most, have a tenuous and in many instances no more than a supposed rather than actual agency relationship with a foreign principal in certain circumstances means that the requirements go well beyond what might really be needed to ensure that there is disclosure of information to effectively limit the interference of external forces in the activities of Georgia's institutions.

136. Secondly, the receipt of foreign funding or other support by NGOs and the drawing by them on the experience and ideas of institutions outside Georgia cannot by itself indicate that they are pursuing the interests of a foreign principal. Nor can the mere existence of a connection with such a principal mean that the particular activities being pursued by the NGOs concerned do not accord with entirely legitimate objectives held by them or that those activities are not ones which they would be entitled under Georgian and international law to pursue on their own initiative.

137. Indeed, as the financial support and other forms of assistance and inspiration received by many governments themselves from international and foreign sources demonstrate, this can be, and generally is, with a view to pursue interests which that State considers important. Receipt of such income, support and assistance by a government does not in itself mean that it is pursuing the interests of the international or foreign source, even if there might be a coincidence in the results they want to see achieved, and that is no less true for NGOs such as those that are subject to the Act's provisions who receive funding, support, assistance and inspiration from a source outside Georgia.

138. Thirdly, the definition of a foreign political party as covering entities having the aim of the establishment, administration of control of any government bodies, even in part of

a foreign country, has the potential – given the requirements consequential on being an agent of a foreign principal – of inhibiting persons belonging to national minorities from establishing and maintaining free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage, and from participating in the activities of NGOs at the international level despite the undertaking by Georgia under Article 17 of the Framework Convention not to interfere with such a possibility.

139. Fourthly, the requirement to submit, in registration statements and supplements thereto, detailed statements of each activity (including political activity) which the registering NGO is performing, etc. for itself or for any person other than a foreign principal is necessarily going well beyond what is needed to control foreign influence and would be both an unjustified restriction on the right to freedom of expression and an unjustified interference with the right to respect for private life.

140. Fifthly, the extensive scope of the information that must be provided in registration statements and supplements thereto regarding directors, managers and employees is likely to go well beyond any need to establish whether and to what extent an NGO is acting as the agent of a foreign principal and is thus beyond what is necessary in a democratic society as a restriction on the right to respect for private life, particularly as this information will be publicly accessible and searchable.

141. Such an intrusion could well be exacerbated by the obligation to provide additional information and the absence of a sufficient guarantee that the information sought must be relevant.

142. Sixthly, although no special name – such as "foreign agent" – will be attached to NGOs that are to be treated under the Act as agents of foreign principals, the latter designation, together with the specific obligation under Article 5 that their informational materials must contain a conspicuous statement that these materials are distributed by such agents on behalf of the foreign principals and the very title of the Act itself, still amounts to signalling that the NGOs concerned are ones which carries out certain work or tasks on the orders, requests, etc. of those principals.

143. As such it is equally likely that the ECtHR would conclude that such a designation was:

> unjustified and prejudicial and also liable to have a strong deterrent and stigmatising effect on their operations[31]

notwithstanding that those NGOs are part of civil society in Georgia and are working to uphold respect for human rights, the rule of law and human development for the benefit of its population.

[31] *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 136.

144. Seventhly, the obligations for an NGO to keep accounts and records for all its activities for 3 years after it has ceased to be an agent for a foreign principal and for the manager or director of an NGO to continue to have the responsibility for filling out the documentation specified in the Act even though the NGO has been dissolved, with the consequent liability to criminal penalties for non-compliance, is unduly burdensome for those individuals and is unlikely to serve any useful purpose in preventing the interference of external forces in the activities of Georgian institutions.

145. Finally, account needs also to be taken of the potential penalties that can be imposed in respect of non-compliance with the requirements in the Act.

146. Thus, there is the possibility of significant fines being imposed, ones that are as great as ones which led the ECtHR to consider non-compliance with requirements in Russia's foreign agent legislation to be excessive for what are essentially regulatory offences and were liable to turn the fines into an instrument for suppressing dissent. This led it to conclude that they could not be regarded as proportionate to the legitimate aim pursued.[32]

147. Such a conclusion is all the more applicable to the harsh prospect of imprisonment being imposed in many instances for up to 5 years.

148. Each of these points taken individually and certainly cumulatively leave no room for doubt that the implementation of the Act cannot be regarded as necessary in a democratic society and will thus, in addition to the provisions that are insufficiently prescribed by law, give rise to significant violations of the rights to freedom of association, freedom of expression and respect for private life.

E. CONCLUSION

149. The measures in the Act will have a very serious impact on the right to freedom of association and several other guaranteed rights.

150. Certainly, many of the provisions in the Act do not fulfil the prescribed by law requirement for imposing any restrictions on rights guaranteed by the European Convention.

151. More fundamentally, there are serious doubts as to whether the adoption of at least some of the provisions in the Act can be regarded as having a legitimate aim.

152. Furthermore, having regard to the inevitable effect of the Act's provisions in precluding NGOs from seeking access to foreign support for the pursuit of objectives entirely consistent with European standards, the excessive obligations to disclose personal data, the unrestricted scope of the demands for supplementary information that can be made, the burdensome record-keeping required and the excessive nature of the

[32] See, e.g., *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, at para. 185.

penalties that can be imposed, the measures contained in the Act are not ones that can be considered necessary in a democratic society.

153. In the circumstances, the implementation of the Act will cause grave and unjustified damage to civil society in Georgia, will be inconsistent with a wide range of commitments that this member state of the Council of Europe has undertaken and will thus be entirely inappropriate.

154. It would, therefore, be appropriate to repeal the Act and to desist from any steps to enforce the implementation of its provisions.