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NOTE ON LEGISLATIVE INITIATIVES ON TRANSPARENCY AND REGULATION OF ASSOCIATIONS FUNDED FROM ABROAD OR SO-CALLED “FOREIGN AGENTS LAWS” AND SIMILAR LEGISLATION AND THEIR COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

GEORGIA

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The Note was also prepared in consultation with Mr. Clément VOULE, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, as part of the [Framework for Joint Action for the protection and promotion of civic space](#).



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EXECUTIVE SUMMARY

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) welcomes the request of the Public Defender of Georgia for international expertise in relation to legislative initiatives aiming at introducing restrictions specifically targeting certain associations receiving funding or other forms of support from abroad (or so-called "foreign agents laws").

The main purpose of this Note is to provide an overview of the human rights concerns raised by "foreign agents laws" or similar legislative initiatives in terms of their compliance with international human rights standards and OSCE human dimension commitments, primarily the right to freedom of association, but also other rights including to freedom of expression and opinion, to respect for private life, to participate in public affairs, and freedom from discrimination.

This Note was requested following the development of two legislative initiatives ("Draft Law on Registration of Foreign Agents" and "Draft Law on Transparency of Foreign Influence") in Georgia, which have now both been withdrawn. However, due to the importance of the topic, the Public Defender of Georgia requested an overview of relevant international norms, recommendations and comparative practices, as well as of the human rights concerns raised by these and similar legislation.

The right to freedom of association is a cornerstone of a vibrant, pluralistic and participatory democracy and underpins the exercise of a broad range of other human rights. Access to funding, including international and foreign funding, is an essential element of the right to freedom of association. As underlined in the Joint Guidelines on Freedom of Association, the right to freedom of association would be deprived of its meaning if groups wanting to associate did not have the ability to access resources of different types, including financial, in-kind, material and human resources, and from different sources, including public or private, domestic, foreign or international. Associations need funding to pursue their activities, but some countries consider foreign funding as suspicious. Overall, the aim of so-called "foreign agents laws" or similar legislation is generally to seek to increase the scrutiny of such funding and of the activities of the recipient associations by introducing new obligations for such associations such as separate and generally burdensome registration, labelling, reporting, accounting and publication/disclosure requirements, as well as special oversight, inspections and sanctions in case of non-compliance. However, such legislation generally fails to comply with the strict requirements provided in international human rights law governing the imposition of restrictions on the right to freedom of association - namely, that they must be prescribed by law, pursue one of the legitimate aims recognized by international standards, be proportionate and necessary in a democratic society, and be non-discriminatory.

In addition to international instruments, the Note offers a comparative perspective and refers to regional case law and other authoritative recommendations that offer useful

guidance on the meaning and scope of the international norms and standards pertaining to freedom of association and other related rights.

In particular the following key issues and considerations should be noted regarding “foreign agents laws” and similar legislative initiatives in general:

(1) Regarding the *rationale* for introducing such legislative initiatives:

- generally, the justification to introduce such legislative initiatives fails to point to a real, present or imminent, sufficiently serious threat to national interests or risk to democracy, substantiated by proper risk-based assessment of the civil society sector, confirming the specific involvement of the NGO sector in the commission of crimes such as corruption, terrorism financing, money laundering or connected crimes; [paras. 30, 35-36, 52 and 56]
- the reasons adduced by national authorities to justify the legislative initiatives are generally not “*relevant and sufficient*”, failing to demonstrate why the existing legal framework is insufficient and/or ineffective as well as not showing the adequacy of the proposed measures to reach the intended aim; an abstract assumption that all funds originating from abroad constitute a potential threat to national interests is incompatible with international human rights standards; [paras. 30, 36, 38-40 and 59-60]
- usually, no proper justification is provided for the difference in treatment on the basis of the foreign origin of the funding, meaning that this differential treatment is likely to be considered as being discriminatory; [paras. 42-45]
- there is generally no explanation as to why measures that apply to associations should be more exacting than those generally applicable to business or commercial entities; [para. 48]
- the legal drafters usually fail to show that they have assessed the potential negative impact of a legislation on associations or considered other legal alternatives and selected the least intrusive measures with regard to the protection of fundamental rights; [para. 75]
- the aim to ensure “transparency”, “openness” or “publicity” of the funding of associations does not *by itself* constitute a legitimate aim as described in the above international instruments, although there may be circumstances where this may be a means in the pursuit of one or more of the legitimate aims recognized as allowing restrictions on this right, such as public order or the prevention of crimes such as corruption, embezzlement, money-laundering or terrorism financing; [para. 52]
- matters such as preventing money laundering or countering financing of terrorism do not by themselves justify imposing new reporting obligations for all associations without a concrete threat or any concrete indication of individual illegal activity; [para. 56]
- references to the United States Foreign Agents Registration Act and the more recent Australian Foreign Influence Transparency Scheme Act adopted in 2018, which are fundamentally different in light of their very distinct purpose and scope, are not relevant comparative examples to justify the introduction of

- legislative initiatives targeting associations receiving funding from abroad; [paras. 65-66]
- (2) The terms used to define the organizations falling within the scope of so-called “foreign agents” laws or similar legislative initiatives and subject to the new restrictions and obligations are generally vague, overbroad and/or ambiguous and fail to comply with the principle of legal certainty and foreseeability of legislation, which renders the scope of the notion and related obligations uncertain, thereby potentially allowing unfettered discretion and abuse on the part of the implementing authorities; [para. 67]
- (3) The legislative initiatives generally introduce disproportionate obligations, restrictions or prohibitions imposed on so-called “foreign agents” or the like, including:
- separate registration obligations, which would *prima facie* appear unnecessary and disproportionate, all the more since excessive sanctions generally apply in case of non-compliance; [paras. 77-81]
 - some forms of labelling requirements on all their materials, which beyond being unnecessary may, depending on the country context, also have a stigmatizing effect, even when seemingly neutral on its face, especially when other associations are not required to label themselves to indicate their legal structure; [paras. 85-88]
 - overly burdensome and costly reporting requirements, given in particular that these obligations generally apply to all such organizations, irrespective of their size and scope of operations, and that they combine multiple layers of reporting, as well as auditing requirements, thereby rendering the compliance with such rules extremely difficult and costly, without clear justification prompting the imposition of additional obligations specifically on such organizations; [paras. 98-100]
 - reporting and disclosure requirements requiring the communication of personal information regarding members, founders, donors, beneficiaries and/or staff that may interfere both with their right to respect for private life as well as the privacy of associations; [paras. 101-104]
- (4) “Foreign agents laws” generally envisage means of control, including the possibility of unscheduled inspections, that are not based on clear legal grounds, not strictly circumscribed and not authorized by court order, which may have a chilling effect and could also constitute a tool of potential intimidation and harassment in the hands of authorities, which could possibly be used against organizations which voice criticism or dissent; [paras. 107-109]
- (5) Some of the “foreign agents” laws provide for fines or even imprisonment in case of violation of the new requirements/obligations imposed on “foreign agents” which would in themselves be disproportionate *per se*, along with the dissolution of the association, which should remain an exceptional measure only applied in last resort; [paras. 110-113].
- (6) “Foreign agents laws” do not respect the principle of equal treatment and non-discrimination, enshrined in Article 26 of the ICCPR, Article 14 of the ECHR and Protocol 12 to the ECHR, as such obligations are applicable on the basis of the

foreign origin of the funding of such organizations and have an indirect discriminatory impact on certain categories of associations, generally those that pursue objectives or activities that are not necessarily congruent with the thoughts and ideas of the majority of society or, indeed, may run counter to them; [paras. 42-45 and 115-116]

- (7) In practice, “foreign agents laws” risk stigmatizing and/or discrediting certain organizations carrying out legitimate work, including advocacy and participation in public affairs/debate, and potentially triggering mistrust, fear and hostility against such organizations, including from the beneficiaries, general public and public institutions/bodies, thereby rendering their operation/activities overly difficult. [paras. 83-88]

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

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I. INTRODUCTION

1. On 6 March 2023, ODIHR received a request from the Public Defender of Georgia to provide a legal analysis of the draft Law of Georgia on the Registration of Foreign Agents. This came in addition to another request of 24 February 2023 to review the draft Law of Georgia on the Transparency of Foreign Influence.
2. Following political developments, the two draft Laws were withdrawn on 10 March 2023.¹ As agreed with the office of the Public Defender of Georgia, due to the importance of the topic, ODIHR pursued the work focusing more generally on the human rights concerns raised by the two draft Laws and similar legislative initiatives, offering a comparative perspective and broader overview of relevant international human rights standards and recommendations, instead of a legal analysis of the proposed two draft Laws.
3. Hence, the present Note outlines applicable international and regional human rights standards and recommendations relevant to the specific legal issues raised by the two draft Laws, providing as appropriate a comparative overview of similar legislative initiatives or legislation in other countries and the human rights concerns they may raise. It focuses, in particular, on some of the main human rights potentially affected by such laws, namely the right to freedom of association and related rights such as freedom of expression and opinion, the right to respect for private and family life, the right to participate in public affairs and freedom from discrimination. The Note specifically looks at the question of the justifications generally invoked by legal drafters for introducing such legislation, and whether they are compliant with international human rights standards. The Note also analyses whether the restrictions introduced by these types of laws may be justifiable according to international instruments, meaning whether they are prescribed by law, in the pursuit of one of the legitimate aims listed exhaustively in the treaty/convention, necessary in a democratic society, which presupposes the existence of a “pressing social need” and respect for the principle of proportionality, and whether they are non-discriminatory.
4. ODIHR conducted the present legal analysis within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.

II. SCOPE OF THE NOTE

5. The scope of this Note covers only the main human rights concerns raised by legislative initiatives aiming at introducing restrictions specifically targeting certain associations²

¹ See <[Parliament Withdrawing Support for Draft Law on Transparency of Foreign Influence - Parliament of Georgia](#)>.

² For the purpose of this Note, ODIHR generally prefers using the term “association” as defined in the ODIHR-Venice Commission [Joint Guidelines on Freedom of Association](#) (2014) as: “an organized, independent, not-for-profit body based on the voluntary grouping of persons with a common interest, activity or purpose” noting that “[a]n association does not have to have legal personality, but does need some institutional form or structure” (para. 7). At times, the Note may refer to “non-governmental organizations” though acknowledging the inherent difficulty of defining such a term, including at the international level as there is no universal definition of

receiving funding or other forms of support from abroad (or so called “foreign agents laws”).

6. The ensuing legal analysis is based on international and regional human rights standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Note also highlights, as appropriate, practices from other OSCE participating States in this field.
7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*³ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*⁴ and commitments to mainstream gender into OSCE activities, programmes and projects, the Note integrates, as appropriate, a gender and diversity perspective.
8. In view of the above, ODIHR would like to stress that this Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Georgia or generally across the OSCE region in the future.

III. LEGAL ANALYSIS AND KEY ISSUES

1. BACKGROUND

9. For more than a decade, multiple laws have been prepared and/or adopted that seek to hamper the role and functioning of associations or civil society organizations more generally. Since the adoption of the *Federal Law N.121-FZ introducing amendments to certain legislative acts of the Russian Federation regarding the regulation of activities of non-commercial organisations performing the function of “foreign agents”* in July 2012⁵ (hereinafter “Russian Foreign Agents Law”, amended several times since then), which was one of the first of such laws, several countries have adopted or attempted to adopt similar laws targeting associations receiving financial or other kind of assistance from abroad, essentially to counter alleged risks posed by “foreign influence”, or more generally, to introduce new reporting obligations on all associations in the name of transparency.
10. One example of such legislation are laws that focus on not-for-profit organizations receiving funding from abroad, which denominate such organizations as “foreign agents” or “organizations receiving funding from abroad” or other terminology. Often, these laws invoke the goal of enhancing the transparency or openness or publicity of funding and/or activities of such organizations, implying that the foreign source of such funding is

what constitutes a non-governmental organization. Of note, the Council of Europe’s [Recommendation Rec\(2007\)14 on the Legal Status of Non-Governmental Organisations in Europe](#), defines non-governmental organizations as “voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members”, and do not include political parties (see para. 1). At times, the present Note also uses the term “civil society organization” as used by the [OCDE Development Assistance Committee](#), understood as “all non-market and non-state organizations outside of the family in which people organize themselves to pursue shared interests in the public domain [including] community-based organizations and village associations, environmental groups, women’s rights groups, farmers’ associations, faith-based organizations, labour unions, co-operatives, professional associations, chambers of commerce, independent research institutes and the not-for-profit media.”

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

4 As stated in the [OSCE Copenhagen Document 1990](#), “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression” (para. 2); see also para. 5.12 which refers to “the independence of judges and the impartial operation of the public judicial service” among “those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings”. See also [OSCE Ministerial Council Decision No. 12/05 on Upholding Human Rights and the Rule of Law in Criminal Justice Systems](#), 6 December 2005.

5 See <[Federal Law No. 20-FZ of 07.2012.121 · Official publication of legal acts \(pravo.gov.ru\)](#)>.

somehow suspect and requiring greater control by the state and by the public. The effects of such laws have ranged from public stigmatization of the organizations in question, to often more stringent oversight and burdensome reporting requirements and other obligations that take up valuable time and capacities, thereby greatly affecting the ability of such organizations to conduct their usual work.⁶

11. The “Russian Foreign Agents Law” provides that non-commercial organizations are required to enrol in a separate register for so-called “foreign agents” if they meet the following conditions: first being registered in the Russian Federation as a non-commercial organization, second, receiving monetary assets and other property from foreign sources, and third, being engaged in so-called “political activities”. Since its adoption, the “Russian Foreign Agents Law” has been amended numerous times, and its scope is now much wider, covering not only non-commercial organizations, but also media outlets, individuals and unregistered associations.⁷ In addition, the term “foreign agent” now encompasses not only those entities and individuals receiving funding from abroad, but also those acting under so-called “foreign influence”. The failure to register and comply with all requirements imposed on “foreign agents” may lead to administrative and/or criminal liability. Moreover, such organizations are required to label their publications as originating from a “foreign agent” organization, post information on their activities on the Internet and are subject to more extensive and more frequent accounting and reporting requirements compared to other non-commercial organizations that do not receive “foreign funding”. They are also required to submit to routine (and, depending on the circumstances, even unscheduled) inspections by the Ministry of Justice. Additionally, since 2014, the Ministry of Justice has the power to put organizations on the “foreign agents” register at its own discretion. While the “Russian Foreign Agents Law” itself does not mention the overall aim of ensuring greater transparency or openness in the activities of non-commercial organizations, this purpose was mentioned in the preparatory documents⁸ and related discussions.
12. Following the adoption of the “Russian Foreign Agents Law”, numerous comparable pieces of legislation were initiated in the OSCE region and elsewhere, such as in the Kyrgyz Republic (2013 and 2016 later discarded, and in 2022-2023), Kazakhstan, Hungary (2017), the Republika Srpska of Bosnia and Herzegovina (2023), Ukraine (2018) to cite a few.⁹ Some of these legislative initiatives were later discarded, because of the national and international outcry that followed. Most recently, in early 2023, the Government of Georgia had prepared a draft “Law on Transparency of Foreign Influence”, which followed objectives similar to so-called “foreign agents laws” (though it applied only to organizations receiving more than 20 per cent of their funds from foreign sources). Other countries have also introduced or sought to introduce new reporting and/or accounting obligations on all associations in the name of “transparency”,

6 See for instance: UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders [Report OL RUS 16/2022](#); and Parliamentary Assembly of the Council of Europe (PACE), Resolution 2162 (2017).

7 See e.g., Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, [CDL-AD\(2021\)027-e](#), as well as weblinks to the respective draft laws: CDL-REF(2021)047-e, CDL-REF(2021)048-e, CDL-REF(2021)049-e, CDL-REF(2021)050-e, CDL-REF(2021)051-e and CDL-REF(2021)052-e.

8 The rationale for the introduction of the status of a “foreign agent” consists in an attempt to “ensure openness and publicity in the activities of non-commercial organizations, exercising the function of a foreign agent, and exercise the organization of the needed social control of the work of non-commercial organizations, participating in political activities in the territory of the Russian Federation and financed from foreign sources.” See Venice Commission, [Report on Funding of Associations](#), 18 March 2019, CDL-AD(2019)002, footnote 93 and references therein.

9 See footnote 40 for the links to the respective legal analyses prepared by ODIHR and/or the Venice Commission on several of such legislative initiatives.

for instance in Romania and Ukraine in 2018,¹⁰ although the proposed new requirements were not adopted.

13. For instance, Hungary adopted a *Law on the Transparency of Organisations Receiving Support from Abroad* in 2017, which contained a definition of foreign-funded organizations, the form of foreign funding and exceptions (e.g., for religious organizations), similar to the “Russian Foreign Agents Law”. However, the Hungarian law stipulated that it only applied once a certain threshold for foreign funding of CSOs had been reached, and did not use the term “foreign agent”, which had been replaced with the more neutral term “foreign-funded organization” (see Sub-Section 5.3 below). The aim of enhancing transparency of CSOs was mentioned directly in the preamble as the main reason for adopting the said Law. Following wide-spread criticisms from civil society and other EU member States, as well as a judgment by the Court of Justice of the European Union (CJEU) in 2020,¹¹ the Law was repealed in that same year.
14. The Payment Act of Kazakhstan and other relevant legislation use the term “*entities receiving money and/or other property from foreign states, international and foreign organizations, foreigners, stateless persons*”. It covers mainly donations and grants received by non-commercial organizations. The relevant associations/individuals must provide the tax authority with information on each receipt of funding from a “foreign source” within ten working days after the day when the funding is received. The list includes the tax number/business identification number and the name of the association/person on the list. It is published on the tax authority's website once every six months. Failure to provide this information is considered an administrative offence. Moreover, information on the receipt and expenditure of funds and/or property from “foreign sources” is to be submitted to the tax authorities quarterly by all individuals and legal entities receiving such funding. This information must be provided on a quarterly basis until the funds or property received from “foreign sources” are spent. Materials published and/or distributed at the expense of “foreign sources” must include information about those who “placed the order” and indicate that these materials were published and/or distributed using “foreign sources”.
15. Among the OSCE Partners for Co-operation, in Israel, for instance, the Disclosure Act 5771-2011, amended by the Duty of Disclosure [for a Body] Supported by a Foreign Political Entity (Amendment) Act 5776-2016 regulates donations from a “foreign political entity”, that is, foreign states or state-related institutions. The Act applies to CSOs that receive over 50 per cent of their funding from a “foreign political entity”. The Act requires such CSOs funded from abroad to submit a report on this funding within one week after the end of the quarter in which the donation was received. The report should include the identity of donors, the amount and purpose of the donations, and the conditions for their receipt. The list of recipients who submitted such a report is published on the Ministry of Justice's website. The information submitted by CSOs shall be published on the website of the Ministry of Justice, as well as on the CSO's website, “*and in any other way selected*” by the Ministry of Justice. Failure to comply with these regulations is subject to a fine.
16. Many of the above laws and draft laws have referred to the US Foreign Agent Legislation Act (FARA) as a comparative country example for introducing the proposed changes,

10 See e.g., the [Draft Law No. 140/2017 of Romania on Amending Governmental Ordinance No. 26/2000 on Associations and Foundations](#); and [Draft Law No. 6674 of Ukraine "On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance"](#) and on [Draft Law No. 6675 of Ukraine "On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance"](#).

11 Court of Justice of the European Union (CJEU), [Commission v. Hungary](#) Case C-78/18, 18 June 2020.

which is questionable as underlined below, given the different goal as well as scope of the said legislation, and its implementation in practice (see Sub-Section 3.6. below).

17. As further emphasized below, legislation on “transparency” or publicity of associations receiving funding from abroad or so-called “foreign agents” legislation pose serious threats to the reputation, functioning or even existence of associations in a country and are harmful for the civil society sector as such. The broad definitions used in such laws, coupled with the stigma associated with the special status for associations receiving foreign funds and the often quite burdensome registration, labelling, reporting, accounting and publication/disclosure requirements, as well as oversight, inspections and sanctions in case of non-compliance, constitute undue restrictions to the exercise of the right to freedom of association and other human rights. International and regional human rights monitoring mechanisms have all raised alarms against such legislation or legislative initiatives that aim to target associations funded from abroad,¹² given their impact of such laws on civil society more generally.

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

18. The right to freedom of association is a cornerstone of a vibrant, pluralistic and participatory democracy and underpins the exercise of a broad range of other human rights.¹³ The right to freedom of association is about the ability of persons to act collectively in pursuit of common interests, which may be those of the members of associations themselves, of the public at large or of certain sectors of the public.¹⁴ Associations often play an important and positive role in achieving goals that are in the public interest, as recognized at the international and regional levels.¹⁵ Freedom of association is also an essential prerequisite for the exercise of other fundamental freedoms, such as the freedom of expression, but also, for example, the freedom of peaceful assembly, freedom of religion or belief, the right to participate in public life, etc. Freedom of association is also closely interlinked with the right to freedom of peaceful assembly¹⁶ as for instance, associations often organize assemblies to express opinions and influence public debate, while public assemblies can eventually give rise to the establishment of new associations.¹⁷ Although the right to freedom of association is

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

13 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, paras. 1 and 8. See also European Court of Human Rights (European Court of Human Rights), *Gorzelik v. Poland*, no. 44158/98, 17 February 2004, para. 92, where the European Court of Human Rights underlined that associations formed for different purposes, including advocating for political agendas, but also “protecting cultural or spiritual heritage, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy”, also emphasizing that: “The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”

14 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, paras. 47 and 76.

15 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 9.

16 UN Human Rights Committee, [General Comment No. 37 on the Right to Peaceful Assembly](#), CCPR/C/GC/37, 17 September 2020, para 112.

17 See for instance: [Solidarnosc, History in dates](#) (accessed on 9 May 2023) and Gilets Jaunes in France: [Journal Officiel - Annonce 861](#), 15 March 2022 (accessed on 11 May 2023).

not an absolute right, it can be limited, or derogated from, only under the strict conditions stipulated in international human rights instruments (see para. 29 below).

19. The right to freedom of association is enshrined in all major international human instruments, including Article 22 of the [International Covenant on Civil and Political Rights](#) (ICCPR).¹⁸ The right of associations to seek, secure and utilize resources is also protected by this right, as otherwise freedom of association would be deprived of all meaning.¹⁹ Furthermore, the 1998 [UN Declaration on Human Rights Defenders](#)²⁰ confirms that “*everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels*” (Article 1) and stipulates that states have to adopt measures to ensure this right. The Declaration further provides specifically that “*everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means in accordance with Article 3 of the present Declaration*” (Article 13). The right of access to funding is to be exercised within the juridical framework of domestic legislation – provided that such legislation is consistent with international human rights standards (Article 3).
20. Furthermore, the UN Human Rights Council’s Resolution 22/6 on protecting human rights defenders urged States “*to acknowledge publicly the important and legitimate role of human rights defenders [...] by respecting the independence of their organizations and by avoiding the stigmatization of their work*” and “*to ensure that reporting requirements placed on [associations] do not inhibit functional autonomy*”, that “*restrictions are not discriminatorily imposed on potential sources of funding*”, and that “*no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto*”.²¹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and association has also emphasized that “*associations should be free to seek, receive and use foreign funding without any special authorization being required*”²² and that stigmatizing or delegitimizing the work of foreign-funded NGOs or subjecting them to special audit requirements and investigations, constitute undue restrictions to the right to freedom of association.²³
21. At the Council of Europe level, Article 11 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) as well as relevant case-law of the European Court of Human Rights set standards regarding the right to freedom of association. In this respect, the compatibility of legislation specifically targeting associations exercising “political activities” and receiving funding or other kind of assistance from abroad (so-called “foreign agents” legislation) has been the focus of the 2022 judgment in the case

18 International Covenant on Civil and Political Rights (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A(XXI) of 16 December 1966.

19 See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, [A/HRC/23/39](#), paras. 8 and 81(d), which specifies that “*associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities*”; and 2022 Report on [Access to resources](#), [A/HRC/50/23](#), 10 May 2022, para. 22 and supplementary guidelines: *General principles and guidelines on ensuring the right to civil society organisations to have access to resources*, HRC/53/38/Add.4, 23 June 2023, para. 1. See also e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 102; and Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), adopted on 10 October 2007, para. 50.

20 *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (hereinafter “UN Declaration on Human Rights Defenders”) of 9 December 1998, adopted unanimously by the United Nations General Assembly ([A/RES/53/144](#)).

21 UN Human Rights Council, *Resolution 22/6 on protecting human rights defenders*, [A/HRC/RES/22/6](#), 21 March 2013, paras. 5 and 9.

22 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Report on Access to resources*, [A/HRC/50/23](#), 10 May 2022, para. 22.

23 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, UN DOC [A/HRC/23/39](#), 24 April 2013, para. 20 and supplementary guidelines: *General principles and guidelines on ensuring the right to civil society organisations to have access to resources*, HRC/53/38/Add.4, 23 June 2023, para. 1.

- Ecodefence and Others v Russia*.²⁴ Several recommendations of the Committee of Ministers of the Council of Europe also offer useful guidance regarding the issue of funding of non-governmental organizations and related matters, including Recommendation [Rec\(2007\)14 on the Legal Status of Non-Governmental Organisations in Europe](#) (hereinafter “Recommendation Rec(2007)14”),²⁵ Recommendation Rec(2003)4 of 8 April 2003 on common rules against corruption in the funding of political parties and electoral campaigns, (hereinafter “Recommendation on funding”),²⁶ and Recommendation on the legal regulation of lobbying activities in the context of public decision making (hereinafter “Recommendation on lobbying”).²⁷ In particular, the CoE Committee of Ministers has stressed the freedom of NGOs to solicit and receive funding from a variety of public and non-public sources, including other states or multilateral agencies.²⁸
22. At the European Union (EU) level, acknowledging that many OSCE participating States are Member States of the EU or candidate countries for accession to the EU, it is important to take into consideration EU primary legislation and the EU Charter on Fundamental Rights,²⁹ especially Articles 11 and 12 on rights to freedom of expression and information and freedoms of peaceful assembly and of association, respectively. The case-law of the Court of Justice of the European Union (CJEU) is also of relevance, especially the 2020 judgment of [Commission v. Hungary](#).³⁰ As one of the preconditions for receiving candidate status, Georgia is also required to fulfil the priorities defined by the European Commission,³¹ and on 3 March 2022, Georgia formally applied for membership of the EU.³²
23. At the OSCE level, the OSCE participating States committed “*to ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms*” (1990 Copenhagen Document).³³ In addition, in the 1990 Paris Document, they affirmed that “*...without discrimination, every individual has the right to (...) freedom of association.*”³⁴ The OSCE participating States have also committed themselves to “*recognize as non-governmental organisations those which declare themselves as such, according to existing national procedures, and to facilitate the ability of such organizations to conduct their national activities freely on their territories*” (1991 Moscow Document)³⁵ and to “*enhance the ability of NGOs to*

24 European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para. 96.

25 Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), adopted on 10 October 2007.

26 Council of Europe, [Recommendation Rec\(2003\)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns](#), adopted 8 April 2003.

27 Council of Europe, [Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making](#), adopted on 22 March 2017.

28 Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), para 50, stating that “NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.”

29 [Charter of Fundamental Rights of the European Union](#), 2012/C 326/02, which Article 12 specifically refers to the freedom to associate “at all levels, in particular in political, trade union and civic matters”.

30 Court of Justice of the European Union (CJEU), [Commission v. Hungary](#) Case C-78/18, 18 June 2020.

31 See [Opinion on the EU membership application by Georgia](#), 17 June 2022.

32 Website of the Prime Minister of Georgia: [Signing of Georgia’s Application for EU Membership 3 March 2022](#), see also [Press Release of 17 June 2022 on the EU Commission on the Recommendation to the European Council to grant Ukraine, Moldova and Georgia’s candidate status](#), and the [Press Release of 23 June 2022 of on the European Council](#) expressing readiness to grant applicant status to Georgia.

33 [CSCE/OSCE, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#), 29 June 1990, Section 10.3.

34 CSCE/OSCE, [Charter of Paris for a New Europe](#), 21 November 1990, p. 3.

35 CSCE/OSCE, [Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE](#), 3 October 1991, Section 43.

make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms” (1999 Istanbul Document).³⁶

24. The Note also makes reference to the 2014 ODIHR-Venice Commission [Joint Guidelines on Freedom of Association](#),³⁷ the 2020 ODIHR-Venice Commission [Guidelines on Political Party Regulation](#)³⁸ and the Financial Action Task Force (FATF) Recommendations 8 and 24 on, respectively, non-profit organisations (“Recommendation 8”) and transparency and beneficial ownership of legal persons (“Recommendation 24”).³⁹ The present Note also refers to other opinions and reports published by ODIHR and/or the Venice Commission in this field, especially those addressing legislation aimed at regulating associations receiving “foreign funding” or introducing new reporting requirements in the name of enhancing “transparency” of the civil society sector.⁴⁰ The Reports⁴¹ and Letters of concerns published by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, especially the Letter dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 (“Foreign Agents Law”) and subsequent amendments⁴² are also of particular relevance.
25. Relevant international standards concerning the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds without interference by public authority and regardless of frontiers,⁴³ the prohibition of discrimination⁴⁴ and the right to respect for private life⁴⁵ are also referred to in the present Note. Additionally, the Note also touches upon the right to take part in public affairs (Article 25 of the ICCPR).⁴⁶
26. Based on the above, members of associations and associations themselves are the holders of human rights, including the rights to freedom of association, freedom of expression and to respect for private life. Moreover, the state has the obligation to respect, protect and facilitate the exercise of the right to freedom of association and any legislative initiatives or amendments should be approached from this perspective.⁴⁷

36 OSCE, [Istanbul Document](#), 19 November 1999, para. 27.

37 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046.

38 ODIHR and Venice Commissions, [CDL-AD\(2020\)032, Guidelines on Political Party Regulation \(2nd ed., 2020\)](#).

39 [International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation - The FATF Recommendations](#), as updated in 2023.

40 See e.g., ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022); [CDL-AD\(2014\)025-e](#), ODIHR and Venice Commission, [CDL-AD\(2018\)004, Romania - Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations](#); [CDL-AD\(2018\)006-e, Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance](#); [CDL-AD\(2013\)030, Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#). See also Venice Commission, [Opinion on Federal Law n. 121-fz on non-commercial organisations \(“law on foreign agents”\)](#), on [Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the criminal code \(“law on treason”\) of the Russian Federation](#); [Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”](#), [CDL-AD\(2021\)027](#); [Hungary – Preliminary Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), [CDL-PI\(2017\)002](#), and Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002.

41 See [Annual thematic reports | OHCHR](#).

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

43 Cf. Article 19 of the ICCPR and Article 10 of the ECHR.

44 Article 26 of the ICCPR; Article 14 of the ECHR and Protocol no. 12 to the ECHR.

45 Article 17 of the ICCPR and Article 8 of the ECHR.

46 Article 25 of the ICCPR.

47 See Principle 2 of the ODIHR-Venice Commission [Joint Guidelines on Freedom of Association](#) (2014). According to the European Court of Human Rights, “genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere” (European Court of Human Rights, [Ouranio Toxo and Others v. Greece](#), no. 74989/01, 20 October 2005, para. 37 and “*t]he Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective*” (see [Airey v. Ireland](#), no. 6289/73, 9 October 1979).

3. RATIONALE FOR INTRODUCING LEGISLATIVE INITIATIVES ON TRANSPARENCY AND REGULATION OF ASSOCIATIONS FUNDED FROM ABROAD OR SO-CALLED “FOREIGN AGENTS LAWS”

3.1. General Remarks

27. As underlined above, the right to freedom of association also encompasses the right of associations to seek, secure and utilize resources, as otherwise freedom of association would be deprived of all meaning.⁴⁸ Principle 7 of the Joint Guidelines states that in order to subsist, associations must have the means to pursue their objectives, meaning that they should have the ability to access different types of resources (including financial, in-kind, material and human resources), and also be able to obtain such resources from different sources, including public or private, domestic, foreign or international.⁴⁹ In the *Ecodefence* case, the European Court of Human Rights has also underlined the fundamental importance of ensuring that NGOs are “free to solicit and receive funding from a variety of sources” in order for them to perform their role as the “watchdogs of society”, further underlining that “[t]he diversity of these sources may enhance the independence of the recipients of such funding in a democratic society”.⁵⁰
28. The introduction of new obligations or restrictions imposed on associations linked to the receipt of funding from certain foreign or internal sources constitutes limitations to the exercise of the right to freedom of association and as such, must comply with the strict requirements imposed by international human rights standards. This is especially so since such new registration, reporting, auditing, supervision/inspections obligations trigger additional expenses and commitments of resources that divert previous resources from the implementation of their activities but may even endanger their very existence, especially when associations have to make a choice between either refusing all foreign funding or being subject to new restrictions or obligations linked to the receipt of foreign funding.
29. In light of the above international human rights standards and OSCE human dimension commitments, restrictions on the right to freedom of association must be compatible with the strict test set out in Article 22(2) of the ICCPR and Article 11(2) of the ECHR, requiring any restriction to be prescribed by law, meaning clear, precise and foreseeable, in the pursuit of one of the legitimate aims listed exhaustively in the treaty/convention, necessary in a democratic society, which presupposes the existence of a “pressing social need” and respect for the principle of proportionality.⁵¹ In addition, the restriction must be non-discriminatory (Article 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR). The legitimate aims mentioned in Article 22(2) the ICCPR and Article 11(2) of the ECHR include national security, public safety, public order (*ordre public*) for Article 22(2) or the prevention of disorder or crime for Article 11(2) of the ECHR,

48 See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, [A/HRC/23/39](#), paras. 8 and 81(d), which specifies that “associations – registered and unregistered – can seek, receive and use funding and other resources from natural and legal persons, whether domestic, foreign or international, without prior authorization or other undue impediments, including from individuals; associations, foundations or other civil society organizations; foreign Governments and aid agencies; the private sector; the United Nations and other entities”; and 2022 Report on [Access to resources](#), [A/HRC/50/23](#), 10 May 2022, para. 22. See also e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 102; and Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), adopted on 10 October 2007, para. 50.

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

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

51 See e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, Principles 9 and 10.

the protection of public health or morals, and the protection of the rights and freedoms of others.

30. The Joint Guidelines on Freedom of Association underline that “[t]he scope of these legitimate aims shall be narrowly interpreted”.⁵² In addition, the Joint Guidelines further emphasize that “only convincing and compelling reasons” for introducing limitations to the right to freedom of association are acceptable, “[i]n other words, only indisputable imperatives can interfere with the enjoyment of the right to freedom of association”.⁵³ Furthermore, restrictions to the freedom of association can only be justified if they are necessary to avert a real, and not only hypothetical danger.⁵⁴ The European Court of Human Rights has specifically held that “[a]ny interference must correspond to a ‘pressing social need’” and **the reasons adduced by the national authorities to justify it should be “relevant and sufficient”, with “evidence of a sufficiently imminent risk to democracy”**.⁵⁵ The CJEU also underlined the need to establish “a genuine, present and sufficiently serious threat to a fundamental interest of society”.⁵⁶ As ODIHR and the Venice Commission have observed, “[a]bstract ‘public concern’ and ‘suspicions’ about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right”.⁵⁷ The Human Rights Committee underlined that the reasons prompting the authorities to restrict foreign funding should be case-specific and evidence-based.⁵⁸
31. Even matters such as preventing money laundering or countering financing of terrorism do not by themselves justify imposing new reporting requirements for all associations without a concrete threat or any concrete indication of individual illegal activity⁵⁹ (see also Sub-Section 4.2 on Risk-Based Approach).

3.2. Lack of Justifications for Introducing Legislative Initiatives Targeting Associations Funded from Abroad and Inadequacy of the Proposed Measures

3.2.1. Lack of a Risks-Based Approach

32. In the case of the Republika Srpska, apart from a vague mention of the risk of “collapse of the legal system and constitutional arrangement of the Republika Srpska” and alleged “harmful consequences” due to the absence of regulation of NPOs, the Explanatory Note to the Draft Law does not justify its development by reference to any concrete threats.⁶⁰ Regarding the Draft Law of the Kyrgyz Republic, the Explanatory Statement to the Draft Law fails to point to a substantiated concrete risk analysis concerning any specific involvement of NPOs in the commission of crimes such as corruption, terrorism financing, money-laundering and connected crimes.⁶¹ Similarly, as far as ODIHR knows,

52 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 34.

53 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 111.

54 See e.g., UN Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. [1119/2002](#), U.N. Doc. CCPR/C/84/D/1119/2002(2005), para. 7.2.

55 See e.g., European Court of Human Rights, *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. [46626/99](#), 3 February 2005, para. 48; and *Gorzelik and Others v. Poland*, no. [44158/98](#), 17 February 2004, paras. 95-96.

56 See e.g., Court of Justice of the European Union (CJEU), *Commission v. Hungary* Case C-78/18, 18 June 2020, para. 91.

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

58 UN Human Rights Committee, *Mikhailovskaya and Volchek v. Belarus*, [CCPR/C/111/D/1993/2010](#) (July 2014), para. 7.3; *Lee v. Republic of Korea*, [CCPR/C/84/D/1119/2002](#) (July 2005), para. 7.2; Communication No. 2001/2010, *Q v. Denmark*, Views adopted on 1 April 2015, para. 7.3.

59 See Financial Action Task Force (FATF)’s Recommendations, Recommendation 8 – as amended, which states: “Countries should apply focused and proportionate measures, in line with the risk-based approach”. See also e.g., European Court of Human Rights, *Sindicatul “Păstorul cel Bun” v. Romania* [GC], no. [2330/09](#), 31 January 2012, para. 69.

60 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 28.

61 ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 62.

the justifications concerning the Draft Laws of Georgia do not refer to specific risks-based assessment of the civil society sector.

33. It is worth referring to the Financial Action Task Force (FATF)’s Recommendation 8 the objective of which is to ensure that non-profit organizations (NPOs) are not misused by terrorist organizations, and which specifically requires countries to apply focused and proportionate measures, in line with the risk-based approach.⁶² Recommendation 8 only applies to those non-profit organizations whose activities and characteristics put them at risk of terrorist financing abuse, rather than on the mere fact that they are operating on a non-profit basis or that they may receive funding or other assistance from abroad. In using the term non-profit organization, the FATF Recommendation 8 is referring only to “a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes”, or for the carrying out of other types of “good works” and so its definition does not cover the entire universe of NPOs⁶³ and certainly not all associations, NGOs and CSOs.⁶⁴
34. FATF recently released a *Report on the Unintended Consequences of the FATF Recommendations*, including on the civil society sector, noting the misuse of FATF Recommendation 8 as a justification for introducing undue restrictions on freedom of association, essentially due to a poor or negligent implementation of the FATF’s risks-based approach.⁶⁵ As mentioned above, even if there were indications of criminal activities on the side of certain individual associations, the correct approach to this would be proportionate targeted responses, as required by FATF, and not new blanket registration and reporting requirements affecting numerous other organizations engaging in entirely legitimate activities, targeted due to the foreign origin of their sources of funding. Of note, regarding similar legislation requiring organisations “receiving support from abroad” to register, with possible dissolution as a penalty for non-compliance, the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) expressed concern that the said legislation was not the result of the application of a risk-based approach.⁶⁶
35. In light of the foregoing, **it is important for the authorities to provide evidence-based justification relying on a proper risk-based assessment of the civil society sector.**

3.2.2. Absence of Demonstration of a Genuine, Real, Present, and Sufficiently Serious Threat

36. As underlined above, when introducing legislative initiatives as those considered by this Note, **national authorities should adduce relevant and sufficient reasons, with concrete evidence of a sufficiently imminent risk to democracy**, as required for

62 According to the [Interpretative Note to FATF Recommendation 8](#), the objective of FATF Recommendation 8 is to ensure that non-profit organisations (NPOs) are not misused by terrorist organisations: (i) to pose as legitimate entities; (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; or (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes, but diverted for terrorist purposes. For this purpose, it is suggested that States adopt requirements on: making publicly available information as to the identity of those who own, control or direct their activities; issuing annual financial statements; measures being taken by NPOs to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs; and making available to the public records of their charitable activities and financial operations (see paragraph 6(b) of the Interpretative Note to FATF Recommendation 8). See also e.g., European Court on Human Rights *Sindicatul “Păstorul cel Bun” v. Romania*, no. 2330/09, 31 January 2012, para. 69.

63 *Ibid.*, Paragraph 1 of the Interpretative Note to FATF Recommendation 8.

64 See [Non-governmental Organisations and the Implementation of Measures against Money Laundering and Terrorist Financing](#) for problems with the way the Recommendation is actually being implemented by States.

65 FATF, “[High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards](#)” (2021).

66 See Council of Europe [Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism \(MONEYVAL\)](#), Hungary - *1st Follow-up report (Enhanced)* (7 December 2017), para. 109.

instance by the ECtHR.⁶⁷ The CJEU also underlined the need to establish “*a genuine, present and sufficiently serious threat to a fundamental interest of society*”.⁶⁸ Generally, the explanatory statements to the draft legislative initiatives fail to demonstrate the existence of **such a present or imminent serious threats and are not based on concrete evidence or risk assessment.**

3.2.3. Absence of Demonstration of the Ineffectiveness or Gaps of the Existing Legal Framework

37. Generally, the explanatory notes attached to the legislative initiatives fail to **substantiate or demonstrate the insufficiency, ineffectiveness or gaps of the existing legal framework, justifying the adoption of new measures.** For instance, as underlined in the Joint Opinion on Republika Srpska, the public authorities justified the need for the Draft Law owing to the inadequacy of the existing legal framework but the Explanatory Note does not elaborate about why the existing reporting requirements are deemed insufficient for the purpose of pursuing one of the legitimate aims provided by international human rights standards.⁶⁹
38. In previous joint opinions, ODIHR and the Venice Commission underlined that the mere fact that organizations or individuals do not comply with the existing legislation “*cannot justify the imposition of new and extensive reporting obligations for all associations*” and that “[*t*]his is rather a question of the efficiency of implementation of the current reporting obligations by the competent state authorities”.⁷⁰
39. Any new legislative initiatives should be accompanied by **a proper explanation substantiating why the existing legal framework is insufficient and/or ineffective and how the new provisions will address the issue.**

3.2.4. Inadequacy of the Proposed New Obligations or Restrictions to Reach the Intended Objectives

40. Similarly, the explanations submitted by the public authorities or legal drafters fail to elaborate on how the proposed new provisions to enhance publicity and/or new registration and/or reporting and/or labelling requirements **are adequate measures to reach the intended aim.** As explicitly noted by the Venice Commission, “[*a*] *measure may be deemed as pursuing a specific legitimate aim only if it is relevant and appropriate to reach this aim*”.⁷¹ For instance, and as underlined in the recent Joint Opinion on the Draft Law of Republika Srpska, it is “*unclear how such new requirements contribute to more transparent and complete information to the public, which is the alleged aim of the Draft Law*”.⁷²

3.2.5. Lack of Justification of the Unequal Treatment of Certain Associations on the Basis of their Sources of Funding and Sectoral Inequity

41. The “foreign agents laws” mentioned above and other similar legislative initiatives all have in common that they introduce measures whereby those associations, and at times, even individuals, receiving funds from foreign sources are treated differently from

67 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 28. See also e.g., European Court of Human Rights, *Partidul Communistilor (Nepeckeristi) and Ungureanu v. Romania*, no. [46626/99](#), 3 February 2005, para. 48; and *Gorzelik and Others v. Poland*, no. [44158/98](#), 17 February 2004, paras. 95-96.

68 See e.g., CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 91.

69 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 30.

70 See e.g., ODIHR and Venice Commission, *Romania - Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations*, [CDL-AD\(2018\)004](#), para. 71.

71 Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, para. 86.

72 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 59.

organizations and individuals receiving funds from domestic sources. Hence, the main criteria for differentiating the associations subject to new requirements is the foreign origin of their funding and/or other type of (undefined) assistance from abroad. Generally, the explanatory statements to the draft laws/amendments do not provide any objective and rational justification for such a differential treatment between the associations receiving foreign funding and other legal entities,⁷³ although at times referring to alleged general threat that this poses for the states’ national security or to the fight against crime, primarily money laundering and terrorism financing (see Sub-Sections 3.3 to 3.5).

42. Article 26 of the ICCPR and Article 14 and Protocol 12 to the ECHR prohibit all forms of discrimination understood as a differential treatment without objective and reasonable justification, meaning that lack a legitimate aim, necessity and proportionality.⁷⁴ When examining whether a difference in treatment amounts to discrimination, the European Court of Human Rights considers that a difference of treatment of persons in relevantly similar situations “*is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised*”.⁷⁵ In the *Ecodefence* case however, the European Court of Human Rights decided not to examine whether the Russian legislation violated Article 14 of the ECHR since “*it ha[d] already considered the claim that the applicant organisations were put into a separate category and singled out for a differential treatment on the basis of the source of their funding*”.⁷⁶ With respect to legislation more specifically, the Venice Commission has noted that in general, only differences in treatment that are devoid of any objective or reasonable justification will constitute discrimination.⁷⁷ In addition, the UN Human Rights Council’s Resolution 22/6 on protecting human rights defenders urged States to ensure that “*restrictions are not discriminatorily imposed on potential sources of funding*”, and that “*no law should criminalize or delegitimize activities in defence of human rights on account of the geographic origin of funding thereto*”.⁷⁸
43. In the case *Commission v. Hungary*, the CJEU considered that the “*differences in treatment depending on the national or ‘foreign’ origin of the financial support in question, and therefore on the place where the residence or registered office of the natural or legal persons granting the support is established, constitute indirect discrimination on the basis of nationality [...] inasmuch as they establish differences in treatment which do not correspond to objective differences in situations*”.⁷⁹ The CJEU, concluded that “*Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations*”.⁸⁰ When reviewing the Draft Law of Hungary in 2017, the Venice Commission underlined that concluded that establishing such a threshold provides for a “*differentiated treatment*” for organizations relying exclusively on domestic funding and those relying on foreign funding. It

73 See e.g., ODIHR and Venice Commission, [CDL-AD\(2018\)006-e. Ukraine - Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance](#), para. 44; and the Expert Council on NGO Law’s [Opinion on the Hungarian Draft Act on the Transparency of Organisations Supported from Abroad](#), para. 46. See also Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), paras. 122-127.

74 See e.g., [ODIHR Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region](#) (2019), para. 56.

75 See e.g., European Court of Human Rights, [Zhdanov and Others v. Russia](#), no. 12200/08, 16 July 2019, para. 178, on different treatment of and refusal to register associations.

76 European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para. 189.

77 Venice Commission, [Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”](#), [CDL-AD\(2021\)027](#), para. 34.

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

79 See e.g., CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, paras. 62-64.

80 *Ibid.* para. 143 (CJEU, [Commission v. Hungary](#) Case C-78/18).

reminded that “*it stems from international instruments that differentiated treatment is possible in this case [differentiated treatment between organizations relying exclusively on domestic funding and those relying on foreign funding] only and in so far as the treatment pursues a number of legitimate aims, such as prevention of money laundering and terrorism and proportionate to the legitimate aims pursued, not going beyond what is strictly necessary to achieve those aims.*”⁸¹

44. Further, as underlined in previous ODIHR-Venice Commission joint opinions, the mere foreign origin of the funding of an association does not by itself constitute a legitimate reason for a differentiated treatment.⁸² Without further justification for introducing such a difference in treatment, this would appear contrary to the prohibition on discrimination enshrined in Article 26 of the ICCPR and Article 14 of the ECHR and Protocol No. 12 to the ECHR.⁸³
45. In light of the above, **when lacking proper justification for the difference in treatment on the basis of the foreign origin of the funding, these (draft) laws would likely be considered as being discriminatory.**
46. Some “foreign agents” laws and the like exclude certain types of association from the scope of the law without offering proper justification for differentiated approach. Notably, the Russian Law on Foreign Agents does not apply to religious organizations, state enterprises (and non-commercial organizations established by them), state and municipal organizations, duly registered employers’ associations, chambers of commerce and industry or political parties.⁸⁴ The repealed Hungarian law, on the other hand, did not apply to associations and foundations that are not regarded as CSOs, including sports associations, organizations carrying out religious activities and associations for national minorities.⁸⁵
47. As mentioned, these exemptions have not been reasonably explained in neither of the above cases. For instance, the Explanatory Memorandum to the Hungarian Draft Law only specified that it “*shall not apply to the organisations listed, considering the fact that either they do not qualify as non-governmental organisations in the first place, or their operation is linked to the exercise of other fundamental rights*”, which as underlined by the Venice Commission, did not seem fully convincing.⁸⁶ Additionally, the Venice Commission’s Opinion on the Hungarian law notes that the said exemptions were expressed in very broad terms, meaning that they may be open-ended, with problematic consequences for the foreseeability of the law,⁸⁷ concluding that they thus appeared unjustified, discriminatory and therefore in breach of Article 14 of the ECHR.⁸⁸

81 See Venice Commission, Hungary - [Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), CDL-AD(2017)015, paras. 33-34.

82 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 33; [Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#), CDL-AD(2013)030, para. 54, referring as a comparison to European Court of Human Rights, *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006, paras. 81-86, where the Court was reluctant to accept the foreign origin of a non-commercial organisation as a legitimate reason for a differentiated treatment. See also Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, para. 34.

83 See ODIHR and Venice Commission, [Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#), CDL-AD(2013)030, Section 3. In this respect, as the Joint Guidelines note, “*while the foreign funding of non-governmental organisations may give rise to some legitimate concerns, regulations should seek to address these concerns through means other than a blanket ban or other overly restrictive measures*”; see ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 219.

84 See <[Federal Law No. 20-FZ of 07.2012.121 · Official publication of legal acts \(pravo.gov.ru\)](#)>.

85 See e.g., Venice Commission, Hungary - [Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), CDL-AD(2017)015, paras. 42-43.

86 See Venice Commission, Hungary - [Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), CDL-AD(2017)015, para. 43.

87 *Ibid.*, para. 43 (2017 Venice Commission’s [Opinion on the Hungarian Draft Law](#)).

88 *Ibid.*, para. 65 (2017 Venice Commission’s [Opinion on the Hungarian Draft Law](#)).

3.2.6. Sectoral Inequity

48. The issue of discriminatory treatment of certain categories of associations on the basis of the foreign origin of their funding also needs to be analysed from the perspective of sectoral equity, meaning **that measures that apply to associations should not be more exacting than those generally applicable to business or commercial entities.**⁸⁹ As underlined in the ODIHR-Venice Commission Joint Guidelines on Freedom of Association, the process of registering an association should not be more cumbersome than the process created for other entities, such as businesses and associations should not be required to submit more reports and information than other legal entities, such as businesses; equality between different sectors should be exercised.⁹⁰
49. In the case of proposed amendments to Ukraine legislation, to assess the proportionality of the proposed measures, ODIHR and the Venice Commission specifically assessed to what extent new requirements, such as reporting and other administrative, civil and criminal law obligations and sanctions, imposed on associations would be more demanding or more severe than those applicable to other legal entities, such as businesses.⁹¹ In this respect, associations should not be required to submit more reports and information than other legal entities, such as businesses. The freedom of associations to seek resources, which is protected by the right to freedom of association, shall be subject only to the requirements in laws that are generally applicable to customs, foreign exchange, the prevention of money laundering and terrorism, as well as those concerning transparency and the funding of elections and political parties, to the extent that these requirements are themselves consistent with international human rights standards.⁹²

3.3. “Transparency” or “Publicity” or “Openness”

50. In order to be in line with the above international human rights instruments, the relevant legislation needs to pursue one or several of the legitimate aims listed exhaustively in international instruments, and to be narrowly interpreted. As stated above in Sub-Section 1 (Background), many of the laws specify or at least imply that they aim to enhance transparency, openness or publicity of funding in the civil society sector, notably the laws of Russia and Hungary (the latter even including reference to transparency in the title of the law), but also the draft Law of Georgia on “Transparency of Foreign Influence” or the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations,⁹³ and the Draft Law of the Kyrgyz Republic on Non-Profit Non-Governmental Organizations.⁹⁴
51. Enhancing transparency or openness of the funding of the civil society sector is not listed among the legitimate aims mentioned in the ICCPR and the ECHR. While the European Court of Human Rights has acknowledged in principle, that the objective of increasing transparency with regard to the funding of CSOs may correspond to the legitimate aim of the protection of public order,⁹⁵ it also specifically referred to the receipt of “substantial foreign funding” in connection with identified risks of foreign involvement in some “sensitive areas – such as elections or funding of political movements” and to the objective of preventing money laundering and terrorism financing.⁹⁶ The CJEU, when

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

90 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, paras. 156 and 225.

91 ODIHR and Venice Commission, [CDL-AD\(2018\)006-e, Ukraine - Joint Opinion](#), para. 43.

92 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 192.

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

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

95 European Court of Human Rights, [Ecodefence and Others v. Russia](#), no. [9988/13](#), 14 June 2022, para. 122.

96 European Court of Human Rights, [Ecodefence and Others v. Russia](#), no. [9988/13](#), 14 June 2022, paras. 139 and 165

looking at the Hungarian legislation, assessed that the objective of increasing the transparency of the financing of associations was not capable of justifying the Transparency Law, having regard to the content and the purpose of the provisions of that law, and especially that it was based “*on a presumption made on principle and applied indiscriminately that any financial support [from abroad] and any civil society organisation receiving such financial support are intrinsically liable to jeopardise the political and economic interests*”.⁹⁷

52. In this respect, as underlined in ODIHR and/or Venice Commission’s previous opinions and reports,⁹⁸ **enhancing transparency does not by itself constitute a legitimate aim as described in the above international instruments,⁹⁹ although there may be circumstances where this may be a means in the pursuit of one or more of the legitimate aims recognised as allowing restrictions on this right, such as public order or the prevention of crimes such as corruption, embezzlement, money-laundering or terrorism financing.¹⁰⁰ At the same time, abstract “public concern” and “suspicions” about the legality and honesty of financing of NGO sector, without pointing to a substantiated concrete risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering cannot constitute a legitimate aim justifying restrictions to this right¹⁰¹** (see also Sub-Section 3.2.1. above on risk-based approach).
53. Moreover, the Joint Guidelines on Freedom of Association provide that, while openness and transparency are fundamental for enhancing accountability and public trust, “[*t*he state shall not require but shall encourage and facilitate associations to be accountable and transparent”.¹⁰²
54. Generally speaking, enhancing transparency and accountability is an essential component of good *public* governance applicable to the public sector but not to private associations, unless they are funded from public sources¹⁰³ or performing essential democratic functions, such as political parties, which may justify the imposition of specific reporting or disclosure requirements as underlined in the *Joint Guidelines on Freedom of Association* and in Council of Europe’s Committee of Ministers’ *Recommendation CM/Rec(2007)14*.¹⁰⁴
55. In the context of political party regulation specifically, the European Court of Human Rights has also acknowledged the imposition of certain requirements entailing

97 CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, paras. 86-87.

98 See e.g., ODIHR and Venice Commission, ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 25; [Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance](#), CDL-AD(2018)006-e, para. 35. See also ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 107; and Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), paras. 61 and 80.

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

100 *Ibid.*

101 See e.g., ODIHR-Venice Commission, [Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance](#), CDL-AD(2018)006-e, para. 36.

102 See e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 224.

103 The *Joint ODIHR-Venice Commission Guidelines on Freedom of Association* acknowledge that the receipt of public support may justify the imposition of reporting requirements, though they should not be too burdensome and, at the very least, should be proportionate to the level of public support received (see ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 214).

104 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, paras. 225-226. See also Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), adopted on 10 October 2007, paras. 62-65.

transparency limited to political parties, providing that they did not entail significant disclosure or reporting obligations, not to be disproportionate.¹⁰⁵ Thus, the Court has found that a prohibition on the funding of political parties by foreign States – which effectively gave rise to an obligation for political parties to publish donations through depositing them in a specified bank account – was necessary for the prevention of disorder.¹⁰⁶ It has also recognized that the possibility for some associations 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.¹⁰⁷ In addition, the European Court of Human Rights has acknowledged that, in view of the fundamental role played by political parties in the proper functioning of democracies, the general public may be deemed to have an interest in political parties being monitored and in sanctions being imposed for any irregular expenditure, particularly as regards those parties that receive public funding so that the inspection of their finances did not in itself raise an issue under Article 11 of the ECHR.¹⁰⁸ In any case, the reporting and transparency requirements that may be imposed on political parties may be justified in light of their specific role and status and should not be extended to apply to all associations. The Joint Guidelines on Political Party Regulation also acknowledge the legitimacy of certain regulations with respect to the third-party financing in relation to election campaigns, such as “[c]ampaign expenditures made independently of a candidate or party with the aim of promoting or opposing a candidate or party, either directly or indirectly”, which “may be subject to reasonable and proportionate limitations”.¹⁰⁹

3.4. Risk of Money-Laundering or Financing of Terrorism or Other Threats to National Security or Public Order

56. As underlined above, **a legitimate aim may be invoked to avert a real, and not only hypothetical danger¹¹⁰ and when relying on a substantiated concrete risk analysis confirming specific involvement of the NGO sector in the commission of crimes¹¹¹** (see also Sub-Sections 3.2. and 3.4. above). The mere invocation by the public authorities of risks of terrorism financing and money-laundering would not be enough *per se*. **Even matters such as preventing money laundering or countering financing of terrorism do not justify imposing new reporting requirements for all associations without a concrete threat or any concrete indication of individual illegal activity.¹¹²**
57. Even if there were indications of terrorism financing, money laundering activities or other criminal activities on the side of certain specific associations, the correct approach to this would be proportionate response targeting the specific individual associations and not new blanket registration and reporting requirements – adding to the already existing

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

106 European Court of Human Rights, *Parti nationaliste basque – Organisation régionale d’Iparralde v. France*, no. [71251/01](#), 7 June 2007.

107 European Court of Human Rights, *Zhechev v. Bulgaria*, no. [57045/00](#), 21 June 2007.

108 European Court of Human Rights, *Cumhuriyet Halk Partisi v. Turkey*, no. [19920/13](#), 26 April 2016.

109 See ODIHR and Venice Commissions, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 218. See also European Court of Human Rights, *Bowman v. United Kingdom*, no. [24839/94](#), 19 February 1998

110 See e.g., UN Human Rights Committee, *Mr. Jeong-Eun Lee v. Republic of Korea*, Communication No. [1119/2002](#), U.N. Doc. CCPR/C/84/D/1119/2002(2005), para. 7.2.

111 Venice Commission, *Report on Funding of Associations*, CDL-AD(2019)002, para. 81.

112 See ODIHR and Venice Commission, *Joint Opinion on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations* (13 June 2023), para. 28; see also Financial Action Task Force (FATF)’s Recommendations, Recommendation 8 – as amended, which states: “Countries should apply focused and proportionate measures, in line with the risk-based approach”. See also e.g., European Court of Human Rights, *Sindicatul “Păstorul cel Bun” v. Romania* [GC], no. [2330/09](#), 31 January 2012, para. 69.

ones – and that affect numerous other organisations engaging in entirely legitimate activities, targeted due to the foreign origin of their sources of funding.¹¹³

58. In its 2021 Opinion on the recent amendments to the “Russian Foreign Agents Law”, the Venice Commission observed that in their supporting documentation, the Russian authorities had failed to indicate any specific threats to national security that might arise from foreign financial support for the activities of non-commercial organisations, unregistered public associations, and individuals.¹¹⁴ They had also not explained how more transparency concerning foreign financial support was supposed to avert these threats.¹¹⁵ For this reason, the Venice Commission concluded that the measures set out in the “Russian Foreign Agents Law” did not pursue one or more legitimate aims.

3.5. Alleged Risks Caused by So-called “Foreign Influence”

59. Some of the legislation specifically targeting all associations that receive funding from abroad refer to the risks posed by “foreign influence” or to a general or abstract assumption that all funding of associations from abroad are suspicious.
60. As also stated by the European Court in the *Ecodefence* case, **an approach considering as “suspect and a potential threat to national interests” any external state scrutiny of the work of CSOs in any matters, including human rights or rule of law, “is not compatible with the drafting history and underlying values of the Convention as an instrument of European public order and collective security: that the rights of all persons within the legal space of the Convention are a matter of concern to all member States of the Council of Europe.”**¹¹⁶ In its judgment against Hungary, the CJEU noted that Hungary appeared to have based its law not on the existence of a “genuine threat”, but on a “presumption made on principle”, which implied, in an indiscriminate manner, that financial support sent by other Member States or third countries and the civil society organisations receiving such financial support were *per se* liable to jeopardize the State’s political and economic interests and the ability of its institutions to operate free from interference.¹¹⁷ For this reason, the CJEU found that Hungary had failed to establish “a genuine, present, and sufficiently serious threat to a fundamental interest of society, which would enable the grounds of public policy and public security mentioned in Article 65(1)(b) Treaty of the Functioning of the European Union to be relied upon”.¹¹⁸
61. Regarding the Draft Law of Republika Srpska on the Special Registry and publicity of the Work of Non-Profit Organizations, the Joint ODIHR-Venice Commission underlined that “[t]he reference to ‘agents of foreign influence’ in the Draft Law seems to imply that the mere receipt of funding by non-profit organisations or other forms of assistance from abroad triggers a presumption of some forms of influence or control of the work of the recipient by the donor, which is not justified.”¹¹⁹
62. As also noted in other previous opinions, new reporting, disclosure or other obligations cannot be justified on the basis of mere “suspicions” about the honesty of the financing of the NGO sector without any concrete risk analysis having been made concerning the

113 See e.g., ODIHR and Venice Commission, [Joint Opinion on the draft law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations](#) (13 June 2023), para. 29.

114 Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, [CDL-AD\(2021\)027](#), para 43.

115 *Ibid*, para 43.

116 European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para. 139.

117 CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 86.

118 CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 95 and preceding paragraphs.

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

involvement of associations in the commission of crimes such as corruption and money laundering.¹²⁰

63. Finally, regarding the funding provided by international organisations in particular, the Venice Commission has emphasized that “[b]y joining an international organisation, a State proclaims to share its values and objectives and participates in the definition of the strategies and actions, including possibly through financing of eligible NGOs. Allocations of funds by an international organisation to a domestic NGO cannot therefore be seen, in this context, as pursuing ‘alien’ interests.”¹²¹

3.6. References to Other Country Examples

64. The explanations or justifications for developing or adopting legislative initiatives targeting associations funded from abroad often refer to other country examples that the public authorities invoke as models for the said initiatives. For instance, the Explanatory Note to the draft Law of Georgia on the Transparency of Foreign Influence mentions both the American Foreign Agents Registration Act (FARA)¹²² and the Australian Foreign Influence Transparency Scheme Act adopted in 2018.¹²³ The public authorities in the Republika Srpska of Bosnia and Herzegovina similarly referred to the American FARA as an inspiration for the [Draft Law on the Special Registry and Publicity of the Work of Non-Profit Organisations](#).¹²⁴
65. It is important to underline that **the above-mentioned country examples are fundamentally different and have very distinct purpose and scope,¹²⁵ and therefore are not relevant comparative examples to justify the introduction of legislative initiatives targeting associations receiving funding from abroad.** The FARA was originally enacted in 1938 with a view to register individuals or entities acting *at the direction and control* of a foreign government and its scope was broadened in 2016 to focus on countering foreign interference in elections.¹²⁶ Contrary to the legislative initiatives under review in this Note, under the FARA, one does not have to register simply because one receives funds from a foreign source. Rather one must be *an agent* of a foreign principal, meaning that one acts at the specific direction and control, and on the behalf, of a foreign principal.¹²⁷ In addition, the FARA was not enacted to regulate specifically civil society organisations or media representatives but any entity, non-profit or commercial, or individual acting as a legal agent on behalf of a foreign principal.¹²⁸ In contrast, the legislative initiatives under review only target associations or not-for-profit organizations, and not other legal entities, and the determining criteria is the mere receipt of funding from abroad, irrespective of any evidence of direction and/or control from a foreign government.¹²⁹ Of note, the scope of the FARA has been significantly narrowed by amendments over time; it does not apply to news or press organisations not owned or controlled by a foreign entity and requires a very high degree of control between the

120 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 55; and Romania - [Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations](#), [CDL-AD\(2018\)004](#), paras. 12 and 66.

121 Venice Commission, [CDL-AD\(2019\)002, Report on Funding of Associations](#), para. 98.

122 See [Foreign Agents Registration Act | Foreign Agents Registration Act \(justice.gov\)](#).

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

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

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

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

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

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

129 [22 U.S. Code § 611 - Definitions](#).

foreign entity and the agent.¹³⁰ Overall, it primarily focuses on the activities of lobbyists and publicity agents acting on behalf of foreign governments.¹³¹

66. As regards the 2018 Australian Foreign Influence Transparency Scheme Act,¹³² it obliges organizations undertaking activities *on behalf of* foreign organizations to disclose details of such activities and relationships, particularly during elections and if the organizations make statements on behalf of a foreign government,¹³³ and to make some of that information public. While CSOs were initially included in the scope of the original draft Act, they were explicitly excluded in a later draft due to a last-minute amendment prior to adoption. In general, as in case of FARA, the Australian Foreign Influence Transparency Scheme Act also primarily focuses on regulation of lobbying.¹³⁴

4. COMPLIANCE WITH THE PRINCIPLE OF LEGAL CERTAINTY AND FORESEEABILITY

67. For the purpose of assessing the legality of a restriction, laws must not only formally exist and be accessible but also clear and foreseeable.¹³⁵ As such, they must be formulated with sufficient precision to enable an individual – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹³⁶ Especially, regarding “foreign agents” legislation or similar legislative initiatives, **the terms used to define the organizations falling within the scope of so-called “foreign agents” laws or similar legislative initiatives are generally vague, overbroad and/or ambiguous – for instance the notion of “political activities”, “foreign funding” or more broadly any assistance from abroad – and fail to comply with the principle of legal certainty and foreseeability of legislation.** As a consequence, this may lead to potential extensive or arbitrary interpretation and unfettered discretion on the side of the public authorities in charge of implementing the legislation,¹³⁷ potentially putting civil society at risk of politically motivated restrictions and repression.¹³⁸
68. For example, in the Russian “Foreign Agents Law”, the denomination “foreign agent” is described as applying to “*non-commercial organizations receiving funding from abroad and participating in political activities*”; the term “political activities”, following amendments made to the law in 2016, applies to all “*activities in the fields of statehood, the protection of the Russian constitutional system, federalism, the protection of the Russian Federation’s sovereignty and territorial integrity, the rule of law, public security, national security and defence, external policy, the Russian Federation’s social, economic and national development, the development of the political system, the structure of State and local authorities, [or] human rights, for the purpose of influencing State policy, the structure of State and local authorities, or their decisions and actions*”. The amended provisions of the law indicate different ways in which these activities may

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

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

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

133 *Ibid.* Section 4.

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

135 See e.g., European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para. 90; [Maestri v. Italy](#) [GC], no. 39748/98, 17 February 2004, para. 30; and [The Sunday Times v. the United Kingdom](#), no. 6538/74, 26 April 1979, para. 49.

136 See, e.g., European Court of Human Rights, [Parti nationaliste basque – Organisation régionale d’Iparralde v. France](#), no. 71251/01, 7 June 2007, paras. 40-42.

137 See European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, paras. 107-112.

138 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022](#) dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 3.

be undertaken, including public assemblies, election campaigning, submitting public petitions, disseminating and shaping opinions, involving citizens in the above activities and financing them.

69. In its 2022 judgment in the case of *Ecodefence and Others v Russia*, the European Court of Human Rights noted the broad and “*inherently vague*” nature of the term “*political activities*”, while at the same time indicating that the Russian authorities had also interpreted this term in “*an extensive and unforeseeable manner*”, so that the concept of “*political activity*” was extended to any form of public advocacy on an extremely wide set of issues.¹³⁹ It concluded that “[*t*]he classification of NGOs’ activities based on this criterion – whether they constituted ‘*political activities*’ – produced incoherent results and engendered uncertainty among NGOs wishing to engage in civil society activities”.¹⁴⁰ Similarly, regarding the term “*foreign funding*”, the Court noted that “[*t*]he absence of clear and foreseeable criteria has given the authorities unfettered discretion to assert that the applicant organisations were in receipt of ‘*foreign funding*’, no matter how remote or tenuous their association with a purported ‘*foreign source*’ was”; it therefore concluded that individuals “*were unable to envisage with a sufficient degree of foreseeability what funding and what sources of funding would qualify as ‘foreign funding’ for the purposes of registration as a ‘foreign agent’*”, and that it allowed “*for its overbroad and unpredictable interpretation in practice, [and did] not meet the ‘quality of law’ requirement*”.¹⁴¹ The question of whether a non-commercial organization would be considered a foreign agent under the law or not thus remained at the discretion of the Russian authorities, leaving the organizations themselves with little advance knowledge of which activities would place them under the scope of the law and which would not. **These kinds of vague and overbroad formulations are thus not “clear and foreseeable”, and therefore the quality of the law is not such as to meet the requirements of Article 11(2) of the ECHR, nor, due to the similarity of the wording, Article 22(2) of the ICCPR.**
70. In its 2021 Opinion on the amended “Russian Foreign Agents Law”, the Venice Commission also noted that terms such as the notion of “*organizational and methodological support*” to determine whether an organisation could be qualified as a “*foreign agent*”, is so vague and susceptible to broad interpretation that the provision cannot be deemed to be foreseeable.¹⁴² In addition, both the Hungarian and the Russian laws (following amendments in 2020), as well as the Georgian draft law on Transparency of Foreign Influence (Article 2(4)), also use the concept of “*indirect funding*”. In this respect, regarding the “Russian Foreign Agents Law”, the Venice Commission questioned the need to expand the definition of foreign funding to include Russian nationals or organizations that received the funds from foreign sources or acted in the capacity of intermediaries and recommended deleting this element from the scope of the laws.¹⁴³
71. **Other elements to be considered to assess the foreseeability of legal provisions include, for instance, the availability of administrative guidelines explaining how the authorities would be interpreting certain terms/limitations or the existence of**

139 See European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras 96-100.

140 *Ibid.* *Ecodefence and others v. Russia*, paras 96-100.

141 *Ibid.* *Ecodefence and others v. Russia*, paras. 110 and 112.

142 Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, para. 52.

143 Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, para. 57.

stable, consistent and foreseeable case-law by domestic courts, which are not existing in the case of the “Russian Foreign Agents Law”.¹⁴⁴

72. Regarding the concept of “foreign representatives” in the recent legislative initiative in the Kyrgyz Republic, ODIHR raised concerns regarding the “*non-compliance with the principle of legal certainty and foreseeability of the definition of ‘foreign representatives’, especially of the meaning of carrying out ‘political activities’, which renders the scope of the notion and related obligations uncertain and thereby would allow unfettered discretion on the part of the implementing authorities*”.¹⁴⁵
73. In the Draft Law of Republika Srpska, the wording used in some provisions of the Draft Law goes beyond the provision of financial resources/funding but refers to any other form of assistance (Article 1). The Joint Opinion noted that this could range from mere provision of equipment or services, or more informal forms of support such as provision of speakers for a conference or potentially even the mere provision of information, and that this wording was thus vague and ambiguous, rendering it “*impossible to envisage with a sufficient degree of foreseeability what funding and other assistance would trigger the qualification of an ‘NPO’ and the related obligations and prohibitions*”.¹⁴⁶

5. NECESSITY AND PROPORTIONALITY OF NEW OBLIGATIONS AND RESTRICTIONS IMPOSED ON ASSOCIATIONS FUNDED FROM ABROAD

5.1. General Comments

74. The consequences of adopting “foreign agents” legislation or the like for the work of these organizations have been dire, often forcing them to choose between continuing their work while accepting foreign funding and the burdens and stigma associated with “foreign agent” or similar status or significantly reducing their activities due to insufficient domestic funding or a complete lack thereof. Additionally, in all of the above cases, the rhetoric surrounding discussions on the above laws and draft laws also implied that associations receiving foreign funds and support were not to be trusted, so that the registration as “foreign agents” or the like also came with a certain public stigma and harassment.¹⁴⁷
75. As noted above, restrictions to the right to freedom of association must also be “necessary in a democratic society”, meaning that any restriction must be proportionate to the intended legitimate purpose. As underlined in the Joint Guidelines on Freedom of Association, “[e]nsuring that an interference by the state in the exercise of a fundamental freedom does not exceed the boundaries of necessity in a democratic society requires striking a reasonable balance between all countervailing interests and ensuring that the means chosen be the least restrictive means for serving those interests”.¹⁴⁸ The Joint Guidelines further elaborate that “[a]t the legislative stage, this should be done by assessing whether a planned interference in the exercise of the right to freedom of association is justified in a democratic society, and whether it is the least intrusive of all possible means that could have been adopted. The state must, therefore, bear the burden

144 See e.g., Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, para. 55; and European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 104. See also e.g., Venice Commission’s *Report on Funding of Associations*, CDL-AD(2019)002, para. 68.

145 ODIHR, *Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic* (12 December 2022), para. 107.

146 See ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 35.

147 CoE Commissioner for Human Rights, *Opinion on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards*, CommDH(2013)15, 15 July 2013, paras. 57 and 80.

148 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 112.

of proving that any restrictions pursue a legitimate aim that cannot be fulfilled by any less intrusive actions.”¹⁴⁹ Accordingly, **it is important to note that legal drafters usually do not assess the potential negative impact of “foreign agents” or similar legislative initiatives on associations carrying out legitimate activities. They also generally fail to demonstrate that they have considered other legal alternatives and selected the least intrusive measures with regard to the protection of fundamental rights. The availability of such alternatives are important factors in the assessment of the proportionality of the proposed legislative choice.**¹⁵⁰

76. One of the decisive consideration, in the context of “foreign agents” legislation or the like is **whether any of the entities potentially affected would be able to secure reasonable level of domestic funding on a transparent and non-discriminatory basis**¹⁵¹ in the event of them not wishing to continue to receive funding from abroad because of concerns about being labelled as “foreign agents” or other terminology, stigmatized as such and/or subject to burdensome and/or costly reporting and other obligations and/or restrictions, such as being limited in the scope of its activities or operation (see below).

5.2. Separate Registration Requirements and Risk of Stigmatization

77. The above-mentioned “foreign agents laws” or similar legislative initiatives, with the exception of the repealed Hungarian law,¹⁵² generally require associations funded from abroad to register in a *separate*, special register,¹⁵³ in addition to the general registration that may be applicable to all associations. In this respect, ODIHR and the Venice Commission **have sometimes questioned the necessity and added value of establishing such an additional registration mechanism,**¹⁵⁴ also underlying the risk of stigmatization that such a separate registration may trigger.¹⁵⁵
78. In some cases, these restrictions are related to all foreign funding, irrespective of the amount and origin of the funds. This is, for example, the case of the “Russian Foreign Agents Law”. Any minimal amount of funding received from abroad or on any minimal period of time during which a non-commercial organization would have to receive foreign funding, or any movable or immovable property is taken into account. This is highly problematic because even payments of very small amounts can lead to the designation of a non-commercial organization as a “foreign agent”. Similarly, the Draft Law of Republika Srpska fails to precisely define what features, including minimum amounts or thresholds and nature of the sources, the so-called “foreign funding” or other types of assistance should have for an association or foundation to fall within the scope of application of the Draft Law.

149 *Ibid.* para. 113 (2014 *Joint Guidelines on Freedom of Association*).

150 See e.g., ODIHR, *Assessment of the Legislative Process in Bosnia and Herzegovina* (2023), para. 245.

151 See e.g., European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 165 and 169. See also ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 31.

152 See e.g., Venice Commission, Hungary - *Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad*, CDL-AD(2017)015, para. 47, which specifies that “During the visit to Budapest, the Venice Commission was informed that no new, separate register was to be established for organisations receiving foreign funding. Rather, the information is to be added to the already existing register of civil society organisations which is regulated by Act No. 181/2011 on the Court Registration of Civil Society Organisations and the Related Rules of Procedure. This solution is to be welcomed, as creating a separate register might strengthen the perception that the Draft Act aims at stigmatising certain civil society organisations, based solely on their source of financing.”

153 As a “foreign agent” (Russian Federation), “non-profit organization” (Draft Law of Republika Srpska), “foreign representatives” (2022-2023 Draft Amendments of the Kyrgyz Republic), “agent of foreign influence” (Article 2 of the Georgian Draft Law on Transparency of Foreign Influence, defined as a) a non-entrepreneurial legal entity, b) a broadcaster c) a legal entity that has ownership in a broadcaster d) a legal entity that has ownership in or uses an internet domain intended for disseminating mass information in the Georgian language).

154 See e.g., ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 50.

155 See e.g., Venice Commission, Hungary - *Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad*, CDL-AD(2017)015, para. 47.

79. The European Court of Human Rights also noted that the “Russian Foreign Agents Law” did not “*establish a minimum amount or share of ‘foreign funding’ in an organisation’s budget, with the result that an organisation regularly funded from abroad, an organisation which has been awarded an international prize for its work, and an organisation receiving a computer or software licence from an international company would all indiscriminately be considered to be funded by ‘foreign sources’*”.¹⁵⁶ Generally, ODIHR and the Venice Commission consider that when the separate obligations or requirements do “*not appear to be made conditional on any minimal amount of funds or assistance received from foreign sources*”, “[t]his lack of differentiation weighs negatively on the assessment of the proportionality of the interference”.¹⁵⁷ Regarding the “Russian Foreign Agents Law” as amended, the UN Special Rapporteur also noted with concerns that “*the unchecked ministerial discretion to dictate the criteria, methods and conditions for NGO registration (articles 5 and 6) may give rise to the discriminatory and disproportionate targeting of NGOs and human rights defenders, particularly those with critical or dissenting views from the Government or working on what are perceived to be politically sensitive issues*”.¹⁵⁸
80. The (repealed) Hungarian Law and the Georgian Draft Law on the Transparency of Foreign influence, on the other hand, were to only apply in cases where funds received from abroad surpassed a certain threshold. In the case of Hungary, CSOs thus needed to register as “*organizations receiving foreign funding*” if they had received more than 7,2 million HUF (approximately 18.000 EUR) annually, while in Georgia, the law, if adopted, would only have applied in cases where an organization has received more than 20 per cent of its total income during a calendar year from a “foreign power” as defined in draft Article 3. With regards to the Hungarian Law, the CJEU considered that “*the financial thresholds triggering the application of the obligations put in place by the Transparency Law were fixed at amounts which clearly do not appear to correspond with the scenario of a sufficiently serious threat to a fundamental interest of society, which those obligations are supposed to prevent.*”¹⁵⁹
81. The (repealed) Hungarian Law provided for a possibility to de-register in case foreign support did not reach the relevant threshold during three consecutive fiscal years. On 8 March 2015, a procedure for removing an organisation from the register of “foreign agents” was added to the “Russian Foreign Agents Law” (section 32(7.1)) and amendments adopted in 2020 also introduced the procedure for removal of *individuals* from the “foreign agent” register. Apart from these, the other above-mentioned “foreign agents” laws or similar legislative initiatives generally do not specify the time that must pass for a “foreign agent” or the like to be removed from the special register if it stops receiving foreign funding or assistance, nor the deregistration procedure.¹⁶⁰ Thus, it remains unclear **whether, and how, an organization registered in the special registry may ever divest itself of the special status of “foreign agents” or the like, and related additional reporting and other obligations and restrictions, once it ceases to receive**

156 European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para. 167.

157 See similar findings in ODIHR and Venice Commission, [CDL-AD\(2013\)030, Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#), para. 55. See also Venice Commission, [CDL-AD\(2014\)025-e, Opinion on Federal Law n. 121-fz on non-commercial organisations \(“law on foreign agents”\), on Federal Laws n. 18-fz and n. 147-fz and on Federal Law n. 190-fz on making amendments to the criminal code \(“law on treason”\) of the Russian Federation](#), paras. 70 and 88, which notes that the Draft Law it “*does not make the legal status of ‘foreign agent’ conditional on any minimal amount of funding received from abroad or on any minimal period of time during which a NCO would have to receive foreign funding. [...] The current draft lacks minimum requirements in the amount of the used money and the length of operation.*”

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

159 CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 94.

160 See e.g., regarding the Draft Law of Republika Srpska, ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 37.

foreign funding/assistance. As noted in other joint opinions, **this is a significant gap which calls into question the proportionality of the measure.**¹⁶¹

82. The publication in registers of personal data and information about “foreign agents”, their representatives, or even individuals in the case of the “Russian Foreign Agents Law” also impacts their right to privacy. For example, the “Russian Foreign Agents Law”, following multiple amendments, now also affects not only CSOs, but also individuals and unregistered public associations. Private information on these entities and individuals is published in the special register maintained by the Ministry of Justice, which is online and accessible to the public. In its Opinion on the “Russian Foreign Agents Law”, the Venice Commission noted that the collection and publication of personal data in the registry of “foreign agent” individuals and entities amounted to an infringement on their right to privacy,¹⁶² which is not justified as it does not pursue a legitimate aim. The Venice Commission also notes that due to the stigmatizing nature of the “foreign agent” designation, the public register will likely tarnish the reputation of entities and individuals and seriously hamper their activities.¹⁶³

5.3. Labelling Obligation and Stigmatization

83. Some of the legislation on so-called “foreign agents” or equivalent require associations receiving funding from abroad to label or mark all their publications, including online, with the wording “foreign agent” (Russian Federation), “organization receiving support from abroad” (repealed Hungarian Law), “non-profit organization” (Republika Srpska), etc. Regarding labelling obligations in general, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has also underlined that *“the sweeping imposition of the label of ‘foreign agent’ on all civil society organizations [...] cannot be deemed necessary in a democratic society in order to ensure a legitimate aim, including ensuring transparency of the civil society sector”*.¹⁶⁴ As further underlined by ODIHR and the Venice Commission when reviewing the draft amendments of the Kyrgyz Republic in 2013, an association labelled **“foreign agent”** **“will probably encounter an atmosphere of mistrust, fear and hostility making it difficult to operate”**.¹⁶⁵
84. Moreover, it should be borne in mind that such labelling may have an entirely improper objective. As the Venice Commission has observed in relation to “foreign agents laws”, *“public disclosure obligations of receipt of foreign funding were often designed to subject associations receiving such funding to public opprobrium and to increase the difficulties for the organizations in achieving their intended work. On occasion, they have even been accompanied by smearing campaigns against associations which receive foreign funding”*.¹⁶⁶ In its earlier 2014 Opinion on the “Russian Foreign Agents Law”, the Venice Commission had already noted that *“the imposition of the very negative qualification of ‘foreign agent’ and the obligation for the NCO to use it on all its materials cannot be deemed to be ‘necessary in a democratic society’ to assure the financial transparency of the NCO receiving foreign funding. The mere fact that an NCO receives foreign funding*

161 See e.g., ODIHR and Venice Commission, [CDL-AD\(2013\)030, Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic](#), para. 65; and [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 37.

162 See Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, [CDL-AD\(2021\)027](#), para. 62.

163 *Ibid.* para. 62 (2021 Venice Commission’s Opinion).

164 [Access to resources](#), A/HRC/50/53, 10 May 2022, para. 28.

165 See ODIHR and Venice Commission, *Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic*, [CDL-AD\(2013\)030, para. 47](#).

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

cannot justify it to be qualified a ‘foreign agent’”.¹⁶⁷ These findings will likely apply to the other above-mentioned laws providing certain CSOs with similar labels as well.

85. With respect to the “Russian Foreign Agents Law” specifically, CSOs complained that requiring them to register as “foreign agents” and use this label on all public materials also violated their right to freedom of expression. The European Court of Human Rights, in the case of *Ecodefence and Others v. Russia*, concurred with this claim, noting that **the label “foreign agent”, aside from being unjustified and prejudicial, was liable to have a strong deterrent and stigmatizing effect on their operations.**¹⁶⁸ As underlined by the Council of Europe Commissioner for Human Rights, “*the use of the term ‘foreign agent’ (inostranny agent) is of particular concern to the organisations affected by the implementation of the [“Russian Foreign Agents Law”], since it has usually been associated in the Russian historical context with the notion of a ‘foreign spy’ and/or a ‘traitor’ and thus carries with it a connotation of ostracism or stigma.*”¹⁶⁹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association noted the same concerns regarding the **stigmatization of the legitimate work of human rights defenders, activists and civil society organizations and the connotation of ‘traitor’ or ‘spy’ associated with the term “foreign agent”, noting the potential damaging effect to the affected persons’ reputation, credibility and even threats to their safety.**¹⁷⁰
86. While the repealed Hungarian law introduced the more neutral label of “*organizations receiving support from abroad*”, the Venice Commission, in its related Opinion, nevertheless noted that this label also carried with it the risk of stigmatizing such organizations, which in consequence adversely affected their legitimate activities and had a chilling effect on freedom of expression and association.¹⁷¹ It based its findings on the context surrounding the adoption of the law in Hungary, notably strong political statements and accusations levelled against these kinds of CSOs receiving foreign funding, portraying them as acting against the interest of the society.¹⁷²
87. Regarding the marking “non-profit organization” (NPO) in the Republika Srpska, although noting that it is more neutral and descriptive than the term “foreign agent”, ODIHR and the Venice Commission emphasized that the “NPO marking” may still, depending on the context, create the risk of stigmatizing certain associations, NGOs and CSOs and affecting their legitimate activities,¹⁷³ especially if other associations and foundations, or foreign and international NGOs, are not required to indicate their status. In the Joint Opinion, it is also underlined that the terms NPO, NGO and CSO are so interchangeably used in practice that it will create additional confusion and possibly implications for wider civil society.

167 Venice Commission, [Opinion on Federal Law N. 121-FZ on Non-Commercial Organisations \(law “on foreign agents”\)](#), CDL-AD(2014)025, para. 60.

168 European Court of Human Rights, [Ecodefence and others v. Russia](#), nos. 9988/13 and 60 others, 14 June 2022, para 136, which refers to “a strong deterrent and stigmatising effect on their operations”.

169 CoE Commissioner for Human Rights, [Opinion on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards](#), CommDH(2013)15, 15 July 2013, paras. 57 and 80.

170 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022](#) dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, pp. 2-3.

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

172 See e.g., Venice Commission’s [Report on Funding of Associations](#), CDL-AD(2019)002, footnote 164. See also Venice Commission, [CDL-AD\(2017\)015, Hungary - Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), para. 65, which states “in the context prevailing in [the country], marked by strong political statements against associations receiving support from abroad, this label risks stigmatising such organisations, adversely affecting their legitimate activities and having a chilling effect on freedom of expression and association”.

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

88. In light of the foregoing, **when other associations are not required to label themselves to indicate their legal structure, obliging associations to use even a seemingly neutral label as their self-identification may in practice, but also depending on the context, impact their actual operation and exercise of their legitimate activities, as it may potentially stigmatize them or discredit their activities in the eyes of others, including their beneficiaries and the public.**¹⁷⁴

5.4. Restrictions or Prohibitions of Certain Activities and Impact on the Right to Freedom of Expression and to Take Part in Public Affairs

89. Some of the above-mentioned “foreign agents laws” or similar legislative initiatives introduce some restrictions or prohibitions regarding the activities that may be carried out by so-called “foreign agents” or the like, for instance restrictions on speech (Russian Federation), limitations to access the public service (Russian Federation), total ban on public funding (Russian Federation) or prohibition to carry out broadly framed “political action” and “political activities” (Republika Srpska). Federal Law No. 91-FZ of April 20, 2021 “On Amendments to Certain Legislative Acts of the Russian Federation” further obliges persons considered to be “foreign agents” or persons affiliated with them to state this fact in the lists of supporting signatures required when declaring the intent to stand for election. The “foreign agent” designation will be listed next to information on candidates’ prior criminal records and needs to be included in campaign materials and stated on information stands on premises of the precinct electoral commissions, as well as on ballots.¹⁷⁵ The latest amendments to the Law on Foreign Agents that came into force on 1 December 2022, have now practically excluded “foreign agents” from key aspects of public life. Based on the amended “Russian Foreign Agents Law”, these individuals are not allowed to join the civil service, participate in electoral commissions, act in advisory or expert capacity in official or public environmental impact assessments, provide independent anti-corruption expertise on draft laws or by-laws, take part in electoral campaigns, or even donate to such campaigns of political parties.¹⁷⁶
90. The right to participate in public affairs is protected by Article 25 of the ICCPR. The right to participate in public affairs, voting rights and the right of equal access to public service, but also to participate in the development of policies and laws, lie at the core of democratic government based on the consent of the people. The Council of Europe Committee of Ministers has likewise encouraged governmental and quasi-governmental mechanisms at all levels to “ensure the effective participation of NGOs without discrimination in dialogue and consultation on public policy objectives and decisions”.¹⁷⁷ 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.¹⁷⁸ Furthermore, NGOs should be free to support a particular candidate or party in an election or a referendum provided that

174 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 47. See also Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, para. 59. See also e.g., Venice Commission, Hungary - *Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, [CDL-AD\(2017\)015](#), para. 65.

175 See Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, [CDL-AD\(2021\)027](#), para. 38.

176 Russia: [New Restrictions for ‘Foreign Agents’](#). Human Rights Watch. 1 December 2022.

177 Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), para 76.

178 *Ibid.* (Recommendation of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe), para 12

they are transparent in declaring their motivation. Any such support should also be subject to legislation on the funding of elections and political parties.¹⁷⁹

91. The above-mentioned restrictions or prohibitions generally appear overbroad and vague, and as such would not comply with the principle of legality and foreseeability. In practice, **they are so broadly phrased that they seem to imply that associations must abstain from any kinds of political discussions or debate.** As emphasized by the UN Human Rights Council, restrictions on the freedom of expression should never be applied to discussion of government policies, electoral campaigning, political speech and expression of opinion and dissent.¹⁸⁰
92. In this respect, the *Joint Guidelines on Freedom of Association* emphasize the fundamental role of the freedom of expression of associations. Principle 6 of the Joint Guidelines specifically states that “Associations shall have the right to freedom of expression and opinion through their objectives and activities. This is in addition to the individual right of the members of associations to freedom of expression and opinion. Associations shall have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law.” Associations also have the right to freedom of expression and opinion, via their objectives and activities. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of peaceful assembly and association as enshrined in Article 11 of ECHR.¹⁸¹ Accordingly, **associations should be free to undertake advocacy on any issues of public debate and to promote policy changes, including changes to laws or to the constitutional order, or other matters deemed controversial, as long as they employ peaceful means when doing so.**¹⁸²
93. In addition, regarding the prohibition to carry out “political action” or “political activities” specifically, as embedded in the Draft Law of Republika Srpska, it is worth reiterating that the European Court of Human Rights, in the case *Zhechev v. Bulgaria*, concluded that the term “political” is inherently vague and could be subject to largely diverse interpretations.¹⁸³ In its *Report on Funding of Associations*, the Venice Commission also noted the inherent difficulty of defining the term “political activities” underlining the risk that “*the authorities could label any activities which were in some way related to the normal functioning of a democratic society as ‘political’.*”¹⁸⁴ As noted in previous joint opinions, this is also inconsistent with “*the fundamental political right of any citizen to directly attempt to influence and change politics or state policy ends up being adversely affected, seemingly without sufficient grounds of necessity in a democratic society.*”¹⁸⁵ In the Joint Opinion on the Draft Law of Republika Srpska, it is further emphasized that the definition of “political activities” and “political action” includes very broad terms capable of covering simply the provision of information to the public about existing or future possible legislative provisions and policies or even as to matters “of public interest”, thereby *de facto* excluding NPOs not only from policy or law-making processes and from public consultations but even from any public discussion.¹⁸⁶ The ECtHR specifically emphasized that “*civil society makes an important contribution to the discussion of public affairs*”, noting its vital role as “public

179 *Ibid.* (Recommendation of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe), para 13. See also European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 146.

180 UN Human Rights Council, *Resolution 12/16, Freedom of Opinion and Expression*, A/HRC/RES/12/16, 12 October 2009.

181 See European Court of Human Rights, *Gorzelik and Others v. Poland*, no. 44158/98, 17 February 2004, paras. 91-93.

182 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, paras. 89 and 182.

183 European Court of Human Rights, *Zhechev v. Bulgaria*, no. 57045/00, 21 June 2007, para. 55.

184 Venice Commission, *Report on Funding of Associations*, CDL-AD(2019)002, paras. 96-100.

185 ODIHR and Venice Commission, *Joint Interim Opinion on the Draft Law Amending the Law on Non-Commercial Organisations and Other Legislative Acts of the Kyrgyz Republic*, CDL-AD(2013)030, para. 62.

186 See ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 40.

watchdog”, and that “*democratic process is an ongoing one which needs to be continuously supported by free and pluralistic public debate and carried forward by many actors of civil society, including individual activists and NGOs*”.¹⁸⁷ The Joint Opinion concluded that the prohibition to take part in policy- and law-making implied by Article 3(2) of the Draft Law of Republika Srpska would unduly restrict the right of such organisations to take part in public affairs, also unduly impacting their right to freedom of expression and to impart information protected under Article 19 of the ICCPR and Article 10 of the ECHR.¹⁸⁸

94. Finally, the prohibition of “foreign agent” individuals from access to state and municipal service provided in the “Russian Foreign Agents Law” violates the right of every citizen to take part in the conduct of public affairs protected under Article 25 of the ICCPR.¹⁸⁹

5.5. Additional Reporting and Disclosure Requirements

95. Regarding the necessity and proportionality of reporting and/or public disclosure obligations, the requirement to provide state authorities and/or the public with information on funds received and how they are spent may be legitimate in the case of public funding allocated to associations.¹⁹⁰ Some “public disclosure obligations” can be imposed on associations in relation to information on how the public funds obtained by the association concerned are spent, but should not be extended to all financing, including from private donors.¹⁹¹ However, any such reporting requirements should not impose an undue and costly burden on associations and, at the very least, should be proportionate to the level of public support received.¹⁹²
96. Generally, the Joint Guidelines on Freedom of Association provide that reporting requirements, where these exist, should be appropriate to the size of the association and the scope of its operations and should be facilitated to the extent possible through information technology tools.¹⁹³ Associations should not be required to submit more reports and information than other legal entities, such as businesses. Moreover, the obligation to report should not involve submitting the same information to multiple state authorities; to facilitate reporting, the state authorities should seek to share reports with other departments of the state if necessary.¹⁹⁴
97. These requirements are not met in the above-mentioned “foreign agents laws”, which all include more frequent and more detailed reporting requirements, such as quarterly or semi-annual reporting on conducted and intended activities as well as public disclosure of persons affiliated in any way with the association,¹⁹⁵ for CSOs receiving foreign funding, including the number of bodies that such reports should be submitted to.
98. In this context, a number of factors need to be borne in mind. First, and as elaborated in Sub-Section 3 above, even matters such as a country’s national interest and the fight

187 See e.g., ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 124 and 139.

188 See ODIHR and Venice Commission, *Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations*, 12 June 2023, para. 40.

189 Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, [CDL-AD\(2021\)027](#), para. 80. UN Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service* (Art. 25), [CCPR/C/21/Rev.1/Add.7](#), 27 August 1996.

190 See e.g., Council of Europe Committee of Ministers, *Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe*, adopted on 10 October 2007, para. 64, which provides that NGOs which have been granted any form of public support can be required to have their accounts audited by an institution or person independent of their management. See also

191 See e.g. Venice Commission, *Report on Funding of Associations*, [CDL-AD\(2019\)002](#), para. 108.

192 *Ibid.* *Joint Guidelines on Freedom of Association*, para. 214.

193 *Ibid.* *Joint Guidelines on Freedom of Association*, para. 225.

194 *Ibid.* *Joint Guidelines on Freedom of Association*, para. 227.

195 See e.g., Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, [CDL-AD\(2021\)027](#), chapters 2 and 3.

against corruption do not justify imposing new reporting requirements for all associations without a concrete threat for the public and/or the constitutional order or any concrete indication of individual illegal activity.¹⁹⁶ A “pressing social need” for such restrictions therefore presupposes “plausible evidence” of a sufficiently imminent threat to the State or to a democratic society.¹⁹⁷ States need to conduct a prior risk assessment to determine any specific threats posed by the civil society sector to the State or democratic society, so that any restrictions on freedom of association are evidence-based.

99. Second, there needs to be an explanation substantiating why the existing reporting obligations, including financial and fiscal ones, would be insufficient for the purpose of getting information about financing from abroad, which is generally not provided in the explanatory statements to the legislative initiatives under consideration.¹⁹⁸ **To assess the proportionality of the proposed new reporting requirements, it is also important to look at the overlap of additional reporting obligations with other already existing reporting obligations** (whether they are of a fiscal nature or otherwise).¹⁹⁹ For instance, in the case of Ukraine, ODIHR and the Venice Commission considered the proposed introduction of new reporting obligations not necessary as “*they duplicate[d] already existing requirements and add[ed] a further, redundant layer of reporting, which would be extremely burdensome, in particular for small associations*” as well as they were going “*beyond the current obligations, without there being a concrete objective need for this*”.²⁰⁰
100. Third, **the reporting modalities should be assessed to see whether they constitute an undue and costly burden on associations, also taking into consideration the size of the associations.** In this respect, ODIHR and the Venice Commission have considered that when **the reporting obligations require information about each donor and the amount of allocated funds, without any minimum threshold, meaning that the said organizations would be obliged to report all funding received, regardless of the amount, even minor sums, this would entail a significant burden for the organizations concerned**,²⁰¹ In the case of Romania in particular, it was noted that in the case of smaller organisations, the proposed reporting obligations requiring to indicate all donors would seriously impact their ability to function, and to implement their activities, especially as the required publication in the Official Gazette is quite costly, at 122 Lei (around 20 EUR) per page, meaning the larger the number of (small) donors, the more such publication will cost – although the legal drafters informed that they would exempt smaller donations.²⁰² Generally, the required level of detail and the existence of unrealistically short and strict deadlines for submitting the information are examples of onerous reporting obligations²⁰³

196 See [FATF’s Recommendations](#), Recommendation 8 – as amended, which states “Countries should apply focused and proportionate measures, in line with the risk-based approach”.

197 See e.g., European Court on Human Rights, *Sindicatul “Păstorul cel Bun” v. Romania*, Application no. 2330/09, 31 January 2012, para. 69. In addition, in the case of *Animal Defenders International v. United Kingdom*, (Application no. 48876/08, para. 108), the Court considered that “in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation.”

198 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 40.

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

200 See e.g., ODIHR and Venice Commission, [CDL-AD\(2018\)006-e, Ukraine - Joint Opinion on Draft Law no. 6674 on Introducing Changes to some Legislative Acts to ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance and on Draft Law no. 6675 on Introducing Changes to the Tax Code of Ukraine to ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance](#), para. 38.

201 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 57; and *Romania - Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations*, [CDL-AD\(2018\)004](#), paras. 68-73.

202 *Ibid.* *Romania - Joint Opinion on Draft Law No. 140/2017 on amending Governmental Ordinance No. 26/2000 on Associations and Foundations*, [CDL-AD\(2018\)004](#), paras. 68-73.

203 See e.g. Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, para. 110.

101. Fourth, **all reporting obligations should at the same time ensure respect for the rights, including the right to respect for private life protected under Article 17 of the ICCPR and Article 8 of the ECHR, of members, founders, donors, beneficiaries and staff, as well as the right of the association to protect legitimate business confidentiality.**²⁰⁴ The above laws have the potential to unduly interfere with the right to privacy given their extensive reporting and/or public disclosure requirements, which at times oblige associations considered to be “foreign agents” to disclose additional information about themselves and their members, donors, beneficiaries and/or supporters publicly. For instance, in Hungary, according to the repealed law, the affected CSOs were obliged to declare and make public the name, country, and city of residence of persons granting them financial support beyond a certain financial threshold, as well as information on the amount of that support. The CJEU held that “*such data falls within the scope of the protection of private life guaranteed in Article 7 of the Charter of Fundamental Rights of the EU.*”²⁰⁵ The Georgian Draft Law on Foreign Agent Registration also contained provisions on very detailed information to be disclosed in its Article 3(3), on names, activities and detailed information on the spending of obtained funds.
102. According to the Joint Guidelines on Freedom of Association, “*the right to privacy applies to an association*” (para. 228) and “[*l*]egislation should contain safeguards to ensure the respect of the right to privacy of the clients, members and founders of the associations, as well as provide redress for any violation in this respect” (para. 231). The UN Special Rapporteur also noted that “*Public disclosure requirements may include confidential and human rights sensitive information, unduly impinging on fundamental privacy rights, in violation of applicable privacy laws, and may expose individuals to serious risks of reprisals.*”²⁰⁶ Hence, obligations to report should be tempered by other obligations relating to the right to security of beneficiaries and to respect for their private lives and confidentiality; any interference with respect for private life and confidentiality should observe the principles of necessity and proportionality.²⁰⁷ In certain circumstances, disclosing the names of certain employees of public associations²⁰⁸ could potentially endanger their safety (for instance those who deal with certain issues such as anti-corruption, protection of victims of domestic violence or non-discrimination on the basis of gender, sexual orientation and gender identity) and could risk them being subjected to harassment.²⁰⁹ Regarding donors specifically, in some circumstances, exposure of donors and contractors of associations could potentially affect donors’

204 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, paras. 228 and 231. See also Council of Europe Committee of Ministers, [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), adopted on 10 October 2007, para. 64, which states: “[a]ll reporting should be subject to a duty to respect the rights of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality”. See also Council of Europe, [Fundamental Principles on the Status of Non-governmental Organisations in Europe](#) and Explanatory Memorandum, para. 67, which provides: “[...] reporting requirements must be tempered by other obligations relating to the respect for privacy and confidentiality. In particular, a donor’s desire to remain anonymous must be observed. The respect for privacy and confidentiality is, however, not unlimited. In exceptional cases, the general interest may justify that authorities have access to private or confidential information, for instance in order to combat black market money transfers. Any exception to business confidentiality or to the privacy and confidentiality of donors, beneficiaries and staff shall observe the principle of necessity and proportionality”.

205 CJEU, [Commission v. Hungary](#) Case C-78/18, 18 June 2020, para. 128.

206 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022](#) dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 3.

207 Explanatory Memorandum to the [Recommendation CM/Rec\(2007\)14 on the legal status of non-governmental organisations in Europe](#), para. 116.

208 For instance, the Draft Law on Non-Governmental Organizations of the Kyrgyz Republic (November 2022) was requiring, *inter alia* a list of 10 employees with the highest salaries would have to be made public.

209 See e.g., ODIHR-Venice Commission, [Ukraine - Joint Opinion on Draft Law No. 6674 "On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance" and on Draft Law No. 6675 "On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance"](#) (16 March 2018), para. 47.

readiness to continue their support for and co-operation with these associations if they were publicly identified.²¹⁰

103. Moreover, regardless of whether reporting and/or disclosure obligations follow a legitimate aim or not, there is no apparent “pressing need” for the public to obtain detailed information with respect to private funding sources of the activities of all associations receiving funding from foreign, but *prima facie* legitimate sources. In addition, in principle, a donor's desire to remain anonymous must be observed.²¹¹ Although under certain circumstances, it may be legitimate to require associations to disclose the identity of the main sponsors, revealing the identity and residence of all sponsors, including minor ones, is excessive and unnecessary. Such legal provisions would not only interfere with the donors’ personal privacy, protected by Articles 17 of the ICCPR and Article 8 of the ECHR,²¹² but also not be compliant with international personal data protection standards.²¹³
104. Generally, far-reaching reporting and disclosure requirements may interfere both with the right to privacy of **members, founders, donors, beneficiaries and staff, as well as of the association**, and more generally with the right to freedom of association of the above persons and entities and cannot be justified as being “necessary in a democratic society”. Much less intrusive reporting or disclosure rules could be designed, for example, requiring only the publication of anonymous data or total figures.²¹⁴
105. Fifth, **the nature and severity of sanctions for failure to comply with reporting obligations should also be taken into account to assess the proportionality of the interference**. Following ECtHR case-law which states that “*a mere failure to respect certain legal requirements or internal management of non-governmental organisations cannot be considered such serious misconduct as to warrant outright dissolution*”.²¹⁵ As underlined in the Joint Guidelines on Freedom of Association, “[i]n case of the non-compliance with requirements on reporting, the legislation, policy and practice of the state should provide associations with a reasonable amount of time to rectify any oversight or error”.²¹⁶ The “Russian Foreign Agents Law” provides for administrative fines and criminal sanctions for breaches of the reporting and public disclosure requirements, which the Venice Commission recommended to repeal as being disproportionate²¹⁷ (see also Sub-Section 5.7. below).

5.6. Special Supervision and Inspections

106. The above-mentioned “foreign agents laws” or similar legislative initiatives generally envisage a distinct mechanism of oversight and/or supervision, for instance in the form of regular yearly inspections as well as unscheduled inspections (see e.g., the Russian

210 See e.g., ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 66.

211 Council of Europe, [Fundamental Principles on the Status of Non-governmental Organisations in Europe](#) and Explanatory Memorandum, para. 67.

212 Venice Commission, Hungary - [Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad](#), CDL-AD(2017)015, paras. 52 and 53.

213 Such as Council of Europe, [Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#) (CETS No. 108), 28 January 1981, and [Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data](#); and the EU [General Data Protection Regulation \(GDPR\) – Official Legal Text \(gdpr-info.eu\)](#).

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

215 See e.g., European Court of Human Rights, [Tebieti Mithafize Cemiyeti and Israfilov v. Azerbaijan](#), no. 37083/03, 8 October 2009; and [Christian Democratic People’s Party v. Moldova](#), no. 28793/02, 14 February 2006, paras. 72 and 73.

216 See ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 234.

217 See Venice Commission, [Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”](#), [CDL-AD\(2021\)027](#), paras. 86-87.

Foreign Agents Law or the Draft Law of Republika Srpska),²¹⁸ in addition to the oversight applicable to all associations.

107. As underlined by ODIHR and the Venice Commission in previous joint opinions, “states have a right to satisfy themselves that an association’s aim and activities are in conformity with the rules laid down in legislation”, but they must do so “in a manner compatible with their obligations under the European Convention” and other international instruments, meaning that “state bodies should be able to exercise some sort of limited control over non-commercial organisations’ activities with a view to ensuring compliance with relevant legislation within the civil society sector, but such control should not be unreasonable, overly intrusive or disruptive of lawful activities.”²¹⁹ As recommended in the Joint Guidelines on Freedom of Association, “legislation should define the procedure for appointing supervisory bodies, as well as the grounds for inspecting associations, the duration of inspections and the documents that need to be produced during inspection”.²²⁰ Hence, inspections should be based on clear legal grounds, strictly circumscribed and authorized by court order. This is essential in order to prevent possibility for arbitrary or discretionary application by public authorities and potential risk of abuse and a selective approach being taken, as well as to avoid the misuse of the regulations, potentially leading to intimidation or harassment.²²¹ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has noted that, while independent bodies may have a legitimate reason to examine associations’ records to ensure transparency and accountability, states must ensure that this procedure is not arbitrary and respects the rights of individuals to non-discrimination and privacy, as it would otherwise put the independence of associations and the safety of their members at risk.²²² The Venice Commission has likewise acknowledged that the “oversight and supervision of associations should not be more intrusive than those applicable to private businesses. They should always be carried out based on the presumption of lawfulness of the aims and activities of associations.”²²³
108. Regarding the inspections provided in the “Russian Foreign Agents Law”, as amended, the Venice Commission concluded that “[t]he expansion of the grounds for unscheduled inspections of NCOs and the extension of the duration of inspections to 45 days, without any cap on the number of inspections, are disproportionate because they lack sufficient qualifying criteria (e.g., requiring the allegations to be credible in order to trigger an inspection). The resulting risk of arbitrarily long and repeated inspections raises the risk of paralyzing the functioning of the affected NCOs.”²²⁴
109. Other “foreign agents” laws also generally include some provisions for constant monitoring and/or potential inspections at any time or in vaguely defined

218 See Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, paras. 14-15. See also Article 12-14 of the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organizations.

219 See ODIHR and Venice Commission, *Ukraine – Joint Opinion on Draft Law No. 6674 “On Introducing Changes to Some Legislative Acts to Ensure Public Transparency of Information on Finance Activity of Public Associations and of the Use of International Technical Assistance” and on Draft Law No. 6675 “On Introducing Changes to the Tax Code of Ukraine to Ensure Public Transparency of the Financing of Public Associations and of the Use of International Technical Assistance”*, CDL-AD(2018)006-e, para. 40.

220 See e.g., ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 229.

221 *Ibid.* *Joint Guidelines on Freedom of Association*, para. 230.

222 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 2013 Report, A/HRC/23/39, para 65.

223 See Venice Commission’s *Report on Funding of Associations*, CDL-AD(2019)002, para 13.

224 Venice Commission, *Russian Federation - Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, para. 66.

circumstances.²²⁵ In this respect, when analysing the Draft Law of Republika Srpska, ODIHR and the Venice Commission noted that the possibility of additional inspections “under extraordinary circumstances” with no clear definition of what might constitute “extraordinary circumstances” and the extent of those deemed competent to make requests for such extraordinary inspections had “*the potential to lead to vigilantism and extensive disruption of the activities of the entities treated as NPOs*”; the Joint Opinion also underlined that this was “*at odds with the presumption of lawfulness of activities of NGOs that should underpin the legal framework regulating associations in order to create an enabling environment for the exercise of the right to freedom of association, as emphasized in Principle 1 of the Joint Guidelines on Freedom of Association*”.²²⁶ In order for a measure to be “prescribed by law”, **the legislation must also clearly specify the circumstances and criteria based on which inspections may be carried out.** Otherwise, this could allow an overbroad discretion on the side of the authorities, with potential for abuse or misuse.

5.7. Sanctions, Suspension and Dissolution

110. Foreseeability of the sanctions that might be imposed on so-called “foreign agents” or alleged “foreign agents” for non-compliance with the laws in question is a key requirement for such legislation to be considered in line with international standards on freedom of association. **Foreseeability of the law, as mentioned above, strongly depends on the unambiguity of interpretation of the requirements and restrictions imposed on “foreign agents”.** When administrative or criminal sanctions are considered, which would be disproportionate *per se* (see para. 111 below), this also raises concerns for not meeting the standards of legal certainty, foreseeability and specificity of criminal law, which requires that criminal offences and related penalties be defined clearly and precisely, so that an individual knows from the wording of the relevant criminal provision which acts will make him/her criminally liable. Furthermore, the nature and severity of the sanctions imposed are also important factors to be taken into account when assessing the proportionality of limitations to the right to freedom of association.²²⁷ The sanctions provided for in the law must be proportionate to the gravity of the wrongdoing and be the least intrusive means to achieve the desired objective.²²⁸
111. The failure to comply with the requirements of “foreign agents laws” or similar legislative initiatives generally leads to sanctions, including criminal sanctions. Thus, in the Russian Federation, a new criminal offence was introduced along with the “Foreign Agents Law”, which prohibits maliciously avoiding the obligation to submit documents required for registering an organization as a “foreign agent”. The punishment ranges from a fine of 300,000 Rubles up to imprisonment, the extent of which was increased from 2 to 5 years in 2020. The Administrative Code was amended to include fines for submitting incomplete, incorrect or belated information to state authorities (100,000 to 300,000 Rubles, approx. 1100-3300 euro) and for conducting activities without being registered in the foreign agents’ register or failing to label publications as originating from a “foreign agent” (300,000–500,000 Rubles, approx. 3300 to 5500 euro). As of 2014, the

225 See e.g., Article 14 of the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations states “*Under extraordinary circumstances, the inspection control over the legality of the work of an NPO can be performed upon requests of citizens, legal entities, publicly available information, authorities of the Republika Srpska or upon request of the competent committee of the National Assembly of the Republika Srpska*”; Article 8 of the Draft Law of Georgia on the Transparency of Foreign Influence, which stated that “*in order to identify an agent of foreign influence or to verify the fulfilment of any of the requirements of this Law, the Ministry of Justice of Georgia shall be authorized to carry out the examination – monitoring of the issue at any time.*”

226 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 64.

227 See e.g., ECtHR, *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, no. [37083/03](#), 8 October 2009, para. 82. See also Venice Commission, [Report on Funding of Associations](#), CDL-AD(2019)002, paras. 114-115.

228 See e.g., ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 237. See also Venice Commission, CDL-AD(2019)002, [Report on Funding of Associations](#), para. 115.

Code allows for fines to be reduced where the nature and effects of an offender’s administrative offence, personality or financial situation so require. The repealed Hungarian law had introduced a gradual system of sanctions, ranging from reminders to fulfil the requirements to dissolution of the association in case of non-fulfilment as the last resort. The Venice Commission welcomed the gradual approach but raised serious concerns about the rigid procedure and a lack of discretion of whether a procedure should be initiated against an association or the lack of discretion of what sanctions to implement.²²⁹ Moreover, the Venice Commission emphasized that “[c]riminal law sanctions including compulsory labour and deprivation of liberty are an ultima ratio instrument and should be generally avoided for breaches of administrative requirements. Therefore, breaches of the ‘foreign agent’ registration, reporting and public disclosure requirements should generally not be punished by imprisonment. Against this background, the deprivation of freedom of up to five years seem disproportionate.”²³⁰ It also concluded that “[t]he hefty administrative fines for breaches of the ‘foreign agent’ registration, reporting and public disclosure requirements exceed the generally appropriate sanctions for violations of this kind”.²³¹

112. **Sanctions that are introduced must always be consistent with the principle of proportionality, that is, they must be the least intrusive means to achieve the desired objective and proportionate to the CSOs’ infringements.** Provisions that allow for gradual imposition of sanctions, with warnings being the first one, should be considered, with an opportunity to rectify errors and omissions, if feasible.²³² Any sanction for failure to comply with obligations under “foreign agents” or similar laws should only be imposed by an impartial court. **Dissolution or prohibition of an association should only be applied in exceptional circumstances of very serious misconduct, as a measure of last resort.**²³³ They should only be applied in cases where the breach gives rise to a serious threat to the security of the state or of certain groups, or to fundamental democratic principles and may never be used as a tool to reproach or stifle its establishment and operations.²³⁴ Associations should not be prohibited or dissolved owing to minor infringements, or of other infringements that may be easily rectified. In addition, associations should be provided with adequate warning about the alleged violation and be given ample opportunity to correct infringements and minor infractions, particularly if they are of an administrative nature.²³⁵ Generally, **non-compliance with the new registration and other obligations and requirements introduced by “foreign agents laws” and the like, which are more of an administrative or bureaucratic nature, would not appear to reach the level of seriousness to justify prohibition or dissolution of an association.** Moreover, under no circumstances should associations be sanctioned solely on the grounds that their activities are in violation of their own internal rules and procedures (provided that these activities are not prohibited by laws that are themselves consistent with international human rights standards).²³⁶ Furthermore, any action or sanction affecting an association must be preceded by an administrative process, **which can be challenged before an independent court with full jurisdiction.**²³⁷

229 Venice Commission, Hungary - *Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, CDL-AD(2017)015, paras. 59-61.

230 See Venice Commission, Russian Federation - *Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”*, CDL-AD(2021)027, para. 87.

231 *Ibid.* 2021 Venice Commission’s Opinion on Russian Federation’s “Foreign Agents Law”, para. 86.

232 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 234.

233 *Ibid.* *Joint Guidelines on Freedom of Association*, paras. 234 and 239.

234 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, paras. 239 and 252.

235 *Ibid.* *Joint Guidelines on Freedom of Association*, para. 253.

236 *Ibid.* *Joint Guidelines on Freedom of Association*, para. 178.

237 Council of Europe Committee of Ministers, *Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe*, paras. 10 and 74, see also ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, Principle 11.

113. Furthermore, to assess the proportionality of fines and assess whether they are excessive, it is generally useful to compare them to the average monthly salaries.²³⁸ In this respect, in the Joint Opinion on the Draft Law of Republika Srpska, ODIHR and the Venice Commission compared the amounts of the fine²³⁹ to the average gross monthly salary in Republika Srpska,²⁴⁰ ranging from 0.5 to 2.5 average monthly salaries, and concluded that “*the range of fines that could be imposed could well be especially problematic for some entities treated as NPOs, especially if they have a small funding base*”.²⁴¹ In any case, the imposition of even the minimum fine could be disproportionate if the breach concerned is not a particularly significant one such as the unintentional submission of inaccurate information in the application.²⁴²

5.8. Right to an Effective Remedy

114. Some of the above legislative initiatives are silent regarding the effective remedies for potential violations of the fundamental rights of freedom of association pertaining to the classification of associations as “foreign agents”, their registration and related obligations and restrictions. Some of them do not provide for a de-registration procedure. As emphasized in the Joint Guidelines on Freedom of Association, associations, their founders and members shall have access to effective remedies in order to challenge or seek review of decisions affecting the exercise of their rights, meaning providing them with the right to bring suit or to appeal against and obtain judicial review of any actions or inactions of the authorities that affect their rights; remedied shall be timely and include adequate reparation.²⁴³

5.9. Non-Discrimination

115. It is also important to underline that indirect discriminatory impact that such legislation may have in practice. Indeed, they will primarily have negative consequences on associations that do not receive public funding nor donations/contributions from domestic sources and heavily rely on contributions from abroad. This is generally the case for association whose objectives or activities may not be a priority for public funding or are not necessarily congruent with the thoughts and ideas of the majority of society or, indeed, may run counter to them, but are still protected by the rights to freedom of association and freedom of expression.²⁴⁴ This generally includes associations imparting information or ideas contesting the established order or advocating for a peaceful change of the Constitution or legislation by, for example, advocating for the decriminalization of abortion, asserting a minority consciousness, promoting gender equality, protecting the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, calling for regional autonomy, or even requesting secession of part of the country’s territory.²⁴⁵
116. In this respect, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association noted specifically the “*disproportionate impact [of foreign agents*

238 The Georgia’s Draft Law on Transparency provided for a fine of 25,000 Lari (approx. 9000 euro) for avoiding registration as an “agent of foreign influence” or failing to submit the relevant financial declaration, also mentioning a fine of 10,000 Lari (approx. 3550 euro) for other infringements, thereby ranging from 5.5 to 14 average monthly salaries in Georgia (the average salary of the first quarter of 2023 was 1716.6 Lari per month, see <[Wages - National Statistics Office of Georgia \(geostat.ge\)](#)>).

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

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

241 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 72.

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

243 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, Principle 11 and para. 36.

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

245 *Ibid.* [Joint Guidelines on Freedom of Association](#), para. 182, and Access to Resources, para. 47.

legislation] on civil society organizations, especially those advancing human rights, democracy, accountability and the rights of marginalized groups, which are often highly dependent on foreign funds to support their activities”²⁴⁶ as well as the “particularly acute chilling effect of the designation of ‘foreign agent’ of human rights defenders, activists and civil society organizations, including those protecting and promoting the rights of LGBTI+ persons.”²⁴⁷

6. PROCESS OF AMENDING LEGISLATION IMPACTING THE EXERCISE OF THE RIGHT TO FREEDOM OF ASSOCIATION

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

*“Associations and their members should be consulted in the process of introducing and implementing any regulations or practices that concern their operations. They should have access to information and should receive adequate and timely notice about consultation processes. Furthermore, such consultations should be meaningful and inclusive, and should involve stakeholders representing a variety of different and opposing views, including those that are critical of the proposals made. The authorities responsible for organizing consultations should also be required to respond to proposals made by stakeholders, in particular where the views of the latter are rejected.”*²⁴⁸

118. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association specifically recommends to states to “*Meaningfully engage with civil society organizations when adopting any measures affecting their right to seek, receive and use funding*”.²⁴⁹
119. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including civil society organizations. They should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals. To guarantee effective participation, consultation mechanisms must allow for input at an early stage and throughout the process, meaning not only when the draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). At times, certain of the legislative initiatives, such as the one in Republika Srpska, were merely published on a public website, for comments within a rather short timeframe.²⁵⁰ Relevant time period

246 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022](#) dated 30 November 2022 addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, p. 7.

247 *Ibid.* UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Letter OL RUS 16/2022](#), p. 3.

248 ODIHR and Venice Commission, [Joint Guidelines on Freedom of Association](#), CDL-AD(2014)046, para. 106.

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

250 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 13.

for public consultations needs to be such as to allow for a proper and in-depth review of the draft law or amendments and should be adapted to its length and complexity of the matter.²⁵¹ Given the potential impact on the exercise of fundamental rights and freedoms of “foreign agents laws” and the like, this would justify longer timeframe for organizing meaningful public consultations. It is also crucial that the authorities take measures to introduce the draft amendments to the public through the media and call for feed-back as it is not enough to simply publish the draft law on an official website.²⁵²

120. Most of the “foreign agents” legislation or similar legislative initiatives were generally devised with little to no involvement or consultations with associations or civil society more broadly or even if some forms of consultations were organized, the timeline was sometimes extremely short for providing comments and often there were no specific efforts to ensure outreach to interested stakeholders nor adequate and timely feedback mechanism or lack of clarity as to the modalities of public consultations, thereby raising some doubt as to whether the public consultations were or will be effective and inclusive.²⁵³
121. While the legal drafters generally prepared some forms of explanatory statements or notes to the said legislation, as underlined under Section 3, they are generally rather succinct, and fail to rely on concrete risks-based approach and evidenced-based information or research on which they are based in order to justify the proposed reform.²⁵⁴ Generally, they do not provide a proper or any regulatory impact assessment, that would also carefully balance any potential benefits of the law weighed against the law’s negative impact on the exercise of the right to freedom of association.²⁵⁵ Impact of legislative initiatives needs to be considered also from a gender, diversity and intersectionality perspective to ensure that all persons and groups, including men, women and non-binary people, persons with disabilities, the youth and elderly persons, ethnic, national or religious communities are not adversely affected by the proposed legislation. The consequences of adoption of the said Draft Law, especially taking into consideration already raised concerns regarding its substance, could be significant for women’s and youth organizations, minority communities and groups. As a good practice and in line with international recommendations, monitoring of implementation of the existing legislation governing associations, should be conducted to ensure evidence-based policy- and law-making by compiling evidence on what has worked well in the past, measuring the impact and thus effectiveness of existing government policies and adopted laws and taking an informed decision to inform potential amendments process.²⁵⁶
122. It is generally recommended to the legal drafters **to ensure that legislative initiatives impacting the right of associations to seek and receive resources, including from abroad, are subjected to inclusive, extensive and effective consultations, including with civil society and representatives of various communities, offering equal opportunities for women and men to participate and that sufficient time is provided for a meaningful parliamentary debate. According to the principles stated above,**

251 See e.g., ODIHR, [Opinion on the Draft Law of Ukraine “On Public Consultations”](#) (2016), paras. 40-41.

252 See ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 13.

253 See e.g., ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), paras. 111-112. See also e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 13.

254 See e.g., ODIHR and Venice Commission, [Joint Opinion on the Draft Law of Republika Srpska on the Special Registry and Publicity of the Work of Non-Profit Organisations](#), 12 June 2023, para. 13.

255 For instance, the Explanatory Note to the Draft Law of Republika Srpska is very succinct and only indicates the absence of social, environmental, and budgetary impact of the Draft Law; for the Draft Law of the Kyrgyz Republic of November 2022, the Explanatory Note only mentions that it foresees no social, economic, gender, environmental, corruption consequences and states that “*this draft law does not address business issues, and no regulatory impact analysis is required*”.

256 See e.g., ODIHR, [Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on “Foreign Representatives” of the Kyrgyz Republic](#) (12 December 2022), para. 114.

consultations should take place in a timely manner, allowing for enough time for the public to provide input, at all stages of the law-making process, including before Parliament. A proper feedback mechanism should be in place. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the said amendments and their impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law/Draft Amendments, if adopted.²⁵⁷

[END OF TEXT]

²⁵⁷ See e.g., OECD, *International Practices on Ex Post Evaluation* (2010).