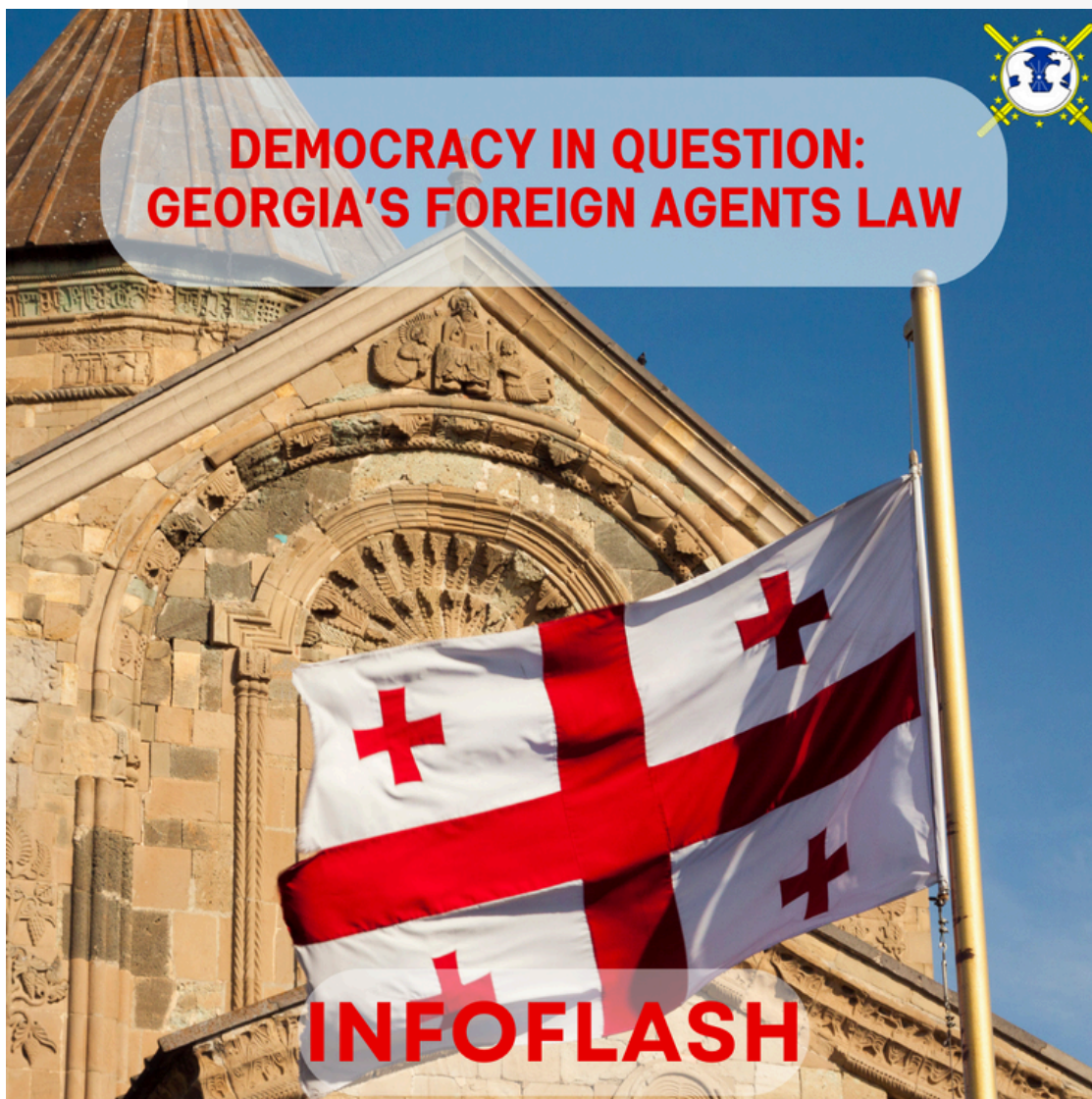


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## Introduction

The adoption of the “foreign agents” law in Georgia has become a critical issue, reflecting broader struggles over democratic governance, the autonomy of civil society and geopolitical direction in the post-Soviet region. Georgia is a parliamentary unitary republic in which the President, the Government, the Parliament, and the judiciary share powers reserved to the national government. In March 2023, two parallel bills have been submitted to the Parliament, namely “Transparency of Foreign Influence” and “Registration of Foreign Agents”. These two bills were withdrawn from the Georgian Parliament following protests in response to the legislative process. On 3 April 2024, the leader of the ruling Georgian Dream party, Mamuka Mdinardze, announced the reintroduction of the Law on Transparency of Foreign Influence to the Parliament. The law requires non-governmental organisations (NGOs) and media companies that receive more than 20% of their funding from foreign sources to register as “organisations serving the interests of a foreign power”. Founded in 2012 by billionaire Bidzina Ivanishvili, the Georgian Dream Party, was formed as an alternative to the Georgian National Movement. Georgian Dream quickly gained widespread support and won the parliamentary elections that year, representing a major shift in the country’s political landscape.

Criticism from both the political and academic fields has raised concerns about the erosion of democratic freedoms in Georgia, arguing that this law mimics Russian legislation used to suppress dissidents and undermine independent civil society. In Russia, like in Georgia, the law on “foreign agents” requires NGOs that receive foreign funding and carry out what the government calls “political activities” to be registered as “foreign agents” and fines for violations as well as onerous disclosure requirements. Large-scale nationwide protests have broken out in response to this legislation, with people calling for the protection of democratic standards and transparency in the government (Lapa& Frosini, 2024). The controversy around the law highlights persistent conflict between Georgia’s ambitions for European integration and the influence of its neighbour, Russia. This is a turning point in the history of Georgia. The adoption of the law could bring the Caucasian country further under Moscow’s sphere of influence and further distant from Brussels.

The Venice Commission, formerly known as the European Commission for Democracy through Law, is a crucial advisory body of the Council of Europe that has raised concerns and called for the repeal of Georgia’s recently enacted Law on Transparency of Foreign Influence. The freedom of association, expression, privacy, and the right to take part in public affairs are among the essential democratic freedoms that the Commission claims are seriously jeopardised (Brzozowski, 2024). Numerous legal documents protect these principles, such as the European Union Charter of Fundamental Rights (2000) and the European Convention on Human Rights (1950).

This article will explore the scenario in which this situation has arisen, analysing the content of the law in question and the opinion of the Venice Commission and the European institutions on the matter.

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## Historical Context

Over the past month in Tbilisi, the capital of Georgia, tens of thousands of people have participated in protests against the government in response to the adoption of the “Law on Transparency of foreign influence”. Taking a step back, the history of the former Soviet republic in recent decades has been highly troubled. After the collapse of the Soviet Union, Georgia proclaimed independence but still failed to stabilise control over all regions of the newly formed republic. Since 1988, it has experienced two violent ethnic conflicts, as well as a short two-phase civil war (Wolff, 2009). While the former was primarily the outcome of Georgian nationalism growing more violent during and after the Soviet Union’s last days, the latter was an opposition between various political forces for control of the Georgian state. These internal contrasts ended in the so-called “rose revolution” of 2004 (Welt& Cory, 2006).

The revolution occurred in response to the public dissatisfaction due to the government’s association with Russia and corruption. The revolution gained support from the opposition activists and the NGOs as more people joined the call for President Shevardnadze’s resignation intensifying the protests. After Shevardnadze resigned, a new interim government took over until the new presidential elections in January 2004. Mikheil Saakashvili won by a large margin and launched a series of political and economic reforms aimed at modernising Georgia and reducing corruption. He moved towards a “pro-Western” and pro-European leadership model, in stark contrast to his predecessor, implementing programmes to improve the country’s economy and launching a new anti-corruption campaign (Lynch, 2006).

## The Path Towards European Integration

Subsequently in 2008, tensions escalated between Russia and Georgia due to the unresolved status of South Ossetia and Abkhazia, two breakaway regions in Georgia which demanded greater autonomy under significant Russian influence within their local governments. After South Ossetian separatists attacked Georgian settlements, tensions escalated, prompting the Georgian military to launch a counterattack to reclaim lost territory in the rebel area. Under the pretext of defending Russian nationals and peacekeepers in South Ossetia, Russia swiftly launched an invasion against Georgia. However, the situation did not escalate; after only five days, the brief war was over. As the President of the European Union at that time, Nicola Sarkozy played an essential role in the negotiations, resulting in the signing of the Six Point Peace Plan, which called for an immediate (Six Point Peace Plan, Government of Georgia, 2008). The aftermath strengthened Russia’s grip over the two regions that declared their independence with Moscow’s support, adding another layer of tension in the Russo-Georgian relations.

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In the post-war years, Georgia sought to strengthen its connection with Western nations and reduce Russia's influence, aspiring to join the North Atlantic Treaty Organisation (NATO) and the European Union (EU). In 2014, Georgia signed the Association Agreement with the EU to enhance the political and economic cooperation and support the process of Georgian democratic transformation in alignment with the EU values. In March 2022, following Russian aggression towards Ukraine, Georgia officially submitted its membership application to the EU. The candidacy is an indication of Georgia's geopolitical orientation towards the European Union and away from Russia. (Sabanadze, 2023). Georgia's public support for EU membership remains high, with many of its citizens seeing EU membership as a pathway to greater prosperity, stability and respect for democratic standards. However, there are still obstacles to Georgia's EU aspirations such as domestic challenges, including problems related to democratic governance and the rule of law (Lavrelashvili, 2024).

### **Adoption of the Foreign Agents Law**

In recent times internal political tensions in Georgia have been triggered by adoption of a law on "foreign agents". In early 2023, the Georgian government has adopted the law which proposed that any NGO receiving over 20% of its funding from abroad have to "declare that they are carrying out the interests of a foreign power", register themselves and provide detailed financial disclosures (Venice Commission, 2024). Critics argued that the law mirrored Russian legislation used to stifle dissent and would suppress civil society and independent media in Georgia (Demytrie & Atkinson, 2024)

Georgian President Salome Zourabichvili, who is not affiliated with the ruling Georgian Dream party, vetoed a bill that passed its third reading in parliament on 14 May 2024. She criticised the bill as a "Russian law" that "contradicts our constitution and all European standards." Despite her veto, the parliament had the possibility to override it with a simple majority, and the government was determined to push the bill through. As a result, the law was successfully enforced on 28 May 2024, despite significant opposition and widespread protests. A large section of the Georgian opposition and western public opinions believe that the measure is intended to silence critics of the government before the upcoming elections in October (Demytrie, 2024).

Those concerns are also verified by the Commissioner for Human Rights of the Council of Europe, Michael O'Flaherty, addressing the Chairman of the Parliament of Georgia with a letter that "expressed concerns about the compatibility of the draft law "On transparency of foreign influence" with the human rights standards in the field of freedom of association and expression, and the chilling effect its adoption may have on the work of media outlets and civil society organisations, including those working on human rights, democracy and the rule of law" (Commissioner for Human Rights, 2023).

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In response, the Chairman of the parliament of Georgia, Shalva Papuashvili, argued that the Law is compatible with European human rights standards and that it seeks to improve transparency; he pledged that “the legislative process would go through” (Parliament of Georgia, 2024).

The Georgian Dream Party argues that this law and the consequent measures are necessary to avoid external influences and possible anti-government conspiracies via NGOs. The Georgian Prime Minister Kobakhidze stated in a speech that these groups are trying to “enter politics,” and are “promoting religious extremism” and “LGBT propaganda.” (Civil Georgia, 2024). Kremlin spokesman Dmitry Peskov, explained to the media that critics of the bill “need to more actively explain the absurdity of considering this a Russian project”. He also stated that Russia wants “stability and predictability” in Georgia and, regarding the bill that “no state wants interference from other countries in domestic politics; this is normal practice” (Light, 2024).

## **The Opinion of the Venice Commission**

Georgia has been a member of the Council of Europe since 1999 and it’s a candidate for EU membership since December 2023. The Council of Europe is one of the oldest international organisations and was founded in 1949 for the purpose of bringing out the idea of the collective European identity based on the principles of freedom, human rights, democracy, and the rule of law. However, it is always important to note that the Council of Europe and the European Union are distinct even though they have similar objectives and closely collaborate. The adoption of the European Convention on Human Rights (ECHR) (1950) in 1950 is one of the Council's most important achievements. The Convention safeguards a broad range of civil and political rights, and its enforcement is monitored by the European Court of Human Rights (ECtHR), where citizens can bring cases if they believe their rights have been violated (Council of Europe, 2022). As a member of the Council of Europe, Georgia is bound by its standards and monitoring mechanisms, including the European Convention on Human Rights and the European Court of Human Rights. The Membership obligates Georgia to implement democratic reforms and ensure that its legal and political framework safeguards human rights. However, Georgia’s adherence to the Council’s principles has been tested by internal and external pressures (European Commission, 2023).

Georgia is a member of some of the most important international human rights instruments, including the ECHR and the International Covenant on Civil and Political Rights (ICCPR). According to Article 4(5) of the Georgian Constitution, “an international treaty of Georgia shall take precedence over domestic normative acts unless it comes into conflict with the Constitution or the Constitutional Agreement of Georgia”. The ECHR and ICCPR provide for strict conditions for limitation from the right to freedom of association (art.11 ECHR and art.22 ICCPR), right to freedom of expression (ECHR, Art.10; ICCPR, Art.19) and right to respect for private life (ECHR, Art.8 ;art.17 ICCPR). Any restriction must be clearly defined by law in a clear and foreseeable manner, in the pursuit of one of the specific legitimate aims listed, which are necessary in a democratic society. This presupposes the existence of a “pressing social need” and requires adherence to the principle of proportionality.

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The European Commission for Democracy through Law (commonly referred to as the Venice Commission) is one of the main bodies of the European Council. It provides legal advice to its member states to assist the states aiming to align their legal and institutional structures with European standards and international experience in the fields of democracy, human rights and the rule of law. The Commission issued an urgent opinion on the Law on Transparency of Foreign Influence, strongly criticising the recent adoption of the law by Georgia and urged its review. According to the Commission, the bill raises significant risks for fundamental democratic freedoms, such as the freedoms of association, expression, privacy and participation in public affairs. (Venice Commission, Urgent Opinion on the Law of Georgia on Transparency of Foreign Influence, 2024).

The Venice Commission notes that the law is imprecise and broad, giving excessive discretion to state bodies, particularly the Ministry of Justice. The concept of the "foreign power" covers a wide range of subjects, from a component of the government of a foreign state to a natural person who is not a citizen of Georgia. Along with other vague definitions, the law creates considerable uncertainty when even a minor external donation can lead the authorities to consider a Georgian civil society association or media organisation "acting in the interests of a foreign state". Its vague and ambiguous wording provides no reasonable degree of predictability as to what financial and other forms of assistance would fall into the "pursuing the interests of a foreign power" category and the corresponding obligations and prohibitions (Venice Commission, 2024).

The Commission's urgent opinion stresses that the law does not meet international and European legal standards, in particular it fails the tests of legality, legitimacy, necessity, proportionality and non-discrimination as set out in the European Convention on Human Rights and the International Covenant on Civil and Political Rights (Venice Commission, 2024).

## **An Obstacle on the Path to EU Integration**

Georgia's accession to the EU will be significantly affected by the adoption of this law. In 2023, Georgia was granted candidate status with the EU and it committed to various democratic reforms. Two of the priorities set by the EU concern "efforts to guarantee a free, professional, pluralistic and independent media environment" (Priority 7) and to "ensure the involvement of civil society in decision-making processes at all levels" (Priority 9) (European Commission, 2023).

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As a candidate country for accession to the European Union, Georgia should harmonise its state legislation with the European Union's "acquis communautaire". Therefore, when drafting new legislation, Georgia must take into account EU primary law and the EU Charter of Fundamental Rights. A significant case in this regard is the judgement of the Court of Justice of the European Union (CJEU) in case C-78/18 is very significant in this respect (Commission vs Hungary (2020)). In this case, the CJEU assessed the Hungarian law on the transparency of organisations receiving foreign funding. The CJEU ruled that the legislation, which requires certain civil society organisations receiving foreign funding above a certain threshold to register, declare and publish their sources of funding and provides for penalties in the event of non-compliance, is discriminatory and unjustified and therefore in conflict with EU primary law (Commission vs Hungary,2020).

Josep Borrell, the High Representative of the Union for Foreign Affairs and Security Policy, released a statement immediately after the adoption of the law stating that "The European Union deeply regrets that the Georgian Parliament decided to override the President's veto on the law on transparency of foreign influence, and to disregard the Venice Commission's detailed legal arguments leading to a clear recommendation to repeal this law." This statement highlights the potential consequences for Georgia after adopting the law, as it could negatively affect Georgia's aspirations to join the EU. The EU enlargement process places a strong emphasis on respect for democratic principles, human rights and the rule of law. However, the passage of the law undermines those principles, as Borel confirms; "We urge the Georgian authorities to reverse this trend and to return firmly on the EU path. The EU and its Member States are considering all options to react to these developments" (EEAS Press, 2024).

## **A Setback for the European Security**

The adoption of this law caused a lot of discontent in Brussels, where many fear that the next step will be a rapprochement towards Russia and that this will lead to a Georgia further and further away from the European dream. This situation poses a challenge for Europe, as the enlargement project is actively contested by another great power (Biscop, 2024). In this unprecedented scenario, Europe is carrying out this "veiled war" on a geopolitical front, not a traditional battlefield. Never before has Europe opened its doors to a state at war, such as Ukraine, or one in deep crisis, such as Georgia and Moldova.

NATO also expressed strong criticism regarding the adoption of the law. Farah Dakhllallah, the organisation's Spokesperson noted that "The Georgian government's decision to pass legislation on so-called "foreign agents" is a step in the wrong direction and takes Georgia further away from European and Euro-Atlantic integration. We urge Georgia to change course and to respect the right to peaceful protest". Harsh criticism also came from the White House, with spokeswoman Karine Jean-Pierre stating that the law "goes against democratic values and distances Georgia from the European Union" (Euronews,2024).

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Georgia has also been affected by another consequence of the outbreak of war in Ukraine that changed the internal security balance: the arrival of more than one million Russian citizens fleeing the mass conscription imposed by the Kremlin after the start of the war operations. This flow was encouraged by the current government, which saw it as an economic opportunity. However, the decision has increased social tensions and encouraged the possible installation of new Russian intelligence cells in the country, increasing the risk of interference in domestic political life (Kucera, 2024).

In this troubled scenario, security and the defence of European integrity are prime concerns. And there are many questions about this uncertain future, like: Europe will stand by and watch a candidate state which is threatened or will it act? And if the EU does not stand up for its candidates, the other powers might even begin to doubt the strength of solidarity among the current member states (Biscop, 2024).

With Russia working tirelessly to thwart European ambitions in the countries still under its influence, can the EU realistically expect the rule of law to be effectively established? Is it feasible for a country like Georgia, where Russian influence is stronger than ever, where Russian tanks are just 40 km away from the capital, or Ukraine, which is in the midst of an all-out war, to build democratic institutions in line with European directives in a short period of time? There is genuine concern that the EU may continue to overlook this question and delay with procedural issues instead of developing the necessary vision for an enlarged and secure Union. (TEPSA, 2024).

## **Conclusion**

The 'foreign agent' law in Georgia created controversy and brought into focus the current clash over sovereignty and the protection of human rights. The law was heavily criticised by the European Union and the Venice Commission, stating that it is against European values and could pose a potential threat to the rule of law. Given this context, adopting this law may pose a significant threat to Georgia's candidacy for EU membership and increase Russian influence. This could be turning point in Georgia's internal democratisation and geopolitical orientation affecting its internal governance and foreign policies.



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