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OPINION ON THE DRAFT ACT ON THE REGISTRATION OF FOREIGN AGENTS (AS OF 11 NOVEMBER 2024)

BULGARIA

This Opinion has benefited from contributions made by members of the ODIHR Panel of Experts on Freedom of Assembly and Association and was peer reviewed by Ms. Antonina Cherevko, Senior Adviser to the OSCE Representative on Freedom of the Media.

The Opinion was also prepared in consultation with Ms. Gina Romero, 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.

Based on an unofficial English translation of the Draft Law provided by the requesting body.

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EXECUTIVE SUMMARY

The main purpose of this Opinion is to analyze the Draft Act on the Registration of Foreign Agents (Draft Act) in Bulgaria, which although rejected by the Parliament on 5 February 2025, may be reintroduced in its existing or similar form. The present analysis aims to provide an overview of the key human rights concerns stemming from this draft legislation from the perspective of international human rights standards and OSCE human dimension commitments, primarily the rights to freedom of association and freedom of expression, but also other rights, including the right to respect for private life, the right to participate in public affairs, and the right to non-discrimination.

The rights to freedom of association and freedom of expression are a cornerstone of a vibrant, pluralistic and participatory democracy and underpin the exercise of a broad range of other human rights. The state's positive obligation to create an enabling environment for such freedoms and the right to information, including by fostering media independence and diversity as a key means of promoting robust, open debate about matters of public interest, should be reflected in the legislative framework.

Access to financial and other resources, including international and foreign funding, is an essential element of the right to freedom of association. As underlined in the ODIHR-Venice Commission 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, or would be unduly restricted, in their 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.

The Draft Act would have introduced new obligations and restrictions for natural and legal persons, including non-profit organizations and mass media actors, that carry out broadly and vaguely defined activities of "informing the public", "forming public opinion" or "publicly disseminating opinions and positions", and receive direct or indirect material support from foreign sources. They would have been required to register as "foreign agents", indicate such designation on their electronic pages and all their publications, be subject to an annual financial audit, with sanctions in case of non-compliance with the new requirements. They would also have been prohibited to operate in public and private education institutions/centers/universities as well as certain defence, interior and justice establishments and departments, while also being prohibited from "*engaging in political activities, lobbying or electioneering in any form, as well as activities that may influence the domestic or foreign policy of the country*".

As analysed in greater details below, overall, the new obligations and prohibitions envisaged by the Draft Act fall short of the strict requirements provided in international human rights law governing the imposition of restrictions on the right to freedom of association and freedom of expression, encompassing media freedom. Any such restrictions must meet the strict three-part test - namely, that they must be prescribed by law, pursue one of the legitimate aims exhaustively listed in the respective human rights instruments, and be necessary in a democratic society and proportionate to reach this aim. In addition, any restriction must be non-discriminatory.

Per the Explanatory Note as well as the Draft Act, the latter aims to implement state control and ensure transparency and publicity of the foreign resources received to exercise a wide range of activities. As underlined by ODIHR in previous opinions, enhancing transparency does not *by itself* constitute a legitimate aim for restricting the rights to freedom of association and freedom of expression as exhaustively listed in international instruments. There may be circumstances where transparency may be a mean in the pursuit of one or more of such legitimate aims as to protect national

security, ensure public order or the prevention of crimes including corruption, embezzlement, money-laundering or terrorism financing. Although there is a brief mention of the contribution of the Draft Act to international efforts to combat money laundering in the Explanatory Note, there is no further elaboration of this or other aim(s) in the Preliminary Impact Assessment. In any case, the mechanism envisaged by the Draft Act cannot be considered as strictly required or proportionate to such legitimate aim(s) invoked.

The Draft Act is furthermore not based on a thorough risk assessment of its potential impact on civil society organizations, especially those promoting or defending the rights of marginalized or under-represented groups, human rights defenders, media outlets, journalists or other stakeholders and the legislative process lacked meaningful consultations with organizations affected and the wider public. The reasons adduced by the MPs who introduced the Draft Act to justify this legislative initiative are generally not relevant and sufficient, failing to demonstrate why the existing legal framework and existing registration/reporting obligations are insufficient and/or ineffective. Moreover, no proper justification is provided for the difference in treatment of natural persons and organizations on the mere basis of the foreign origin of their funding and other resources.

The proposed "foreign agents" registry and new obligations applicable on the basis of the mere receipt of funding or of other tangible or intangible assets of foreign origin will also be stigmatizing or likely have an indirect discriminatory impact on certain categories of natural persons and associations. This is particularly the case for those actors that may not be able to secure domestic or public funding because they 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. There is a risk that the organizations and media which will be affected by this Draft Act, may very well be those who are critical of a government, so that their potential reduced or impaired functioning would adversely affect open, well-informed and pluralistic public discourse.

The legal drafters have also not demonstrated that they have carefully assessed the potential negative impact of the proposed legislation on human rights, and not-for-profit organizations' or media outlets' ordinary activities, or considered other legal or non-legal alternatives and selected the least intrusive measures with regard to the protection of fundamental rights.

There are a number of requirements that can be imposed on civil society and media organizations while being justifiable from a human rights perspective. These include some forms of notification or registration to acquire legal personality, tax and customs declarations or certain reporting requirements when receiving public funding. These obligations already exist in the domestic legal framework, and while these could be assessed to identify possible areas for improvement, the approach chosen with this Draft Act raises serious concerns that the contemplated measures are neither necessary nor proportionate.

The consequences for those designated as "foreign agents" are far-reaching. The new obligations, including the registration, labelling, and mandatory annual financial audit, appear burdensome and costly, especially for small not-for-profit organizations or media outlets, which could in turn severely deplete their capacity to engage in their core activities. It is also not clear how such obligations or requirements would apply to natural persons. In addition, "foreign agents" would be prohibited from carrying a broad range of activities, phrased in a manner that implies that they would need to abstain from any kinds of discussions or debate on public interest matters, thereby amounting to unjustified restrictions on their rights to freedom of association and freedom of expression, including media freedom. The focus and nature of the Draft Act create a significant risk that it could be used as a tool to suppress legitimate activities such as

democratic participation, political dissent, human rights or rule of law advocacy, or the mere dissemination of information of public interest, as evidenced by similar practices in other countries.

As a consequence, in light of the analysis contained in more details hereinafter, the Opinion concludes that the Draft Act **contains serious deficiencies that renders it incompatible with international human rights standards and OSCE human dimension commitments and should not be reintroduced in the Parliament in its current or similar form**.

ODIHR and the OSCE Representative on Freedom of the Media remain at the disposal of the authorities for further assistance in this matter, especially with respect to the identification of possible legislative or other alternatives to address genuine, specific concerns that correspond to the legitimate aims of regulation as provided for by international human rights law.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws 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 18 December 2024, the Secretary General of the Ombudsman of the Republic of Bulgaria sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Draft Act on the Registration of Foreign Agents (as of 11 November 2024) in Bulgaria (hereinafter "the Draft Act").
2. On 20 December 2024, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of this Draft Act with international human rights standards and OSCE human dimension commitments. In light of the subject matter, ODIHR invited the OSCE Representative on Freedom of the Media (RFoM) and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to contribute to the preparation of this Opinion.
3. While on 5 February 2025, the Draft Act was rejected by majority vote of the Parliament, the analysis offered in this Opinion aims to inform the discussions on this matter highlighting the key human rights concerns stemming from this draft legislation, should the Draft Act in its current or similar form be reintroduced.
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.[1]

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers only the Draft Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the right to freedom of association and/or the right to freedom of expression and freedom of the media in Bulgaria.
6. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require improvements than on the positive aspects of the Draft Act. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments.
7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[2] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[3] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
8. This Opinion is based on an unofficial English translation of the Draft Act, which is attached to this document as an Annex. Errors from translation may result. Should the Opinion be translated into another language, the English version shall prevail.

1 In particular, CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, para. 9.3; and Charter of Paris for a New Europe (1990), where the OSCE participating states affirmed that "*…without discrimination, every individual has the right to (…) freedom of association."* See also OSCE, *Istanbul Document 1999*, para. 27, where OSCE participating States committed to "*enhance the ability of NGOs to make their full contribution to the further development of civil society and respect for human rights and fundamental freedoms*".

2 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. Ukraine deposited its instrument of ratification of this Convention on 12 March 1981.

3 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

9. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective subject matters in Bulgaria in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

1.1. Rights to Freedom of Association and Expression, and Other Rights

10. The rights to freedom of association and freedom of expression are a cornerstone of a vibrant, pluralistic and participatory democracy.[4] 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.[5] 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.[6] The rights to freedom of association and freedom of expression and to receive and impart information are fundamental rights, as well as an enabler of other human rights and fundamental freedoms and serve as a guardian of democratic values.[7] The state's positive obligation to create an enabling environment for the exercise of these rights, including by fostering media independence and diversity as a key means of promoting robust, open debate about matters of public interest, should be reflected in the legislative framework.

11. The rights to freedom of expression and to freedom of association are enshrined in all major international human rights instruments, including Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR),[8] respectively. 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 its core meaning.[9] Furthermore, the 1998 UN Declaration

4 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 1 and 8. See also European Court of Human Rights (ECtHR), *Gorzelik v. Poland* [GC], no. 44158/98, 17 February 2004, para. 92, where the Court 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*."

5 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), paras. 47 and 76.

6 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 9.

7 See UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur and the African Commission Special Rapporteur on Freedom of Expression and Access to Information (hereinafter "International Mandate-Holders on Freedom of Expression"), Joint Declaration on Media Freedom and Democracy, 2 May 2023.

8 International Covenant on Civil and Political Rights (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A(XXI) of 16 December 1966. Bulgaria ratified the ICCPR on 21 September 1970. Article 19 (1) and (2) of the ICCPR provides that "everyone shall have the right to hold opinions without interference" and that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice" (see also UN Human Rights Committee, General Comment No. 34 on Article 19 Freedoms of Opinion and Expression of the ICCPR, CCPR/C/GC/34, 12 September 2011). Article 22 (1) of the ICCPR provides that "*everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests*".

9 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* (2015), 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.

on Human Rights Defenders[10] 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).

12. 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*".[11] 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"[12] 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.[13] The UN Special Rapporteur also specifically pointed out the rise of narratives labelling civil society and protesters as "foreign agents" and "agents of foreign influence", used as a tool for stigmatization aimed at delegitimizing human rights activists and associations.[14]

13. Freedom of the media is derived from freedom of expression, since the media and journalists are regarded as important 'deliverers' of public interest information and facilitators of public debate. The UN Human Rights Committee has thus authoritatively noted the essential nature of the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives. It has likewise stressed how important it is for free press and other media to be able to comment on public issues without censorship or restraint and inform public opinion, also underlining the public's corresponding right to receive media output.[15]

14. At the Council of Europe level, Articles 10 and 11 of the European Convention on Human Rights and Fundamental Freedoms (ECHR)[16] as well as the relevant case-law of the European Court of Human Rights (ECtHR) set standards regarding the rights to freedom of expression and of association. In this respect, the compatibility of legislation specifically targeting associations exercising broadly defined "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 *Ecodefence and Others v Russia*.[17] Several recommendations of the Committee of Ministers of the Council of Europe also offer useful guidance regarding

10 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).

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

12 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.

13 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.

14 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *2024 Report*, A/79/263, 31 July 2024, paras. 39-40.

15 See UN Human Rights Committee, *General Comment No. 34 on Article 19 Freedoms of Opinion and Expression of the ICCPR*, CCPR/C/GC/34, 12 September 2011, para. 13.

16 See the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR), signed on 4 November 1950. Bulgaria ratified the ECHR on 7 September 1992.

17 ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 96.

the issue of funding of non-governmental organizations (NGOs) and related matters, including *Recommendation Rec(2007)14 on the Legal Status of Non-Governmental Organisations in Europe* (hereinafter "Recommendation Rec(2007)14*"*),[18] 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"),[19] and Recommendation on the legal regulation of lobbying activities in the context of public decision making (hereinafter "Recommendation on lobbying").[20] 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.[21] In addition, with respect to freedom of the media, a number of CoE Recommendations are highly relevant, especially the Recommendation on a New Notion of Media[22] and Recommendation on Principles for Media and Communication Governance.[23]

15. As a EU Member State, Bulgaria is also bound by the EU primary legislation and the EU Charter on Fundamental Rights,[24] especially Articles 11 and 12 on the 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 *Commission v. Hungary* judgment.[25]

16. At the OSCE level, there are a number of commitments in the area of freedom of association, freedom of expression, access to information and freedom of the media. The 1990 Copenhagen Document proclaims the right to everyone to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers; the OSCE participating States also 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*".[26] In addition, in the 1990 Paris Document, they affirmed that *"…without discrimination, every individual has the right to (…) freedom of expression, [and] freedom of association*."[27] The OSCE participating States have also reaffirmed *"the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinion"* and 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).[28] Moreover, in 1994 in Budapest, OSCE participating States reaffirmed that "*freedom of expression is a fundamental human right and a basic component of a democratic society*" committing to *"take as their guiding principle that they will safeguard this right"* and emphasizing in this respect, that *"independent and pluralistic media are essential to a free*

18 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.

19 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.

20 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.

21 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."

22 See, as an example of good regional practice, CoE Recommendation CM/REC(2011)7, "Recommendation of the Committee of Ministers to member States on a new notion of media", Council of Europe, Committee of Ministers, adopted on 21 September 2011.

23 See, as an example of good regional practice, CoE Recommendation CM/REC(2022)11, "Recommendations of the Committee of Ministers to member States on principles for media and communication governance", Council of Europe, Committee of Ministers, adopted on 6 April 2022.

24 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".

25 Court of Justice of the European Union (CJEU), *Commission v. Hungary*, Case C-78/18, 18 June 2020.

26 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, 29 June 1990, paras. 9.1. and 10.3.

27 CSCE/OSCE, *Charter of Paris for a New Europe*, 21 November 1990, p. 3.

28 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE*, 3 October 1991, paras. 26 and 43.

and open society and accountable systems of government".[29] In its Decision 3/18, adopted on 7 December 2018, the OSCE Ministerial Council called upon OSCE participating States to fully implement all OSCE commitments and international obligations related to freedom of expression and media freedom and to make their laws, policies and practices pertaining to media freedom fully compliant with their international obligations.[30]

17. The Opinion also makes reference to the 2015 ODIHR-Venice Commission *Guidelines on Freedom of Association*[31] and the 2020 ODIHR-Venice Commission *Guidelines on Political Party Regulation.*[32] The present Opinion 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.[33] In particular, the 2023 ODIHR Note of the Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad of So-called "Foreign Agents Laws" and Similar Legislation offers an analysis of the compliance of such types of legislation with international human rights law.[34] The Reports and Letters of concerns published by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association are also of particular relevance.[35]

18. Relevant international standards concerning the prohibition of discrimination[36] and the right to respect for private life[37] are also referred to in the present Opinion. Additionally, the Opinion also touches upon the right to take part in public affairs (Article 25 of the ICCPR).[38]

19. 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 fulfil the exercise of the rights to freedom of association and freedom of expression and to create an

29 See CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era (Budapest Document), CSCE/OSCE, 21 December 1994, Chapter VIII, para. 36.
30 See OSCE Ministerial Council Decision No 3/18, "Safety of Journalists", 12 December 2018.
31 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015).
32 ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).
33 See e.g., *ODIHR Urgent Opinion on the Law "On Transparency of Foreign Influence" of Georgia* (30 May 2024); ODIHR, *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* (25 July 2023); 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), CDL-AD(2023)016; 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); 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; *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; *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. 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.
34 ODIHR, *Note of the Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad of So-called "Foreign Agents Laws" and Similar Legislation and Their Compliance with International Human Rights Standards* (2023).
35 See <Annual thematic reports | OHCHR>. See also especially the Letter addressed to the Russian Federation relating to the Federal Law No. 121-FZ dated 20 July 2012 and subsequent amendments, see UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Letter OL RUS 16/2022* dated 30 November 2022.
36 Article 26 of the ICCPR; Article 14 of the ECHR, which stipulates that the "*enjoyment of the rights and freedoms set forth in this Convention should be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*" (Bulgaria has not signed nor ratified the *Protocol No. 12 to the ECHR*, which contains a general prohibition of discrimination in the enjoyment of any rights); Article 21 of the EU Charter of Fundamental Rights.
37 Article 17 of the ICCPR; Article 8 of the ECHR; Article 7 of the EU Charter of Fundamental Rights (and Article 8 on Protection of Personal Data).
38 Article 25 of the ICCPR.

enabling environment for such freedoms and the right to information.[39] Any legislative initiatives or amendments should be approached from this perspective.

1.2. Restrictions on the Rights to Freedom of Association and Expression

20. Any restriction on the rights to freedom of association and expression must be compatible with the strict three-part test set out in, respectively, Article 22 of the ICCPR and Article 11 (2) of the ECHR, and Article 19 (3) of the ICCPR and Article 10 (2) of the ECHR. This test requires any restriction to be provided by law (requirement of legality), to be in pursuit of one or more of the legitimate aims listed exhaustively in the respective treaty/convention,[40] to be necessary in a democratic society and to respect the principle of proportionality (which *inter alia* presupposes that any imposed restriction should represent the least intrusive measure among all those possible means effective enough to achieve the designated objective).[41] In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR[42]).

21. The grounds for restrictions listed in international instruments should not be supplemented by additional grounds in domestic legislation and should be narrowly interpreted by the authorities.[43] Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific aim being pursued (Article 18 of the ECHR).

22. The requirement that any restrictions be 'prescribed by law' not only requires that the restriction should have an explicit basis in domestic law, but also refers to the quality of the law in question.[44] While acknowledging that absolute precision is not possible and that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice,[45] laws must be sufficiently clear and precise to enable an individual to assess whether or not his or her conduct would be in breach of the law and to foresee the likely consequences of any such breach.[46] This also means that the law must be formulated in terms that provide a reasonable indication as to how these provisions will be interpreted and applied.[47]

23. The test of 'necessary in a democratic society' means that any restriction imposed on the rights of freedom of association and expression, whether set out in law or applied in practice,

39 See Principle 2 of the ODIHR-Venice Commission Joint Guidelines on Freedom of Association (2015). According to the ECtHR, "genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere" (ECtHR, *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 ECtHR, *Airey v. Ireland*, no. 6289/73, 9 October 1979).

40 For Article 22 (2) of the ICCPR, these are national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. For Article 11 (2) of the ECHR, the aims are: the protection of public health or morals, and the protection of the rights and freedoms of others. For Article 19 (3) ICCPR: *(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*"; For Article 10(2) ECHR: "*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*"

41 See ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 10 and para. 113.

42 Bulgaria has not signed nor ratified the *Protocol No. 12 to the ECHR*, which contains a general prohibition of discrimination in the enjoyment of any rights.

43 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), Principle 9 and para. 34.

44 *Ibid.* para. 34, requiring the law to be "*precise, certain and foreseeable*".

45 See, for example, ECtHR, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, 15 October 2015, para. 109. See also ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131, where the Court underlined that: "*A norm could not be regarded as a "law" unless it was formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail. However, the Court went on to state that these consequences did not need to be foreseeable with absolute certainty, as experience showed that to be unattainable.*"

46 See, for example, ECtHR, *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, 25 November 1999; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, 12 January 2010; *Kudrevičius and Others v Lithuania* [GC], no. 37553/05, 15 October 2015. See also UN HRC, General comment No. 34 on Article 19 of the ICCPR, CCPR/C/GC/34, para. 25. See also ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, paras. 48-49; and *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 131.

47 See e.g., Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, para. 58. In addition, see ECtHR, *The Sunday Times v. the United Kingdom (No. 1)*, no. 6538/74, where the Court ruled that "*the law must be formulated with sufficient precision to enable the citizen to regulate his conduct," by being able to foresee what is reasonable and what type of consequences an action may cause*."

must meet a "pressing social need",[48] be proportionate to the legitimate aim pursued and the reasons justifying it must be relevant and sufficient.[49] As underlined in the Joint Guidelines on Freedom of Association, this means that only convincing and compelling reasons for introducing such limitations are acceptable and only indisputable imperatives can interfere with the enjoyment of the right to freedom of association.[50] The means used should be proportionate to the aim pursued, which also means that where a wide range of interventions may be suitable, the least restrictive or invasive means must always be used.[51] In addition, restrictions must never entirely extinguish the right nor deprive it of its essence or causing a chilling effect.[52] In addition, restrictions must not be discriminatory, either directly or indirectly.[53]

2. BACKGROUND

24. The Constitution of Bulgaria guarantees the right to freedom of association in Articles 12 and 44 with the latter provision specifying that "*organization/s activity shall not be contrary to the country's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens; no organization shall establish clandestine or paramilitary structures or shall seek to attain its aims through violence. (3) The law shall establish which organizations shall be subject to registration, the procedure for their termination, and their relationships with the State*".

25. The Non-Profit Legal Entities Act, which entered into force on 1 January 2001,[54] regulates the establishment, registration, operations, and dissolution of associations and foundations in Bulgaria, with specific rules applying to public benefit non-profit legal entities, including the obligation to prepare an annual activity report and financial statements – the latter being subject to an independent financial audit, which are then published in the Register (Article 40 (3) of the Non-Profit Legal Entities Act).

26. The Draft Foreign Agents Registration Act of Bulgaria was introduced to the Parliament on 11 November 2024. On 5 February 2025, the Draft Act was placed on the Parliament's agenda, despite it not having been reviewed by any of the Parliamentary sub-committees to which it was assigned. The Draft Act was rejected by a majority vote.[55] The Draft Act may be proposed to the Parliament again not earlier than three months from the date of the initial vote. A similar bill was voted down on 19 September 2024 by the Parliament's Committee on Culture and Media[56] and another was introduced in 2022, but also rejected in a parliamentary vote.

27. Article 1 of the Draft Act designates legal and natural persons conducting certain types of activities deemed political or aimed at influencing public opinion, while simultaneously receiving funds or other material assistance from foreign sources, as "foreign agents" and provides for their inclusion in a special register. In addition, they are subject to new obligations, such as labelling of all published materials with the "foreign agent" designation while imposing more stringent reporting requirements on them. According to Article 2, the

48 This means that a restriction must be considered imperative, rather than merely 'reasonable' or 'expedient': ECtHR, *Chassagnou v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, 29 April 1999. "Necessary" is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable"; see ECtHR, *The Sunday Times v. the United Kingdom (No. 1),* no. 6538/74, para. 59.

49 See, for example, ECtHR, *Taranenko v. Russia*, no. 19554/05, 15 May 2014. In relation to freedom of expression, see, for example, ECtHR, *Janowski v. Poland* [GC], no. 25716/94, 21 January 1999, paras. 31 and 35.

50 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 111.

51 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, paras. 112-113. See also e.g., ECtHR, *Perinçek v. Switzerland* [GC], no. 27510/08, 15 October 2015, para. 273.

52 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, para. 24.

53 ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association*, CDL-AD(2014)046, Principle 5 and para. 123.

54 See <Bulgarian Non-Profit Legal Entities Act>.

55 See <Законопроекти - Народно събрание на Република България>.

56 See <Bills - National Assembly of the Republic of Bulgaria>.

purpose of the Draft Act is to "…*implement state control and regulation of transparency and publicity with regard to the sources and purpose of remittances made and material assistance provided free of charge from abroad*". Furthermore, the Draft Act prohibits natural and legal persons designated as "foreign agents" from engaging in the very types of activities that may potentially be interpreted to designate them as "foreign agents" in the first place (such as political, lobbying or other activities aimed at influencing public policies). This creates a form of circular reasoning, whereby individuals or entities are first registered due to engagement in certain activities, only to be subsequently prohibited from carrying out those same activities. Such an approach renders the registration regime functionally redundant and legally incoherent.

28. In general, the Draft Act contains numerous vague definitions open to various interpretations while leaving certain important issues remain unaddressed. If adopted, the Draft Act could impact a significant segment of Bulgarian society due to its overly broad scope. It seems to apply to individuals as well as legal entities, including media, non-governmental organizations, and commercial companies. The definition of relevant activities is extremely broad, and the threshold for mandatory registration is set low at only 1,000 BGN (approximately 510 EUR). Additionally, several provisions of the Draft Act are clearly retroactive.

29. The consequences for those designated as foreign agents are far-reaching, including obligations to label materials, extensive reporting requirements, and even prohibitions on practicing certain professions and conducting a wide range of activities. Although the Draft Act includes a preliminary impact assessment, it appears that a comprehensive impact assessment, including human rights impact assessment, has not been conducted. Moreover, no public consultations were held during its drafting process. The purpose, nature and sub-standard quality of the Draft Act create a significant risk that it could be used as a tool to suppress legitimate activities such as democratic participation, political dissent, professional media operations or human rights advocacy, as evidenced by similar practices in other countries.[57] Importantly, independent media outlets and freedom of the media as such have often become a "collateral damage" of the adoption and implementation of various types of "foreign agents" or "foreign influence" laws. This happens *inter alia* because in a number of local contexts, independent media are founded by or are registered and function as non-governmental organizations. "Foreign agents" or "foreign influence" laws tend to undermine media viability and to negatively affect media pluralism.

3. Objective Pursued by the Draft Act and its Potential Impact

3.1. Transparency and Anti-Money Laundering

30. Article 2 of the Draft Act refers to the regulation of transparency and publicity of sources and funds and material assistance provided free of charge from abroad to a certain category of entities and natural persons referred to in Article 1. In the "Motives to the Foreign Registration Act" ("мотиви", hereinafter referred to as the "Explanatory Note"), the introduction of the legislation is noted as a measure to protect Bulgaria's national security by requiring public disclosure of persons who defend foreign national or corporate interests and

57 For more than a decade, multiple laws have been drafted and/or adopted that seek to hamper the role and functioning of associations or civil society organizations ("CSOs") receiving funding from abroad; for some examples of such legislative initiatives, see ODIHR, *Note of the Legislative Initiatives on Transparency and Regulation of Associations Funded from Abroad of So-called "Foreign Agents Laws" and Similar Legislation and Their Compliance with International Human Rights Standards* (2023), currently being updated. Since the adoption of the *Federal Law No. 121-FZ "on 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"* on 20 July 2012 (hereinafter "Russian Foreign Agents Law", amended numerous times since then), which was one of the first of such laws, several countries have adopted or attempted to adopt similar laws targeting associations that receive financial or other forms of assistance from abroad, primarily to counter alleged risks posed by "foreign influence" or, more broadly, to impose new obligations on associations, independent media outlets and individuals in the name of transparency.

receive foreign funding for this purpose as well as to contribute to international efforts to combat money laundering.

31. Justifications such as the need for transparency, publicity or need to protect against "foreign influence" are frequently invoked to justify the introduction of "foreign agent laws".[58] International instruments such as the ICCPR and ECHR allow for limitations on the freedom of association when pursuing one of the legitimate aims listed exhaustively in the respective treaty/convention.[59] The Joint Guidelines on Freedom of Association emphasize that "*only convincing and compelling reasons*" for imposing such limitations are acceptable. As the Guidelines state, "*only indisputable imperatives can interfere with the enjoyment of the right to freedom of association*".[60]

32. Regarding the stated goal of ensuring "transparency", it must be underlined that the need for transparency in the internal functioning of associations is not specifically regulated in international and regional treaties, owing to the right of associations to be free from interference of the state in their internal affairs. The Joint Guidelines on Freedom of Association provide that, while openness and transparency are fundamental for establishing accountability and public trust, "*[t]he state shall not require but shall encourage and facilitate associations to be accountable and transparent*".[61] Generally speaking, enhancing transparency and accountability is an essential component of good *public* governance applicable to the public sector.[62] In specific cases, transparency requirements can be applied to private, not-for-profit organizations or associations, for example when they are funded from domestic public sources[63] or performing essential democratic functions, such as political parties. The latter can be regulated by enacting robust political party and electoral campaign financing rules and may justify the imposition of specific reporting or disclosure requirements as underlined in the *Joint Guidelines on Freedom of Association* and in the Council of Europe's Committee of Ministers' *Recommendation CM/Rec(2007)14*.[64]

33. At the same time, as underlined in ODIHR and/or Venice Commission's previous opinions and reports,[65] enhancing transparency does not *by itself* constitute a legitimate aim as

58 For instance, "transparency" was used as a justification for the laws adopted by the Russian Federation (see 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" adopted in July 2012 and subsequent amendments), Hungary (Law on the Transparency of Organisations Receiving Support from Abroad adopted in 2017, repealed in 2020), Republika Srpska (with respect to the Law on Special Registry and Publicity of the Work of Non-Profit Organisations, see <https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2023)024-e>), and the Kyrgyz Republic (Law of the Kyrgyz Republic on Non-Commercial Organizations pertaining to "foreign representatives", for which 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).

59 For Article 22 (2) of the ICCPR, these are national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. For Article 11 (2) of the ECHR, the legitimate aims are: the protection of public health or morals, and the protection of the rights and freedoms of others. For Article 19 (3) ICCPR: *(a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals*". For Article 10(2) ECHR: "*in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*"

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

61 See e.g., ODIHR and Venice Commission, *Joint Guidelines on Freedom of Association* (2015), para. 224.

62 ODIHR, *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* (25 July 2023), para. 54, currently being updated. 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. 26.

63 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 (2015), para. 214). See also ECtHR, *Vörður Ólafsson v. Iceland*, no. 20161/06, 27 April 2010, paras. 81-82, where in light of the public functions of a trade union to promote the specific industry under public supervision in exchange for the allocation of the funds derived from the industry charge to this single organization, the Court noted the need for transparency and accountability regarding the use of the revenues from the industry charge vis-à-vis non-members of the trade unions.

64 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association (2015), 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.

65 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; *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*

described in an exhaustive list in the international human rights instruments,[66] although it may be a mean in the pursuit of one or more of the internationally recognised legitimate aims that may, in case other requirements are also fulfilled, allow restrictions on this right, such as protection of national security, public order or the prevention of crimes, including corruption, embezzlement, money-laundering or terrorism financing.[67] While the ECtHR has acknowledged, in principle, that the objective of increasing transparency with regard to the funding of civil society organizations (CSOs) may correspond to the legitimate aim of prevention of disorder in Article 11 (2) of the ECHR,[68] it has specifically only 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.[69] Imposing transparency obligations on non-profit organizations solely due to the foreign funding received by them would fail to meet criteria established by ECtHR.

34. Furthermore, any restriction must be necessary to avert a *real, tangible danger*—not merely a hypothetical one,[70] while being proportionate to the nature and scope of the threat that it is intended to address. The Draft Act fails to justify the introduction of these measures or to explain the specific threats posed by its prospective subjects. Instead, the explanations remain overly vague. For instance, the Explanatory Note claims that the primary goal of the Draft Act is to protect Bulgarian society from foreign interest groups and entities that finance individuals and organizations playing key roles in shaping public opinion in Bulgaria. These foreign groups allegedly act primarily to advance and impose their own self-interests, unspecified "foreign ideologies" or the private economic and commercial interests of foreign entities, which could potentially endanger Bulgaria's political and economic situation. Without pointing to a substantiated risk analysis concerning any specific involvement of the NGO sector in the commission of crimes, such as corruption or money-laundering, and/or concrete, well-evidenced threats to national security, "transparency" cannot constitute a legitimate aim justifying restrictions of freedom of association and/or freedom of expression (including media freedom).[71] In 2020, the CJEU, having regard to the content and the purpose of the provisions of the Hungarian legislation, assessed that it was based "*on a presumption made on principle applied indiscriminately that any financial support [from abroad] and any civil society organisation receiving such financial support are intrinsically liable to*

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.

66 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.

67 Ibid.

68 ECtHR, *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, para. 122.

69 ECtHR, *Ecodefence and Others v. Russia*, no. 9988/13, 14 June 2022, paras. 139 and 165.

70 See e.g., ECtHR, *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, where the Court 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*"; see also CJEU, *Commission v. Hungary*, Case C-78/18, 18 June 2020, para. 91, where the CJEU also underlined the need to establish "*a genuine, present and sufficiently serious threat to a fundamental interest of society*"; and 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. See also e.g., ODIHR-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, where 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*"; *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. See also Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, para. 81.

71 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.

jeopardise the political and economic interests",[72] which was not enough to justify the restriction.

35. It is also important to emphasize that NGOs in Bulgaria are already subject to registration and other obligations under existing laws, similar to other private entities.[73] Non-profit legal entities (associations and foundations) are subject to registration and are already subject to some reporting requirements, for example for tax purposes, for statistical reasons, and for the purpose of combating money laundering. In addition, public benefit non-profit legal entities have an additional reporting requirement – to submit an annual report about their activities and their financial statements to the Central Register for Non-Profit Legal Entities with the Ministry of Justice, which publishes them in the Register. The oversight authorities are the Regional Prosecutors' Office; the National Revenue Agency; the National Statistic Agency; and the State Agency for National Security.[74]

36. Depending on the final aim, some alternative, less intrusive means to address the so-called "foreign influence" could be considered. These could include regulating (clearly defined) professional, remunerated lobbying or interest representation activities aimed at influencing public decision-making processes carried out under the control or direction of a foreign principal, that should be clearly distinct from ordinary advocacy activities of not-for-profit organizations and designed in compliance with international human rights standards.[75]

37. Other specific regulatory initiatives could address the prevention of corruption, money laundering and financing of terrorism, aim at improving corporate governance and transparency of beneficial ownership of legal persons and/or introduce robust political party and electoral campaign financing rules. Regarding the latter, the ECtHR has acknowledged as legitimate and proportionate the imposition of certain transparency requirements limited to political parties, owing to the essential democratic functions they perform, providing that they did not entail significant disclosure or reporting obligations.[76] Measures to ensure transparency of media ownership and/or to promote more open, transparent and accountable public decision-making processes could also be considered if not already in place. Any such initiatives should be compliant with international human rights and rule of law standards and should be applicable to the relevant actors instead of specifically targeting the civil society sector and independent media.

38. Thus, the Draft Act risks imposing unnecessary and disproportionate restrictions without clear justification, potentially violating the right to freedom of association as well as the right to freedom of expression while completely disregarding the legal certainty standard required under international human rights law.

3.2. Impact Assessment

39. From the Explanatory Note ("мотиви") and the Preliminary Impact Assessment attached to the Draft Act, it does not appear that the authorities have carried out a proper assessment of the existing legal framework to determine whether the stated goal could be effectively achieved by other less intrusive means, including by strengthening existing obligations,

72 CJEU, *Commission v. Hungary*, Case C-78/18, 18 June 2020, paras. 86-87.
73 (Bulgaria) Law on Non-Profit Legal Entities.
74 (Bulgaria) Law on Non-Profit Legal Entities.
75 See e.g., CoE Recommendation CM/Rec(2017)2 of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision making, 22 March 2017, para. 4, which emphasizes that legal regulation of lobbying should not, in any form or manner whatsoever, infringe the democratic right of individuals to express their opinions and petition public officials, bodies and institutions, whether individually or collectively; campaign for political change and change in legislation, policy or practice within the framework of legitimate political activities, individually or collectively; PACE Committee on Economic Affairs and Development, *Report "Lobbying in a democratic society (European Code of conduct on lobbying)"* (Doc. 11937, 5 June 2009). As underlined in the 2019 Venice Commission Report on the Funding of Associations, "*such a drastic measure, as 'public disclosure obligation' (i.e. making public the source of funding and the identity of the donors) may only be justified in cases of political parties and entities formally engaging in remunerated lobbying activities";* and *"lobbying as a professional remunerated activity should be clearly defined in the legislation and be clearly distinguished from ordinary advocacy activities of civil society organisations, which should be carried out unhindered*".
76 As in ECtHR, *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007 (as regards political parties).

whether provided for by law, including financial or tax-related ones, or practices which exist on a voluntary basis. Nor is it apparent that authorities have sought to review other existing legislation to identify potential ineffectiveness of existing provisions or regulatory gaps that, if addressed, would contribute to achieving the stated goal. As a key element of democratic lawmaking, different legislative options to address a determined (legitimate) objective should be debated and weighed up, along with their respective immediate and long-term impacts, advantages and disadvantages, and how easy or difficult it may be to implement them.[77]

40. This would have demonstrated that the drafters had considered alternatives and selected the least intrusive measure to interfere with the respective fundamental rights if the existing pressing social need requires them to do so. Along with questions related to the necessity and the availability of such alternatives, these are important factors in the assessment of the proportionality of the proposed legislative choice.[78]

41. In addition, the Preliminary Impact Assessment does not provide a proper assessment of the impact of the Draft Act on the exercise of the right to freedom of association or freedom of expression including freedom of the media or other rights, nor does it look at the potential adverse differentiated impact it may have on certain associations or other entities or individuals promoting the rights of women, Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI), minorities or marginalized groups. Additionally, there is also no indication in the Explanatory Note or Preliminary Impact Assessment that the drafters considered the practical impact on organizations which face these new requirements including whether such organizations would have realistic, alternative, sufficient funding streams coming from domestic sources.

42. In the absence of a proper regulatory impact assessment and meaningful and inclusive consultations with civil society, independent media and other relevant stakeholders, during the process of developing the Draft Act, it appears that there has been no genuine attempt to assess the potential impact of its adoption or explore alternative less intrusive legal or other options.

3.3. Discriminatory Impact

43. The Draft Act introduces measures whereby individuals and organizations that receive funds from foreign sources are treated differently from those receiving funds that are of domestic origin and others. Hence, the main criteria for differentiating the individuals and organizations subject to the new requirements under the Draft Act is the foreign origin of their funding and other tangible or intangible assets. The Explanatory Note does not provide any objective and rational justification for such a differential treatment between the those receiving foreign funding and other legal entities, including, *inter alia*, private business companies with foreign investments.[79] The contemplated restrictive framework will thus result in unequal treatment of different civil society actors as well as not-for-profit and business sectors.[80]

77 ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 141.
78 See 2023 ODIHR Note, para. 75.
79 See e.g., 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. 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, *Report on Funding of Associations*, CDL-AD(2019)002, paras. 122-127.
80 See e.g., 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. 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, *Report on Funding of Associations*, CDL-AD(2019)002, paras. 122-127.

44. It is also important to underline the potential indirect discriminatory impact that the Draft Act may have in practice. Indeed, it will likely 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, including the funding from international and intergovernmental organizations as well as from private philanthropies and diaspora. This may be the case for associations promoting human rights, for instance the rights of persons with disabilities, or those involved in service delivery (such as disaster relief, health-care provision or environmental protection), whose access to resources is important, not only for the existence of the associations themselves, but also to the enjoyment of human rights by those benefitting from the work of these associations. This may generally also be the case for associations 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, including media freedom.[81] Similar considerations will also concern independent media outlets, especially those representing minority voices and/or serving local communities.[82]

45. Article 26 of the ICCPR and Article 14 of the ECHR (Bulgaria has not signed nor ratified Protocol 12 to the ECHR) prohibit all forms of direct and indirect discrimination understood as a differential treatment without objective and reasonable justification, meaning those that lack a legitimate aim, necessity and proportionality.[83] The CJEU expressly held that "*differences in treatment depending on the national or 'foreign' origin of the financial support in question [to associations and foundations from another Member State or third country], 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*".[84] As also 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.[85] 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*".[86] In this respect, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association has specifically emphasized that narratives labelling civil society and protesters as "foreign agents" and "agents of foreign

81 Ibid. *Joint Guidelines on Freedom of Association*, para. 98.

82 Ibid. *Joint Guidelines on Freedom of Association*, para. 182, and Access to Resources, para. 47. See also 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. 3 and 7, where the UN Special Rapporteur noted specifically the "*disproportionate impact [of foreign agents 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*" 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*."

83 See e.g., *ODIHR Note on the Anti-Discrimination Legislation and Good Practices in the OSCE Region* (2019), para. 56. See also 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, where the Court has considered 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". See also CJEU, *Commission v. Hungary*, Case C-78/18, where 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" and concluded that "Hungary has introduced discriminatory, unjustified and unnecessary restrictions on foreign donations to civil society organisations". See also e.g., Venice Commission, Hungary - Opinion on Draft Law on the Transparency of Organisations Receiving Support from Abroad, CDL-AD(2017)015, paras. 33-34.

84 CJEU, *Commission v. Hungary*, Case C-78/18, 18 June 2020, para. 62.

85 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.

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

influence" are used as a tool for stigmatization aimed at delegitimizing human rights activists and associations.[87] Without further justification for introducing such a difference in treatment on the basis of the foreign origin of funding or other assistance, this would appear contrary to the prohibition on discrimination enshrined in international instruments.[88]

46. The issue of discriminatory treatment of certain categories of associations/organizations 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, associations should not be required to submit more reports and information than other legal entities, such as businesses; equality between different sectors should be ensured.[90]

47. In light of the above, since the Draft Act lacks proper justification for the difference in treatment on the basis of the mere foreign origin of the funding or other assistance, it would likely be considered as being discriminatory.

4. DEFINITION OF "FOREIGN AGENTS" FOR THE PURPOSE OF THE DRAFT ACT

4.1. Personal Scope

48. For the purpose of assessing the legality of a restriction, laws must not only formally exist and be accessible but also be clear and foreseeable.[91] As such, they must be formulated with sufficient precision to enable an individual – if need be, with appropriate legal advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.[92] 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 provided for in the law or the existence of stable, consistent and foreseeable case-law on this matter by domestic courts.

49. Several terms used in the Draft Act – for instance the notion of "political activities", "foreign ideologies", "forming public opinion", "the exercise of influence", "any material assistance […] received directly or indirectly from abroad" – are too broad and vague, and fail to comply with the principle of legal certainty and foreseeability of legislation. As a consequence, this may lead to potential extensive, selective or arbitrary interpretation and unfettered discretion on the side of the public authorities in charge of implementing the legislation,[93] potentially putting civil society at risk of politically motivated restrictions and persecution.[94]

50. Article 4 of the Draft Act defines the "natural persons" and "legal entities" that fall within its scope. Article 4 further highlights specific types of legal entities, which fall within the scope of the Draft Act, such as non-profit legal entities, associations, and parties (presumably meaning "political parties"). At the same time, some other provisions provide further definitions, which often include exceptions and partial definitions. The Explanatory Note also

87 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *2024 Report*, A/79/263, 31 July 2024, paras. 39-40.

88 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 (2015), para. 219.

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 (2015), paras. 156 and 225.

91 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.

92 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.

93 See ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 107-112.

94 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.

refers to these groups, identifying media organizations and entities established under the right of association – such as private and public benefit associations and foundations – as the main targets of the Draft Act.

51. Under § 1 (2) of the Supplementary Provisions, a "foreign agent" is defined as a "*… natural or legal person carrying out activities referred to in Article 3, paragraph 1, who receives funds or other material assistance from foreign sources, directly or indirectly, in connection with the activities referred to in Article 3, paragraph 1…* ." Similarly, according to the Draft Act under review, the question of whether a non-commercial organization, a media outlet or a natural person would be considered a "foreign agent" under the law or not will remain at the unfettered discretion of the authorities, leaving the organizations and individuals themselves with little advance knowledge of which activities would place them under the scope of the Act and which would not. **Therefore, the vague and overbroad formulation as reflected in § 1 (2) of the Supplementary Provisions is not "clear and foreseeable" and may not be in compliance with the requirements as to the quality of a law deriving from international human rights instruments.**

52. Article 3 (2) of the Draft Act specifies certain entities that are exempt from the scope of the Draft Act, including organizations engaged in health and healthcare activities, sports clubs, religious organizations, financial institutions, and commercial companies subject to licensing, with the exception of media companies. The provision also excludes activities financed with the EU funds. Such exclusions suggest that the Draft Act still applies to a broad range of legal entities, including associations and independent media, especially taking into account the scope of the activities covered by the Draft Act as explained below. The Draft Act seems to extend to commercial companies or other types of legal entities such as universities.

53. Article 5 introduces one additional category of individuals liable under the law: those related to foreign agents. These include founders, representatives, and individuals participating in the management of organizations designated as "foreign agents", as well as owners, partners, representatives, and management personnel of commercial companies designated as "foreign agents". Furthermore, it extends to individuals receiving payments or material assistance from "foreign agents" for financing activities covered under Article 3 (1).

54. This creates an extremely broad group of potential subjects falling within the scope of the Draft Act, with no clear or exhaustive definition. Ambiguous terms, such as "partners of the organization designated as a foreign agent", remain undefined, creating a significant risk of arbitrary and selective enforcement. Additionally, the inclusion of founders as possible "foreign agents" raises concerns about retroactivity. Organizations may have been established years ago, and their founders may have long ceased to be involved in their management. Applying the Draft Act to such individuals retroactively risks contradicting principles of legality (see also paras. 111-113 *infra* regarding the retroactivity of the Draft Act).

55. Establishing a special regulatory regime for organizations and individuals receiving foreign funding or having any ties to foreign entities raises significant concerns about the legitimacy of imposing such requirements solely based on the foreign nature of the funding or assistance. This approach risks violating principles of equality and non-discrimination, as well as undermining the legitimate activities of civil society organizations and other entities operating in good faith.

56. As a consequence, **the definitions used for the entities and individuals falling within the scope of the Draft Act, may potentially lead to extensive or arbitrary interpretation and unfettered discretion on the side of the public authorities in charge of implementing the**

legislation,[95] therewith risking putting civil society at risk of politically motivated restrictions and repression.[96]

4.2. Activities

57. The first precondition for being designated as a "foreign agent" is that a natural or legal person engages in certain types of activities. The Explanatory Note suggests that such activities are primarily aimed at "*influencing public opinion*." Article 1 of the Draft Act broadly defines these activities as those involving informing the public, shaping public opinion, and disseminating opinions and positions publicly, particularly through mass media. Article 3 (1) of the Draft Act notes that it applies to (1) public dissemination of information through the mass media; (2) carrying out awareness-raising, training, information, campaigning and other campaigns; (3) the provision of social, consumer or other services freely or by virtue of law or other regulations, and in any other non-profit activity for private or public benefit; (4) and the implementation of projects, targeted at or affecting particular social groups in society.

58. According to Article 3 (2), activities financed with European Union funds are excluded from the scope of the law as are activities carried out by specific subjects such as organizations engaged in health and healthcare activities, sports clubs, religious organizations, financial institutions, and commercial companies subject to licensing, except for media companies.

59. In practice, the activities listed under Article 3 (1) will encompass the majority of those conducted by NGOs and media. By comparison, other "foreign agents" or similar laws generally require targeted entities to be engaged in broadly defined "political activities" as a prerequisite for their designation as "foreign agents".[97] This term has been widely criticized by international organizations and courts, noting the broad and "inherently vague" nature of the term "political activities", and possibility to interpret this term in an extensive and unforeseeable manner, potentially covering any form of public advocacy on an extremely wide set of issues, thus being at odds with the requirement of being "prescribed by law".[98]

60. In the present situation, the scope of the activities covered by the Draft Act appears to be even broader, and to cover a very wide range of activities carried out by individuals and legal entities. While activities which could be defined as "political" under certain conditions seem to be covered under points (1) and (2) of Article 3 (1), the inclusion of points (3) and (4) significantly expands the scope of the Draft Act, encompassing a much wider range of activities. In particular, the second part of point (3), which states that the Draft Act applies to "*any other non-profit activity for private or public benefit*" leaves room for excessively broad interpretation. As seen in other jurisdictions where foreign agent laws with similar provisions have been adopted, such vague and expansive definitions have led to arbitrary enforcement, allowing governments to selectively target entities and individuals engaged in civic, social, or awareness raising work under the pretext of regulating foreign influence. **Due to the overbroad and extremely vague scope and terminology, the list of activities covered by the Draft Act is likely to result in disproportionate interference with the core of the rights to freedom of association and freedom of expression, including media freedom**. This is especially so since the new registration and reporting obligations, and monitoring by public authorities may trigger additional expenses and require commitment of resources that divert an organization's resources from the implementation of their activities. Further, the far-reaching terminology used in the Draft Act will go against the very essence of media

95 See European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 107-112.
96 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.
97 See 2023 ODIHR Note, paras. 67-69.
98 See e.g., European Court of Human Rights, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 97-100; and 2023 ODIHR Note, paras. 67-69, and references therein. See also Venice Commission, *Opinion on the Compatibility with International Human Rights Standards of a Series of Bills Introduced by the Russian State Duma between 10 and 23 November 2020 to Amend Laws Affecting "Foreign Agents"*, CDL-AD(2021)027, para. 81.

freedom as it will undermine the work of independent media organizations, restrict freedom of speech, and exert control over public opinion.

4.3. Foreign Funding

61. The second precondition for being designated as a "foreign agent" is the receipt of foreign material assistance. Article 6 (1) of the Draft Act states that material assistance includes any sum of money or any grant of material assistance received *directly or indirectly* from abroad. This contribution may originate from foreign governments, foreign state enterprises, foreigners, foreign commercial companies, foreign foundations, foreign non-profit organizations, foreign civil society organizations, or other associations of natural or legal persons engaged in activities described in Article 3 (1). According to Article 6 (1), the material assistance can also take the form of immaterial services, such as training, seminars, educational courses and programs, social activities, or projects. Additionally, Article 6 (3) specifies that the funds can include any kind of material benefit with monetary value. Only a few types of payments are excluded, such as those arising from commercial transactions, donations for medical treatment, training, and gambling of a pecuniary nature (Article 6 (1)) and payments originating from the European Union funds (Article 6 (4)). Under § 1 (2) of the Supplementary Provisions, a "foreign agent" is defined as a "*... natural or legal person carrying out activities referred to in Article 3, paragraph 1, who receives funds or other material assistance from foreign sources, directly or indirectly, in connection with the activities referred to in Article 3, paragraph 1…".*

62. Hence, the Draft Act may cover a very broad range of not only financial assistance directly received from abroad but also those received through intermediaries transferring funds to domestic individuals or legal persons, or any type of vaguely and broadly defined material assistance, also received *directly or indirectly* from abroad.

63. In the *Ecodefence* case, regarding the term "foreign funding" used in the Russian legislation similar to the one used in the Draft Act, the ECtHR 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*".[99] The question of whether a non-commercial organization would be considered a "foreign agent" under the Russian legislation 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. The inclusion of both direct and indirect funding indefinitely broadens the potential scope of the Draft Act's addressees, making it difficult to adequately implement. With respect to the 2020 amendments to laws affecting "foreign agents" in the Russian Federation, which introduced the concept of indirect funding, the Venice Commission raised concerns, stating that "*it is questionable why the definition of 'foreign funding' was expanded to include indirect funding received from Russian nationals or organizations that themselves received the funds from foreign sources or acted as intermediaries*."[100].

64. In light of the foregoing, the vague and overbroad formulation as reflected in Articles 6 and § 1 (2) of the Supplementary Provisions is thus not "clear and foreseeable" and may not be

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

100 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, 6 July 2021, para. 57.

in compliance with the requirements as to the quality of a law deriving from international human rights instruments.

65. The provision stating that funds can also be received through immaterial services, such as training, seminars, educational courses and programs, or social activities and projects, is similar to the concept of "methodological support" introduced by the 2020 amendments to the laws affecting "foreign agents" in the Russian Federation, which addition was widely criticized by international organizations.[101] Under this definition, any interaction with a foreign entity could potentially be considered as "foreign funding".

66. The 1998 UN Declaration on Human Rights Defenders states 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*."[102] The right to access funding should be exercised within the legal framework of domestic legislation, provided that such legislation aligns with international human rights standards.[103]

67. Article 7 sets a threshold for the mandatory registration of a natural or legal person as a "foreign agent". Any individual or organization falling within the scope of the Draft Act will be required to declare receipt of foreign funding once the amount received reaches 1,000 BGN (approximately 510 EUR). This threshold is unreasonably low, even in comparison to other similar pieces of legislation, and many individuals and, particularly, organizations are likely to be affected. It may also be questioned whether the financial threshold triggering the application of the registration obligation reflects the alleged danger to the political and economic interests of the country invoked by the initiators of the Draft Act.[104] For example, the Draft Act can be applied to an individual who had received 510 EUR from a relative or friend, based abroad, and who later spoke out on matters of public interest online or participated in a protest action offline. Furthermore, it remains unclear how the amount of "foreign funding" should be calculated when the funds are received through immaterial services, such as training, seminars, educational courses, social activities, or projects, as outlined in Article 6 (1).

68. The CJEU judgment in the case of Hungary is highly relevant for the analysis of the Bulgarian Draft Act, as both countries are members of the European Union. In its assessment of the former Hungarian Law on the Transparency of Organizations Receiving Support from Abroad, the Court determined that the measures introduced were discriminatory. Specifically, it found that the Hungarian Law established, directly or indirectly, a difference in treatment between domestic and cross-border movements of capital, which did not correspond to an objective difference in circumstances.[105] The Court concluded that the Hungarian Law constituted "*a restriction on the free movement of capital, prohibited by Article 63 TFEU, unless it is justified in accordance with the FEU Treaty and case-law*."[106]

69. The Draft Act automatically links the "directly or indirectly receiving material assistance" from sources abroad for certain activities to being a "foreign agent". This seems arbitrary, as the fact that an organization receives funding from a particular non-Bulgarian entity cannot

101 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*. 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. 52.

102 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). Article 13.

103 *Ibid.* Article 3.

104 Court of Justice of the European Union (CJEU), *Commission v. Hungary*, Case C-78/18, 18 June 2020, para. 94, where the Court 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*."

105 Court of Justice of the European Union (CJEU), *Commission v. Hungary*, Case C-78/18, 18 June 2020, para. 53.

106 CJEU, *Commission v. Hungary*, Case C-78/18, 18 June 2020, para. 65.

by itself indicate that it is potentially a "channel for foreign state or corporate interests" or "conduits of foreign state or corporate interests" (as referred to in the Preliminary Impact Assessment, paragraphs 1 and 3). As underlined in the ODIHR-Venice Commission Joint Opinion on the Draft Law of Republika Srpska, the assumption *"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, […] is not justified."*[107]

70. This categorisation may even endanger the very existence of non-profit organizations or media actors, when they have to make a choice between either refusing foreign funding or other assistance, or being subject to new restrictions and obligations linked to the receipt of foreign funding, and facing the consequences of the prohibition of engagement in an extremely broad range of activities as well as the need to allocate financial and human resources to ensure compliance with the new regulatory requirements. Such requirements can especially adversely impact associations promoting human rights or those involved in service delivery (such as disaster relief, health-care provision or environmental protection), or smaller media outlets with limited institutional and financial capacity. In the case of these organizations, access to resources is important not only to their existence *per se*, but also to the enjoyment of human rights by those benefitting from the work of these associations[108] as well as from pluralism of the media sources, including local and hyperlocal media. These new obligations also run the risk of having a stigmatizing effect, even when seemingly neutral on their face, especially when other associations are not required to register as a "foreign agent" nor to include the label "foreign agent" on all their communication materials. The consequences of adopting obligations of this nature could force organizations to choose between continuing their work while accepting foreign funding and the burdens and stigma associated with the label "foreign agent", or significantly reducing their activities due to insufficient domestic funding or a complete lack thereof.

71. In light of the above, the introduction of new obligations **and restrictions** imposed on **organizations and individuals** linked to the receipt of funding (money or other **material assistance**) from "sources abroad" will result in limitation to the exercise of the **rights** to freedom of association **and freedom of expression, including media freedom. Such limitation is likely to be found unnecessary and disproportionate**. While the limitation does not directly prohibit the receipt of certain types of funding or assistance, the Draft Act will inevitably restrict organizations' ability to seek, receive and use resources from a variety of sources, including foreign and international, which, as noted above, is a core aspect of the right to freedom of association. As such, the new registration, public disclosure and other obligations and prohibitions introduced by the Draft Act must comply with the strict requirements imposed by international human rights law, and the following sections of this Opinion elaborate further on the compliance with the requirements of legality, necessity, proportionality and non-discrimination.

5. REGISTRATION REQUIREMENTS

72. According to Article 7 of the Draft Act, the Ministry of Justice will establish a public electronic registry for foreign agents. Any individual or entity falling within the scope of the Draft Act will be required to declare that they receive foreign funding within 15 days once the total amount of funds received reaches 1,000 BGN (approximately 510 EUR). Both natural and legal persons will be responsible for their registration.

107 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.

108 UN, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/23/39, 24 April 2013, para. 9.

73. Upon reaching the specified threshold, they must submit a declaration containing various details, including personal information about the individual or legal entity (and its management), as well as information on the activities outlined in Article 3 (1) that the declarant is currently undertaking or intends to undertake. Regarding the foreign funding itself, the declarant must disclose the source of the funding, the amount of the material benefit received, the date of receipt, and the purpose for which the funds were received.

74. Within 7 days, the Ministry of Justice will notify the Registry Agency or the BULSTAT Register about the declaration, and the register will then add the label "foreign agent" to the respective organisation's entry on the record. The "foreign agent" label may be removed from the registry five years after its registration or following the last notification, provided there has been no subsequent foreign assistance received within this period of time.

75. Since the obligation to register as a "foreign agent" is triggered by reaching a relatively low threshold of material assistance, natural and legal persons are compelled to closely monitor and continuously evaluate all forms of assistance received from foreign sources to determine the exact moment this threshold is crossed – an overly cumbersome requirement. This administrative burden is further compounded by the strict 15-day deadline imposed for registration once the threshold is reached.

76. The requirement to inform the designated registration body about the purpose of either income or expenditure, whether from Bulgarian or non-Bulgarian sources, also seems to imply that a broad monitoring exercise would be undertaken, which is fundamentally inconsistent with the freedom of associations to pursue their lawful objectives and activities. The Draft Act accords wide discretion to the Ministry of Justice in order to carry out "*methodological guidance and control of the activities related to the registration of foreign agent, issuance of reports and certificates etc*…" (Article 10). In addition, it is also inconsistent with the presumption in favour of the lawfulness of the activities of associations as underlined in Principle 1 of the ODIHR-Venice Commission Guidelines on Freedom of Association.[109]

77. By contrast, regarding certain specific types of associations, in particular, political parties, in light of the fact that they perform essential democratic functions, the regulation and public disclosure of the source of funding and the identity of the donors is justified.[110] There could also be a legitimate need to ensure transparency of media ownership, in particular in the broadcasting sector, but regulation should never be limited to the outlets receiving foreign funding, while excluding those with domestic owners, and should be construed in line with the established international standards in this field.

78. The requirement to provide state authorities and/or the public with information on funds received and how they are spent may also be legitimate in the case of public funding allocated to associations.[111] 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 even if it was solely in this case, the obligation should not be extended to all financing and other types of assistance, including from private donors. In addition, 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.[112]

79. It seems that the declaration to the Register would require information about each donor and the amount of allocated funds, without any minimum threshold, meaning that the declaring individual or legal person would be obliged to report all funding received, regardless of the

109 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association (2015), Principle 1 (para. 26). 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. 67, which states: "The activities of NGOs should be presumed to be lawful in the absence of contrary evidence".

110 See ODIHR and Venice Commissions, *Guidelines on Political Party Regulation* (2nd ed., 2020), paras. 207-231.

111 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association (2015), para. 226.

112 *Ibid.* Joint Guidelines on Freedom of Association (2015), para. 226.

amount, even minor sums, this would entail a significant burden for the individuals/organizations concerned.[113] Moreover, the obligations apply to the natural and legal persons as identified irrespective of their size and scope of operations, and appear *prima facie* burdensome and costly, especially taking into account the already existing obligations in the national legislation. As underlined in the Guidelines on Freedom of Association, *"[t]he state shall not require but shall encourage and facilitate associations to be accountable and transparent*". Accordingly, as an alternative option, the public authorities could encourage associations' self-declaratory practices of informing the public of their sources of funding.

80. As mentioned above, even for the purpose of registration, and even if the process as such appears to be a mere administrative requirement, the level of details and types of information required appear unnecessary for the stated purpose as well as potentially burdensome and costly, especially for smaller organizations. This could in turn severely deplete their capacity to engage in their core activities. The extent of the information also requires the organizations to be equipped with the necessary legal, financial and administrative support, and allocate time to collect this information.

81. In particular, the Draft Act requires to submit the names of the donor(s) and "*personal data of the persons in the management bodies*" of the recipient but also *"[d]etailed information on any activity within the meaning of Article 3(1), including of a political nature, which the declarant carries out or intends to carry out*", not only with the use of "foreign funding" but funded from any source.

82. In addition, the Register would also include information on the addresses of individuals deemed "foreign agents" It is not evident why any personal data should be required to shed light on whether an entity has been pursuing a foreign interest. Moreover, the type of personal and potentially confidential information that is requested appears overly broad, and may also include sensitive information about the donors or beneficiaries or other information covered by attorney-client privilege, or by commercial or bank secrets, or journalists' right not to disclose their sources, especially taking into account the broad nature of Article 3 (1) of the Draft Act. Requiring the provision of any such data appears irrelevant and it would be interfering with the right to respect for private life of those individuals who would be affected. This level of detail raises further privacy and potentially security or safety concerns, particularly when sensitive information could be accessed by the public or be misused by third parties.[114]

83. Article 7 (5) of the Draft Act provides that any person may request access to the data published in the Register though it is not clear what types of information would be regarding the "foreign agent" and whether all information submitted at the time of registration may be communicated.

84. As with similar types of legislation in other countries, "foreign agent laws" often require individuals or organizations to disclose detailed information about their activities, funding sources, and donors, including sensitive financial data.[115] The public disclosure can expose personal information about members, supporters, staff and donors, leading to potential stigmatization, harassment, or targeting by both state and non-state actors, which can also generally deter others to donate or otherwise support these individuals or organizations in the future. Although the Draft Act does not specify which information from the registration

113 ODIHR, *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* (25 July 2023), para. 100. See also 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. 57.

114 ODIHR, *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* (25 July 2023), para. 102.

115 ODIHR, *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* (25 July 2023), para. 101.

materials will be made public, and stresses that when publishing such information, the principle of data protection will be respected in accordance with applicable legislation (Article 7 (3)), this remains a significant concern.

85. In the recent ECtHR ruling in the case of *Kobaliya and Others v. Russia*, the Court also addressed the issue of the right to privacy. It noted that the designation of the individual applicants as "foreign agents" had multiple repercussions on their private and professional lives. Following their designation, the applicants' names, along with their dates of birth, tax, and social security numbers, were published online on the Ministry of Justice's website. Even if such data were classified domestically as information in the public interest, the publication of the names and other personal details – particularly when combined with the stigmatizing label of "foreign agent" – must be regarded as an interference with their right to respect for their private life according to the Article 8 of the ECHR.[116]

86. Articles 8 and 9 outline the manner of establishing and operating the Public Register of Foreign Agents, as well as the procedures for entry, changes in circumstances, and removal from the register, will be determined by a regulation issued by the Minister of Justice. The regulation will also address access to information in the Register and the forms of applicable documents. The Draft Act does not sufficiently define the criteria based on which the Ministry of Justice will determine the exact rules and procedures for the proposed registration and disclosure requirements, which only adds to the Draft Act's lack of legal certainty**.**

87. In light of the foregoing, **the burdensome registration process and potential public disclosure of personal information envisaged in the Draft Act, besides not appearing to pursue a legitimate objective nor attesting to a particular necessity, seem disproportionate and may also unduly impact the rights to privacy of the donors and beneficiaries, in addition to the associations' right to privacy**.

6. LABELLING REQUIREMENTS

88. Article 12 of the Draft Act specifies the labelling obligations, requiring each "foreign agent" to indicate this designation on its electronic pages, as well as in printed publications and other materials issued by it. The Draft Act provides a detailed enumeration of the materials that must be labelled, including specific instructions regarding the size and proportions of the label.

89. The qualification "foreign agent" is problematic as it implies that individuals or organizations receiving funding or other assistance from foreign sources act as the representatives or under the control of "foreign power(s)" and in their interests, irrespective of the activities pursued and/or any official authorization or instructions from such powers. In practice, this may negatively impact their actual operation and exercise of their legitimate activities, as it may discredit their activities in the eyes of others, including their beneficiaries and the public,[117] and may cause safety and security risks for them and their beneficiaries, among others.

90. The use of the label to designate civil society organizations and other legal and natural persons as "foreign agent" has been addressed in numerous reports, opinions or international caselaw on "foreign agents" legislation, including the caselaw of the CJEU and ECtHR. In its judgment in the Hungarian case, the CJEU considered that the designation of civil society organizations as "organisations in receipt of support from abroad" was capable of creating a generalized climate of mistrust towards those organizations and of stigmatizing them.[118] In the *Ecodefence and Others v. Russia* case, the ECtHR concluded that attaching the label of "foreign agent" to any organizations receiving foreign funding was unjustified and prejudicial

116 ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, para. 84.
117 See Venice Commission, *Report on Funding of Associations*, CDL-AD(2019)002, para. 59. See also e.g., Venice Commission, *Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad*, CDL-AD(2017)015, para. 65.
118 CJEU, *Commission v. Hungary*, Case C-78/18, 18 June 2020, paras. 118-119.

and also liable to have a strong deterrent and stigmatising effect on their operations, notwithstanding the fact that such a label was also colouring them as being under foreign control.[119] The term carries a very negative connotation for large sections of the population, which can pose a significant threat to the free exercise of activities by the affected organizations and individuals.[120] Furthermore, the ECtHR established that the introduction of the labelling as a "foreign agent" for certain organizations, along with onerous auditing and reporting obligations, excessive and arbitrary fines, subjected organizations to measures that were not necessary in a democratic society.[121] In the 2024 Report, the UN Special Rapporteur on the rights to freedom of peaceful assembly and association has specifically emphasized that narratives labelling civil society and protesters as "foreign agents" and "agents of foreign influence" are used as a tool for stigmatization aimed at delegitimizing human rights activists and associations.[122] The Special Rapporteur also underlined the chilling effect of such labelling, underlining that "[c]ivil society associations may self-censor or decline international support for fear of such stigmatization or other adverse consequences of being labelled 'foreign agents'".[123]

91. In light of the foregoing, attaching the label "foreign agent" to individuals and organizations that merely receive funds or other assistance from foreign sources is both unjustified and prejudicial[124] and may be used as a tool for stigmatization and smear campaigns aimed at delegitimizing their work.

92. The ECtHR recently ruled on the issue of labelling requirements in the context of the "Russian Foreign Agents Law", in its judgment in *Kobaliya and Others v. Russia*. The Court concluded that "*the labelling requirements were not only applied in an overly broad and unpredictable manner but have also severely restricted the applicants' capacity for expressive conduct. (...) A holistic protection of the freedom of expression necessarily encompasses both the right to express ideas and the right to remain silent; otherwise, the right cannot be practical or effective. By forcing the applicants to attach the "foreign agent" label to all their public communications, the authorities infringed upon this negative right, compelling them to express a message with which they disagreed. (...)*."[125]

93. Further, the labelling as "foreign agents" means that the origin of the funding and other assistance is publicly disclosed, which runs the risk of stigmatizing the recipient organization. As the Venice Commission has observed, "*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*".[126] Regarding the imposition of a more neutral label of "*organisation receiving support from abroad*", the Venice Commission concluded that "*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*".[127] As noted in the 2024 EU Rule of Law Report for Bulgaria,

119 ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 136.
120 See Commissioner for Human Rights of the Council of Europe, *Opinion on the Legislation of the Russian Federation on Non-Commercial Organisations in light of Council of Europe Standards* (CommDH(2013)15), para. 57; and Venice Commission, *Opinion on Federal Law N. 121-FZ on Non-Commercial Organisations (law "on foreign agents")*, CDL-AD(2014)025, para. 55.
121 See e.g., ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, paras. 160 and 170.
122 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *2024 Report*, A/79/263, 31 July 2024, paras. 39-40.
123 See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, *2024 Report*, A/79/263, 31 July 2024, para. 27.
124 ECtHR, *Ecodefence and others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022, para. 136.
125 ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, para. 84.
126 See Venice Commission, CDL-AD(2019)002, Report on Funding of Associations, para. 85.
127 See Venice Commission, CDL-AD(2017)015, Opinion on the Draft Law on the Transparency of Organisations Receiving Support from Abroad, para. 65.

"[s]erious concerns have been raised as this draft law could have a stigmatising effect and negatively affect the civic space in the country, which continues to be rated as narrowed".[128]

94. In light of the foregoing, **the parallel registration and labelling obligations and their cumulative impact are highly likely to constitute excessive interferences with the freedom of association and freedom of expression, including media freedom**. The authorities should at minimum clearly delineate registration obligations from disclosure obligations, the latter of which are generally for the public. **Overall, these requirements do** not appear to meet any legitimate need or be proportionate to the stated purpose of the Draft Act.

7. PROHIBITED ACTIVITIES FOR "FOREIGN AGENTS"

95. Article 11 (1) of the Draft Act enumerates the activities that natural persons or organizations designated as "foreign agents" are prohibited from carrying out. The list includes a ban on "operations" at all stages of the educational system (from preschool to university education), in establishments and departments of the Ministry of Defence (as well as in establishments related to national security), of the Ministry of the Interior and of the Ministry of Justice, and in the Bulgarian Academy of Sciences. The term "operating" or "operations" is not further clarified, making it unclear whether it refers solely to employment or if it encompasses all activities at the premises of, or related to the aforementioned institutions, such as involvement in university grants, commercial contracts with these entities, volunteering, ad-hoc lectures or events, or other forms of formal or informal engagement.

96. In the recent ECtHR ruling in the case of *Kobaliya and Others v. Russia*, the ECtHR outlined that, as a consequence of their designation as "foreign agents", the applicants were barred from exercising certain professions or occupations, including prohibitions on employment at public schools and universities, providing instruction to minors, and limiting their publications to adult audiences. The Court found that these restrictions had serious consequences for the applicants' social and professional lives and reputations, thus constituting an interference with their right to respect for private life, as protected by Article 8 of the ECHR.[129]

97. According to Article 11 (2) of the Draft Act, "foreign agents" are prohibited from engaging in "*political activities, lobbying, or electioneering in any form, as well as activities that could influence the domestic or foreign policy of the country*". These restrictions limit the ability of natural and legal entities, including associations, to participate in public affairs and decision-making processes. The right to participate in public affairs, protected by Article 25 of the ICCPR includes the participation in the development of policies and laws, and lies 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*".[130] 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.[131] Furthermore, NGOs should be free to support a particular candidate or party in an election or a referendum provided that they are transparent in

128 See European Commission, 2024 Rule of Law Report, *Country Chapter on the rule of law situation in Bulgaria*, 24 July 2024, p. 36.
129 ECtHR, *Kobaliya and Others v. Russia*, nos. 39446/16 and 106 others, 22 October 2024, paras. 108 and 109.
130 Council of Europe Committee of Ministers, Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe, para. 76.
131 *Ibid.* (Recommendation of the Committee of Ministers to member states on the Legal Status of Non-Governmental Organisations in Europe), para. 12

declaring their motivation. Any such support should also be subject to legislation on the funding of election campaigns and political parties, including third party regulations.[132]

98. The above-mentioned definitions of prohibited activities generally appear overbroad and vague, and as such would not comply with the principle of legality and foreseeability. In practice, the prohibitions are phrased in a manner that seems to imply that organizations and individuals must abstain from any kinds of discussions or debate on the matters of public interest. This would also violate the requirements of necessity and proportionality as it would *de facto* prevent a wide range of actors, including independent media outlets and individual speakers, from participating in a public debate. As emphasized by the UN Human Rights Council, restrictions on the freedom of expression should not be applied to discussion of government policies, electoral campaigning, political speech and expression of opinion and dissent,[133] unless constituting expressions prohibited in accordance with international human rights law.[134]

99. 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*." 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.[135] Accordingly, associations should be free to undertake advocacy on any issue of public debate and to promote policy changes, including changes to laws or to the constitution, or on other matters, even if deemed controversial, as long as they employ peaceful means while doing so.[136]

100. Moreover, the Draft Act would impose unjustified restrictions on organizations' and individuals' ability to inform the public and shape public opinion, thereby interfering with the right to freedom of expression (Article 10 of the ECHR, Article 19 of the ICCPR). If adopted, the Draft Act will seriously endanger media freedom by effectively prohibiting operations of media outlets, which are either in receipt of or have any connection to foreign funding. It can also potentially lead to self-censorship and create an overall chilling effect within the media sector.

132 *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. See also ODIHR Note on Third Party Regulations in the OSCE Region (2020).

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

134 These include: "*direct and public incitement to commit genocide*", which should be punishable as per Article III (c) of the Convention on the Prevention and Punishment of the Crime of Genocide; the "*propaganda for war*" and the "*advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*", which should be prohibited as per Article 20 (1) and (2) of the ICCPR (see also OSCE RFoM, Non-Paper on Propaganda and Freedom of the Media (2015), especially with reference to propaganda for war and hatred that leads to violence and discrimination); "*all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as […] incitement to [acts of violence] against any race or group of persons of another colour or ethnic origin*", which should be an offence punishable by law according to Article 4 (a) of the ICERD; "*public provocation to commit acts of terrorism*", when committed unlawfully and intentionally which should be criminalized (see UN Security Council Resolution 1624 (2005)); "*child sexual exploitation material*" which shall be criminalized as per Articles 2 (c) and 3 (1) (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography". International recommendations also call upon States to enact laws and measures, as appropriate, "*to clearly prohibit and criminalize online violence against women, in particular the non-consensual distribution of intimate images, online harassment and stalking*", including *"[t]he threat to disseminate non-consensual images or content*", which must be made illegal; see UN Special Rapporteur on violence against women, its causes and consequences, Report on online violence against women and girls from a human rights perspective (18 June 2018), A/HRC/38/47, paras. 100-101. As a comparison, General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance (ECRI) recommends to make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate. See also Council of Europe Committee of Ministers, Recommendation CM/Rec(2022)16 on combating hate speech, adopted by the Committee of Ministers on 20 May 2022, para. 11.

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

136 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association (2015), paras. 89 and 182.

101. **If adopted, the Draft Act would limit the activities of the affected organizations and individuals to the degree, which could constitute illegitimate interference with the rights to freedom of association and freedom of expression, including media freedom.**

8. MANDATORY ANNUAL FINANCIAL AUDIT

102. According to Article 13, entities designated as "foreign agents" will be subject to a mandatory annual financial audit, which must be published on their account within the Register of foreign agents. However, it is unclear how this requirement could be applied to individuals, as the provision does not specify how the audit process would function for natural persons as opposed to legal entities. In practice, this provision is likely to be burdensome for the entities in question and could be open to misuse. For non-governmental organizations, it also contradicts the CoE *Recommendation on the Legal Status of Non-Governmental Organizations in Europe*, which states that only NGOs receiving public support may be required to have their accounts audited by an institution or person independent of their management.[137]

103. Principle 1 of the Joint Guidelines on Freedom of Association enshrines the presumption in favour of the lawful formation, objectives, and activities of associations. 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*."[138]

9. LIABILITY

104. According to Article 14, whoever fails to comply with the requirements of the Draft Act, including the obligation to declare the required data within 15 days of the occurrence of any circumstance subject to declaration, shall, unless subject to a more severe penalty, be liable to a fine ranging from BGN 1,000 to BGN 5,000 for natural persons (from approx. 510 EUR to 2,550 EUR) and from BGN 5,000 to BGN 10,000 (from approx. 2,550 EUR to 5,100 EUR) for all other entities. Higher fines are envisaged in case of repeated offence.

105. To assess the proportionality of fines and whether or not they could be excessive, it is generally useful to compare them to the average monthly salaries.[139] According to official statistical data from the last quarter of 2024, the average monthly wages and salaries in Bulgaria reached 2,413 BGN (approximately 1,234 EUR).[140] In view of this, the proposed fines, particularly the upper limit, seem disproportionate. For natural persons, the proposed fines range from 0.4 to 2.1 times the average gross monthly salary. The fines are likely to be

137 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.

138 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.

139 ODIHR, *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* (25 July 2023), para. 113. For example, in the Joint Opinion on the Draft Law of Republika Srpska, ODIHR and the Venice Commission compared the amounts of the fine to the average gross monthly salary in Republika Srpska, 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*"; 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

140 See <Total | National statistical institute>. In the fourth quarter of 2024, the average monthly wages and salaries were 2 413 BGN.

especially problematic for smaller non-profit organizations. Moreover, it is important to note that the fines for repeated violations of the provisions of the Draft Act are set significantly higher with an upper limit of 5,112 EUR for individuals – i.e., 10 times the average monthly salary – and 10,225 EUR for legal entities.

106. Also, the reference to "unless subject to more severe penalty" in paragraph 1 of Article 14 risks to open the doors for its arbitrary application. It seemingly undermines the principle of legality reflected in the main international instruments, including the ICCPR and ECHR, which mandate that both administrative and criminal offences be clearly defined by law.

107. According to Article 14 (3), in all cases described above (single or repeated violations), each individual or entity shall be entered *ex officio* by the Ministry of Justice in the public register of foreign agents and a notification shall be sent to the National Revenue Agency with a request for a tax audit under the Tax and Insurance Procedure Code.

108. In light of the observations in the previous sections that the Draft Act does not seem to pursue a legitimate objective as reflected in international human rights instruments, nor attests to a particular necessity, while unduly interfering with the right to freedom of association and right to privacy, among others, the imposition of fines would only further aggravate the infringement of these rights.

109. In any case, even assuming that the imposition of fines could be justified, these sanctions must always be consistent with the principle of proportionality, that is, they must be the least intrusive means to achieve the desired objective. Imposing even a minimum possible fine in line with the Draft Act could be regarded as disproportionate if the breach concerned is a minor one, such as, for instance, unintentional submission of inaccurate information in the application for registration. In this respect, the Joint Guidelines on Freedom of Association emphasized that when there is a breach of a legal requirement, the first response should be to request rectification of the omission, and a fine or other proportionate penalty should only be issued at a later date, if appropriate.[141]

110. Importantly, the Draft Act**,** whilst providing that proceedings can be initiated against the imposition of an administrative offence based on the liability provisions, lacks provisions guaranteeing access to effective remedies in order to challenge or seek review of other decisions taken in the context of its implementation that could infringe upon the right to freedom of association and freedom of expression, including media freedom, and does not foresee any possibility for rectification of the information provided in line with its provisions. Although this may be regulated under the legislation governing administrative procedure, it would be advisable to cross-reference the applicable laws.

10. TRANSITIONAL PROVISIONS

111. According to § 2 of the Transitional and Final Provisions of the Draft Act, all the individuals and legal persons falling within its scope shall be obliged to register in the public register at the Ministry of Justice within 6 months of its entry into force. That applies not only to those, who are receiving foreign assistance at the moment, but also to those, who received such assistance *during the last five years*.

112. This provision of the Draft Act is clearly retroactive. As a rule, legislation should not have retroactive effect since this may negatively affect rights and legal interests.[142] International human rights law specifically provides a right to protection against retroactive *criminal* law, meaning that governments cannot impose criminal liability for actions or omissions that were

141 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association (2015), para. 237.
142 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principles 5, 6, 7 and 12. See also Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.

not offences at the time they were committed.[143] Outside of the criminal law context, exceptions to the non-retroactivity principle may be permissible but need to be clearly outlined in legislation strictly limited to compelling public-interest reasons, and conform with the principle of proportionality.[144] Generally, laws are not applied to the events or circumstances that occurred before their enactment to ensure fairness, legal certainty and predictability. The principle of legal certainty is a cornerstone of the rule of law. It requires that individuals and organizations should be able to foresee the legal consequences of their actions. The retroactive nature of the Draft Act undermines this principle by imposing obligations and/or penalties for past activities that were not regulated or prohibited prior to its entry into force. For example, if an organization received foreign funding before the enactment of such a law, retroactive application might unfairly subject it to registration, disclosure, labelling, and/or reporting requirements for past actions.

113. Such retroactive application can unduly burden organizations potentially violating their right to freedom of association. By applying such laws to past activities, states could intentionally and selectively stigmatize organizations and restrict their ability to operate freely. Retroactive application means that organizations could be forced to disclose information about their past activities that they had no reason to believe would be subject to scrutiny at the time, thus, potentially infringing upon the right to privacy protected under Article 17 of the ICCPR and Article 8 of the ECHR. **Any retroactive application of the Draft Act should be reconsidered entirely.**

11. Recommendations Related to the Process of Preparing and Adopting the Draft Act

114. 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).[145] Moreover, key commitments specify that *"[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).[146] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input throughout the lawmaking process.[147] 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*."[148]

143 This principle derives from Article 7 of the ECHR and Article 15 of the ICCPR. See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 2; and Venice Commission, *Rule of Law Checklist* (2016), para. 62.
144 See also ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 2; and Venice Commission, *Rule of Law Checklist* (2016), para. 62.
145 Available at <http://www.osce.org/fr/odihr/elections/14304http://www.osce.org/fr/odihr/elections/14304>.
146 Available at <http://www.osce.org/fr/odihr/elections/14310http://www.osce.org/fr/odihr/elections/14310>.
147 See ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), in particular Principles 5, 6, 7 and 12. See also Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, Part II.A.5.
148 ODIHR and Venice Commission, Joint Guidelines on Freedom of Association (2015)para. 106.

115. 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*".[149]

116. It is concerning that a Draft Act of this nature, directly affecting core human rights obligations, was rushed in the parliamentary process, and in a manner that does not do justice to the weight and potential impact of this legislative initiative. It is 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 meaningful consultations, including with civil society and representatives of various communities, offering equal opportunities for women and men to participate. The legal drafters should also ensure that sufficient time is provided for a meaningful parliamentary debate, but also to ensure that a proper feedback mechanism is in place.[150] The concerns pertaining to the deficiencies in the processing of this Draft Act are only exacerbated by the lack of a thoroughly conducted regulatory impact assessment. Further, as an important element of good lawmaking, a consistent monitoring and evaluation system of the implementation of the proposed legislative act and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Act.[151]

117. ODIHR and RFoM remain at the disposal of the authorities for further assistance in this matter, especially with respect to the identification of possible legislative or other alternatives to address genuine, concrete concerns that correspond to the legitimate aims of regulation as provided for by international human rights law.

[END OF TEXT]

149 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.

150 i.e., a mechanism whereby decision makers shall report back to those involved in consultations, including the public, by providing, in due time, meaningful and qualitative feedback on the outcome of every public consultation, including clear justifications for including or not including certain comments/proposals; see ODIHR Guidelines on Democratic Lawmaking for Better Laws (January 2024), p. 108.

151 See e.g., See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024); see also OECD, International Practices on Ex Post Evaluation (2010).

ANNEX:

DRAFT

ACT
ON THE REGISTRATION OF FOREIGN AGENTS

Chapter I

Subject

Art.1. This Act shall regulate the public relations related to informing the public, the activities for the formation of public opinion and the public dissemination of opinions and positions as the main activity through the mass media, as well as the publicity in the financing of natural and/or legal entities carrying out such activities on the territory of the Republic of Bulgaria, directly or indirectly receiving material support for these activities from sources abroad, including from foreign governments or foreign countries.

Objective

Art.2. The purpose of the Act is to implement state control and regulation of transparency and publicity with regard to the sources and purpose of remittances made and material assistance provided free of charge from abroad to the persons referred to in Article I in the exercise of their activities, under the conditions and in the manner regulated in this law.

Scope

Art.3. (1) This Act shall apply in the cases of:
1. public dissemination of information through the mass media;
2. carrying out awareness-raising, training, information, campaigning and other campaigns by the persons referred to in Article 1;
3. the provision by the persons referred to in Article 1 of social, consumer or other services freely or by virtue of law or other regulations, and in any other non-profit activity for private or public benefit;
4. the implementation of projects by the persons referred to in Article 1, targeted at or affecting particular social groups in society and financed from external sources.

(2) Excluded from the scope of the Act are the activities financed with European Union funds, as well as the activities carried out by organisations engaged in health and health care activities, religious activities, sports clubs, insurance companies, financial institutions and commercial companies engaged in a professional activity or occupation subject to a licensing regime beyond that of the Broadcasting Act.

Persons liable under this Act

Art.4. The Act determines which natural persons and which legal entities (including non-profit legal entities, associations, parties) are considered as foreign agents with respect to the activities they exercise and fall within the scope of the Act, the procedure for their registration, the announcement of the circumstances and the manner of financing and

support.

Art.5. Natural persons related to foreign agents shall be deemed to be the founders, the representatives and the persons participating in the management of organisations designated as foreign agents, as well as the owners, the partners, the representatives and the persons in the management bodies of commercial companies designated as foreign agents, as well as the persons receiving payments or material assistance from persons designated as foreign agents for the purpose of financing an activity carried out by them under Article 3, paragraph 1.

Foreign funding

Art.6. (1). For the purposes of this Act, material assistance shall be deemed to be any sum of money, irrespective of the stated legal basis for its receipt, or any grant of material assistance, *excluding commercial transactions, donations for medical treatment, training and other of this type and gambling of a pecuniary nature*, received directly or indirectly from abroad from foreign governments or by foreign state enterprises, foreigners, foreign commercial companies, foreign foundations, foreign non-profit organizations, foreign civil society organizations and other associations of natural or legal persons engaged in activities referred to in Article 3, paragraph 1 for and through *training, seminars and educational courses and programs, social activities or projects shall also be considered as funds within the meaning of this Act*.
(2) The following funds shall also be considered as funds within the meaning of this Act: funds received from foreign governments or from foreign state-owned enterprises, foreigners, foreign commercial companies, foreign foundations, foreign non-profit organizations, foreign civil society organizations and other associations of natural or legal persons engaged in activities referred to in Article 3, paragraph 1 for and through training, seminars and educational courses and programs, social activities or projects.
(3) Funds shall also mean any material benefit granted to the persons referred to in Article 1 for the pursuit of the activities referred to in Art. 3, paragraph 1, which has a monetary value.
(4) The amount of the assistance referred to in paragraph 1 shall not take into account any funds which the person receives under a separate law whose source of funding is the European Union.

Chapter II

Publicity. Foreign Agents Registration Authority

Art.7. (1) There shall be established in the Ministry of Justice a public electronic register of foreign agents to which every person who meets the requirements and conditions of this Act shall be required to declare that he receives foreign funding within 15 days after the amount of funds received by him reaches the amount specified in Article 6, namely 1 000.00 BGN. [one thousand BGN].
(2) The person with foreign assistance shall send the declaration referred to in par. 1 in the form of a notification with the following data contained therein:
1. The declarant's name, registered office and any other business addresses, located in the territory of the Republic of Bulgaria or outside it, used by the declarant.
2. Declarant Status:
- if a natural person, nationality;
- if a legal entity, the name, registered office and address of the management, personal data of the persons in the management bodies and a copy of the current articles of association of the legal entity,.

3. Detailed information on any activity within the meaning of Article 3(1), including of a political nature, which the declarant carries out or intends to carry out on the territory of the Republic of Bulgaria;
4. The amount of the sum or material benefit received and the date of its receipt.
5. The name and legal form of the foreign funding source.
6. The reason for receiving.

(3) The public electronic register publishes information in alphabetical order of registrants and also chronologically by dates of material assistance received. When publishing the information referred to in the previous paragraph, the principle of data protection shall be respected in accordance with the legislation in force.

(4) The Ministry of Justice, within 7 days of receipt of the notification, sends information to the Registry Agency or the BULSTAT Register, which shall register the person as a foreign assistance organisation by adding the words "*foreign agent"* to the name of the person.

(5) Any person may make a free real-time reference to the public register for the data published therein of the existence or otherwise of the registration of a specific entity as a foreign agent. The information shall be made available electronically and, on request, on paper in the form of a certificate.

(6) After a period of five years following registration, or following the last notification if there is no subsequent foreign aid, the supplement *"foreign agent"* shall be deleted from the register by the state administration, and the Ministry of Justice shall send the information to the Registry Agency, which shall delete the specification to the name of the person - *"foreign agent"*.

Interaction between the public register of foreign agents and other state institutions

Art.8. The Public Register shall provide the Council for Electronic Media and the Council of Ministers every week with up-to-date information from the database on persons registered as foreign agents.

Art.9. The manner of establishment and functioning of the Public Register of Foreign Agents, the procedure for entry, change of circumstances and removal therefrom, the access to information therefrom and the forms of applicable documents shall be determined by a regulation of the Minister of Justice.

Art.10. The methodological guidance and control of the activities related to the registration of foreign agents, issuance of reports and certificates, etc., shall be carried out by the Ministry of Justice.

Chapter III

Restrictions and obligations for recipients of foreign funding and related natural persons

Art.11. (1) Foreign agents and related natural persons shall be prohibited from operating in public and private kindergartens, schools and centers for support of personal development registered under the Preschool and School Education Act, in public and private universities accredited by the National Assessment and Accreditation Agency and established under the conditions and in accordance with the procedure laid down by the Act on Higher Education, in establishments and

departments of the Ministry of Defence, as well as in establishments related to the national security of the country, in establishments and departments of the Ministry of the Interior and the Ministry of Justice, as well as in the Bulgarian Academy of Sciences.
(2) Foreign agents are prohibited from engaging in political activities, lobbying or electioneering in any form, as well as activities that may influence the domestic or foreign policy of the country.

Art.12. (1) Each foreign-assisted entity shall be required to indicate on its electronic pages, as well as in printed publications and other publications issued by it, including newspapers and magazines, books, leaflets, notes, business cards, address cards, printed proofs, engravings, photographs, picture, drawings, plans, maps, cutting templates, catalogues, prospectuses, advertisements and various types of printed, engraved, lithographed or autographed items and generally all images or reproductions, produced on paper or other paper-like material, on parchment or cardboard, by printing, engraving, lithography, autographing, or any other recognizable mechanical process, but not including the photocopying press, stamps of the movable or fixed type, and typewriter, images, or videos distributed by any technical means, the foreign agent designation under this Act. The designation "foreign agent" shall appear on each title/head page or front visible portion of the published material and shall be at least one-half the size of the title of the product or of the text material, respectively, and equal in size to the designated name of the person.
(2) The obligation under par. (1) shall be borne by the foreign-assisted and/or financed entity for so long as it qualifies as a foreign agent under this Act.

Art.13. (1) Foreign agents shall be subject to an annual financial audit, which shall be published in the person's account in the register of foreign agents.
(2) The Ministry of Justice shall publish in the electronic register an annual summary report on the persons covered by this Act.

Chapter IV

Administrative Penalty Provisions

Art. 14. (1) Whoever fails to comply with the requirements of this Act and fails to comply with his obligation to declare the required data within 15 days of the occurrence of any circumstance subject to declaration shall, unless subject to a more severe penalty, be liable to a fine of from BGN 1 000 to BGN 5 000 for natural persons and from BGN 5 000 to BGN 10 000 for all other entities falling within the scope of the Act in each case.
(2) Where the act referred to in par. 1 is committed repeatedly, the fine shall be from BGN 5 000 to BGN 10 000 for natural persons and from BGN 15 000 to BGN 20 000 for all others.
(3) In all cases referred to in par. 1 and 2, the person or entity shall be entered ex officio by the Ministry of Justice in the public register of foreign agents and a notification shall be sent to the National Revenue Agency with a request for a tax audit under the Tax and Insurance Procedure Code.

Art.15. (1) Violations under this Act shall be established by acts drawn up by officials designated

by the Minister of Justice.
(2) On the basis of the acts drawn up, penal decrees shall be issued by the Minister of Justice or officials designated by him.

Art.16. The acts for the establishment of offences and the penal decrees under this Actw shall be drawn up, respectively issued, appealed against and enforced in accordance with the procedure provided for in the Administrative Offences and Penalties Act.

Chapter V

Supplementary provisions

§ 1. For the purposes of this Act:
1. ***"foreign assistance"*** within the meaning of the Act means any remittance of money from a foreign person to a resident person carrying on activities referred to in Article 3, paragraph 1, and any form of grant in aid for the carrying on of such activities having a monetary value.
2. ***'foreign agent'*** means that natural or legal person carrying out activities referred to in Article 3, paragraph 1 who receives funds or other material assistance from foreign sources, directly or indirectly, in connection with the activities referred to in Article 3, paragraph 1 from which they are derived:
- the exercise of influence over the free formation of opinions and/or beliefs of members or groups of society;
- forming public opinion;
- the public dissemination of an opinion or position;
- publicly presenting or defending foreign ideologies.
The same are considered to be domestic entities with foreign financial support.

Transitional and final provisions

§ 2. Within six months of the entry into force of the law, all natural and legal persons falling within its scope who have carried out or are carrying out activities referred to in Article 3, paragraph 1, and who have received direct foreign assistance in the last five years shall be obliged to register in the public register at the Ministry of Justice.
§ 3. The implementation of this Act shall be entrusted to the National Revenue Agency and the Minister of Justice, who shall, within one month of its entry into force, issue the Ordinance referred to in Article 9.
§ 4. The following addition shall be made to the Commercial Register Act:
1. In Article 6, a new fourth paragraph shall be inserted, reading as follows:
(4) The Ministry of Justice shall send a reference of the persons registered under this Act who are foreign agents to declare this fact on the account of the person concerned, indicating opposite his name "-foreign agent".
§ 5. The following addition shall be made to the BULSTAT Register Act:
1. In Art. 3, paragraph 1, a new twelfth point is added with the following text:
12. persons registered as foreign agents.