

# Georgia's Bill on Foreign Agents and the Limits of the EU's Soft Power

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Davit Zedelashvili

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On February 20, 2023, the Parliament of Georgia registered the bill „On the transparency of foreign influence“ that introduces the category of an „agent of foreign influence“ – any private legal entity which gets more than 20% of its entire budget from a „foreign force“. The definition of „foreign force“ is generously broad, including not only foreign states and their structures but also any natural person who is not a Georgian national, any juridical person not established under Georgian law and any other entity established under foreign law or international law.

„Foreign agents“ are under obligation to register at the public registry (registration is free of charge-an incentive of compliant behaviour in the spirit of a utilitarian legislator). In addition, registered organizations must submit their yearly financial declaration to the justice ministry (MOJ). Non-compliance with registration and reporting requirements carries considerable monetary fines (up to GEL 25 000, roughly 9 000 EUR). The ministry additionally gains power „to monitor“ any other organization either by „decision of its competent official“ or based on the written statement „signalling“ the ministry at the alleged „foreign agent“.

These facially innocent „monitoring“ functions harbour a potentially totalitarian instrument of control. For example, the MOJ official could target any private non-profit organization at a whim and examine organization's and its employees' financial information and personal data. Alternatively, in a not less worrisome case, an official's whim could find ground in a written statement „signalling“ at the „foreign agent“. In Georgia, which underwent Stalinist purges of the 1930s, where family members (anonymously) denounced each other to the NKVD (secret police) and innocent people were rounded and summarily executed on charges of being a „foreign agent“, this rings a much louder alarm bell than elsewhere.

## The rule of law for the regime's enemies

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Out of the proper context, the Rule of Law (ROL) defect of somewhat overbroad or improperly checked official discretion could be tolerable in theory. Here lies the abusive cunning of illiberal legality – it turns the ills tolerable elsewhere into a deadly weapon, serving the illicit ends of those who wield power.

The bill also displays other familiar patterns of illiberal ROL abuse. Consider the irrationality of the bill's classification, as it purports to achieve the „legitimate aim“ already well served by existing laws (see the discussion below). However, laws make all sorts of

not-that-rational classifications, often passing the ROL's muster.

What if an ulterior legislative aim is „predominant“ (following the standard of Article 18 cases established by the ECtHR grand chamber in Merabishvili v. Georgia)? An objective jurisprudential test to find a „predominant ulterior purpose“ may exist; however, satisfying this test before the law gets in force seems unlikely.

Beyond the compatibility with any objective test of ROL abuse, in countries that endured Gulags and have a living intergenerational memory of everyone labelled by the state as a „foreign agent“ losing their life or liberty, the stigmatizing force and intention of classification as a „foreign agent“ is hardly deniable. This judgment holds even when classification initially entails only a facially harmless obligation, like registration and financial reporting in the case of the Georgian bill.

Regarding the irrationality of the „foreign agent“ classification, note that the bill aims to achieve more „transparency“. However, it is unclear where the need for such „transparency“ comes from. The foreign funding CSOs and media, the primary targets of this legislation, are already transparent and publicly available. Strict campaign finance laws, closely monitored and enforced by the State Auditor's office, prohibit foreign financing of political parties and „persons with electoral ends“. The latter category already ensures that all private non-profit organizations which openly participate in political affairs comply with heightened financial transparency and reporting requirements. The special legislation also tightly regulates lobbying, including foreign lobbyists.

Therefore, it is also a lie that the bill serves the same purposes as the US FARA legislation. The US state department spokesperson has also expressly refuted this claim, comparing the Georgian bill to the Russian and Hungarian analogues. Thus, the reference to FARA serves only propaganda purposes, as it did in the case of similar Russian legislation.

Doubling down on the FARA-related propaganda line, the regime MPs have initiated an alternative bill, which they claim is a direct translation from FARA. Tabling a more outrageous version of controversial legislation that the regime can drop later at a strategically opportune time is a famous trick from the illiberal playbook. It gives the regime room for manoeuvre and an opportunity to keep appearances.

The alternative bill ditches the term “influence” and leaves plain “registration of foreign agents” as its title. Under the alternative bill, natural persons are also eligible to get a “foreign agent” label. Persons engaged in charity get exemption [otherwise, Oligarch Ivanishvili, a French citizen, would qualify as a foreign agent]. The enforcement powers go to the Prosecutor General, who gets sweeping powers to scrutinize all business and personal information of “foreign agents”. In addition, the latter must transfer all communication content with their foreign sources to the prosecutor general. Furthermore, non-compliance with the law's registration and reporting requirements carries criminal

liability and includes imprisonment of up to five years as a penalty. According to the GD leaders, the Venice Commission will review both bills; however, they will enact one regardless of the commission's opinion.

The alternative bill contains more openly draconian measures, which appeared in Russia only years after the original legislation of 2012. The trajectory of Russian „foreign agent“ legislation, which gradually targeted a wider variety of regime opponents down to individual dissent, gives a more apparent horizon of where the GD regime is heading. Moreover, placing the bills into the proper context of the events makes the Russian comparison even more plausible.

The bill's sponsors are MPs from the „People's power“ (PP), a splinter group from the governing „Georgian Dream“ (GD), run from the shadows by the billionaire oligarch Bidzina Ivanishvili. PP is part of the Ivanishvili regime, de facto remaining a part of its parliamentary majority (GD would have lost its majority without PP's continued support). GD leaders have vocally supported the initiative and defended the bill as their own.

PP's members cite the protection of the interests of Ivanishvili as their prime purpose. They propagate a conspiracy theory that Mr Ivanishvili is the victim of blackmail from Western powers „to open the second front“ [of the Ukraine war] in Georgia. While PP members make more extravagant claims and engage in personal smearing of foreign (notably the US) ambassadors, GD leadership and their propaganda machine repeat and amplify the more toned-down versions of the same messages.

The regime propagated conspiracy claims that only the wisdom and resilience of the GD regime and its leader Ivanishvili saved Georgia from war and destruction. In this setting, the regime propaganda portrays purported „foreign agents“, the CSO and critical media, as enemies of the people, conspiring with the Western forces driving Georgia to war or „emissaries of the global party of war“.

The anti-Western sentiment fuelling the Georgian regime's rapid authoritarian slide coincides with its ambivalent position on the Russian aggression in Ukraine and its observable drift towards the Russian orbit. Nevertheless, GD's foreign policy acrobatics still includes the declared goal of European integration. Following the unexpected window of opportunity created by the Russian Imperialist war, Georgia, Ukraine, and Moldova have applied for EU membership; however, only Georgia failed to secure the candidacy.

The European Commission has clearly stated the reasons hampering Georgia's European path. Oligarchic capture of the state and society features prominently in the list (so-called „12-point plan“). However, the GD regime has been doing little to address the EU's concerns substantively. Instead, they have repeatedly stated that Georgia „has been punished“ for not joining the war in Ukraine. Therefore, the GD leaders argue, if Georgia fails to secure the candidacy due to the follow-up review in 2023, this will also be due to the „political decision“ punishing Georgia.

GD regime's carelessness against the prospect of failing central national aspiration of European integration (incorporated into the Constitution of Georgia by the GD constitution-amending majority itself) demonstrates that the EU's „soft“ power fails to affect the regime behaviour significantly. This behaviour is altogether curious, considering that the prospect of accelerated candidacy and eventual membership is the highest soft power the EU could project to aspirant countries like Georgia.

## **Foreign agents' bill-exposing the limits of the EU's soft power in Georgia**

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European concerns regarding the foreign agents' bill promptly appeared, and it is clear to the GD regime that passing this legislation will block Georgia's European path. However, „so be it“ is their apparent response. Furthermore, the GD chairman even lists the EU as one of the malign sources of influence foreign agent legislation intends to counter, blaming that the EU finances polarization in Georgia. GD regime's readiness to defy the EU in the name of „sovereignty“ clearly signifies the diminished EU soft power.

However, it has not occurred overnight and has been observable for at least two years. The EU institutions intensified wielding soft power tools in 2021 when the GD regime delivered a spectacular slap against the EU's high-profile efforts to solve Georgia's institutional and political crisis. In the summer of 2021, GD unilaterally quit the so-called „Michel deal“, which ended an impasse caused by the contested 2020 parliamentary elections. By annulling the „Michel deal“, the regime had forgone the essential reform commitments taken in that document, including the crucial judiciary reforms. Against its previous commitments, GD and its subservient judiciary elite, nicknamed „clansmen“, had finalized the packing of the Supreme Court.

The EU immediately deployed aid conditionality and froze the tranche of financial aid due that year. GD regime has declared that it no longer needs financial assistance, foreshadowing the current approach towards the possible repeated failure to secure EU membership candidacy.

Two years ago, writing for this blog, among other pleas, this author argued for a more robust deployment of the EU's soft power tools to counter the authoritarian slide in Georgia perpetrated through the abuse of the ROL. After two dramatic years, having witnessed part of that policy implemented by the EU fail, it is high time to revisit the original argument and inquire where it went wrong. The argument for the projection of soft power proved wrong not because it was unfounded or inconsistent but rather due to the wrongness of some of its underlying assumptions.

The primary underlying assumption that no longer holds is that it would be unbearably costly for the GD regime to defy overwhelming popular support for European integration overtly and that it would serve as a powerful internal constraint to respond to increased projection of the EU's soft power. Possibly, the original assumption that the preferences of society and the right soft power incentives from the outside would effectively constrain the GD regime overlooked the peculiarities of illiberal regimes like Georgia. Being

Plebiscitarian Leader Democracies, such regimes cancel the agenda-setting powers of the citizenry. The leader ultimately sets the agenda and preferences in a public sphere distorted by the regime's dominance and rampant propaganda.

Even in the case where the regime does not fully succeed in altering social preferences, it has other options to sidestep them. For example, the GD regime has, over the years, worked out and succeeded in a strategy to defy strong popular preferences to the contrary and accommodated the aggressor state Russia, the policy named by leading Georgian political scientists as „bandwagoning by stealth“.

Therefore, it is doubtful that the prospect of gaining EU membership candidacy in 2023 will deter the GD regime from enacting the bill on foreign agents into law and going further down the autocratization path.

## **Conclusion**

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While soft power had been a dominant factor for much of the EU-Georgia relations, there is growing evidence that it no longer is the case. Moreover, the dialogic approach accompanying the soft power policy assumes the bona fide disposition of the parties. It, therefore, is high time for all the stakeholders, especially in the EU, to realize that the GD regime in Georgia does neither believe nor practice what it more and more reluctantly preaches – the commitment to European values and Georgia's European integration.

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