

## OVERVIEW<sup>1</sup>

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# Georgia: Implications of the Implementing Regulation to the Law of Georgia on Transparency of Foreign Influence

AUGUST 31, 2024

## Introduction

On May 28, 2024, the Georgian parliament adopted the Law on Transparency of Foreign Influence (hereinafter “the Law”)<sup>2</sup>. The Law requires non-entrepreneurial (non-commercial) legal entities (hereinafter “NNLEs”<sup>3</sup>) and media organizations<sup>4</sup> to register and submit information to be included in a special registry of “implementing organizations of foreign power interests” (hereinafter “IOFPs”), maintained by the National Agency of Public Registry (hereinafter “the Agency”<sup>5</sup>). The Agency has broad authority to inspect the income, revenue, and assets of all NNLEs and media organizations subject to the Law. It is also authorized to request information from any individual and legal entity to verify the organizations’ compliance with the Law.

On August 1, 2024, the Ministry of Justice of Georgia (hereinafter “the MoJ”) adopted the “Rule for Registration, Financial Declaration Submission, and Monitoring of

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<sup>1</sup>The unofficial translation into English of the Regulation has been used for the purpose of preparing this Overview. The authors bring apologies for any discrepancies in the use of terminology or in interpretation of the provisions of the Regulation caused by inaccurate transliteration and/or translation.

<sup>2</sup>The Law of Georgia on Transparency of Foreign Influence (hereafter referred to as “the Law”), Parliament of Georgia, May 28, 2024, at <https://matsne.gov.ge/en/document/view/6171895?publication=0>.

<sup>3</sup>The terms “NNLE” and “Organization” are used interchangeably in this document.

<sup>4</sup>While many provisions in the Law apply to both NNLEs and media organizations, there are some peculiarities in the treatment of media organizations which will not be addressed in this Overview.

<sup>5</sup>The National Agency of Public Registry (hereafter – “the Agency”) is a legal entity of public law under the Ministry of Justice of Georgia. See the official webpage of the Agency at: <https://www.napr.gov.ge/ka/service/registers>.

Implementing Organizations of Foreign Power Interests” (hereinafter “the Regulation”<sup>6</sup>) to implement the Law<sup>7</sup>.

The Regulation governs:

- Registration and cancellation of registration of organizations as IOFPs.
- Submission of financial declarations by IOFPs.
- Monitoring by the Agency of organizations that may be subject to registration or have been registered as IOFPs.
- Administrative procedure for imposing penalties on violators of the Law.

The Law requires NNLEs that meet the criteria of IOFPs based on 2023 activities to submit a registration request (i.e., written statement) to the Agency by September 1, 2024. NNLEs that meet this criterion in 2024 will need to apply to the Agency in January 2025. Within two working days of receiving the request, the Agency must grant them access to a special website where they are required to submit a Financial Declaration. Within 10 working days of gaining access to the website, NNLEs must process their 2023 financial data to compile the comprehensive information needed for the Financial Declaration.

Collection of the required information for a Financial Declaration involves significant effort. Some organizations may find it challenging to provide all the required information due to not having kept such detailed records. Before the adoption of the Law, NNLEs were not legally obligated to maintain records of some of the information now required for the Financial Declaration. However, failure to comply with the requirements for the Financial Declaration is punishable with harsh penalties.

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<sup>6</sup> Order No. 1019, “Approval of the Rule for Registration, Financial Declaration Submission, and Monitoring of Organizations Acting in the Interest of Foreign Powers” (hereinafter referred to as “the Regulation”), Minister of Justice of Georgia, August 1, 2024, at <https://matsne.gov.ge/ka/document/view/6238278?publication=0>.

See also Order No. 1016, “Regarding the Amendment to the Order No. 134 of the Minister of Justice of Georgia (dated May 3, 2016) on Approving the Bylaw of the Legal Entity of Public Law - National Agency of Public Registry,” Minister of Justice of Georgia, July 29, 2024, at <https://matsne.gov.ge/ka/document/view/6234258?publication=0>.

Order No. 1016 governs the establishment of a new department within the Agency: Department of Financial Declarations. The new department is responsible for overseeing the enforcement of the requirements stipulated by the Law.

*Disclaimer: This Overview does not focus on the content of Order No. 1016.*

<sup>7</sup> “Overview of the Law on Transparency of Foreign Influence and Its Impact on Non-entrepreneurial (Non-commercial) Legal Entities and Media Organizations in Georgia,” ICNL and ECNL, May 2024, at [https://www.icnl.org/wp-content/uploads/05.23.2024-Georgia\\_Implications\\_of\\_the\\_FR\\_Law\\_FV.pdf](https://www.icnl.org/wp-content/uploads/05.23.2024-Georgia_Implications_of_the_FR_Law_FV.pdf).

See also “Brief – Georgia: Review of the Implementing Regulation to the Law of Georgia on Transparency of Foreign Influence,” ICNL and ECNL, August 2024, at <https://www.icnl.org/wp-content/uploads/georgia-review-implementing-regulation-on-transparency-of-foreign-influence.pdf>.

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This Overview, prepared by the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-for-Profit Law (ECNL) for the USAID Civil Society Engagement Program, provides interpretations and analysis of the requirements in the Regulation, including the submission of a Financial Declaration, in an attempt to help NNLEs better understand the requirements and their implications for the activities of such organizations (hereinafter referred to as “Overview”)<sup>8</sup>.

The Overview is divided into the following sections:

1. Access to the website to register as an IOFP.
2. Submission of a Financial Declaration.
3. Registration in the registry.
4. Publicity of information in Financial Declarations and protection of personal data and commercial secrets.
5. Monitoring.
6. Cancellation of registration as an IOFP.
7. Administrative penalties and proceedings.
8. Conclusion.

### 3. Access to the Website to Register as an IOFP

NNLEs that meet the criteria of an IOFP, taking into consideration their activities in 2023, are required to apply for registration in the IOFP register by submitting a written request to the Agency through the Justice House within one month after the enactment of the Law (i.e., by September 1, 2024)<sup>9</sup>. Organizations that meet these criteria based on their 2024 activities will need to apply to the Agency for registration by January 2025.

The Regulation specifies that the written request must be submitted by a person authorized to manage or represent the organization<sup>10</sup>. The Regulation does not specify the consequences if an organization does not have a manager or another authorized representative. In such cases, the organization risks incurring a fine of 25,000 Georgian

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<sup>8</sup> *Not Legal Advice.* The information contained in this document does not constitute legal advice and is for informational purposes only. Before acting upon the information contained in this document, please consult local legal counsel.

<sup>9</sup> See the official website of the Justice House here: <https://psh.gov.ge/>.

<sup>10</sup> A head of the organization or another person authorized to manage/represent this organization according to the organization's bylaws may be considered “a person with managerial/representative powers”.

Lari (GEL) or further sanctions<sup>11</sup> for failing to apply for registration if the Agency, based on monitoring, determines that it meets the criteria of an IOFP. It is unclear how the Agency will conduct monitoring of such organizations, if an organization does not have a person with managerial or representative powers, such as a head of the organization.

The written request must include a mobile phone number and email address registered in Georgia, owned and used by the person with managerial or representative powers in the NNLE. The person submitting the request is responsible for ensuring that the mobile phone number and email address specified in it are in the possession and use of a person with managerial or representative powers and/or that s/he has received consent from such a person for their use.

Upon the submission of the request, a one-time verification code is sent from the Agency's electronic system to the mobile phone number indicated in the written request. If the mobile phone number cannot be verified or confirmed, an alternative mobile phone number for the authorized representative must be submitted to the Agency following the procedure outlined in the Regulation.

Once verified, the Agency's electronic system sends an activation code—"username," "user password," and a link—to the email address and mobile phone number of the authorized representative of the organization, enabling him/her to access the website. The authorized representative is responsible for any legal consequences arising from the (im)proper use of the "username" and "user password," as well as for any unauthorized transfer of these credentials to another person.

Only one manager or representative of an NNLE can be authorized and responsible for managing the organization's user page on the Agency's website. If the organization has more than one person authorized to manage or represent it, the principal person authorized to manage the organization's user page should be determined by agreement. Those with managerial or representative powers (e.g., directors) should agree and adopt a joint written decision to assign the function of managing the user page to one of them, unless this authority is specified by the governing body in the founding agreement or charter.

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<sup>11</sup> If, for example, as a result of monitoring, the Agency requests an organization to submit a financial declaration, and the organization fails to do so, it will be fined by 10,000 GEL. If, after getting penalized with the mentioned amount, the organization continues to disobey the Agency's request to submit the declaration, it can be fined by 20,000 GEL, possibly every month, until it submits the declaration.

The Agency grants access to the authorized representative of the applying organization, whose credentials are registered on the website, to the user page within two working days after receiving the written request for registration.

After gaining access to the user page, the organization must submit the Financial Declaration<sup>12</sup> (i.e., application) to the Agency electronically using the authorized user page. This differs from the written request discussed earlier, which is submitted as a hard copy and in person through the Justice House. The written request is needed to initiate registration, while the Financial Declaration is required to assess whether an organization qualifies as an IOFP and to complete the registration process.

#### 4. Submission of a Financial Declaration

An organization must electronically complete and submit a Financial Declaration within 10 working days after being granted access to the authorized user page on the Agency's website. The Financial Declaration must include the following information:

- Applicant's<sup>13</sup> identification data.
- Applicant's address.
- Applicant's website.
- Information about the source, amount, and purpose of funding or other types of material benefits received during the previous calendar year.
- Information about the amount and purpose of money spent during the previous calendar year.
- Percentage of total income from foreign sources for NNLEs potentially qualifying as IOFPs under sub-section "a" of section 1 of Article 2 of the Law<sup>14</sup>.
- Percentage of the total non-commercial income received during the calendar year from foreign sources for media organization potentially qualifying as IOFPs under sub-sections "b" through "d" of the first section of Article 2 of the Law<sup>15</sup>.
- Date of filling out the application.

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<sup>12</sup>According to Article 4(3) of the Law, the application is submitted at the same time as the applicant's financial declaration.

<sup>13</sup>The "applicant" means the organization applying for a registration as an IOFP.

<sup>14</sup>According to sub-paragraph "a" of section 1 of Article 2 of the Law: "For the purposes of the present Law, an implementing organization of foreign power interests means: a) A non-entrepreneurial (non-commercial) legal entity, which is not founded by an administrative body, which is not a national sports federation of Georgia provided in the Law of Georgia on Sports or a blood bank provided in the Law of Georgia on Quality and Safety of Human Blood and its Components, and whose more than 20% of gross revenue received in a calendar year comes from a foreign power".

<sup>15</sup>Broadcasters, printing media and online media. For more information, please, see sub sections "b" through "d" of section 1 of Article 2 of the Law.

Organizations must fill out 11 forms that constitute a Financial Declaration (provided in APPENDICES 1.1 to 1.11<sup>16</sup> of the Regulation). These forms require the provision of an exhaustive list of details on an IOFP's income, expenditures, balance sheet, bank accounts, cash-register operations, non-financial assets, real estate, vehicles, other leased or rented property, liabilities, loans, credits, and concluded contracts. *The requirements for each form will be reviewed below.*

After the Agency checks the Financial Declaration, it may determine that the Declaration has been filled out in an “incorrect” or “incomplete” manner. In this case, the Agency must give the applicant 10 working days to correct the fault, starting from the date of receipt of a notification from the Agency requesting to corrections<sup>17</sup>.

If the organization fails to correct the fault within 10 days, the Agency will impose a fine of 10,000 GEL<sup>18</sup>. If it continues to fail to comply with the Agency's request within one month from the date of the penalization, the Agency will impose an additional fine of 20,000 GEL<sup>19</sup>.



The Law and the Regulation do not specify whether the 20,000 GEL fine is a one-time sanction or if it can be imposed repeatedly every month until the organization complies with the Agency's request. The wording of the relevant article opens the possibility for the Agency to penalize NNLEs repeatedly for the same offense until they submit the requested information<sup>20</sup>.

There is a concern that many organizations, particularly those qualifying as IOFPs based on their activities in 2023 and in 2024, will struggle to comply with the new financial reporting requirements established in the Regulation and will, therefore, be subjected to harsh penalties.

Prior to the Law, NNLEs were not required by Georgian legislation to keep detailed records of all transactions which are now required for the Financial Declaration. Previously, NNLEs were obligated to comply with accounting rules under the Law of Georgia “On Accounting, Reporting and Audit”<sup>21</sup>. The accounting requirements for

<sup>16</sup> APPENDIX 1.12 defines terms used in the financial declaration forms.

<sup>17</sup> Section 4 of Article 4 of the Law and Section 2 of Article 5 of the Regulation.

<sup>18</sup> Section 2 of Article 9 of the Law.

<sup>19</sup> Section 3 of Article 9 of the Law.

<sup>20</sup> Section 3 of Article 9 of the Law reads as follows: “Continuation of the action provided for in paragraph 2 of this article within 1 month from the imposition of the last administrative fine for the same action.” The last administrative fine can also mean the 20,000 GEL fine that was imposed last month for the “continuation of the action”.

<sup>21</sup> Law of Georgia “On Accounting, Reporting and Audit” (hereinafter the “Law on Accounting”), at <https://matsne.gov.ge/en/document/view/3311504?publication=4>.

NNLEs have been similar<sup>22</sup> to those for the category four<sup>23</sup> enterprises. Unlike enterprises, however, NNLEs were not required to submit any financial statements to the government.

The Accounting Standards<sup>24</sup> for NNLEs have been established by the Service for Accounting, Reporting, and Auditing Supervision. These standards are much simpler compared to the new requirements for completion of the Financial Declaration established by the Law.

Meeting the requirements for the completion of the Financial Declaration demands significant investment in human resources, hardware, and software, which many NNLEs did not need prior to the adoption of the Law. It is possible that some organizations may not be able to afford it.

In addition to the complex requirements, the Financial Declaration obligates NNLEs to submit information that may be irrelevant and unrelated to the “transparency of foreign influence.” For example, [APPENDIX 1.1](#) requires NNLEs to describe the characteristics of property received from any sources (including domestic sources); [APPENDIX 1.2](#) requires accounting for each transaction of expenditures, regardless of whether the funds were received from domestic or foreign sources; and [APPENDIX 1.3](#) requires listing all the assets, properties, financial and non-financial obligations, taxes to be paid in the future, and even the amount of VAT included in the price of purchased goods and services. *Further review will provide multiple examples of such requirements.*

According to the Law, the information provided in the Financial Declaration will be made public, which may the constitutional rights of Georgian citizens regarding the legal protection of personal data, commercial secrets, and other sensitive data (*for more information on this topic, see section 4 “Publicity of Information in Financial Declarations and Protection of Personal Data and Commercial Secrets” below*).

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<sup>22</sup>According to Section 6 of Article 3 of the Law on Accounting, “Financial reporting standards for enterprises of the fourth category and for non-entrepreneurial (non-commercial) legal entities shall be established by the Service for Accounting, Reporting and Auditing Supervision.” According to section 10 of the same article, “Enterprises of the fourth category and non-entrepreneurial (non-commercial) legal entities shall also be entitled to apply the International Financial Reporting Standards for Small and Medium-sized Entities (IFRS for SMEs), or the International Financial Reporting Standards (IFRS)”.

<sup>23</sup>Georgian enterprises are categorized into four different categories based on size, income, and other factors, with each category having its own accounting standard, with category four being an entity whose indicators, at the end of the reporting period, meet at least two out of three criteria outlined below: a) the total value of its assets does not exceed GEL 1 million; b) the revenue does not exceed GEL 2 million; or c) the average number of persons employed during the reporting period does not exceed 10.

<sup>24</sup>Order #n-9 of the Head of the Service for Accounting, Reporting and Auditing Supervision “On the approval of the financial accounting standard for non-entrepreneurial (noncommercial) legal entities” (dated June 26, 2018) (hereafter “Accounting Standards for NNLEs”), at <https://matsne.gov.ge/ka/document/view/4234420?publication=1>.

The following sections review the 11 individual forms included in the Financial Declaration.

#### APPENDIX 1.1: INCOME RECEIVED DURING THE YEAR

This Appendix requires organizations to provide details of all income, listed separately for each transaction, regardless of whether it comes from foreign or domestic sources. The Regulation does not set a minimum threshold for reporting income as separate transactions—even amounts as small as 5 GEL must be included, and all relevant sections of the form must be completed.

NNLEs must specify the percentage of their total revenue, including both funds and the value of in-kind assets, received from foreign sources during the calendar year. Media organizations must indicate the percentage of their total non-commercial income from foreign sources during the calendar year.

For each income received, the organization must provide the following information:

- The date the income was received.
- Category of Income (commercial or non-commercial).
- Type of income (monetary amount, movable property, immovable property). For property, the amount or market value of each item must be specified.
- Type of contract through which the income was received (e.g., grant, loan, donation, membership fee, purchase, gift, lease, etc.).
- Purpose of Income (i.e., the intended use of the income).
- Amount received in cash and non-cash forms, or the market price of the item in GEL (the value of the income received in foreign currency, as well as the market price of the received property must be reported in GEL according to the official exchange rate of the National Bank of Georgia<sup>25</sup> on the day when the income or property was received).
- Details on the source of income, including the name and surname of the individual, or the name of the legal entity, state government entity, organization established under the law of a foreign state or international law, or other types of unions of persons (e.g., foundation, association, corporation, union, or similar organization).
- Country of origin of the income<sup>26</sup>.
- Type of income source, which may include: a) An entity that is part of the

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<sup>25</sup> National Bank of Georgia (hereinafter – “NBG”), at <https://nbg.gov.ge/>.

<sup>26</sup> It is not clear what information to provide if the country of origin is not known, for example, regarding cash donations received in a cash box.



government system of a foreign state; b) An individual who is not a citizen of Georgia; c) A legal entity not established under Georgian legislation; and/or d) An organizational formation (e.g., foundation, association, union, or other type of organization) or any other type of union of persons established under the law of a foreign state and/or international law. If the source of income does not fall into any of these categories, it must be indicated that "the source of income is not a foreign power".

- Bank account number of the income source.
- Financial institution of the income source.
- Bank account number of the income recipient.
- Financial institution receiving the income.
- Description of the immovable property (cadastral code, address, area, and other relevant details).
- Description of the movable property/item (item type, manufacturer, specifications, quantity, and other relevant details).

Effectively, organizations are required to detail each income receipt transaction separately according to the categories of information listed above.



A comparison of the requirements of [APPENDIX 1.1](#) with the previously established Accounting Standards for NNLEs reveals a significant disparity. The Accounting Standards for NNLEs do not require many of the details mandated in [APPENDIX 1.1](#), such as:

- Purpose of income.
- Identification data of the source of income.
- Country of the source of income.
- Bank account number and financial institution of the source of income.
- Detailed description of immovable or movable property received.
- Type of the agreement based on which the income was received.
- Type of income source, etc.

These new requirements make accounting for all NNLEs, including those who might not qualify as IOFPs (as they cannot determine in advance whether they will qualify by the end of the year), significantly more complex compared to the previous regulations.

All information in this form, including personal and identification data of donors (e.g., in columns 8, 9, 12, 13, and 14 in the table in [APPENDIX 1.1](#)), will be publicly accessible. The public exposure of such information may discourage some businesses and

individuals from supporting NNLEs and media organizations. As detailed in section 4 “Publicity of Information in Financial Declarations and Protection of Personal Data and Commercial Secrets,” legal mechanisms exist that allow NNLEs to protect their personal data and commercial information.

#### APPENDIX 1.2: EXPENSES INCURRED DURING THE YEAR

This appendix requires organizations to provide detailed information about its expenses. The expenses must be reported according to the following types:

I. Expenses:

- Remuneration of work, divided into salaries, bonuses/supplements, and other remunerations<sup>27</sup>.
- Business trips, both within Georgia and abroad.
- Office expenses, divided into cost for purchase, installation, and maintenance of office equipment; stationery and inventory; current repair costs for buildings and their surrounding areas; communication costs; postal service costs; utility costs, including water, natural and liquefied gas, and electricity costs; unclassified office expenses; representative expenses; food and medical expenses.
- Transportation and equipment operation and maintenance costs, divided into cost of purchasing fuel and oils and current maintenance costs.
- Bank service charges.
- Advertising costs, divided into costs of advertisements through TV, print, and internet outlets; advertising cost for branded accessories; outdoor advertising costs (e.g., billboards, light boxes, street-mounted screens, vehicle advertising, and other types)<sup>28</sup>.
- Expenses for organizing sessions, conferences, congresses, seminars, and other work meetings.
- Costs of consulting, notary, interpreter, and translation services.
- Costs of audit services.
- Costs of building security.
- Rent expenses, divided into real estate lease expense, leasing of motor vehicles, and other movable property leases.

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<sup>27</sup> According to **APPENDIX 1.12** (glossary) of the Regulation, this includes remuneration provided by an employer, either monetary or in-kind, to compensate employees for work performed during the accounting period (excluding work related to the creation of capital with personal funds).

<sup>28</sup> According to the footnote of the **APPENDIX 1.2**, in the case of advertising costs, the field “purpose of expenditure” must include the information about a performing company/person, identification number, advertiser, circulation/duration, area (for print and internet advertising), advertised entity, unit type (e.g., sq. m, min.), and unit cost (GEL).

- Expenses for cultural, sports, educational, and exhibition events.
  - Other goods and services.
  - Transfer of tangible and intangible values to individuals, including small-value accessories (e.g., t-shirts, caps, hats, flags, etc.), charity work, other values<sup>29</sup>.
  - Expenses incurred for ancillary activities<sup>30</sup>.
  - Social security<sup>31</sup>.
  - Other expenses, divided into insurance costs, taxes (excluding income tax and VAT recorded in the cost of goods), fees, miscellaneous expenses, losses from exchange rate differences and all other expenses<sup>32</sup>.
2. Increase in non-financial assets, divided into buildings, unfinished construction, land, means of transportation, other machinery and equipment, other fixed assets, other tangible supplies<sup>33</sup>.
  3. Increase in other financial assets<sup>34</sup>.
  4. Decrease in liabilities, divided into repayment of loans received from commercial banks, repayment of other loans<sup>35</sup>.
  5. Consumption of fixed capital<sup>36</sup>.

The Regulation does not provide for a minimal threshold above which expenses must be reported. Even if an expense is 5 GEL, all relevant sections in the form must be completed.

In total, approximately 60 sub-types of expenses are listed in this form under the relevant fields. For each type and sub-type of expenses, organizations must provide the following details:

- Name, surname, and legal form of the individual or legal entity receiving the funds from the organization.

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<sup>29</sup> According to **APPENDIX 1.12**, the transfer of cash, tangible, and intangible assets to persons means “costs of purchasing and producing valuables intended for transfer to persons; funds provided to legal entities and other individuals (non-employees) in the form of assistance or a gift”.

<sup>30</sup> According to **APPENDIX 1.12**, this includes “all types of expenses incurred for entrepreneurial activities”.

<sup>31</sup> According to **APPENDIX 1.12**, this includes “social assistance provided by an employer, including severance pay, compensation for employee absences due to illness, and other forms of assistance”.

<sup>32</sup> The Regulation does not clarify what these “other expenses” might be.

<sup>33</sup> According to **APPENDIX 1.12**, this means “payments made for the acquisition of fixed assets, non-produced assets, valuables, and tangible supplies”.

<sup>34</sup> According to **APPENDIX 1.12**, this includes cash funds directed for placement on bank term deposits, granting loans to legal and natural persons, and purchasing securities.

<sup>35</sup> According to **APPENDIX 1.12**, this includes “funds allocated to cover bank loans and financial obligations to other legal and natural persons”.

<sup>36</sup> According to **APPENDIX 1.12**, this “represents an operation that reflects a decrease in the value of fixed assets and other specified non-financial assets due to continuous or multiple use.” This includes the reduction in value of fixed assets owned and used by the entity, resulting from physical or moral wear and accidental damage.

- Personal number and/or identification number of the individual or legal entity receiving the funds from the organization.
- Recipient's bank account number.
- Financial institution of the individual or legal entity receiving the funds from the organization.
- Bank account number of the legal entity making the expenditure.
- The financial institution of the legal entity making the expenditure.
- Actual cost<sup>37</sup>.
- Cash expenses<sup>38</sup>.
- Income tax withheld at the source of payment<sup>39</sup>.
- Date of expenditure.
- Purpose of expenditure<sup>40</sup>.

Organizations must account for expenses on both an accrual and cash basis and must report expenses incurred, even if they have not yet been paid. Additionally, they must describe the purpose of each expenditure, essentially providing a summary of each contract.



When comparing the requirements of **APPENDIX 1.2** of the Regulation with the previously established Accounting Standards for NNLEs, it is evident the latter does not require expenses to be categorized into multiple types. For example, Article 1.28. of the Accounting Standards for NNLEs<sup>41</sup> states that the accounting on an NNLE's activities should be divided according to the costs related to unlimited, temporarily limited, and permanently limited funds, in line with the following articles:

- Incomes (according to their types).
- Structure of expenses (according to the functions of the expenditures).
- Results of the current operational activities.
- Financial expenditures.
- Expenditures related to taxes.

<sup>37</sup> According to **APPENDIX 1.12**, this means "an expense recognized in accounting, i.e., accrued, regardless of whether the payment has been made or not".

<sup>38</sup> According to **APPENDIX 1.12**, the term "cash expenses" is defined as "money actually paid".

<sup>39</sup> According to the footnotes of **APPENDIX 1.2**, information about the income tax withheld at the source of payment should only be filled out in relation to expenses related to remuneration of work.

<sup>40</sup> According to the footnotes of **APPENDIX 1.2**, the information about the expenditure should be shown specifically and in detail with respect to each and any amount of money spent. For example, for amounts spent on services, the type of service, a brief description, and the subject of the contract should be indicated. For amounts spent on sessions, conferences, assemblies, seminars, and other working meetings, the specific purpose and topic of the event should be indicated. The Regulation states that the purpose of the expenditure must be described in a way that does not disclose personal data of a special category of the individual receiving the money.

<sup>41</sup> *Ibid.* See, for example, Article 1.28 of the Accounting Standards for NNLEs.

- Surplus or deficit between incomes and expenditures.
- Net result of the accounting period.

Instead of requesting detailed information about each expenditure transaction, the Accounting Standards for NNLEs require costs to be accounted for under broader headlines and categories. There is no need to describe each expense separately, as they are totaled in the corresponding article or field. However, for NNLEs that must register as IOFPs in September 2024, there will be a requirement to categorize expenditure data into much narrower categories. They will need to identify and calculate relevant figures from their documentation and bank transactions history and extract information from each contract. In the future, all NNLEs will need to maintain detailed accounting records, a significant shift from the previous practices prior to the adoption of the Law and the Regulation, due to the uncertainty of their qualification as an IOFPs<sup>42</sup>.

APPENDIX 1.2 states that “the purpose of the expenditure must be described in a way that does not disclose personal data of a special category of the individual receiving the money.” This appendix specifically addresses the data on the “purpose of expenditure.” However, all appendices request information that clearly qualifies as personal data and/or commercial secrets, such as the names of recipients of funds (e.g., employees, experts, service providers, vendors), their ID numbers, and bank account information (e.g., lines I.I, columns C, D, and E).

The requirement to disclose the identification data of beneficiaries and individuals in contractual relations with an IOFP may result in beneficiaries refusing to use the services of IOFPs.

#### APPENDIX 1.3: BALANCE SHEET

This appendix requires organizations to provide the following information in the Declaration:

- I. **Total financial assets and other receivables.** This information must be divided into the following sub-categories:
  - Cash on hand, in both foreign and national currencies (separately).
  - Settlement (current) accounts and currency accounts in banks (separately).
  - Deposits in banks, in both national and foreign currencies (separately).

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<sup>42</sup>Even an NNLE, which only received grants from a local business might qualify as IOFP if the local business received funds from a foreign entity without informing an NNLE of this fact, in compliance with section 4b) of Article 2 of the Law.

- Other bank accounts.
- Other financial assets<sup>43</sup>.
- Claims arising from delivery and service provision<sup>44</sup>, business trips<sup>45</sup>, losses (damages)<sup>46</sup>, and other claims towards accountable persons<sup>47</sup>.
- Paid VAT<sup>48</sup>.
- Prepaid profit tax<sup>49</sup>.
- Other tax assets<sup>50</sup>.
- Rents paid in advance.
- Claims from other pre-payments<sup>51</sup>.
- Interests, dividends, memberships, and one-time contributions to be received.
- Other remaining receivables<sup>52</sup>.

**2. Total non-financial assets.** This information must be divided into the following sub-categories:

- Buildings.
- Machinery and equipment.
- Other fixed assets (not specifically defined in the Regulation).
- Unfinished construction.
- Other material supplies.
- Values<sup>53</sup>.

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<sup>43</sup> According to **APPENDIX 1.12**, the examples of “*other financial assets*” are issued loans, purchased bonds, and other securities. However, this term is not limited with these examples and may include other financial investments which may be related to direct financial output.

<sup>44</sup> According to **APPENDIX 1.12**, claims arising from delivery and service provision means “*claims arising from the supply of goods, ready-made products, raw materials, materials, other assets, as well as works and services*”.

<sup>45</sup> According to **APPENDIX 1.12**, this means claims related to employees’ business trips. However, it is vague what claims an NNLE has in practice related to business trips of its employees.

<sup>46</sup> According to **APPENDIX 1.12**, this includes “*claims for the amounts of losses of material value and monetary funds caused by the fault of the organization’s employees or other reasons*”.

<sup>47</sup> According to **APPENDIX 1.12**, this includes all other claims against accountable persons that are not included in other fields related to claims against accountable persons.

<sup>48</sup> According to **APPENDIX 1.12**, this means the amount of VAT paid during the purchase of goods, services, or works (VAT included in price).

<sup>49</sup> According to **APPENDIX 1.12**, this means current profit tax payments, which are calculated based on the previous year’s data, and is paid during the reporting year.

<sup>50</sup> According to **APPENDIX 1.12**, this means claims against the budget for overpaid or erroneously paid taxes, as well as other prepaid taxes (except for VAT and profit tax).

<sup>51</sup> According to **APPENDIX 1.12**, this means claims arising from other types of prepayments. One may conclude that this includes any other claims arising from other types of prepayments (such as prepaid salary, utility bills, etc.).

<sup>52</sup> According to **APPENDIX 1.12**, this means various types of receivables not recorded in other specific fields, as well as claims arising from adjustments to previously completed transactions.

<sup>53</sup> According to **APPENDIX 1.12**, this means manufactured goods with important value that are purchased and stored as a means for accumulation and are not used for production or consumption (such as precious stones and metals, high-value jewelry made from them, collections, and other valuables, paintings, sculptures, and other valuables that are recognized as works of art or as antiques).

- Non-produced assets<sup>54</sup>.

**3. Total liabilities and capital (i.e., total financial liabilities and other creditor debts).**

This information must be divided into the following sub-categories:

- Financial obligations.
- Obligations from supply and service<sup>55</sup>.
- Profit, income, and value-added taxes to be paid.
- Other financial obligations to the state budget.
- Salaries payable to staff and non-staff employees (likely referring to “part-time employees”).
- Obligations from business trips<sup>56</sup>.
- Obligations for social assistance provided by the employer, in both monetary and in-kind forms<sup>57</sup>.
- Amounts seized in accordance with court decisions, administrative rulings, or other seized amounts<sup>58</sup>.
- Rent received in advance.
- Liabilities with other income received in advance<sup>59</sup>.
- Interest to be paid.
- Membership fees and one-time contributions to be paid.
- Other accounts payable.

**4. Total capital. This information must be divided into the following sub-categories:**

- Authorized capital<sup>60</sup>.
- Funds<sup>61</sup>.
- Uncovered deficit<sup>62</sup>.

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<sup>54</sup> According to **APPENDIX 1.12**, this is defined as land and other non-produced assets.

<sup>55</sup> According to **APPENDIX 1.12**, this means obligations arising from the provision of goods, finished products, raw materials, materials, other assets, as well as works and services (carried out by others in favor of the declarant).

<sup>56</sup> According to **APPENDIX 1.12**, this is defined as obligations (debts) related to business trips that the organization has towards individuals traveled on business within Georgia and abroad.

<sup>57</sup> According to **APPENDIX 1.1,2**, this means obligations arisen on the payment of social benefits to employees.

<sup>58</sup> According to **APPENDIX 1.12**, this is defined as “amounts withheld from salaries or other payments based on writs of execution or other documents in accordance with judicial decisions and/or those of administrative bodies”.

<sup>59</sup> According to **APPENDIX 1.12**, this is defined as “any amounts received in advance for future periods (except for rent)”.

<sup>60</sup> NNLEs are not required to have authorized capital.

<sup>61</sup> According to **APPENDIX 1.12**, funds are defined as “the net result of actual income and expenses from previous years, as well as the net result from the current reporting period that was not distributed”. It is not clear what “previous years” means and how extensive of a period it should cover.

<sup>62</sup> “Uncovered deficit” refers to the amount of losses from previous years and the current reporting period. The Regulation does not define what the term “previous years” means and how extensive of a period it should cover.

5. **Reference articles.** According to [APPENDIX 1.12](#), reference articles are used to provide additional information about items that belong to the balance but are not recorded as balance sheet entries.

For each of the categories and subcategories of assets (listed above), an organization must identify their value at the beginning and the end of the reporting period<sup>63</sup>, and reflect this information in the balance sheet in [APPENDIX 1.3](#).



Although NNLEs are required to maintain a balance sheet under the Law on Accounting and the Accounting Standards for NNLEs<sup>64</sup>, the requirements in the Regulation ([APPENDIX 1.3](#)) are more detailed. Article 1.23 of the Accounting Standards for NNLEs states that in the balance sheet must include the following information:

- Fixed assets.
- Investments.
- Supplies (stocks, reserves).
- Receivables.
- Money and its equivalents.
- Operational and other obligations.
- Tax obligations and tax assets.
- Reductions (deductions).
- Long-term interest obligations.
- Funds and reserves.

It is evident that the Accounting Standards for NNLEs establish simpler requirements for the information included in the balance sheet than those in the new Regulation.

Besides, [APPENDIX 1.3](#) requires NNLEs to submit information beyond just the revenues and expenditures received during the previous calendar year<sup>65</sup>, as stipulated by the Law<sup>66</sup>.

<sup>63</sup> According to sub-sections “d” and “e” of section 3 of Article 4 of the Law, organizations are required to reflect in the Declaration incomes and expenditures from previous calendar year. The same requirement is provided in sub-sections “d” and “e” of section 2 of Article 4 of the Regulation. Therefore, it can be concluded that the term “reporting period” means the previous calendar year.

<sup>64</sup> See article 1.23. of Accounting Standards for NNLEs.

<sup>65</sup> For example, article on “uncovered deficit” requires including information about losses received during the reporting period as well as during previous years. The Regulation does not define “previous years” or the extent of the covered time period.

<sup>66</sup> Section 3 d) of Article 4 of the Law.



Furthermore, it is not unclear how certain information requested in [APPENDIX 1.3](#) aligns with the Law’s objective to ensure transparency of foreign influence. Examples of irrelevant requests include information on pre-paid profit tax (defined as “current profit tax payments, calculated based on the previous year’s data, and paid during the reporting year”) and VAT included in the price of purchased goods and services.

Additionally, some required information is not applicable to NNLEs. For example, NNLEs do not distinguish between staff and non-staff employees, as the term “non-staff employees” is used only in legislation pertaining to certain categories of workers employed by public institutions.

#### **APPENDIX 1.4: BANK ACCOUNTS**

This appendix requires organizations to provide information about their bank accounts. This includes:

- Bank name.
- Account number.
- Currency.
- Account opening date.
- Balance at the beginning of the reporting period.
- Income during the reporting period.
- Expenses during the reporting period.
- Balance at the end of the reporting period.
- Account closing date.



The Law on Commercial Bank Activities<sup>67</sup> treats “information on any agreement (including attempts to conclude an agreement), payment operations, bank accounts, transactions conducted from accounts, and account balances” as confidential information. Section 1 of Article 17 of the same law states that “no one shall have the right to give anyone access to confidential information, to disclose or disseminate this information, or to use it for personal purposes.”

Article 202 of the Criminal Code of Georgia imposes criminal liability for the “illegal collection, transfer, disclosure or use of commercial or bank secrets”<sup>68</sup>.

<sup>67</sup> See section 2 of Article 17 of the Law of Georgia on Commercial Bank Activities at <https://matsne.gov.ge/en/document/view/32962?publication=37>.

<sup>68</sup> See Article 202 of the Criminal Code of Georgia, at <https://matsne.gov.ge/en/document/view/16426?publication=262>.

When filling out [APPENDIX 1.4](#), organizations will need to consider the requirements of other laws (*for more information on how Georgian legislation protects such information, please see section 4 “Publicity of Information in the Financial Declarations and Protection of Personal Data and Commercial Secrets” of the Overview*).

Several articles in this Appendix duplicate fields of for information requested in other appendices, such as [APPENDICES 1.1](#), [1.2](#), and [1.3](#).

#### **APPENDIX 1.5: CASH REGISTER OPERATIONS**

This appendix requires organizations to provide information about cash transactions, including:

- Cash balance at the beginning of the reporting period.
- Date of the transaction.
- Cash receipts in GEL and foreign currency (separately).
- Cash withdrawals in GEL and foreign currency (separately).
- Value of each transaction.
- Purpose of each transaction.
- Balance after each transaction.
- Cash balance at the end of the reporting period.

The Regulation does not clarify how these fields should be filled if an organization does not have any cash transactions. Most probably, if there is no cash transaction, the form in [APPENDIX 1.5](#) will be completed with zeros.



It remains uncertain how the Law and the Regulation requirements towards the Financial Declaration will be reconciled with Constitutional and data protection laws. This Appendix duplicates articles of other appendices, such as [APPENDICES 1.1](#), [1.2](#), and [1.3](#)<sup>69</sup>. Additionally, it is unclear what the purpose is of requesting NNLEs to provide such detailed information on cash transactions and how this relates to the aim of the Law of “ensuring transparency of foreign influence”.

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<sup>69</sup> E.g., requirement to declare cash balance is included in [APPENDIX 1.3](#) (Articles 1110 and 1120), information on cash transactions, incomes, and expenditures in cash is scattered in [APPENDICES 1.1](#) and [1.2](#) (columns 4 and 7 in [APPENDIX 1.1](#) and column 1 in [APPENDIX 1.2](#)); purposes of cash transactions are reflected in column 6 of [APPENDIX 1.1](#) and the last column of [APPENDIX 1.2](#).

#### APPENDIX 1.6: NON-FINANCIAL ASSETS

This appendix requires organizations to provide information about “fixed assets”<sup>70</sup> (e.g., buildings, transport, machinery, inventory, etc.), “material stocks/supplies”<sup>71</sup> (raw materials and materials, finished products, spare parts, etc.), “valuables”<sup>72</sup>, and “non-produced assets”<sup>73</sup>. In total, this appendix includes the classification of 34 categories of non-financial assets.

For each category, the organization must indicate the balance at the beginning of the reporting period (quantity and value), the increase during the reporting period (quantity and value), the decrease during the reporting period (quantity and value), and the balance at the end of the reporting period (quantity and value).



Article 3.13 of the Accounting Standards has similar requirements for NNLEs.

APPENDIX 1.6 duplicates many articles included in APPENDICES 1.2 and 1.3.

#### APPENDIX 1.7: DESCRIPTION OF REAL ESTATE

This appendix requires organizations to provide information on the purpose and category of land and buildings (e.g., agricultural land, building type), their description, legal address, cadastral code, area in square meters, balance sheet value, and date of recording on the balance sheet.

The Regulation does not clarify how these fields should be filled if an organization does not have real estate. Most probably, in such cases, the form in APPENDIX 1.7 will be completed with zeros.



It remains uncertain how the Law and the Regulation requirements towards the Financial Declaration will be reconciled with Constitutional and data protection laws. This appendix partially duplicates the information required in APPENDICES 1.3 (e.g., Articles 2110, 2140, 2400) and 1.6 (Articles from 1.1.1 to 1.1.3 and from 4.1. to 4.4.) but it demands far more detailed information about the real estate owned by NNLEs.

Like many other requirements in the Financial Declaration, this appendix also extends

<sup>70</sup> According to APPENDIX 1.12, fixed asset is defined as manufactured assets valued over 500 GEL and with a useful life exceeding one year include buildings, vehicles, machinery, and other fixed assets.

<sup>71</sup> According to APPENDIX 1.12, this is defined as raw materials, materials, finished products, and other goods in inventory.


<sup>72</sup> The definition of valuables values is given in section APPENDIX 1.3 “Balance Sheet”.

<sup>73</sup> The definition of non-produced assets is given in section APPENDIX 1.3 “Balance Sheet”.

beyond the declared objective of the Law to “ensure the transparency of foreign influence”.

#### **APPENDIX 1.8: DESCRIPTION OF VEHICLES**

This appendix requires an organization to provide details about vehicles, including the type, make, model, year of manufacture, state number (license plate number), book value, and date of registration, as well as a description of each vehicle.


 **APPENDIX 1.8** includes information that overlaps with Article 1.2.1 of **APPENDIX 1.6**. However, **APPENDIX 1.8** requires more complex and detailed information compared to the latter.

Article 3.13. of the Accounting Standards for NNLEs also requires information about the means of transport owned by NNLEs. However, it does not mandate the detailed descriptions specified in **APPENDIX 1.8** of the Regulation.

The detailed information required in **APPENDIX 1.8** makes the vehicles of NNLEs easily identifiable (as it is published on the website of the Agency), which in turn, opens possibilities for potentially hostile individuals and entities to monitor their movements and pose threats.

#### **APPENDIX 1.9: DESCRIPTION OF OTHER LEASED/RENTED MOVABLE PROPERTY**

This appendix requires organizations to provide detailed information about leased objects, including their type and technical specifications, which are not defined in the Regulation. Additionally, organizations must include the monthly lease payment (in GEL), the lessee's personal number, the lessee's name and surname, and the organization's identification number and name, if applicable.

 The current Accounting Standards for NNLEs do not require detailed records of leased assets unless they appear on the organization's balance sheet. The Standards only require a record of the total rent paid, unlike the Regulation, which mandates detailed records of monthly rental fees. Additionally, the Accounting Standards do not require a description of the leased object or its technical characteristics, nor do they require the personal data of the lessee.

Similar to other requirements in the Financial Declaration, it is unclear what legitimate purpose is served by requesting detailed information on the property leased by NNLEs and how this information contributes to the transparency of foreign influence.

Furthermore, the inclusion of personal and commercial data of the lessee in this appendix may discourage individuals from renting property to NNLEs.

#### APPENDIX 1.10: DESCRIPTION OF OBLIGATIONS

This appendix requires organizations to provide information about financial obligations to vendors. Specifically, organizations must present details regarding contractual obligations for goods and services received. The required information includes:

- The date on which the contract involving any financial or property obligation was concluded.
- The name of the counterparty, including the name of the legal entity or the first and last name if the counterparty is an individual.
- The identification number and/or personal number of the counterparty.
- A brief description of the subject matter of the agreement.
- The total amount specified in the contract, in GEL.
- The value of the goods or services provided under the contract, in GEL.
- The amount already paid to the contractor, in GEL.

According to the accounting practice, total liabilities must correspond to the ending balances of the liability accounts presented in [APPENDIX 1.3](#) at the end of the reporting period.



Prior to the adoption of the Regulation, NNLEs were not required to record the details of concluded contracts. Accounting Standards for NNLEs require recording operational and other obligations (liabilities), tax obligations (liabilities), and long-term interest obligations (liabilities). These Standards do not require listing all the contracts and their details. Under the Standards the obligations (liabilities) are part of a balance sheet and can be recorded by much broader categories and headlines. With this new requirement, organizations may not have access to the information requested under [APPENDIX 1.10](#).

For identifying and calculating financial and property liabilities, larger organizations use accounting software that can automatically generate certain categories of information. After the adoption of the Regulation, smaller organizations will also need to invest in additional human resources and software to manage these requirements. At the same time, they will still need to identify, analyze, and manually record the information about obligations that cannot be generated through IT tools, such as details about counterparties or the subject of the contract.

APPENDIX 1.10 partially duplicates information included in APPENDIX 1.3 (articles from 3100 to 3246).

#### APPENDIX 1.11: DESCRIPTION OF LOANS AND CREDITS


This appendix requires organizations to provide information about loans and credits taken by the organization, in particular:

- Date of taking the loan.
- Lending bank.
- Type of loan.
- Loan currency.
- Loan amount.
- Loan term (number of months).
- Contractual annual interest rate.
- Loan repayment conditions.
- Means of securing the loan.
- Guarantee (yes/no).
- Guarantor's (natural/legal) name, surname/title.

The Regulation does not clarify how to complete these fields if an organization does not have loans. Most probably, in such cases, the form in APPENDIX 1.11 will be filled with zeros.

#### APPENDIX 1.12: ON THE TERMS USED IN THE FINANCIAL DECLARATION

This appendix provides definitions for the terms used in APPENDICES 1.1 through 1.11.

 The definitions are nearly identical to those found in Order No. 012036/21 of the Auditor General of the State Audit Service, “On the Regulation of Some Issues Related to the Transparency of Political Finances” (dated August 5, 2021), which expired after 2023.<sup>74</sup> They are also similar to the glossary included in Order #4 of the Head of the LEPL “Anti-Corruption Bureau,” “On the Regulation of Some Issues Related to the Transparency of Political Finances” (dated August 25, 2023)<sup>75</sup>.

<sup>74</sup> Order No. 012036/21 of the Auditor General of the State Audit Service, “On the Regulation of Some Issues Related to the Transparency of Political Finances” (dated August 5, 2021), at <https://mat.sne.gov.ge/ka/document/view/5237330?publication=0>.

<sup>75</sup> Order #4 of the Head of the LEPL “Anti-Corruption Bureau,” “On the Regulation of Some Issues Related to the Transparency of Political Finances,” August 25, 2023, at <https://mat.sne.gov.ge/ka/document/view/5900992?publication=0>.

## 5. Registration in the Registry

If an organization submitting a Financial Declaration meets the criteria for an IOFP, the Agency will register it as an IOFP within 30 working days from the date of submission of the Declaration and enter the organization into a special register.

The author<sup>76</sup> of an incorrectly or incompletely filled out Declaration is required to correct the errors within 10 working days after the Agency requests them to do so<sup>77</sup>. If the errors are not corrected within this period, the Agency will proceed to register the NNLE as an IOFP after five additional working days, regardless of whether the NNLE has made the corrections, provided that the organization meets the criteria for an IOFP.

According to the Regulation<sup>78</sup>, once an organization is listed in the register, an extract is prepared and published on the website, alongside the electronic application (Financial Declaration) of the registered organization. The following details are registered and reflected on the webpage of the Agency about the registered organization:

- Name, legal form, identification number, registration number and date, and the name of the registering authority.
- Legal address.
- Information about the governing body, its members, a person/entity with managerial/representative powers, and their identification data. If the NNLE has a supervisory board, founders' assembly, or general assembly as governing bodies, information about their members and identification data is also included.
- The electronic application (Financial Declaration) of the registered organization.

## 6. Publicity of Information in Financial Declarations and Protection of Personal Data and Commercial Secrets

Under the Regulation, the information included in the register of IOFPs is public. The Agency is responsible for ensuring public access to and publishing this information on

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<sup>76</sup> It is the authors' understanding that "*the author*" referenced in the Regulation is the organization that submits the declaration to be included in the IOFP register.

<sup>77</sup> The Agency has 30 working days to study a declaration starting from the date of its submission. At any time within this period, it can decide that the declaration was incorrectly or incompletely filled out. It notifies an NNLE about the fault and requests that the NNLE submit additional information within 10 working days of the Agency's notification.

<sup>78</sup> Section 4 of Article 5 of the Regulation.

the appropriate website<sup>79</sup>. The public information includes the request submitted to the Agency by the organization, the electronic application (i.e., Financial Declaration), as well as the organization’s current charter, other founding documents, and the most recent extract from the Public Registry, if any<sup>80</sup>.



The note in [APPENDIX 1.2](#) stating that “the purpose of the expenditure must be described in a way that does not disclose personal data of a special category of the individual receiving the money” is intended to protect sensitive personal data. However, this note only applies to the specific data category of “purpose of expenditure” – and does not address other instances where personal data and commercial secrets are requested. [APPENDIX 1.2](#) and other appendices explicitly request information which qualify as personal data and/or commercial secret, such as names of fund recipients (e.g., employees, experts, service providers, vendors, etc.), their ID numbers, and bank account information (lines I.I, columns C, D, and E)).

Given that neither the Law nor the Regulation specifies additional protections for personal data, commercial secrets, or other protected information, it can be inferred that the Financial Declaration, as published, might include sensitive details without alterations or safeguards.

#### PROTECTION OF SENSITIVE DATA BY LAW



It remains uncertain how the Law and the Regulation requirements towards the Financial Declaration will be reconciled with Constitutional and data protection laws. The requirement to disclose detailed information, including personal data and commercial secrets, contradicts several laws that establish legal protection for the rights, including the Constitution of Georgia<sup>81</sup>, the Law of Georgia “On Personal Data Protection”<sup>82</sup>, the General Administrative Code of Georgia<sup>83</sup>, and the Law on Commercial Bank Activities<sup>84</sup>.

The Constitution of Georgia states that:

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<sup>79</sup>Section 2 of Article 5 of the Law.

<sup>80</sup>Section 1 of Article 5 of the Law.

<sup>81</sup>The Constitution of Georgia, at <https://matsne.gov.ge/ka/document/view/30346?publication=36>.

<sup>82</sup>The Law of Georgia on Personal Data Protection (hereafter the Law on Personal Data Protection), at <https://matsne.gov.ge/ka/document/view/5827307?publication=1>.

<sup>83</sup>The General Administrative Code of Georgia (hereafter “the Administrative Code”), at <https://matsne.gov.ge/ka/document/view/16270?publication=43>.

<sup>84</sup>Section 2 of Article 17 of the Law of Georgia on Commercial Bank Activities (hereafter “the Law on Commercial Banks”), at <https://matsne.gov.ge/en/document/view/32962?publication=37>.



*“Everyone has the right to get acquainted with the information or official document available in a public institution in the manner established by law, unless this information or document contains commercial or professional secrets or is acknowledged as a state secret by law or in accordance with the procedures established by law”<sup>85</sup>.*

*“Information contained in official records related to a person's health, finances, or other personal matters shall not be made available to anyone without the consent of that person, except as provided by law, when it is necessary to ensure state or public security, protect public interests, health, or the rights of others”<sup>86</sup>.*

*“A person's personal and family life is inviolable”<sup>87</sup>.*

The Administrative Code, based on the Constitutional provisions mentioned above, delineates clear boundaries between public information and personal data, as well as commercial and professional secrets. It also establishes protective mechanisms to prevent the illegal disclosure of such information:

*“Public information is open, except for the cases provided by law and the information assigned to state, professional<sup>88</sup>, or commercial<sup>89</sup> secrets or personal data<sup>90</sup> in accordance with the established procedure”<sup>91</sup>.*

The Administrative Code reiterates the Constitutional provision that a public institution is obliged not to disclose personal data without the relevant person's consent, except in cases stipulated by law, when it is necessary to ensure state or public security and protect public interests, health, or the rights of others.

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<sup>85</sup> Section 2 of Article 18 of the Constitution of Georgia.

<sup>86</sup> Section 3 of Article 18 of the Constitution of Georgia.

<sup>87</sup> Section 1 of Article 15 of the Constitution of Georgia. This right may be restricted only in accordance with law for ensuring national security or public safety, or for protecting the rights of others, insofar as is necessary in a democratic society.

<sup>88</sup> Article 273 of the Administrative Code states that “information representing the personal data or a commercial secret of others and has become known to a person with regard to his/her fulfillment of professional duties shall be a professional secret”.

<sup>89</sup> Section 1 of Article 272 of Administrative Code defines “commercial secret” as “information about a plan, formula process, or means of a commercial value, or any other information used for manufacturing, preparing or processing of goods, or for rendering services, and/or is a novelty or a significant result of technical activity, and other information that may prejudice the competitiveness of a person is disclosed”.

<sup>90</sup> According to paragraph “a” of Article 3 of the Law on Personal Data Protection, personal data is defined as “any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, including by his/her name, surname, identification number, location data, and electronic communication identifiers, or by physical, mental, psychological, genetic, economic, cultural, or social characteristics”. See <https://matsne.gov.ge/end/document/view/5827307?publication=0>. This means that any data that allows to identify a person, or relates to a person already identified, is considered a personal data.

<sup>91</sup> Section 1 of Article 28 of the Administrative Code.

The Regulation requires NNLEs to disclose names, surnames, personal identification numbers, remunerations, and bank account details of certain individuals, such as employees or others receiving income from the NNLE (APPENDIX 1.2). According to the Law on Personal Data Protection, this information is classified as personal data and is protected by law<sup>92</sup>. Additionally, the Regulation mandates that NNLEs disclose the prices and other characteristics of goods and services provided to them by vendors (columns "c" and "d," APPENDIX 1.2, APPENDIX 1.10). This information falls under the definition of “commercial secret,” since its disclosure can “harm their competitiveness on the market”<sup>93</sup>.

Publishing personal data or commercial secrets violates the Constitution of Georgia and Administrative Code if the individuals or legal entities involved do not consent to making this data public. Exposing such data is not “necessary to ensure state or public security, protect public interests, health, or the rights of others,” as the Georgian government has never proved otherwise”.

Under the Administrative Code, “an applicant has the right to request protection of the submitted information containing commercial secrets or personal data to ensure its confidentiality”<sup>94</sup>. By exercising this right, an individual or organization may request that specific personal data or commercial secrets that affect their rights not be disclosed to the public.

The Administrative Code provides specific procedures for the protection of commercial secrets:

*“When submitting information, a person is obliged to indicate that this information is his/her commercial secret. The public institution is required to consider the information specified in the first part of this article as a commercial secret within 10 days, except when the obligation to disclose the information is established by law”.*

The Administrative Code permits administrative bodies to withhold recognition of information as a commercial secret if its disclosure is mandated by law. In the given

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<sup>92</sup> See paragraph “a” of Article 3 of the Law on Personal Data Protection.

<sup>93</sup> The Supreme Court of Georgia defined a “commercial secret” as any information “that has a commercial value or on the basis of which it should be possible to make a profit...the information is also considered to be commercial, if its disclosure may harm a person’s competitiveness in the market”. In addition, the court pointed out that competitiveness “represents the ability of an enterprise to provide commercial production in a certain market in such a way as to withstand the market competition of similar goods (services)”. See the decision of the Supreme Court of Georgia adopted on February 28, 2017, on the case number BS-33-32(K-16).

<sup>94</sup> Article 82 of the Administrative Code.

case, the Law generally refers to “information about sources, amount, and purpose of money and other types of material benefits received by the applicant” and “information about the amount and purpose of money spent by the applicant”.

The Regulation provides a more detailed definition of the information required in the Financial Declaration and specifically mandates the public disclosure of information that constitutes personal data and commercial secrets. This requirement contravenes the Constitution and other laws and extends beyond the scope of the Law for which the Regulation was adopted. For the Agency to dismiss the protection of commercial secrets under the Administrative Code, such publicity should have been mandated by the Law itself, not by the Regulation.

If the Agency receives a request for the protection of information containing commercial secrets and does not classify it as such, it must make a decision regarding the openness of the information and promptly notify the relevant party. The information will become public 15 days after this decision unless the owner of the information appeals to a higher administrative body or court in accordance with Georgian procedural legislation before the expiration of this period. The appeal must be promptly communicated to the Agency<sup>95</sup>.

Georgian law also protects banking data. The Law on Commercial Bank Activities<sup>96</sup>, which holds higher legal authority than the Regulation, safeguards banking information. This law treats “information on any agreement (including in the case of an attempt to conclude an agreement), payment operation, bank account, transaction conducted from accounts, and account balance” as confidential. Section 1 of Article 17 of this law states that “no one shall have the right to give anyone access to confidential information, to disclose or disseminate this information, or to use it for personal purposes”. In Georgian legislation, the term “no one” generally encompasses all individuals and legal entities, including managers of NNLEs who are otherwise required to disclose such information under the Regulation. The President of the National Bank of Georgia, following the adoption of the Law, commented that “the Law does not affect financial and banking sector and individuals” and that “bank secret is protected under the special law”<sup>97</sup>.

It remains uncertain how the Law and the Regulation requirements towards the

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<sup>95</sup> Section 3 of Article 272 of the Administrative Code.

<sup>96</sup> Section 2 of Article 17 of the Law of Georgia on Commercial Bank Activities at: <https://matsne.gov.ge/en/document/view/32962?publication=37>.

<sup>97</sup> See the comment of the President of the National Bank of Georgia at: <https://1tv.ge/news/natia-turnava-uckhour-i-gavlenis-gamchvirvalobis-shesakheb-kanoni-ar-sheekheba-chvens-safinanso-seqtors/>.

Financial Declaration will be reconciled with Constitutional and data protection laws.

#### ADMINISTRATIVE PROCEDURES TO PROTECT SENSITIVE DATA



When completing the Financial Declarations required under the Law, NNLEs may face a dilemma: whether to comply with the Law and Regulation by submitting all required information or to challenge the submission and/or public disclosure of certain information based on protections granted by the Constitution and other laws.

Organizations submitting Financial Declarations under the Law are entitled to invoke the provisions of the Administrative Code to request the confidentiality of their commercial information, specifying which information they wish to protect (e.g., salary amounts, bank account numbers of employees, details about contracts with beneficiaries and experts, etc.). This request can be made either simultaneously with the submission of the Financial Declaration or in advance. The Agency has 10 days to decide on this matter.

If the Agency does not honor the request for confidentiality, the decision can be appealed administratively in a higher administrative body<sup>98</sup> and after that, in court. According to the Administrative Code, this appeal process prevents the publication of the data until a final decision is made. However, the provisions of the Administrative Code requesting to temporarily suspend the publishing process contradict to section 8 of Article 9 of the Law stipulating that appealing the act adopted based on this Law and its subordinate normative acts does not suspend its enforcement<sup>99</sup>.

NNLEs may also apply to the court to request an interim measure to suspend the legal force of the decision of the Agency refusing to recognize the information as a commercial secret. If the court grants this motion, the Agency will be required not to disclose information in the Financial Declaration until the court issues a final decision in the case<sup>100</sup>.

According to the Code of Administrative Procedure<sup>101</sup>, “at the request of a party, the court can suspend the operation of an individual administrative-legal act or its part”, even if the legislation provides that the appeal of such act does not automatically

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<sup>98</sup> If the initial decision is made by the Agency or a person authorized by the MoJ, the higher administrative body can be the Minister of Justice; but this is not entirely clear from the Regulation.

<sup>99</sup> Section 8 of Article 9 of the Law states that “the appeal of a legal act issued on the basis of this law and/or on the basis of a subordinate normative act provided for by this law does not suspend its operation.”

<sup>100</sup> Sections 3 and 4 of Article 29 of the Civic Procedure Code.

<sup>101</sup> Section 3 of Article 29 of the Administrative Procedure Code of Georgia (hereafter the “Administrative Procedure Code”), at <https://mat.sne.gov.ge/en/document/view/16492?publication=98>.

suspend its operation. This suspension can be granted “if there is a reasonable doubt about the legality of an individual administrative-legal act or if its urgent enforcement can cause substantial harm to the party or makes it impossible to protect their legal rights or interests”.

A decision by the Agency refusing to protect personal data, not to classify information as a commercial secret, or to request additional data from legal entities and individuals (during the registration, monitoring, or checking of Financial Declarations) constitutes an individual administrative-legal act. Therefore, in such cases, NNLEs can utilize the provisions described above and apply to the court with a motion to suspend the legal force of the respective decisions of the Agency.

The court is authorized to determine the duration of the suspension of the validity of the act or its part. A party's motion to suspend the legal force of an individual administrative-legal act can be submitted even before filing a lawsuit<sup>102</sup>.

The same administrative procedure applies when an NNLE decides to comply with the requirements of higher-hierarchy laws and refuses to disclose bank details, personal data, or commercial secrets in their Declarations (resulting in incomplete Declarations). If, in response, the Agency requests the NNLE to “correct the fault” and provide additional information, the NNLE is entitled to appeal this request and simultaneously file a motion with the court to suspend the legal force of the Agency’s decision requesting additional information. If the court grants the motion, the NNLE will not have to disclose the information until a final decision is made on classifying the personal data or commercial secret<sup>103</sup>.

## 7. Monitoring

According to the Law, a person authorized<sup>104</sup> by the MoJ can monitor NNLEs and media organizations at any time “in order to identify an organization acting in the interests of a foreign power” or “to verify compliance with any requirements of the Law...”<sup>105</sup> For this purpose, the person authorized by the MoJ is entitled to “examine” and “study” (collectively referred to as “monitor”) the matter. Neither the Law nor the Regulation

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<sup>102</sup>Section 5 of Article 29 of the Administrative Procedure Code.

<sup>103</sup>See Article 82 of the Administrative Code that allows applicants to request to classify such information.

<sup>104</sup>“A person authorized by the MoJ” is the Head of the Financial Declaration Department (or the acting head of this department) of the Agency.

*Ibid.* See Order No. 1016, Minister of Justice of Georgia, July 29, 2024, at: <https://matsne.gov.ge/ka/document/view/6234258?publication=0>; Section 3 of Article 273 of the Order No. 134, Minister of Justice of Georgia, May 3, 2016, at: <https://matsne.gov.ge/ka/document/view/3271803?publication=37>.

<sup>105</sup>Section 1 of Article 7 of the Regulation.

define the terms “examine” or “study”<sup>106</sup>.

The basis for initiating monitoring can be<sup>107</sup>:

- A decision made by a person authorized by the MoJ; or
- A written statement submitted to the MoJ through the Justice House, which contains relevant information about a specific organization allegedly acting in the interests of a foreign power.



The Regulation does not allow a third party's written statement submitted to the MoJ to be anonymous. Therefore, monitoring cannot be initiated based on an anonymous request.

The Regulation does not establish measures of responsibility for individuals who provide false or misleading information to the MoJ to prompt the monitoring of an organization. It also does not require the MoJ to verify information received from third parties before initiating monitoring activity. This gap potentially allows the MoJ or unscrupulous actors, such as competitors, to unfairly target organizations for monitoring.

The Regulation does not specify the criteria or basis on which the person authorized by the MoJ can initiate monitoring based on his/her own decision.

To conduct monitoring, the person authorized by the MoJ is required to send a written notification to the organization no less than three days after initiating the monitoring activity<sup>108</sup>.



This clarification eliminates NNLEs' previous concern about whether inspections of organizations could be initiated and conducted without their knowledge.

The written notification must notify organizations about the subject and scope of the monitoring and request the relevant information from them in written form to determine whether the organization meets the legal requirements of an IOFP<sup>109</sup>. This notification must be served in accordance with the procedure outlined by the Civil


<sup>106</sup> The Law and the Regulation do not define the terms “research and examination of the matter”, “search for necessary information”, or “conduct monitoring.”

<sup>107</sup> Section 2 of Article 7 of the Regulation.

<sup>108</sup> Section 4 of Article 7 of the Regulation.

<sup>109</sup> Section 4d) of Article 7 of the Regulation.

Procedure Code for delivering a judicial subpoena<sup>110</sup>. Since the notification needs to be delivered to the NNLE subject to monitoring, the provisions governing the delivery of subpoenas to legal entities should be followed.

 According to the Civil Procedure Code, a judicial subpoena can be delivered by technical means, such as telephone, fax, or other electronic methods, by post, through a court courier, or by another delivery method agreed upon by the parties. If the initial attempt to deliver the notice to the addressee fails, it must be sent at least once more to the same or another address known to the court.

A subpoena sent by post or courier to a citizen's workplace or to an organization must be delivered to the chancellery or a relevant structural unit or person of similar function. If such a person is not present, the document should be handed over to an authorized representative of the organization, who will then pass it to the intended recipient. The delivery is confirmed by the recipient's signature on the second copy of the document<sup>111</sup>.

Issues may arise if the organization's legal address differs from its actual address, or if the organization does not have a designated person, manager, chancellery, or any other authorized recipient for the notification. It is unclear whether the monitoring activity can have any legal consequences (e.g., involuntary registration of an NNLE) if the notification cannot be delivered to the respective NNLE.

Based on the content of the Regulation, it is also unclear how the Agency will proceed with monitoring procedures if it fails to deliver the notification to the respective NNLE.

The Law does not grant a special authority to the Agency to conduct procedural activities defined in the Administrative Code, Administrative Procedure Code, and the Code of Administrative Offenses, such as interrogation of individuals, conducting searches of premises, accessing private or working spaces, confiscating property for examination, etc., other than specify that the Agency must send “written notifications” (i.e., information requests) with the content and during the term defined in the Regulation.

The Agency is also limited in the extent of the information it can request from NNLEs

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<sup>110</sup> Section 5 of Article 7 of the Regulation.

<sup>111</sup> Section 8 of Article 73 of the Civil Procedure Code of Georgia. For the detailed information on the rule of delivering the subpoena, please, see Articles 70-78 of the same code.

during monitoring. The Regulation authorizes the Agency to request information needed to determine whether an NNLE meets the legal criteria of an IOFP. This includes information on the NNLE's income, as the definition of an IOFP is based on this data, and information required by the annexes of the Regulation.



During monitoring, a person authorized by the MoJ may also request additional information or documents from any individual or legal entity that are essential for the monitoring. However, such requests must not exceed the scope defined by the Regulation.

Individuals and legal entities are required to “immediately provide the information in their possession” upon request from the MoJ. This means that if they do not possess or are not aware of the information requested by the MoJ, they cannot be penalized for failing to submit such information.

It remains uncertain how the Law and the Regulation requirements towards the Financial Declaration will be reconciled with Constitutional and data protection laws. Organizations remain concerned that the MoJ may abuse its power by requesting sensitive information, such as personal data about individuals associated with the organization, or information reflecting communication among employees of the organization (e.g., emails, telephone messages). In this case, the Constitution provides legal protections.

According to the Constitution, a person's private and family life<sup>112</sup>, as well as his/her personal space and communication are inviolable. Limitation of these rights is allowed only in accordance with the law, for the purpose of ensuring the necessary state or public security in a democratic society or to protect the rights of others<sup>113</sup>.



If, during monitoring activity, the person authorized by the MoJ requests irrelevant information, or personal and sensitive data of the persons associated with the respective NNLE, or exceeds the powers granted under the Law and Regulation, legal entities and individuals are entitled to appeal such actions to higher administrative bodies<sup>114</sup> and to the court. They can request that information requests or actions exceeding the MoJ's legal authority be declared void. The Administrative Code

<sup>112</sup> According to the first paragraph of Article 34 of the Constitution, “the basic human rights specified in the Constitution, taking into account their content, also apply to legal entities”. Therefore, the right to privacy and inviolability of private and working space applies to legal entities too (to NNLEs in the given case).

<sup>113</sup> Section 1 of Article 15 of the Constitution of Georgia.

<sup>114</sup> It is not clear if the higher administrative body for appeals is the Minister of Justice or the head of the Agency.



requires administrative bodies to act only within the authority established in the law<sup>115</sup>. An administrative-legal act issued in excess of authority, as well as any action taken by an administrative body beyond its granted powers, has no legal force and must be declared invalid<sup>116</sup> (*for more details, see section 4 “Publicity of Information in the Financial Declarations and Protection of Personal Data and Commercial Secrets”*).

According to the Law, the same organization can be monitored no more than once every 6 months<sup>117</sup>.

## 8. Cancellation of Registration as an IOFP

A registered IOFP that, based on data from the previous calendar year, no longer meets the criteria for an IOFP may apply to the MoJ through the Justice House to request the cancellation of its registration. The organization must submit a written statement, along with its Financial Declaration, to the Agency, requesting the cancellation. The request should be submitted personally in material form, while the Financial Declaration should be submitted through the organization’s authorized user page on the Agency’s website.

The cancellation can only be requested when an IOFP submits its annual Financial Declaration to the Agency<sup>118</sup>. According to the Law, IOFPs are required to submit their Declarations electronically in January of every year following the registration as an IOFP<sup>119</sup>. Therefore, the request for cancellation of registration should be submitted in January following the year when the organization no longer qualifies as an IOFP (i.e., did not receive more than 20% of its income from sources considered as “foreign power”).

As stated by the Law and the Regulation<sup>120</sup>, the request for cancellation should be accompanied by a written justification explaining why the organization no longer meets the criteria of an IOFP.

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<sup>115</sup> Section 1 and 2 of Article 5 of the Administrative Code.

<sup>116</sup> Section 3 of Article 5 of the Administrative Code.

<sup>117</sup> Section 3 of Article 7 of the Regulation.

<sup>118</sup> According to Section 1 of Article 7 of the Law, “if an entity registered as an implementing organization of foreign power interests no longer meets the criteria established in Article 2 of this law according to the data (circumstances) of the previous calendar year, may, when submitting to the Agency the financial declaration provided in Article 6 of this Law, submit a reasoned written application (in material form) to the Ministry of Justice of Georgia and request cancellation of its registration as an implementing organization of foreign power interests”.

<sup>119</sup> Section 1 of Article 6 of the Law.

<sup>120</sup> See the Section 1 of Article 6 of the Regulation and Section 1 of Article 7 of the Law.

The Regulation does not provide further details on the procedures followed by the Agency when an NNLE submits a cancellation request. The Law stipulates that in this case, a person authorized by the MoJ must decide on the request within 30 working days, after adequately “examining” and “studying the matter.” To this end, the authorized person may, according to the Law, search for necessary information, including personal and confidential data. This may involve reviewing the submitted Declaration and sending information request letters to legal entities and individuals to gather additional information related to the applicant's incomes, expenses, and other data required in its Financial Declaration. The Agency may also determine that the Declaration is filled out in an “incomplete” or “incorrect” manner and provide an additional 10-day period for the IOFP to make the necessary corrections<sup>121</sup>.

## 9. Administrative Penalties and Proceedings

### APPLICABLE LAW

Violations of the requirements in the Law are punishable with administrative penalties. When an offense defined by the Law is committed, “proceedings shall be carried out according to the Code of Administrative Offences and other relevant legislative acts”<sup>122</sup>. The Regulation does not specify what is meant by “other relevant legislative acts”.

A person authorized by the MoJ is entitled to determine whether an action constitutes an administrative offense under the Law. This person is also authorized to draw up a protocol on such administrative offenses and impose the applicable administrative penalties<sup>123</sup>.

The form of the protocol for an administrative offense, the rules for its completion, the use of protocol forms, and accounting-reporting, and the form of the special register for their accounting, are determined by the APPENDICES 2.1, 2.2, and 2.3 of the Regulation. To enforce the resolution on imposing an administrative fine, the form of the enforcement sheet is provided in APPENDIX 3<sup>124</sup>.

The Code of Administrative Offences stipulates general rules for proceedings related to an administrative offense unless otherwise specified by special legislation. Since

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<sup>121</sup> Although neither the article of the Law, nor the article of the Regulation regulating the cancellation of the registration include the authority of the Agency to define additional 10 days for correction of the fault (in case the declaration submitted for the purposes of abolishing the registration is “incomplete”), the Agency can base its decision on Article 6 of the Law. An IOFP is required to submit an annual financial declaration, whether or not it intends to cancel the registration and, in this case, the authority of the Agency is defined under Article 6 of the Law.

<sup>122</sup> Section 5 of Article 9 of the Law.

<sup>123</sup> Section 5 of Article 9 of the Law.

<sup>124</sup> The Appendices of the Regulation, at: <https://matsne.gov.ge/ka/document/view/6238278?publication=0>.

neither the Law nor the Regulation define special rules, the general rules of the Code of Administrative Offenses apply.

#### **GENERAL RULE FOR CONSIDERATION OF AN ADMINISTRATIVE OFFENSE CASE**

The case of an administrative offense is generally considered at the place of its commission<sup>125</sup>. However, in the case of offenses defined by the Law, it is unclear what will be considered the place of their commission (e.g., in cases of evading registration, failure to submit a declaration, or failure to provide information by individuals).

The authorized official of the MoJ must consider the case of an administrative offense within 15 days of compiling the administrative offense protocol and other materials (e.g., incomplete Financial Declaration)<sup>126</sup>.

The administrative case is reviewed either by a collegial body or a designated official—in this case, by the person authorized by the MoJ—who must explain the participants' rights and duties and publicly read the administrative offense protocol<sup>127</sup>. Consequently, it should be assumed that an oral hearing will be conducted after the authorized person prepares the protocol of the administrative offense. However, the Regulation does not provide details on the oral hearing process.

According to the general rules, at the hearing, participants in the case must be given the opportunity to speak, evidence must be examined, and motions must be decided upon. Persons charged with an administrative offense have the right to review the case materials, provide explanations, submit evidence, and file petitions (motions)<sup>128</sup>. They are also entitled to legal assistance from a lawyer during the consideration of the case. Participants can speak in their native language, and if they do not know the language of the proceedings, they may use the services of an interpreter.

To exercise these rights, appropriate timelines must be granted to the NNLEs under proceedings. However, neither the Law nor the Regulation sets such timelines. Therefore, it can be concluded that the hearing should be held within 15 days after the protocol is completed.

The administrative proceedings must be held in the presence of the person prosecuted for the administrative offense. The case may be heard in the person's absence only if there is evidence that s/he was timely informed of the venue and time of the hearing,

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<sup>125</sup> Section 1 of Article 261 of the Code of Administrative Offenses. Sections 2-5 of the same article envision some special cases when the case of administrative offense is considered in the court building, at the office of the MoJ, etc.

<sup>126</sup> Section 1 of Article 262 of the Code of Administrative Offenses.

<sup>127</sup> Article 263 of the Code of Administrative Offenses.

<sup>128</sup> Article 252 of the Code of Administrative Offenses.

but s/he has not filed a petition for the postponement of the hearing<sup>129</sup>.

It is unclear from the Law, the Regulation, and the Code whether the person authorized by the MoJ can proceed with the hearing if the subpoena is not delivered to the organization's authorized representative (i.e., manager), or whether the representative has the right to request a postponement of the hearing and, if so, on what grounds.

As a result of hearing an administrative case, the official considering it must deliver a resolution (decision) on the case<sup>130</sup>. The resolution on the administrative offense must be announced immediately after finishing the consideration of the case<sup>131</sup>.

A copy of the resolution must be handed or sent to the person against whom the resolution is issued within three days<sup>132</sup>. This copy should be delivered in person and the fact of receipt should be certified by a signature<sup>133</sup>. If the resolution is sent, it must be delivered to the authorized person of the organization according to the rules established for delivering a judicial subpoena (*discussed in detail in section 5 "Monitoring"*).

If it is not possible to deliver the resolution to the party, it may be announced publicly according to the procedure established by the Administrative Code and is considered to have been delivered to the party on the third day after the announcement<sup>134</sup>.

It remains uncertain how the Law and the Regulation requirements towards the Financial Declaration will be reconciled with Constitutional and data protection laws. Given the rule for delivering the resolution, it is important to determine when the terms for appealing and enforcing the resolution will begin if the resolution cannot be delivered to the authorized representative (i.e., manager).

#### ADMINISTRATIVE PENALTIES UNDER THE LAW

The Law establishes penalties for the following offenses<sup>135</sup>:

- Avoiding registration as an IOFP; failing to submit the Financial Declaration within the timeframe prescribed by the Law -

*"Shall result in the imposition of a fine amounting to 25,000 GEL."*

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<sup>129</sup> Section 1 of Article 252 of the Code of Administrative Offenses.

<sup>130</sup> Section 1 of Article 266 of the Code of Administrative Offenses.

<sup>131</sup> Section 1 of Article 268 of the Code of Administrative Offenses.

<sup>132</sup> Section 2 of Article 268 of the Code of Administrative Offenses.

<sup>133</sup> Section 4 of Article 268 of the Code of Administrative Offenses.

<sup>134</sup> Section 9 of Article 268 of the Code of Administrative Offenses.

<sup>135</sup> Sections 1-8 of Article 9 of the Law.

- Failure to fill out and submit to the Agency the application form to register as an IOFP within 10 days of being allowed access to the website for registration of IOFPs; failure to correct the fault within 10 days after receiving a request for corrections due to an incorrectly filled form and/or incomplete form; failure to comply with the obligation to submit the Financial Declaration upon the request of the MoJ as a result of the monitoring by the MoJ -

*“Shall result in the imposition of a fine amounting to 10,000 GEL”.*

- Commission of an act provided in para. 2, above, by a person/entity, who has been penalized for committing an administrative offense provided in para. 2, one (1) month after imposition of the administrative penalty -

*“Shall result in the imposition of a fine amounting to 20,000 GEL”.*

(For example, if the organization continues to refuse to submit the requested Financial Declaration or application, the MoJ can penalize it in the following month in the amount of 20,000 GEL<sup>136</sup>).

- Failure to provide the information requested by the MoJ in accordance with the Law (applies to any entity or person, from whom the MoJ requested info and who failed to provide it immediately) -

*“Shall result in the imposition of a fine amounting to 5,000 GEL”.*

The penalties under the Law “may be imposed on an entity that committed the administrative offense only within 6 years after commission of the administrative offense”<sup>137</sup>.

Section 8 of Article 9 of the Law states that “an appeal of a legal act issued based on this law and/or on the basis of the subordinate normative act provided for by this law does not stop its operation”<sup>138</sup>.

#### **PROCEDURE FOR APPEALING ADMINISTRATIVE PENALTIES**

A decision made by an authorized person of the MoJ regarding the imposition of an

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<sup>136</sup> Section 3 of Article 9 of the Law.

<sup>137</sup> Section 7 of Article 9 of the Law. As a comparison, according to the Code of Administrative Offenses, the general rule is that a person committing an administrative offense may be penalized only within 3 months after committing the offence. See at: <https://www.matsne.gov.ge/en/document/view/28216?publication=495>.

<sup>138</sup> Appeal administratively or in courts.

administrative fine can be appealed to a higher authority (higher official), whose decision, in its turn, may be appealed to the court<sup>139</sup>. The Law does not clarify whether the head of the Agency or the Minister of Justice is considered a higher authority for appeals against a resolution issued by an MoJ's authorized person. The appellant (the NNLE) should submit the complaint to the body or official that issued the resolution. The body or official is then required to send the complaint, along with the case files, to the body or official that is authorized to consider the appeal<sup>140</sup>.

The court will not accept an appeal if the resolution has not been appealed administratively.

A resolution related to an administrative offense may be appealed within 10 days of its delivery<sup>141</sup>. If this time limit is missed due to justifiable reasons, it may be reactivated by the body or official authorized to hear the appeal upon request from the person against whom the resolution was issued.

This time limit applies to appeals in higher administrative bodies. The legislation provides different time limits for appealing decisions of higher bodies in court. Generally, a claim must be filed with the court within one month of receiving a decision on an administrative appeal or after the deadline for making that decision has passed. For normative acts, a claim must be filed within three months of experiencing direct prejudice<sup>142</sup>.

An organization subject to a fine must pay the fine within 30 days after receiving a copy of the resolution on imposing the fine<sup>143</sup>. If the fine is imposed on the spot, it must be paid within 30 days of the date of receiving the copy of the resolution (receipt).

Administrative bodies may publish a resolution if attempts to deliver it fail. The resolution is considered delivered three days after its publication<sup>144</sup>.

According to the general rule, the execution of the resolution (and the term for paying the fine) is suspended if an appeal or protest is filed against the resolution on imposing the fine<sup>145</sup>. However, the Law states that the appeal of the legal acts does not suspend its

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<sup>139</sup> Sub-section "a" of section 1, of Article 272 of the Code of Administrative Offenses.

<sup>140</sup> See Section 2 of Article 272 of the Code of Administrative Offenses.

<sup>141</sup> Section 1 of Article 273 of the Code of Administrative Offenses.

<sup>142</sup> Section 3 of Article 22 of the Administrative Procedure Code.

<sup>143</sup> Section 1 of Article 290 of the Code of Administrative Offenses.

<sup>144</sup> Section 9 or Article 268 of the Code of Administrative Offenses.

<sup>145</sup> Section 1 of Article 275 of the Code of Administrative Offenses.

legal force<sup>146</sup>. This includes a resolution on imposing a fine.

An additional procedure outlined in the Code of Administrative Procedure allows a party to file a motion with the court to request the suspension of the legal force of a legal act, even if the Law states that the appeal procedure does not suspend it.

If the person or organization does not pay the fine within the specified time limits, and the resolution remains in effect, the fine will be enforced involuntarily after the expiration of the 30-day period for voluntary enforcement<sup>147</sup>. This means that after this period, the authorized person from the MoJ will issue the enforcement form (enforcement sheet) provided in APPENDIX 3 of the Regulation and send it to the National Enforcement Bureau<sup>148</sup>. The Bureau will then provide additional 7 days for the NNLE to voluntarily pay the fine<sup>149</sup>. If the NNLE does not pay the fine within this additional period, the National Enforcement Bureau can freeze the NNLE's bank accounts, order covering the penalty amounts from the funds deposited on these accounts, sequester the NNLE's property, and use other enforcement mechanisms provided under the legislation<sup>150</sup>.

## 10. Conclusion



The Regulation provides important details for the implementation of the Law and clarifies the authority of the MoJ and the Agency to monitor compliance.

Organizations qualifying as IOFPs based on their activities in 2023 have a very limited timeframe to collect and analyze the information necessary to meet the requirements set by the Law and Regulation. Specifically, they must submit a registration request (written statement) by September 1, 2024, and file Financial Declarations shortly thereafter.

The collection of the required information for a Financial Declaration is a significant task. For some organizations, it may be impossible due to a lack of detailed record-keeping, as NNLEs were not previously required to maintain records of some details required for completion of the Financial Declaration. Failure to comply with the

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<sup>146</sup> Section 8 of Article 9 of the Law.

<sup>147</sup> Section 4 of Article 283 of the Code of Administrative Offenses.

<sup>148</sup> See the website of the National Enforcement Bureau at: <https://nbe.gov.ge/?locale=ka>.

<sup>149</sup> Section 7 of Article 25 of the Law of Georgia on Enforcement Proceedings. See at: <https://matsne.gov.ge/en/document/view/18442?publication=99>.

<sup>150</sup> For more information, see Law of Georgia on Enforcement Proceedings. See at: <https://matsne.gov.ge/en/document/view/18442?publication=99>.

Financial Declaration requirements results in severe penalties, and it remains to be seen how these penalties will be enforced in practice.

Unclear provisions in the Law further complicate its implementation. For instance, it is not clear how the Agency will monitor NNLEs lacking designated managerial or representative persons. Additionally, it is uncertain whether the Agency will adhere to the administrative processes outlined in the Civil Procedure Code for communication with organizations. These ambiguities not only hinder compliance but also potentially allow the Agency to expand its authority over the Law's implementation.

The Regulation requires the submission of information in the Financial Declaration that includes personal data, commercial secrets, and other sensitive information protected by the Constitution and Georgian laws. Examples include salary details, bank account numbers of employees, and contract specifics with beneficiaries and experts. Disclosing such information publicly without consent would violate constitutional and legal protections. While the law provides mechanisms to safeguard these rights, the effectiveness of administrative and judicial systems in protecting these rights remains to be seen. In the meantime, organizations that do not comply face the risk of severe penalties.

It is crucial to closely monitor the implementation of the Law to assess its practical application and to ensure that it aligns with the government's stated objective of "ensuring transparency of foreign influence." Many organizations are concerned that the true intent may be to harass NNLEs and media, and to restrict their access to resources.

*This document was developed by the International Center for Not-for-Profit Law (ICNL) and the European Center for Not-For-Profit Law (ECNL) under the USAID Civil Society Engagement Program. The content of this document reflects the views of the authors and does not necessarily represent the views of East-West Management Institute (EWMI), USAID or the United States Government.*