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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**GEORGIA**

**FINAL OPINION**

**ON THE DRAFT LAW "ON DE-OLIGARCHISATION"**

**Adopted by the Venice Commission  
at its 135<sup>th</sup> Plenary Session  
(Venice, 9-10 June 2023)**

**on the basis of comments by**

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## I. Introduction

1. By letter dated 1 December 2022, Mr Shalva Papuashvili, Chairman of the Parliament of Georgia, requested an opinion of the Venice Commission on the draft Law "on de-oligarchisation" ([CDL-REF\(2023\)010](#)) (hereinafter "the draft law").
2. Mr Francesco Maiani, Ms Grainne McMorrow, Ms Angelika Nussberger and Mr Cesare Pinelli acted as rapporteurs for this opinion.
3. On 10-11 March 2023, at its 134<sup>th</sup> Plenary Session, the Venice Commission adopted an interim opinion on the draft law ([CDL-AD\(2023\)009](#)) ("the March 2023 interim opinion"). Acknowledging the importance of the de-oligarchisation issue and in view of the fact that further general reflection and discussion were required in order to be able to take a final position on this complex matter, the Venice Commission prepared the opinion as an interim one, with a view to taking into account further legislative developments when they are available.
4. On 13 April 2023, Mr Shalva Papuashvili, Chairman of the Parliament of Georgia, sent a revised version of the draft law on de-oligarchisation ([CDL-REF\(2023\)010rev](#)) (hereinafter "the revised draft law") and requested an urgent opinion of the Venice Commission on it. The Venice Commission's Bureau decided that the final opinion would be prepared as an ordinary opinion for the 135<sup>th</sup> Plenary Session of June 2023.
5. On 18-19 May 2023 Ms Grainne McMorrow and Ms Angelika Nussberger, together with Mr Schnutz Dürr and Mr Domenico Vallario from the Secretariat, visited Tbilisi. The delegation met with representatives of the Parliament (majority and opposition), the Administration of the Government, the Public Defender's Office, specialised agencies and institutions (National Anti-Corruption Bureau, National Commission of Communications, Financial Monitoring Service, National Bank), representatives of the international partners of Georgia as well as with representatives of civil society. The Commission is grateful to the Council of Europe Office in Tbilisi for the excellent organisation of these meetings.
6. This opinion was prepared in reliance on the English translation of the draft law and the revised draft law. The translation may not accurately reflect the original version on all points.
7. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 18-19 May 2023. It was examined at the meeting of the Sub-Commission on Democratic Institutions on 8 June 2023 and subsequently adopted by the Venice Commission at its 135<sup>th</sup> Plenary Session (Venice, 9-10 June 2023).

## II. Preliminary remarks

8. Preventing non-transparent, undue influence of individuals on political, economic and public life is certainly a priority for any state wishing to achieve a democratic system governed by the rule of law and respectful of human rights. This concern has a specific connotation in the States of Eastern Europe, such as Ukraine, Georgia and the Republic of Moldova, where the non-transparent influence of so-called "oligarchs" is a major problem for democracy-building.
9. It is difficult to grasp the extent of the adverse influence of "oligarchs" on the rule of law, because "oligarchs" usually do not exert overt influence on political life and on the media directly, but in an indirect and scarcely visible manner. Often illegal methods are used to merge political decision-making and business interests. "Oligarchs" tend to successfully avoid the jurisdiction and ambit of the criminal, anti-corruption and anti-monopoly legislation utilising methods designed to undermine the protective mechanisms of separation of powers and by exerting undue influence on the judiciary to their benefit.

10. Indeed, in Georgia as in other countries, oligarchisation is the combination of exercising political power without political mandate, influence on parliaments, governments, political parties, judiciary and law enforcement bodies; ownership or influence on the media, decisive, if not monopolistic, influence on a number of areas, such as energy, mining, oil and gas, metallurgy, real estate, etc.<sup>1</sup> Speaking about the problem of oligarchy, the term "captured state" has also been used.<sup>2</sup>

11. While the Venice Commission firmly supports the goal of fighting oligarchic influence, it stresses that the so-called de-oligarchisation is a very complex issue, and the choice of the means to achieve it is of decisive importance if the system is to be effective while respecting democracy, the rule of law and fundamental rights.

12. In its interim opinions concerning the draft laws submitted by Georgia and the Republic of Moldova,<sup>3</sup> which were to a large extent based on the Ukrainian Law, the Venice Commission analysed the general state of play and distinguished two approaches in fighting oligarchisation.

13. The first approach, which the Venice Commission referred to as "systemic", involves the adoption and strengthening of legal tools in many fields of law, such as legislation relating to media, anti-monopoly, political parties, elections, taxation, anti-corruption and anti-money laundering (etc.) with a view to preventing the destructive influence of oligarchy in a comprehensive and coordinated manner. This "systemic" approach has a long-term preventive effect.

14. The second approach, which has been adopted also by the draft law under consideration and which the Venice Commission referred to as "personal", seeks to identify the persons who are suspected of wielding this negative influence on the state through specific criteria, such as wealth, media ownership, etc. As will be outlined below, the persons who fulfil a combination of these criteria are publicly declared "oligarchs" with their information included in a public register. Once registered as "oligarchs", these persons are then subjected to a series of limitations that include exclusion from the financing of political parties or activities, exclusion from privatisations of public property, and the strict obligation for public officials to report on the content of exchanges with them or their representatives. The "personal approach" is thus rather punitive in character.

15. In its interim opinions on Georgia and the Republic of Moldova, the Venice Commission supported the "systemic approach" and expressed its strong reluctance to accept the personal approach, as had been outlined in the draft legislation which it assessed.

16. The Commission wishes to stress that any "systemic" measures to fight oligarchisation need to fit the historical, legal, political and contextual situation of each country. There is no one-size-fits-all. It is clear that the prevailing domestic context is very different in Georgia, as compared to Ukraine and the Republic of Moldova. Ukraine is fighting a war of aggression by the Russian Federation, which seems to have resulted in reducing the extent of the adverse influence of the "oligarchs". Such situation can obviously not be compared with that of Georgia and the Republic of Moldova, even if part of the territory of both countries, occupied by the Russian Federation, is

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<sup>1</sup> See among many others, [CDL-AD\(2020\)013](#), *Albania - Opinion on draft amendments to the Law n°97/2013 on the Audiovisual Media Service*, § 48; Wojciech Konończuk, Denis Cenuşa and Kornely Kakachia, "[Oligarchs in Ukraine, Moldova and Georgia as key obstacles to reforms](#)", *Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas with Ukraine, Moldova and Georgia*, 2017; [Study](#) prepared by the Reporters Without Borders, 2016.

<sup>2</sup> See for example, in respect of the Republic of Moldova: European Parliament resolution of 14 November 2018 on the implementation of the EU Association Agreement with Moldova ([2017/2281\(INI\)](#)), paragraph 3.

<sup>3</sup> March 2023 Interim Opinion, §§ 12-17; see also Venice Commission, [CDL-AD\(2023\)010](#), *Republic of Moldova - Interim opinion on the Draft Law on limiting excessive economic and political influence in public life (de-oligarchisation)*, §§13-18.

not under the control of the respective governments. The timing and the extent of the measures to be taken against “oligarchs” will accordingly differ for Georgia, Ukraine and for the Republic of Moldova.

### III. Analysis

#### A. An anti-oligarch “system” or a law against “oligarchs”?

17. The Venice Commission underlines at the outset that the danger of the concentration in the hands of a private individual of significant influence over the economic, political and public life of a country without transparency, legitimacy and accountability may exist in virtually any country. Most countries have devised and put in place a set of interconnected legislative, (inter-)institutional, administrative, economic and other measures, in order to prevent the disruptive effects on democracy, the rule of law and human rights brought on by the concentration of such influence with the objective of leveling the playing field for all actors in society. Depending on the context of the country concerned, such measures for example include: an effective competition policy, anti-corruption and anti-money-laundering measures, measures to ensure media pluralism, rules on the financing of political parties and election campaigns (etc.). As indicated above, the Venice Commission qualifies such an approach as a “system” to fight oligarchic influence.

18. The question arises as to whether such a “system” may be effective in a country like Georgia, where oligarchic influence seems to have taken root and could represent a hurdle for the democratic functioning of the institutions of the state, notably the courts and the specialised independent regulatory authorities which are tasked with anti-corruption, anti-monopoly, anti - money laundering, or even for the adoption of appropriate legislation or policies. The anti-oligarch draft legislation which the Venice Commission has been asked to assess has indeed been devised as an attempt to counter this specific threat. In the words of its Article 1, the revised draft law seeks to “*prevent excessive influence of persons who wield significant economic and political weight in public life, overcome the conflict of interest caused by the merger of politicians, media and big business, prevent the increase of one’s own capital with the use of political power, ensure Georgia’s national security in economic, political and informational spheres and protect fundamental human rights, democracy and state sovereignty*”.

19. This is certainly a difficult and complex question, which the Venice Commission has carefully considered, and to which it wishes to provide an answer at this stage, while acknowledging that the reflection needs to be continued, not least in the light of the future experience in fighting oligarchic influence.

20. The Venice Commission reiterates that the standard-compliant, and most efficient manner to prevent and limit oligarchic influence in a democratic country is the “systemic” one. Every state should adopt “systemic” measures against the disruptive effects of oligarchic influence and implement them (if this is not already the case), adapting and developing them as appropriate to its specific context.

21. The Venice Commission acknowledges that in exceptional, extremely critical situations, for example a situation of state capture, the effective implementation of the above systems may be difficult, and radical solutions such as some measures of a personal nature could appear to be justified, as a measure of last resort, on a temporary and exceptional basis, and as a supplement, not an alternative, to the anti-oligarchic influence system.

22. However, it needs to be stressed that even when exceptional and last resort, such personal measures would necessarily require clear legal criteria and strong guarantees of an independent decision-making body and due process, with notions defined in such a way that they can be proven, and – as a consequence – judicially controlled, with the establishment of special

procedures for the investigation into the applicability of the criteria, for making decisions, for a comprehensive appeal process against these decisions and the possibility of having the “oligarch” designation removed for a person previously registered as an “oligarch”. Such preconditions seem to contradict the very design of such laws. Besides, in a situation of state capture, even “personal measures” such as the ones outlined in the revised draft law would likely meet the same hurdles as the comprehensive system, and thus likely fail to reduce oligarchic influence effectively. This is the great paradox of de-oligarchisation laws in the form they are currently proposed: if the administration and the judiciary are strong and independent enough to support the implementation of “personal measures” of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary are “captured” by the interests that the “personal measures” intend to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.

23. For these reasons, anti-oligarch legislation of the kind which the Venice Commission has been asked to assess is not seen as a democratic response to this scourge, and not even as an effective one. Instead of fighting oligarchic influence effectively, de-oligarchisation legislation of this kind undermines democracy and the rule of law. As will be outlined in part III.D below, the Venice Commission finds that the “personal measures” as set out in the Law do not live up to the required standards and it therefore does not support such legislation.

#### **B. A “system” to counter oligarchic influence in Georgia**

24. The Commission will start its analysis with a short overview of what such a “system” could look like in Georgia. From the outset, it should be stressed however that it is not for the Venice Commission to prescribe the exact elements of a “system”, as states are themselves better placed to identify and analyse existing tools and shortcomings therein and design an appropriate strategy. Nonetheless, the Venice Commission will enumerate a number of important building blocks of the “system”, which – although non-exhaustive – may provide further guidance to the authorities of Georgia in this respect.

25. In the opinion of the Venice Commission, the design and realisation of an effective system to prevent the reestablishment of oligarchic influence would first of all require a close look at why the existing legal tools have not been able to adequately address the destructive influence of “oligarchs” (for example, analysing why certain oligarchic monopolies have not been broken up): identifying which pieces of legislation can be further strengthened, taking into account the power of “oligarchs” in counteracting these measures, and identifying where the weaknesses or loopholes are with a view to making these the legal provisions “oligarch resistant”. It would also require analysing the way various institutions (anti-corruption bodies, anti-monopoly committee, state audit, banking supervisory authorities etc.) can work better together in preventing and eliminating the influence of “oligarchs” (for example, if there are legal impediments preventing effective cooperation and information exchange, these should be addressed; bodies working in this field should be obliged to report about the weak implementation by other bodies when there is reason to suspect that their work has been influenced by “oligarchs”). This should culminate in a focused strategy to tackle oligarchisation, recognising the interconnected nature of the problem, allowing for bridges to be built between various fields of law and the institutions that implement them (through the specific lens of tackling oligarchisation), with due regard to the need to strengthen their independence and effectiveness.

26. Such a “system” would need to build on the structural reforms of the judiciary in line with European standards to strengthen its independence, impartiality and integrity.<sup>4</sup> Only an

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<sup>4</sup> See Venice Commission, [CDL-AD\(2023\)006](#), *Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts*.

independent judiciary with judges who refuse being corrupted by either “oligarchs” or any other influence can act as arbiters in the numerous disputes that result from measures taken to rein the negative influence of “oligarchs” in the various fields relevant to the systemic approach.

27. As concerns specific sectors, an effective competition policy has to be established and implemented on a sound legal basis. The full range of anti-competitive behaviour outlined in EU regulations has to be covered. The body in charge of this sector, in Georgia the Competition Agency, has to use the legal tools entrusted to it, such as inspection and enforcement powers, to effectively break up existing monopolies and cartels. Entry into oligarchy-controlled sectors should be actively encouraged to foster competition.

28. Measures to prevent and fight corruption should be reinforced, in line with GRECO recommendations, including addressing high-level corruption by, where needed, increasing the capacities and independence of the authorities in charge. In this regard, with particular regard to Georgia, the Venice Commission takes good note of the creation of a new single anti-corruption agency, the National Anti-Corruption Bureau (“NAB”). The agency will be tasked with overseeing the implementation of the policy and strategy documents concerning the fight against corruption and will coordinate the activities of the relevant state bodies, in addition to monitoring asset declarations and party financing. It is paramount however that its political and functional independence be guaranteed, and that continued support be entrusted to it.

29. Following the adoption of the new law “On Public Procurement”, the transparency of public procurement<sup>5</sup> and compliance with relevant EU Directives<sup>6</sup> needs to be upheld, effectively excluding corrupt and fraudulent companies or individuals from accessing government contracts,<sup>7</sup> by taking measures to prevent corrupt needs assessments or terms of reference tailored to certain entities, by enforcing conflict of interest regulations in procurement processes and strengthening the audit and oversight of public contracting, but also by strengthening the relevant audit agencies and ensuring accountability for integrity breaches in procurement in practice.

30. Given that “oligarchs” are often defined by their influence on media, a central issue is the need to strengthen media pluralism, including by the enforcement of competition law and merger control procedures, as outlined above, and transparency of media ownership, in line with the Recommendation of the Committee of Ministers of the Council of Europe on media pluralism and transparency of media ownership,<sup>8</sup> and ensuring that such ownership information covers all media actors and is easily available and accessible to the public.

31. The anti-money laundering policy should be further enhanced, in line with international standards and recommendations by MONEYVAL.<sup>9</sup> More specifically, in order to identify who possibly hides behind complex structures of companies, sometimes through direct and indirect foreign ownership, the transparency of of legal persons and arrangements as well as timely

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<sup>5</sup> See OECD [Public Procurement Recommendation](#), 2015.

<sup>6</sup> [Directive 2014/24/EU](#) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (Text with EEA relevance).

<sup>7</sup> See, in this regard, the good practices of the EU Anti-Fraud Knowledge Centre, including the system put in place in [Malta](#) for excluding companies or individuals convicted of corruption, fraud, money laundering, tax evasion, distortion of competition.

<sup>8</sup> [CM/Rec\(2018\)1](#), adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

<sup>9</sup> [Georgia – Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism \(MONEYVAL\)](#). Other than MONEYVAL's recommendations, international standards such as those of the [FATE](#), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism ([CETS No. 198](#)) and the [EU Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing](#) (as well as the forthcoming sixth anti-money laundering directive) are also of relevance

and effective access to accurate up-to-date beneficial ownership information should be further enhanced, in line with recommendations of MONEYVAL<sup>10</sup> and the Financial Action Task Force (FATF),<sup>11</sup> using a multi-pronged approach<sup>12</sup> on the basis of a variety of information sources to ensure that competent authorities have access to accurate and up-to-date information on beneficial ownership to expose oligarchic structures. This information should be made available to all agencies which are relevant for limiting the influence of “oligarchs”. Only on the basis of such information can they take effective measures in this fight and only through smooth cooperation between these agencies can their work be effective.

32. The rules on the financing of political parties and election campaigns should be reinforced, aiming to reduce the role of big money in politics and easing participation of candidates and parties not beholden to oligarchic interests.<sup>13</sup> These rules need to be implemented in a general, non-selective way and this implementation needs to be controlled by an independent judiciary. Only such transparent independent control can remove any doubts as to a politically biased implementation. This can be done by reinforcing campaign expenditure caps, introducing a ban on donations by legal persons, increasing allocation of public funds to political parties, in particular during election campaigns, lowering thresholds for receiving public funds and/or providing air time for political parties on the main television networks to level the playing field. The campaigns of all political parties should be monitored in order to identify major expenses (e.g. for meetings and rallies) which were not declared. The role of existing control mechanisms should be strengthened in supervising compliance with party finance rules and public scrutiny of party and election campaign finance should be eased.

33. Given that “oligarchs” use tax loopholes and the possibility to shift the declaration of revenue to low tax countries, tax legislation should be reformed, to more effectively tax the wealth of oligarchic structures and cut out such tax benefits and exemptions used by such structures. In this context, international cooperation will be very helpful. Again, information on beneficial ownership is essential for this purpose and need to be shared effectively between the relevant bodies and agencies.

34. The Georgian authorities informed the delegation visiting Tbilisi on 18-19 May of the various legislative initiatives being developed to pursue a systemic approach to fight de-oligarchisation. Namely, the ongoing reform of the judiciary, which should fully implement Venice Commission’s recommendations,<sup>14</sup> the strengthening of the newly-created specialised NAB, in addition to the allegedly internationally acknowledged good results in the fields of competition, media ownership, tax legislation, financing of political parties and transparency of beneficial ownership. According to the Georgian authorities, some elements of a “system” have thus already been put in place.

35. The Venice Commission wishes nonetheless to stress in this context that what matters for de-oligarchisation is not only for some sectoral laws to be adopted or amended, on the basis of recommendations of various international bodies, but that concrete measures be taken with the aim to reduce oligarchic influence and assess what the impact of these measures is in countering oligarchisation. Therefore, the Venice Commission recommends preparing a comprehensive, detailed analysis of the failings of existing legislation, policies and institutions

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<sup>10</sup> See Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), [Anti-money laundering and counter-terrorist financing measures – Georgia - Fifth Round Mutual Evaluation Report, September 2020](#), see in particular recommendations 24 and 25.

<sup>11</sup> See, for example, Financial Action Task Force (FATF), [Best Practices on Beneficial Ownership for Legal Persons](#) (October 2019).

<sup>12</sup> Combining registry approach, company approach, existing information approach and risk-based approach – see FATF, [Guidance on Beneficial Ownership of Legal Persons](#), March 2023.

<sup>13</sup> See, for example, Group of States against corruption (GRECO), Third evaluation Round, [Second Addendum to the Second Compliance Report on Georgia](#), December 2018.

<sup>14</sup> See [CDL-AD\(2023\)006](#), cited above.

in tackling oligarchic influence and assessing at regular intervals the impact of any corrective, additional, complementary measures through the specific lens of de-oligarchisation, as outlined above, to make sure that a co-ordinated “system” to tackle oligarchic influence is in place.

### C. The March 2023 Interim Opinion

36. In the March 2023 Interim Opinion, while fully supporting the goal of eliminating or at least significantly reducing the influence of “oligarchs” in political, economic and public life, the Venice Commission expressed its preference for a “systemic approach” aimed at strengthening the institutions and legislation relating to media, anti-monopoly, political parties, elections, taxation, anti-corruption and anti-money laundering, etc. rather than a “personal approach” aimed at targeting persons who may qualify as “oligarchs” through specific criteria, such as wealth, media ownership, etc.<sup>15</sup> It issued some recommendations in this regard.<sup>16</sup> The Venice Commission further noted that the “personal approach” (such as the one employed by the laws under examination), entailed the risk of violation of several human rights, and of the violation of political pluralism and the rule of law.<sup>17</sup>

37. Among the shortcomings of the draft law, the Venice Commission found, *inter alia*, that the measures of the draft law could lead to violations of fundamental rights protected under the ECHR and that it gave the Government too much influence over the process of designation of an “oligarch”. The Venice Commission outlined in particular that the process of collecting, assessing, storing and processing personal data on persons potentially designated as “oligarchs” by the Government, the stigmatisation associated with the publication of information on persons designated as “oligarchs” in the register of the Government, the requirement for persons designated as “oligarchs” to submit declarations of assets and the requirement upon public officials to declare their contacts with persons designated as “oligarchs” and/or their representatives may constitute an infringement of the enjoyment of rights under Article 8 ECHR.<sup>18</sup> Similarly, the Commission considered that prohibiting persons designated as “oligarchs” from financing political parties, election campaigns, other political campaigns and rallies and demonstrations “with political demands” may infringe their rights under Articles 10 and 11 ECHR.<sup>19</sup>

38. While recalling that enjoyment of the rights under Articles 8, 10 and 11 is not absolute and can be restricted, the Venice Commission stressed that the vagueness of the criteria used to designate a person as an “oligarch”, the broad discretion of the Government in interpreting and applying these criteria, its lack of independence/impartiality, the lack of due process guarantees and effective remedies afforded to persons designated as “oligarchs”, as well as the lack of proportionality and consideration for other less-intrusive measures made it difficult to justify the restrictions imposed by the draft law.<sup>20</sup> In that respect, the Venice Commission issued, in addition to its recommendations as regards systemic measures, a series of recommendations aimed at improving the draft law, or at least at minimising its negative effects. In particular, recommendations were directed at clarifying key provisions and procedures, including full procedural safeguards and effective remedies, and ensuring the proportionality of certain consequences of designation as an “oligarch”.<sup>21</sup>

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<sup>15</sup> March 2023 Interim Opinion, §§ 15, 68.

<sup>16</sup> March 2023 Interim Opinion, § 72, *in fine*.

<sup>17</sup> March 2023 Interim Opinion, § 67.

<sup>18</sup> March 2023 Interim Opinion, §§ 34-38.

<sup>19</sup> March 2023 Interim Opinion, §§ 39-40.

<sup>20</sup> March 2023 Interim Opinion, §§ 42-57.

<sup>21</sup> March 2023 Interim Opinion, § 72.

#### D. The revised draft law

39. Following the adoption of the March 2023 Interim Opinion, the Georgian Parliament has now revised the draft law and submitted it to the Venice Commission for opinion. Among the main changes:

- The criteria for recognising a person as an “oligarch” have been amended in Article 2 of the revised draft law;<sup>22</sup>
- The power to designate a person as an “oligarch” is now conferred to the National Anti-Corruption Body, a newly created body, instead of the Government (new Article 3 § 2);<sup>23</sup>
- Procedural guarantees for the persons under examination by the NAB have been added;<sup>24</sup>
- The decision to designate a person as an “oligarch”, being qualified as an administrative act, is now explicitly subject to appeal with suspensive effect, which entails that no information on the designation is made public until the appeal has been decided upon (new Article 3 § 8);
- The prohibition to finance political parties, election campaigns, other political campaigns and rallies and demonstrations “with political demands” by the persons designated as “oligarchs” is lifted. Likewise, the requirement on persons designated as “oligarchs” to submit asset and interest declarations is removed. The only prohibition retained upon inclusion on the Register is that such persons are still banned from being buyers (or beneficiaries thereof) in large-scale privatisation processes (new Article 5 § 1);
- The requirement to disclose the content of communications between public officials and persons designated as “oligarchs” has been deleted, replaced by the requirement to disclose only whether such communications included a conversation on a political issue related to Georgia (new Article 5 § 4(f)).<sup>25</sup>

40. The Venice Commission acknowledges that the revised draft law submitted by the Georgian Parliament *prima facie* and in theory seems to address most of the recommendations of the March 2023 Interim Opinion in so far as they were directed at improving the “personal approach” adopted by the draft law.

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<sup>22</sup> In particular by: (a) deleting the criterion of “*being the ultimate beneficial owner of a business entity that occupies a monopoly (dominant) position in the market according to the Law of Georgia on “On Competition”, and maintaining or strengthening such position within one consecutive year*” (Article 2 § 1 (c) of the draft law); (b) introducing a minimum financing of 30.000 GEL (approximately 10.800 EUR) to political parties and electoral campaigns in order to be considered as “participating in political life” for the purposes of being recognised as an oligarch (new Article 2 § 2 (e) and (f)); (c) adding a new safeguard clause to the criteria of participation in political life: “there is other apparent evidence confirming his/her participation in the political life in Georgia during the last one year” (new Article 2 § 2(g)); (d) clarifying the criterion of exerting influence on media services (new Article 2 § 3), while at the same time adding a new safeguard clause “there is other apparent evidence confirming that he/she exerted influence on media service in Georgia during the last one year” (new Article 2 § 3(c)).

<sup>23</sup> The NAB conducts an enquiry to establish whether a person is an “oligarch” or not ex officio or upon proposal of a member of the Government, a permanent member of the National Security Council, the National Bank, the State Security Service or the National Communication Agency (new Article 3 § 3);

<sup>24</sup> In particular: (a) the right to be assisted by a representative (new Article 3 § 5); (b) the right to be informed of the hearing in front of the NAB at least one month in advance (new Article 3 § 6); (c) the right to request the postponement of such a hearing upon giving due reasons (new Article 3 § 6); (d) the right to have such a hearing conducted openly and publicly (new Article 3 § 7).

<sup>25</sup> Further changes include: (a) clearer procedures for collection of data in the process for the recognition as an oligarch have been outlined, by authorising the NAB to collect necessary information and documents from legal and natural persons in compliance with the Law on “personal data protection” (new Article 3 § 4); (b) within the information entered in the register of “oligarchs”, reference to the fact that the recognition of a person as an “oligarch” and entry into the register does not in itself prove that this person is a criminal or some other type of offender is added (new Article 4§4); (c) the concept of “impeccable business reputation” (former Article 10) is deleted; (d) some “family exceptions” have been added to the obligation to disclose communication with a person recognized as an “oligarch” (new Article 5 § 2(a)).

41. However, the Venice Commission considers that the steps made in improving the draft law have not in any way negated the main shortcoming of the law in that it still allows the executive to initiate and follow through a procedure which risks entailing a public “blacklisting” of potential political opponents based on vague criteria, absent any indication of wrongdoing.<sup>26</sup> The risk of a potential political abuse of the revised draft law and a possible arbitrary application of its provisions might then severely jeopardise rule of law and political pluralism, while doing little to tackle “oligarchic” influence. A personalised de-oligarchisation law like the one being assessed risks becoming a dangerous tool in the hands of those in power to harass political opponents. The risk of arbitrary application of the revised draft law is of specific relevance in the case of Georgia in light of public statements, indicating that once adopted, it will be applied to the opposition.

42. As outlined above, this kind of “personal approach”, even when deprived of most of its punitive consequences, raises a series of questions regarding its compatibility with rule of law and the principle of political pluralism, while questions can also be raised as to the actual efficacy of the measures in reducing the influence of “oligarchs” on political and economic life in Georgia. In this regard, the Georgian authorities would need to prove how and if the personal measures which remain under the revised draft law would be necessary to counter oligarchic influence in addition to the “system” and would target the phenomenon not only partially, but as a whole. The Venice Commission therefore reiterates that the fight against oligarchic influence in Georgia is to be carried out through a well-designed and effective comprehensive “system”, instead of through the Law under consideration.

43. As at this stage the Venice Commission is not convinced that the changes to the revised draft law could remedy the unavoidable frictions with Council of Europe standards on human rights, democracy and the rule of law, the Venice Commission recommends pursuing the “systemic” approach, and, in light of the above considerations, the Venice Commission recommends not to adopt the revised draft law.

#### **IV. Conclusions**

44. The Venice Commission underlines that the danger of the concentration in the hands of a private individual of significant influence over the economic, political and public life of a country without transparency, legitimacy and accountability may exist in virtually any country. Most countries have devised and put in place a set of interconnected legislative, (inter-)institutional, administrative, economic and other measures, in order to prevent the disruptive effects on democracy, the rule of law and human rights brought on by the concentration of such influence in the hands of a few. Depending on the context of the country concerned, such measures for example include: an effective competition policy, anti-corruption and anti-money-laundering measures, measures to ensure media pluralism, rules on the financing political parties and election campaigns (etc.).

45. Rather than pursuing this multi-sectoral, “systemic” approach, Georgia has chosen to tackle the destructive influence of oligarchisation through a different “personal approach”, by preparing a draft law on de-oligarchisation. This “personal approach”, as specified by revised draft law, seeks to identify persons as “oligarchs” through specific criteria, such as wealth, media ownership (etc.), and subjects them to a series of limitations. Despite having been deprived of most of its punitive consequences and limitations in its revised version, the potential political abuse of the revised draft law and a possible arbitrary application of its provisions may still severely jeopardise the rule of law and political pluralism.

46. While recognising that in the fight against oligarchic influence there is no one-size-fits-all and that in exceptional, extremely critical situations, for example a situation of state capture,

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<sup>26</sup> March 2023 Interim Opinion, § 36.

radical solutions – such as some measures of a personal nature – could appear to be justified, as a measure of last resort, on a temporary and exceptional basis, the Venice Commission considers that these should be a supplement, not an alternative, to the “systemic” approach. However, if there were such a need, these measures would have to be designed with full respect for the standards of political pluralism and the rule of law, *inter alia* clear legal criteria, strong guarantees of an independent decision-making body and due process. Such preconditions seem to contradict the very design of such laws. This is the great paradox of de-oligarchisation laws in the form they are currently proposed: if the administration and the judiciary are strong and independent enough to support the implementation of “personal measures” of the kind described, then such measures are no longer needed because the preconditions are met to deploy a much more systemic and effective strategy. If conversely the administration and judiciary are “captured” by the interests that the “personal measures” intend to fight, then such measures are either ineffective or – having to be adopted through executive acts that are not fully subject to effective judicial control – profoundly dangerous for human rights, democracy and the rule of law.

47. Currently, the revised draft law cannot be seen as a democratic response to the scourge of oligarchisation, and not even as an effective one. In this regard, the Georgian authorities would need to prove how and if the personal measures which remain under the revised draft law would be necessary to counter oligarchic influence in addition to the “system” and would target the phenomenon not only partially, but as a whole. Indeed, instead of fighting oligarchic influence effectively, de-oligarchisation legislation of this kind risks becoming a dangerous tool in the hands of those in power to harass political opponents. As at this stage the Venice Commission is not convinced that the changes to the revised draft law can remedy the unavoidable frictions with Council of Europe standards on human rights, democracy and the rule of law, the Venice Commission concludes that the revised draft law should not be adopted and that a “systemic” approach be pursued.

48. Therefore, the Venice Commission recommends that the revised draft law not be adopted, and that the Georgian authorities, in order to fight oligarchic influence in the country:

- Carry out an in-depth and comprehensive analysis of the existing systemic measures, of their shortcomings in terms of structure, powers and coordination;
- Devise corrective, additional or complementary legislation or measures, which, *inter alia*, include:
  - establishing and implementing an effective competition policy;
  - strengthening the fight against high-level corruption and the prevention of corruption, in line with GRECO’s recommendations;
  - upholding the transparency of and accountability in public procurement;
  - strengthening media pluralism and transparency of media ownership;
  - further enhancing the anti-money laundering policy, including the transparency of legal persons and arrangements and timely and effective access to beneficial ownership information, in line with MONEYVAL and FATF recommendations;
  - reinforcing rules on the financing of political parties and election campaigns and existing control mechanisms;
  - amending tax legislation.
- Strengthen the independence and effectiveness of the key regulatory and controlling authorities;
- Assess the way various institutions (anti-corruption bodies, anti-monopoly committee, state audit, banking supervisory authorities etc.) can work better together in preventing and eliminating the influence of “oligarchs” over political, economic and public life;
- Carry out an impact assessment of such measures at regular intervals;
- Put thus in place a comprehensive system to prevent and fight oligarchic influence through a focused strategy/action plan to address oligarchisation, recognising the interconnected nature of the problem, allowing for bridges to be built between various fields of law and the institutions that implement them;

- Implement it without delay in a transparent and accountable manner.

49. The Venice Commission underlines that, in order for the above-mentioned system to function effectively, the holistic reform of the judicial system aimed at ensuring its independence, integrity and impartiality, including of the High Council of Justice, fully in line with Venice Commission recommendations, should be relentlessly pursued.

50. The Venice Commission remains at the disposal of the Georgian authorities for any further assistance.