

DEEPENING EU-GEORGIAN RELATIONS

What, why and how?



EDITED BY

MICHAEL EMERSON AND TAMARA KOVZIRIDZE

A Trilogy of Handbooks: Understanding the EU's Association Agreements and Deep and Comprehensive Free Trade Areas (DCFTAs) with Georgia, Moldova and Ukraine

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ABBREVIATIONS

ACAA	Agreement on Conformity Assessment and Acceptance of Industrial Products
AEO	Authorised economic operator
CAA	Civil Aviation Agreement
CCC	Community Customs Code
CE	Conformité Européene
CEN	European Committee for Standardisation
CENELEC	European Committee for Electrotechnical Standardisation
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CJEU	Court of Justice of the European Union
CSDP	Common Security and Defence Policy
DCFTA	Deep and Comprehensive Free Trade Area
DRB	Dispute Resolution Board
DSM	Dispute settlement mechanism
EaP	Eastern Partnership
EASA	European Aviation Safety Agency
EaTCP	Eastern Partnership Territorial Cooperation Programme
EBRD	European Bank for Reconstruction and Development
EDA	European Defence Agency
EEA	European Environment Agency
EFTA	European Free Trade Association
EIA	Environmental impact assessment
EIB	European Investment Bank
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMSA	European Maritime Safety Agency
ENP	European Neighbourhood Policy

ETSI	European Telecommunications Standards Institute
EU	European Union
FDI	Foreign direct investment
FSA	Financial Supervision Agency
FTA	Free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GI	Geographical indications
GOST	<i>Gosudarstvenny Standart</i> (State Standard)
GPSD	General Product Safety Directive
ICT	Information and communications technologies
IMF	International Monetary Fund
INTERREG	Inter-regional cooperation programmes of the EU
IPR	Intellectual property rights
MFN	Most favoured nation
MoU	Memorandum of Understanding
NBG	National Bank of Georgia
NGO	Non-governmental organisation
NIF	Neighbourhood Investment Facility
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organisation for Economic Cooperation and Development
OSCE	Organization for Security and Cooperation in Europe
PEM	Pan Euro-Mediterranean System of Rules of Origin
PESI	Pan-European infrastructure
PLLC	Public limited liability companies
SMEs	Small and medium-sized enterprises
SPA	State Procurement Agency
SPS	Sanitary and phytosanitary (food safety) regulations
TBT	Technical barriers to trade (industrial product standards)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
VLAP	Visa Liberalisation Action Plan
WTO	World Trade Organisation

PREFACE

This Handbook seeks to explain the contents of a long and complex treaty, the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA), between Georgia on the one hand, and the European Union (EU) and its 28 member states, on the other. Like most complex legal texts, it cannot be read like a book. The purpose here is therefore to make it possible for anyone to understand what each chapter of the Agreement means, in terms of both the nature of the commitments that the parties have assumed, and the prospects for their implementation.

In writing this Handbook, the authors had a broad range of readers in mind, including officials, parliamentarians, business leaders, lawyers and business consultants, think tanks, civil society organisations, university teachers, trainers, students and journalists.

The structure of this Handbook essentially mirrors that of the Agreement, but the chapters are not identical to it. Some chapters in the Agreement of lesser interest are not covered, and there is some rearrangement of various chapter headings.

The present volume is one of a trilogy of Handbooks that cover very similar but not identical agreements between the EU and its member states, and Georgia, Moldova and Ukraine. All three books are available electronically for free downloading in English and the respective languages of the three countries, at www.3dcftas.eu.

There are some references in the Handbook to an Association *Agenda*, which is a document drawn up jointly by Georgia and the EU to review progress in the implementation of the Association Agreement, and which usefully provides updating and some greater detail on various topics. The Agreement and Agenda are thus not to be confused. The official texts of both documents are also available in English and in Georgian, at www.3dcftas.eu.

A much shorter, popular version of this book is being prepared with the aim of reaching a wider readership, including students. This version will also be available in print and online for free downloading in English and Georgian, at www.3dcftas.eu.

The Handbook has been prepared by two teams of researchers and experts, from CEPS in Brussels and Reformatics in Tbilisi. Established in 1983, CEPS is a leading think tank on European affairs, with a strong in-house research capacity and an extensive network of partner institutes throughout the world. Its mission is to produce sound policy research leading to constructive solutions to the challenges facing Europe.

Reformatics is an independent international consulting firm in Tbilisi founded by former high-level officials in Georgia who were instrumental in their country's impressive achievements in economic reforms over the last decade. The firm currently undertakes advisory projects in Central and Eastern Europe, Africa and Central Asia. Its contributors express their thanks to Nika Gilauri for helpful comments on several chapters.

While much of the content of the Handbook is undoubtedly rather dry, we hope that the reader will appreciate the lighter touch in the artwork of Constantin Sunnerberg, which graces the book's cover and the introductory page of each chapter.

Finally, the authors are most grateful to the Swedish International Development Agency (Sida) for their support and funding for the project, and in particular to Mirja Peterson and Maria Liungman for their encouragement from the beginning.

The views expressed in this book are entirely those of the authors and should not be attributed to CEPS, Reformatics, Sida or the European Union.

SUMMARY

What?

The Association Agreement between the European Union (EU) and Georgia is a comprehensive treaty covering Georgia's relationship with the EU. The trade-related content is covered in the Deep and Comprehensive Free Trade Area (DCFTA), which is one important part of the overall Agreement. For the EU it is a 'mixed' agreement, i.e. engaging both the EU and its member states. It is a voluminous text with many annexes.



The Agreement was signed on 27 June 2014, and has subsequently been ratified by Georgia, the European Parliament and all 28 EU member states. While most of the economic content of the Agreement has been provisionally in force since 1 September 2014, its definitive and complete entry into force took place on 1 July 2016.

While the Agreement is intensely technical, in essence it is an act of geopolitical significance for Georgia, affirming its European identity and its strategic foreign policy priority of developing closer ties with the EU.

Why?

The political and economic objectives of the Agreement are fundamental for the future of Georgia as an independent and secure European state, and can be simply defined.

The political purpose is to deepen the realisation of Georgia's 'European choice' and its relations with the EU. This means making a reality of fundamental European values, namely democracy, the rule of law and respect for human rights, and the norms of the European security order. Membership of the EU is not pre-figured in the Agreement, but neither is it excluded in the longer run.

The economic purpose is to help modernise Georgia's economy, by boosting trade with the EU and other major trading partners

worldwide, and by reforming economic regulations in line with European best practice. These steps should lead ultimately to the highest level of economic integration between Georgia and the EU.

How?

Of all the countries of Eastern Europe, Georgia has distinguished itself by pushing ahead unilaterally over the years since the Rose Revolution of 2003 with a radical economic liberalisation and reform agenda. It has succeeded in reducing corruption and establishing a highly favourable business climate. The Association Agreement and DCFTA thus build on a most promising base.

The Agreement amounts to a charter for Georgia's modernisation and Europeanisation through alignment with European norms, which generally correspond to best international practice. Georgia does not have to 're-invent the wheel' in many technically complex areas. The country takes a careful approach to alignment with European legislation, however, avoiding excessive or premature obligations. There are also considerable flexibilities over the implementation of commitments, with procedures for extending timeframes or updating the legislative references if both parties agree. There will be much 'learning by doing' for both Georgia and the EU, and the need to adjust the detail of legislative requirements where necessary. For the EU, the DCFTA with Georgia, as well as those with Moldova and Ukraine, represent especially deep examples of the new model of comprehensive agreements being made with countries in the wider Europe and other continents (Korea, Canada).

Since 1 September 2014, the EU has opened its market for tariff-free imports from Georgia almost completely. Yet since 2006, Georgia has been engaged in a radical unilateral opening of its market towards the whole world. This means that the opening of the EU market offers only new opportunities and no risks for Georgia, since its economy has already adjusted to the discipline of international competitiveness.

Financial support is available to help with technical assistance and investment where there are heavy adjustment costs, with grants from the EU, and loans or investment from the European financial institutions.¹

The Agreement is no magic wand to cure Georgia's outstanding political and economic challenges. But its provisions do engage with a

¹ Notably, these are the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

substantial part of Georgia’s political and economic reform agenda. Ultimately, it is a roadmap for Georgia to join the many small but very open European economies that do, or can achieve very high standards of economic and social development.

* * * *

Part I. Political Principles, the Rule of Law and Foreign Policy

These chapters deal with the non-economic content of the Agreement, and the commitments made are, while of fundamental importance, mostly qualitative in nature.

Democracy, respect for human rights and the rule of law are deemed ‘essential elements’ of the Association Agreement, such that in the event of their grave violation the Agreement may be suspended. As a young democracy, Georgia has progressed in establishing democratic institutions. The country continues its wide-ranging reforms in the justice field, although concerns remain with respect to selective justice, freedom of the media and the independence of courts. Georgia’s human rights record has improved since the Rose Revolution. Substantial improvement is seen at the legislative level, with practical implementation to be further improved.

Georgia has made major progress in combating corruption and has become an international leader in this respect. It remains committed to continuing reforms in this direction, which is crucial for the overall success of the Association Agreement and Georgia’s economic future.

These reforms link to the conditions that the EU set for extending visa-free access for Georgian citizens to travel to the EU. According to the European Commission, the conditions for this have been met, and a final decision by the Council of the European Union on the scrapping of visas for short-term visits is awaited.

Foreign and security policy is a crucial component of EU–Georgian cooperation, given both Georgia’s strategic objective of integration with the EU and the need to counter security threats posed by Russia. Georgia aligns itself on many EU positions adopted in international diplomacy and is one of the most active non-member state partners of the EU in several military missions. The most significant security action by the EU in Georgia so far is its Monitoring Mission

(EUMM) along the occupation lines of the separatist regions of South Ossetia and Abkhazia. This action began in October 2008 after the war with Russia and continues in 2016.

Part II. Deep and Comprehensive Free Trade Area

These chapters are the hard core of the economic content of the Agreement, covering both tariff and non-tariff barriers to trade, with many legally binding obligations undertaken by both parties.

The elimination of tariffs forms the classic basis of a free trade area. Georgia is an exceptional case in that it unilaterally and radically liberalised its external trade policies as early as 2006. With the DCFTA, the EU caught up with Georgia in liberalising its imports and, since 1 September 2014, the two parties enjoy virtually completely tariff-free trade for exports and imports, making the pact unique compared with the other two DCFTAs.

The first year of the DCFTA has seen only a modest growth of exports to the EU. But this compares with massive declines in Georgia's trade with Russia and Ukraine, and so overall there is a major change in trade structure in the direction of the EU. The positive effects of the DCFTA are likely to build up strongly over the medium to long term, since the Georgian economy has already absorbed the adjustment to competitive, open market conditions. Development of export-oriented industries will be facilitated by progressive approximation to the EU's technical standards for industrial and agricultural goods.

Georgia is currently negotiating a free trade agreement with China, and could become a location of choice for Chinese direct investment aimed at exporting to the EU market.

The DCFTA includes key measures to ensure fast, efficient and transparent customs services, and Georgia is advancing well with its legislative and institutional commitments. Georgia implemented significant reforms in customs policy for trade facilitation well before the signature of the Agreement and DCFTA.

Adoption of European technical regulations and standards for industrial and agri-food products is vital for the modernisation and competitiveness of Georgian products. The government has adopted comprehensive strategies and an ambitious programme for industrial standards, thus to eliminate technical barriers to trade (TBTs), as well as food safety with sanitary and phytosanitary (SPS) regulations. These involve ambitious long-term objectives, and Georgia should adopt a gradual and progressive approach so as not to incur undue costs in the short run.

For the service sectors, Georgia's schedule of specific commitments in the WTO is very liberal and leaves little room for further liberalisation. As a result, there is an asymmetry with more liberalisation and fewer reservations on the Georgian than the EU side.

Georgia's public procurement system has undergone significant changes for approximation to EU requirements and international best practice, with some limited gaps in legislative approximation remaining to be addressed. Georgia has had a fully electronic system of procurement in place since 2010, ensuring greater transparency and simplicity, and significantly decreasing administrative costs and corruption.

Georgia's intellectual property rights (IPR) system is mainly in compliance with international best practices, agreements and EU legislation. As one of its priorities in IPR, Georgia has been registering geographical indications and appellations of origin, for example for wines, and has been protecting them internationally.

Georgia recently aligned its competition legislation largely with the key principles of EU competition law. Its Competition Agency is independent and has investigative and decision-making powers.

Part III. Economic Cooperation

The chapters under this heading are numerous, but they range greatly in terms of the extent of legal obligations and their economic importance.

As regards the overall macroeconomic policy, radical reforms starting in 2004 enabled Georgia to achieve impressive results with fast growth and great improvements in its international rankings related to the ease of doing business and perceptions of corruption. But then the economy suffered several adverse economic shocks, first with the 2008 war with Russia, followed by the global financial crisis. However the economy has proved quite resilient. A liberal regulatory system and a diversified economic structure enabled Georgia to recover relatively quickly from the crisis. The EU is supplying significant financial assistance to the country, including macroeconomic loans alongside the IMF, budget grants and major investment from the EIB and EBRD.

Georgia's financial market is mainly represented by a comparatively well-developed banking sector, while other parts of the financial system are less developed. Most EU legislation is very complex for Georgia to implement. Approximation to EU legislation, if done properly and taking into account local market developments, is

an opportunity for Georgia to ensure a sound and prudent financial system.

Georgia has the ambition to become a transport and logistics hub in the Black Sea–Caucasus–Caspian Sea region, and to fully integrate its infrastructure into the international and regional transport systems. The DCFTA sets out the EU’s detailed regulatory regime for transport by sea, road, rail and inland waterways. For air transport the EU and Georgia concluded a Common Aviation Agreement in 2010. Georgia is well positioned to benefit from the joining up of China’s new Silk Road initiative with the transport networks of the EU.

Georgia’s energy sector has undergone a substantial transformation, establishing a competitive regulatory and tariff system to attract substantial investment and diversify energy supplies for ensuring energy security. Georgia is expected to accede later in 2016 to the Energy Community Treaty, which will entail alignment with EU energy policies. This step will link to a highly ambitious programme of environmental and climate change actions provided under the Agreement, for energy efficiency, air and water quality, and management of waste and dangerous chemicals. These actions will entail significant costs for many businesses, but with predictable long-term health as well as economic benefits.

The broad sector of ICT, embracing the entire body of information and communications technology, is a vital, strategic part of the economic reform and modernisation process in Georgia. The ICT sector has been developing rapidly, notably through exemplary government e-services. The Agreement provides for gradual alignment with basic EU regulatory practices, and the programming for approximation is mostly within three to five years.

Agriculture is a socially important sector for Georgia’s economy, but one that suffered disastrous losses of output and capacity in the first two decades of the post-Soviet period. The current 2015–20 strategy seeks to position the sector on a reform and recovery path. The EU and EIB are funding considerable technical assistance and investment projects.

The fundamental reform of Georgia’s Labour Code began in 2006, which led to the modernisation of labour regulations and the adoption of the major ILO conventions, and more recent reforms in 2013 already implementing the EU’s requirements on key issues of labour law and anti-discrimination. Other domains for legislative approximation under the Agreement include company law, corporate governance and consumer protection.

Since 2004, Georgia has been implementing a set of reforms in the education sector to increase competition and quality in public and private education. These reforms are supported in the Agreement, notably for higher education through the Bologna process, and with the Erasmus+ providing large numbers of Georgian students with exchanges in EU universities.

There are extensive possibilities for Georgian participation in the activities of the many EU agencies and programmes, with the potential to develop institutional capabilities and advance policy reforms. For example, Georgia will become a full participant in the EU's main research funding instrument Horizon 2020. The EU supports Georgian civil society organisations, considering them both a driver for democratic change and a watchdog of the government's activities.

Part IV. Legal and Institutional Provisions

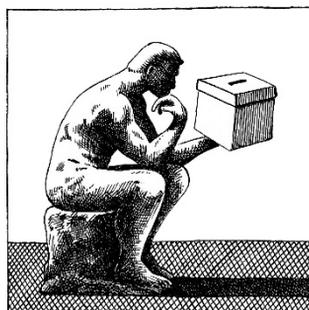
A comprehensive, joint institutional framework will monitor the implementation of the Agreement and provide a platform for political dialogue. The Association Council has a broad competence to amend the annexes of the Agreement, but not the main body of the Agreement. Implementation of the Agreement is supported by well-defined mechanisms for dispute settlement.

PART I.
POLITICAL PRINCIPLES, THE
RULE OF LAW AND FOREIGN
POLICY

1. POLITICAL PRINCIPLES

Provisions of the Agreement

The entire Association Agreement is premised on a common commitment to the modern, democratic political values of the EU, recognising in the preamble that “the common values on which the European Union is built – namely democracy, respect for human rights and fundamental freedoms, and the rule of law – lie also at the heart of political association and economic integration as envisaged in this Agreement”.



These principles are repeated in Art. 2 and declared “essential elements” of the Agreement. This description links up to Art. 419, which provides that in the event of violation of these principles the Agreement may be suspended. Political dialogue and cooperation on “domestic reform” should be conducted with respect for these same principles (Art. 6). This political dialogue is conducted through regular meetings at different ministerial and senior official levels.

On the substantive implementation of the basic principles, the jointly agreed Association Agenda (hereafter the ‘Agenda’) text of 17 November 2014 is more explicit. Priority matters for action include institutional questions on guaranteeing democracy, respect for the rule of law, human rights and fundamental freedoms. These challenges are addressed in considerable detail in the Agenda.

Institutions guaranteeing democracy. Strengthening the institutions is seen as a central element in ensuring the democratic conduct of elections, addressing any shortcomings in the legislative framework and election administration identified by OSCE and ODIHR. In the EU–Georgia Human Rights Dialogue of mid-June 2015,

the EU “called on Georgia to address the recommendations of the OSCE/ODIHR recommendations in good time before elections [in] 2016”.²

In the same vein, constitutional amendments should be subject to comprehensive consultation domestically, while at the same time respecting the roles of the prime minister and the president. There should be adequate checks and balances as the political system undergoes transition from a semi-presidential to a parliamentary system and the decentralisation strategy should be in line with the European Charter of Local Government of the Council of Europe.

Judicial reform. The Association Agenda foresees reform of Georgia’s Criminal Code and Criminal Procedure Code (e.g. the right to a fair trial, independent investigation, and reforms to juvenile justice and plea-bargaining). Furthermore, it calls for the implementation of the 2013 reform of the Prosecutor’s Office, transparency in criminal proceedings and strengthened oversight of law enforcement, revising the rules of administrative detention and conducting capacity-building activities among the judiciary and law enforcement professionals. To those ends, Georgia has committed itself to developing a Judicial Strategy and Action Plan with clear benchmarks.³

Human rights and fundamental freedoms. The expectations about Georgia’s respect for human rights are laid down in the “Georgia in transition” report prepared in 2013 by the former Council of Europe Commissioner for Human Rights Thomas Hammarberg, who advised the government. This includes ensuring respect for rights of the most vulnerable groups and national minorities, in conformity with the Framework Convention of the Council of Europe for the protection of national minorities, the ratification and transposition of the UN Convention on Statelessness and the Council of Europe recommendations on the European Charter for Regional or Minority Languages. The Agenda also calls for guaranteeing the effective implementation of judgments of the European Court of Human Rights, promoting awareness of anti-discrimination in the judiciary,

² See the Press Release on “EU–Georgia Human Rights Dialogue”, European External Action Service, Tbilisi, 15 June 2015 (http://eeas.europa.eu/statements-eeas/2015/150615_01_en.htm).

³ See the Press Release on “Improving access to Justice, and promoting Human Rights: The European Union supports Georgia with an ambitious €60 million programme”, European External Action Service, Tbilisi, 14 May 2015 (http://eeas.europa.eu/delegations/georgia/documents/news/2015/20150514_01_en.pdf).

administration and law enforcement bodies, and including civil society as watchdogs in the process. The Agenda pays specific attention to combating the ill treatment and torture of human beings through updating and implementing the National Strategy and Action Plan, as well as strengthening monitoring of the penitentiary system, police and military by both internal and external bodies.

Developments in Georgia

Constitutional. The constitution of Georgia is that of a young democracy, with only two decades of experience since the 1995 constitution established the foundations of a modern democratic system. Against the background of post-Soviet turbulence, a civil war, ethno-political tensions and the transformation from a totalitarian to a democratic system of governance, the process could hardly be a smooth one, and the constitution has been amended numerous times.

The 1995 constitution established three branches of government: legislative, executive and judicial. The first major change was introduced in 2004, as a result of which the power of the president increased, and the political and legislative authority of the parliament considerably decreased. At the same time, the amendments of 2004 separated the judiciary from the function of the prosecutor.

Six years later, in 2010 another wave of constitutional amendments took place, with a change from a presidential to a semi-parliamentary system, which came into force after the 2013 presidential elections. In line with these amendments, the power of the prime minister and the government significantly increased, while both became accountable to the parliament.

The process of constitutional reform has improved over time. In contrast to earlier years, the amendments have been widely debated with a greater engagement of civil society and close cooperation with the Venice Commission, especially as almost all of its recommendations have been adopted.

Over 2015–16, the parliament has been working on further amendments to strengthen constitutional stability, increase the independence of constitutional institutions (among them the judiciary) and ensure stronger guarantees of human rights protection, including the rights of minorities. To this end, a State Commission for Constitutional Reform has been established.

One of the remaining challenges lies in the overlapping powers and interinstitutional tensions between the president and prime

minister, which is related to the governing style of the current government rather than the constitutional set-up. This is further aggravated by the continuing overt influence of former Prime Minister Bidzina Ivanishvili over the political processes in the country.

Overall, notwithstanding these persistent challenges, Georgia continues to progress in consolidating democratic governance and stronger state institutions.

Judicial. The constitution establishes a legal basis for an independent judiciary that is free from political influence. Nevertheless, the judiciary has been the object of criticism for years. While the previous government succeeded in substantially reducing corruption, and in establishing institutional effectiveness and better infrastructure, the lack of political independence of the judicial system, including the Prosecutor's Office, remained to be addressed. The government, both the previous and the incumbent one, has been carrying out intensive reforms in this direction, yet the judicial system is still not fully up to international standards and best practices. The continuation of reforms is required.

Building on the progress achieved and taking into account the criticisms voiced, in 2012 the newly elected government prioritised judicial reforms and opted for making the judicial system considerably more transparent and independent than it had been in preceding years. Consequently, a new wave of judicial reforms was launched. The reforms involved changes in the composition of the High Council of Justice (HCoJ), replacing members of parliament with representatives of civil society and academia. Under the new law, the judicial, legislative and executive branches of government share the authority to elect/appoint new members of the HCoJ. In the Council of fifteen members, eight are elected by judges, five by the parliament and one is appointed by the president. Although the Venice Commission has questioned the timing and urgency of terminating the term of sitting members of the HCoJ, the reform has been largely considered positive.

In 2014, a competition-based recruitment of judges was introduced, who after a successful probation period are offered life tenure. The reform also envisaged developing objective criteria for their appraisal. Since 2013, court sessions have become more open and transparent.

Another significant step forward has been the attempt to ensure the internal independence of judges within their institutions. The reform package introduced in 2013 gives judges more flexibility and discretion in applying sanctions, in cases of an accumulation of crimes.

To further guarantee independence from political influence, a random electronic distribution of cases was introduced in 2015 with the objective of ensuring independent, impartial, transparent and effective legal proceedings.

Despite these substantial legislative amendments, concerns over the political bias of the judiciary and Prosecutor's Office are still voiced by civil society and international organisations. Criticisms are mostly related to cases of prosecution of political opponents, this being a declared priority of the Georgian Dream governing coalition. Since the Georgian Dream came to power, more than 30 members of the previous government have been charged with criminal offences, and 14 have been arrested or put into pre-trial detention. Yet no criminal charges have been brought against any United National Movement (UNM) party members who have switched parties since 2012. In some cases, investigations stopped altogether after the individuals changed their party allegiance and left the UNM. Political statements by government officials disregard the presumption of innocence in labelling the UNM members as criminals. The impartiality of the judiciary has also been seriously questioned in the case of the Rustavi 2 television channel, one of the strongest and most critical broadcasters, and also with respect to the trial against five former defence ministry and general staff officials in the so-called 'cable case'.

The success of judicial reform also rests heavily on reforming the Prosecutor's Office, which has been persistently criticised for political bias. In 2015, in line with the requirements of the Association Agreement, the government approved a package of legislative amendments to the Law on the Prosecutor's Office. The law aimed at establishing a depoliticised and independent Prosecutor's Office, and thus implied a new rule for the selection/appointment and dismissal of the prosecutor general. Although the prime minister no longer appoints the prosecutor general, the ruling party retains the power to select the desirable candidate. A key concern is the role of the minister of justice in the selection process and the lack of merit-based professional criteria.

Human rights. As a member of the Council of Europe alongside all EU member states, Georgia adheres to the European Convention on Human Rights and Fundamental Freedoms, and is bound by the rulings of the Strasbourg Court. Respect for these norms are "essential elements" of the Association Agreement, the violation of which could (as noted above) lead to the suspension of the Agreement.

Whereas Georgia's human rights record is generally respectable, concerns do remain. They are set out in detail in the Agenda. The implementation of judgments rendered by the European Court of Human Rights is one of them. Georgia also needs to fight against discrimination and torture, protect the rights of minorities and ensure freedom of religion.

Organisations like Human Rights Watch, Freedom House and local advocacy groups⁴ criticise the government for its lack of accountability for abuses by law enforcement officials, and the absence of an independent and effective mechanism for investigating crimes committed by such officials.⁵ Investigations into past abuses remain problematic. The EU has spoken out on more than one occasion against the practices of selective justice and the political nature of prosecutions, for instance against former President Mikheil Saakashvili and members of the opposition. The case of Gigi Ugulava, the former mayor of Tbilisi who was held in pre-trial detention for more than nine months, has caused particular worries about the respect for constitutional rights.

Whereas the constitution protects media freedom and Georgia has the most progressive legislation and free press in the region,⁶ alarms were raised by local NGOs and international political commentators about practices curbing the freedom of expression as a result of court proceedings brought in 2015 against the popular Rustavi 2 TV station, which has been critical of the government. According to Amnesty International, a lawsuit by a former shareholder of Rustavi 2 against its current owners was prompted by the government in order to deprive the opposition of its main mouthpiece.⁷ Adherence to the freedom of expression and the independence of the judiciary remains closely watched in the run-up to parliamentary elections in October 2016.

Adoption of the National Human Rights Strategy 2014–20, and the consequent Action Plan, have generally been welcomed as positive

⁴ Among these groups are the Human Rights Centre and Global Young Leaders Academy.

⁵ See Human Rights Watch (www.hrw.org/europe/central-asia/georgia).

⁶ See Freedom House, "Freedom of the Press 2015", Washington, D.C., April 2015 (https://freedomhouse.org/sites/default/files/FreedomofthePress_2015_FINAL.pdf).

⁷ See Amnesty International, "Annual Report Georgia 2015/2016", London, 2016 (www.amnesty.org/en/countries/europe-and-central-asia/georgia/report-georgia/).

steps, especially because they were elaborated in an inclusive manner. The documents incorporate recommendations from the Ombudsman's Office, the UN Office of the High Commissioner for Human Rights, national and international human rights NGOs, and the country report by Thomas Hammarberg, then in his capacity as EU special adviser on legal reform and human rights in Georgia. However, concerns remain given that most of the progress has been made at the legislative level, while implementation lags behind.

For instance, the Georgian parliament adopted an anti-discrimination bill, as part of the EU–Georgia Visa Liberalisation Action Plan, with an overwhelming majority in 2013. The draft bill would have introduced the independent institution of an inspector for equality protection, which was considered by the OSCE/ODIHR to be a real attempt to address all forms of discrimination. Yet, as a result of a harsh debate and the radical stance of the Orthodox Church, the law, in its current form, does not envisage any effective, law-binding mechanism to monitor and control the elimination of discrimination. Instead, the public defender's office is in charge of taking anti-discrimination measures. According to reports, human rights violations of religious minorities and the LGBT community are still grave. The Human Rights Centre has criticised the government for its inadequate response to acts of violence against minorities.⁸ A similar picture emerges from the annual report of the public defender, which flags up several cases of the ill treatment of inmates, despite the adoption of a new Law on Penitentiary Service and amendments to several legislative acts, including the Detention Code in 2015.⁹

In May 2015, the Inter-Agency Coordination Council approved the 2015–16 Action Plan on the fight against torture, inhuman, cruel and humiliating treatment or punishment, which was elaborated on the basis of the National Human Rights Strategy (2014–20). In 2015, the government began implementation of the Istanbul Protocol (UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), which provides comprehensive and practical guidelines for the investigation and documentation of torture. Nonetheless, fact-based allegations against the police for cases of human torture persist and are not duly investigated.

⁸ See Human Rights Center, "State of Human Rights in Georgia", Annual Report, Tbilisi.

⁹ See Human Rights Watch, "Country summary", New York, NY, January 2015.

There has been significant progress in addressing the issues of ethnic minorities over the last decade. A set of legislative measures, targeted policies and financial investment has improved the conditions for the integration of ethnic minorities in public and political life. Despite years of long programmes aimed at improving the use of the state language by ethnic minorities, this remains a challenge and requires further efforts. Georgia is participating in the UN process for a 'Universal Periodic Review' of human rights, and has implemented most of the recommendations addressed to it as a result.

Georgia still has not managed to find consensus on ratification of the European Charter for Regional or Minority Languages, which is an outstanding obligation towards the Council of Europe undertaken in 1999.

The government has consistently issued statements about the grave human rights situation in the occupied regions of Abkhazia and Tskhinvali (South Ossetia), and has persistently requested the access of the OSCE/ODIHR and international human rights organisations to the occupied territories, so far without results.

Gender equality. Women's rights and gender equality have been placed high on the government's agenda, especially after a spate of murders in 2014 in which at least 23 women died in cases of domestic violence. The president of Georgia declared 2015 a year of women. Already the constitution upholds the principle of equal rights for men and women, and in 2010 a Gender Equality Law was enacted. The law enhances women's security and aims at strengthening women's political participation. The law also outlines the unacceptability of discrimination on the basis of gender and includes the principle of equality established by the UN Convention on the Elimination of all Forms of Discrimination against Women. In 2014, Georgia harmonised its domestic legislation with the Istanbul Convention. A first legislative package – which introduces, among others, 'forced marriage' as a criminal offence – has been finalised. A second package of legislative amendments is in the pipeline.

Notwithstanding these legislative provisions for gender equality, achieving it in practice remains a serious challenge. The government established an Inter-Ministerial Commission on Gender Equality and Empowerment in order to boost gender equality in the country and encourage women's empowerment. But the economic empowerment of women has yet to occur, especially in rural areas, among internally displaced women and among women affected by conflict.

Domestic violence has been a major concern in the country. The government has pursued an active awareness-raising campaign that has substantially altered public perceptions of domestic violence (whereas in 2009, 79% of the population thought that domestic violence was a ‘family’ matter, by 2015 this had been reduced to 25%). And yet, the practice of early marriages continues to be an issue in certain regions of Georgia.

Local governance. A new Local Self-Government Code has been one of the significant actions of the government for strengthening local government as part of a decentralisation process, and for increasing the participation of local communities in local policy-making. Among other initiatives, the Code has increased the number of cities (by seven) that have the status of local government. Unlike previously, when only the mayor of Tbilisi was directly elected, in 2014 citizens were empowered to directly elect mayors in 12 major cities and the chairpersons of 59 municipalities (outside the 12 major cities). Moreover, due to amendments to the election law, a minimal threshold for electing mayors and heads of municipalities (*gamgebelis*) was increased from 30 to 50%. The government also put a particular emphasis on ensuring multiparty representation, with the introduction of a minimum threshold of 4% for proportional, party-list elections. In most city councils (*sakrebulos*), the number of party-list seats has been increased, and new mechanisms for additional state funding for political parties have been introduced. These initiatives have been important steps in the decentralisation process, and for encouraging the participation of local communities in decision-making. Nevertheless, the new Code has revealed a number of gaps when applied in practice. One of the key challenges is the lack of communication between local populations and the authorities.

Political principles at a glance

Democracy, respect for human rights and the rule of law are deemed “essential elements” of the Association Agreement, but are not detailed in the text. The Association Agenda text, however, is more substantial on these matters.

As a young democracy, Georgia has progressed in establishing stronger democratic institutions.

Georgia continues its wide-ranging reforms in the judicial system, although concerns remain with respect to selective justice, freedom of the media and the independence of courts.

Georgia's human rights record has improved since the Rose Revolution. A greater degree of improvement is seen at the legislative level, with practical implementation to be further improved.

Adoption of an Anti-Discrimination Law marks significant progress in the protection of minority rights in Georgia. Actual implementation of the law will be a next important step in this direction.

2. RULE OF LAW AND MOVEMENT OF PEOPLE



This chapter deals with several related issues, notably the fight against organised crime, corruption and terrorism, and policies for border management and the movement of persons, including the crucial issue of visa-free travel between Georgia and the EU.

The fight against crime, corruption and terrorism

Even if only a handful of provisions in the Association Agreement mention combating corruption *expressis verbis* (e.g. Arts 4, 17, and Title VII on anti-fraud), the principal idea is mainstreamed across the whole text in many specific provisions; for instance over public procurement rules, competition policies and state aids, and intellectual property rights, among others.

Georgia's fight against corruption has improved dramatically since the Rose Revolution of 2003. The government has strengthened the anti-corruption institutional framework, created an online state procurement system and an online financial declarations system for public officials (based on the principle of 'everybody sees and knows everything'), and developed e-treasury and e-budget programmes. Most government services are delivered electronically, based on a principle of 'silence is consent', which minimises risks of corruption and leaves little room for corrupt practices by service-issuing entities. In general, the government has carried out significant legislative reforms, thereby establishing a solid ground for the prosecution of corruption-related crimes. Georgia has demonstrated steady progress in its fight against corruption for over a decade now, and the

government is intensifying efforts in this field. Its development of innovative solutions for public procurement and public service delivery won Georgia accolades and UN awards in 2012.

The 2015 Transparency International Index ranked Georgia 48th out of a total of 168 countries, higher than several EU member states (e.g. Bulgaria, Greece, Italy and Romania, in joint 69th place). The 2014 Business Bribery Risk index by Trace International ranks Georgia 11th out of 197 countries, ahead of Norway, the Netherlands, France, Switzerland, the UK and Austria.¹⁰ According to the 2013 Global Corruption Barometer Survey, only 4% reported paying a bribe.¹¹ The 2015 the World Justice Project Rule of Law Index identifies Georgia as the strongest overall rule of law performer in Eastern Europe and Central Asia, holding 1st place in the 'absence of corruption'¹² dimension.

With the Association Agreement, Georgia committed itself to carrying on its public administration reform and building an accountable, transparent and professional civil service. This reform drive is also pushed by civil society organisations. In 2011, Transparency International Georgia (TIG) stressed the lack of a verification system for asset declarations as a major gap in its earlier National Integrity System assessment. In 2014, the Georgian government began working on the introduction of such a system. At the same time, the Georgian parliament also adopted TIG's recommendation regarding local government, and expanded the list of local government officials who are required to file asset declarations.¹³ In 2015, amendments to the law on the "Conflict of Interests and Corruption in Public Service" were approved by parliament. In addition, a draft Code of Ethics was drawn up and an Automated Human Resources Management System was implemented in 18 ministries.¹⁴

¹⁰ See www.traceinternational.org/trace-matrix/. Business interactions with government and government service transparency are assessed as the lowest corruption risk domains in the country.

¹¹ See www.transparency.org/gcb2013/country/?country=georgia.

¹² See <http://worldjusticeproject.org/rule-of-law-index>.

¹³ Transparency International, "The State of Corruption: Armenia, Azerbaijan, Georgia, Moldova, Ukraine".

¹⁴ See www.eu-nato.gov.ge/sites/default/files/AA%20NAP%202015%20Summary.pdf.

In April 2015, the government approved and updated an Anti-Corruption Strategy and the new Anti-Corruption Action Plan for 2015–16, along with a monitoring methodology for their implementation. According to evaluations by the Council of Europe and OECD, Georgia has implemented all but one of the 15 recommendations issued to it by these organisations.¹⁵ Further steps taken in 2015 include the adoption of legislative amendments for the launch in 2017 of a verification system for asset declarations of public officials, and higher protection for whistle-blowers. Meanwhile, TIG has outlined an array of important issues yet to be addressed, regarding informal influence over public institutions, the establishment of an independent anti-corruption body to prevent high-level corruption, de-politicising the civil service, and a transparent recruitment and dismissal process in the civil service to exclude politically motivated decisions and nepotism.¹⁶

Movement of persons and border management

The Association Agreement sets the stage for a comprehensive dialogue and cooperation on legal migration, the trafficking and smuggling of people, border management, asylum and return policies, and the mobility of persons, including visa-free travel with the EU.

The Agreement itself only deals with the movement of persons in summary terms, but the Visa Liberalisation Action Plan (VLAP) goes into much more detail. The Agreement confirms that Georgia is required to fully implement the ‘visa facilitation’ and ‘readmission’ agreements and take gradual steps on the road to ‘visa liberalisation’ (i.e. a visa-free travel regime). The VLAP has four blocks of requirements, concerning i) document security, including biometric passports; ii) integrated border management, migration management and asylum; iii) public order and security; and iv) external relations and fundamental rights. In December 2015 the European Commission published its latest progress report on VLAP implementation, highlighting the significant headway made by Georgia in meeting the criteria for visa liberalisation, with the following conclusion: “Following the positive assessment of the progress report and taking into account the overall EU–Georgia relations, the Commission will

¹⁵ See www.eu-nato.gov.ge/sites/default/files/AA%20NAP%202015%20Summary.pdf.

¹⁶ See www.transparency.ge/en/node/5749.

present in early 2016 a legislative proposal to the Council and the European Parliament to lift visa requirements for Georgian citizens holding a biometric passport".¹⁷

Consequently, on 9 March 2016, the European Commission proposed to the Council of the European Union and the European Parliament to lift visa requirements for citizens of Georgia. Once the decision is made by the Council and the European Parliament, citizens of Georgia who hold biometric passports will be able to travel visa-free in the Schengen area and four Schengen associated countries. At the time of writing the final decision is awaited.

More broadly, a number of significant changes have been introduced to the migration-related legislation since the Rose Revolution, when the country launched an open door policy to ensure liberal access. As a result, foreign citizens of around 100 countries no longer need a visa or work permit for stays of up to one year. Since then, and particularly in the last five years, Georgia's migration policy has seen substantial progress.¹⁸ Apart from advances under the VLAP, migration management structures and a coordinating agency were established, and migration-related policies streamlined.¹⁹

In December 2015, the government approved the 2016–20 Migration Strategy and its Action Plan for the period 2016–17, which succeeded the 2013–15 Strategy. A Unified Migration Analytical System²⁰ has been introduced, which collects data from various government agencies on migration, emigration and internal migration. Such a unified database helps it identify and forecast risks, as well as apply suitable measures in line with the EU standards. As a result, the government is well equipped to manage migration in a comprehensive manner, as required by the VLAP.²¹

¹⁷ See http://europa.eu/rapid/press-release_IP-15-6368_en.htm.

¹⁸ The State of Migration in Georgia, Report developed in the framework of the EU-funded Enhancing Georgia's Migration Management project, see http://migration.commission.ge/files/enigma-state-of-migration_e_version.pdf.

¹⁹ Ibid.

²⁰ To be tested by mid-2016.

²¹ Report from the Commission to the European Parliament and the Council (http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/fourth_report_georgia_implementation_action_plan_visa_liberalisation_en.pdf).

The government also introduced an electronic database of asylum seekers, refugees and persons with humanitarian status. Indicators have been elaborated to monitor decision-making on asylum applications,²² facilitating the decision-making process to grant or deny asylum. Asylum conditions, decision processing and flow for immigrants have largely been improved.²³

Georgia continues its fight against trafficking in human beings. Apart from preventive and investigative measures, improved shelters are being established for victims of violence, including children. Another major step has been the establishment of a Labour Conditions Inspection Department, which has been functional since 2015.²⁴

The readmission of people apprehended in the EU without authorisation continues smoothly; the government has allocated financial and human resources to pursue this readmission policy.

In Georgia, as elsewhere, visa-free travel is seen as a tangible instrument to mobilise support for the process of closer political association with the EU. Visa-free travel will provide an opportunity for business people to learn from best practices, explore the market, conclude business relations with their counterparts throughout Europe, attract investment and compete on equal terms. Visa liberalisation will make Georgia a more attractive destination for European travel agencies and airlines. It can also be expected to boost cooperation in science and culture, and provide better opportunities for students. The decision to grant visa-free travel to Georgian citizens will also be one of the most effective tools to counteract the Russian propaganda machine. First-hand experience of the benefits associated with the EU will enhance support for reforms at the grassroots level.

In political terms, visa-free travel will enhance Georgia's endeavours to re-establish ties with citizens in the occupied territories. Georgia has declared its readiness to share the benefits of European integration and offer integration, not isolation, to its citizens in these territories. It is notable that following Moldova's visa liberalisation with the EU, many citizens in Transnistria have been taking up Moldovan passports.

²² See www.eu-nato.gov.ge/sites/default/files/AA%20NAP%202015%20Summary.pdf.

²³ State Commission on Migration operates a web-page that offers comprehensive information at <http://migration.commission.ge/>

²⁴ Ibid.

Rule of law and movement of people at a glance

Georgia continues to be a leading country in the fight against corruption and remains committed to reforms in this direction, which is crucial for the overall success of the Association Agreement and for Georgia's economic future.

Georgia's objective to obtain visa-free access for its citizens to travel to the EU is of the highest political and practical importance. According to the European Commission, the conditions for this have been met, and a final decision is awaited.

3. FOREIGN AND SECURITY POLICY



The Association Agreement seeks to facilitate the gradual convergence of Georgia's foreign, security and defence policies with those of the EU at bilateral, regional and multilateral levels. These include areas covered by the EU's Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).

The CFSP encompasses issues related to the strategic interests and external objectives of the EU, the joint actions and common positions adopted by the Union and the procedures for taking these actions and positions.

The CSDP covers a wide range of activities, including humanitarian, conflict prevention and peacekeeping tasks, intervention by combat forces in crisis management and post-conflict stabilisation.

In general terms, the Agreement reaffirms the parties' commitment to the international canons of sovereignty, territorial integrity and the inviolability of borders in accordance with the Charter of the United Nations and the Helsinki Final Act of 1975.

Georgia has been aligning its positions with many CFSP declarations since 2011 on a voluntary basis, having joined 47% of the CFSP declarations in 2014. In 2015, Georgia joined 221 statements released by the EU in conjunction with different international organisations.

Georgia's priorities. In view of the grave security challenges posed by Russia in the post-Soviet space, and particularly the EU Association Agreements signed by Georgia, Moldova and Ukraine, Georgia stresses the need for a more robust, strategic EU engagement in its neighbourhood.

Georgia regards Russia's recent aggression in Ukraine as part of a strategy that draws parallels with the Russian–Georgian War of 2008. Georgia is highly interested in Ukraine's integration into Western institutions. At the same time, the strategy of the Georgian Dream government is to normalise relations with Russia. To this end, the government has tried to keep a low profile on sensitive issues with Russia, including the international sanctions. Although Georgia joined the EU's policy of non-recognition of Russia's annexation of Crimea, the government has refrained from participating in the sanctions imposed by the EU and the US against Russia over its destabilisation in Donbas – a position that is controversial among Georgian public opinion.

Georgia continues to participate actively in Western security operations. Thanks to their high degree of interoperability, the Georgian armed forces have been providing significant contributions to both NATO (in Kosovo, Iraq and Afghanistan)²⁵ and EU-led peace support operations.

Participation in CSDP missions and the development of related national capabilities are among the priorities of the government. Since signing and ratifying the Framework Participation Agreement with the EU in November 2013, Georgia has adopted the necessary by-laws to allow for its personnel to participate in CSDP missions. The legislation is currently being revised for further improvement.

The Office of State Security and Crisis Management Council, under the Office of the Prime Minister, coordinates all matters concerning the participation of Georgia in EU civilian missions and related activities (training and so forth), while deployments to EU military operations are managed by the Ministry of Defence. The Ministry of Defence actively cooperates with the European External Action Service within the framework of the Georgia–EU Staff Work

²⁵ Georgia has become the fourth non-member state to be a member of the NATO Response Force. Georgia was one of the largest non-NATO troop contributors to the International Security Assistance Force, which completed its mission in Afghanistan in December 2014. It is currently one of the top overall contributors to the follow-on NATO-led mission (Resolute Support) to train, advise and assist the Afghan forces. Georgia continues to provide transit for supplies destined for forces deployed in Afghanistan. The Georgian government has also pledged financial support for the further development of the Afghan National Security Forces (www.nato.int/cps/en/natohq/topics_38988.htm?selectedLocale=en).

Plan on CSDP affairs, which implies deepening CSDP cooperation. The plan was elaborated in 2014 and updated in 2015.

Adjustments to the planning process for participation in military CSDP operations are currently being considered to ensure swifter crisis-response capabilities. Georgia is also working to strengthen its civilian contribution to CSDP missions. Taking into consideration the diversity of the CSDP tasks and accumulated experience, the government aims at establishing a pool of trained civilian candidates ready to be deployed whenever required. In 2015, Georgia deployed a representative to the EU Advisory Mission in Ukraine.

Conflict diplomacy. Georgia and the EU are committed to working together for the peaceful resolution of regional conflicts. The Agreement restates the need for a peaceful and sustainable resolution of conflicts with respect for Georgia's territorial integrity and sovereignty, as well as for post-conflict reconciliation and rehabilitation (e.g. the return of displaced persons). The Agreement also recognises the need to fulfil the obligations of the Six-Point Agreement of 12 August 2008 brokered by then French President Nicolas Sarkozy in stopping the war with Russia and the decisions adopted in the framework of the Geneva International Discussions (co-chaired by the OSCE, the EU and the UN). The Association Agenda foresees regular EU–Georgia bilateral consultations on the breakaway regions of Abkhazia and South Ossetia, and encourages trade, travel and investment across the administrative lines.

CSDP mission in Georgia. Immediately following the Six-Point Agreement, on 1 October 2008 the EU launched the EU Monitoring Mission in Georgia (EUMM), which has been successively extended so far until the end of 2016. The goal of the EUMM is to observe compliance by Russia and Georgia of the Six-Point Agreement, and crucially to prevent a renewal of hostilities. It further seeks to improve the security environment through its presence as a stabilising force and to create conditions for civilians to cross the occupation lines. EUMM consists of around 200 unarmed monitors from the EU member states. The mission patrols areas adjacent to the South Ossetian and Abkhazian occupation lines.

Although the EUMM is mandated to be present in the whole territory of Georgia, the de facto authorities of Abkhazia and South Ossetia have thus far denied the monitors access to the territories under their control. Worse, after Russia recognised the independence of South Ossetia following the 2008 war, the Russian-backed security forces of South Ossetia have been pushing the occupation line deeper into

Georgian-controlled territory, which the EUMM could not prevent. In July 2015, the occupation line was moved to within 500 metres of Georgia's E60 motorway, which is the main road linking Tbilisi to the Black Sea coast. The new fence also places a 1.6 kilometre segment of the BP-operated Baku–Supsa pipeline inside the occupied territory. Although the EUMM has continued to be denied access to the occupied regions despite Georgia's insistence, it remains the only international monitoring and reporting mechanism on the ground.

Georgia in EU CSDP operations. Under the Agreement, Georgia and the EU have committed themselves to enhancing their cooperation in crisis management, and in particular Georgia's participation in EU-led crisis management or training missions conducted under the CSDP. It contributes to the Immediate Reaction Team of the EU's Military Advisory Mission in the Central African Republic with 241 personnel, and to the EU Training Mission in Mali. Georgia's role in the former mission was acknowledged by European Council President Donald Tusk: "Georgia's participation, as the second largest contingent in the operation, has been essential to its success... Together, we are achieving something very important in a spirit of both global and European solidarity and cooperation."²⁶ As mentioned above, in 2015, Georgia deployed a representative to the EU Advisory Mission in Ukraine. The EU acknowledges Georgia as one of the most active non-member state partners in the CSDP.

International Criminal Court. The Association Agreement reaffirms that the prosecution of acts of genocide, war crimes and crimes against humanity should take place at both the national and international levels. To this end, the Agreement promotes the implementation of the 1998 Rome Statute on the International Criminal Court. The EU–Georgian Association Agenda stipulates cooperation with the Court for investigations into the 2008 war.

Weapons of mass destruction and disarmament. Georgia and the EU have agreed to advance the non-proliferation of weapons of mass destruction through the ratification and implementation of the relevant international instruments. Their cooperation efforts aim at effectively controlling and combating the illegal arms trade (in line with the Council of the European Union's Common Position 2008/944/CFSP) and international terrorism (in line with, inter alia, the framework of UN Security Resolution 1373 of 2001).

²⁶ See "Meeting with Georgian troops deployed under the EUFOR CAR CSDP Mission" (<http://tvnewsroom.consilium.europa.eu/video/shotlist/meeting-with-georgian-troops-deployed-under-the-eufor-car-csdp-mission>).

Foreign and security policy at a glance

Foreign and security policy is a crucial component of EU–Georgia cooperation, given both Georgia’s strategic objective of EU integration and the need to counter security threats posed by Russia.

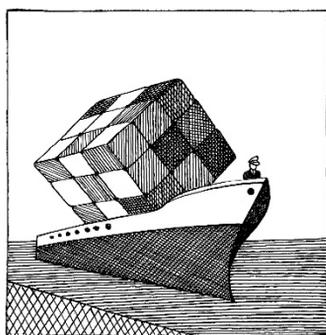
Since 2011, Georgia has aligned itself with many EU positions adopted in international diplomacy.

The most significant security action by the EU in Georgia so far is its Monitoring Mission (the EUMM) along the occupation lines of the separatist South Ossetian and Abkhazian regions, which began in October 2008 after the war with Russia and has continued since then.

Georgia participates in several CSDP military missions, notably in the Central African Republic and Mali, and in a civilian mission in Ukraine. In this regard, it is one of the most active, non-member state partners of the EU.

PART II.
DEEP AND COMPREHENSIVE
FREE TRADE AREA

4. MARKET ACCESS FOR GOODS



Tariff liberalisation is the basic starting point for creating a free trade area. Georgia is an exceptional case in that it unilaterally and radically liberalised its external trade policies back in 2006. Since the start of the provisional application of the DCFTA on 1 September 2014, the EU has caught up and completed the free trade area with its own tariff liberalisation for imports from Georgia.

Provisions of the Agreement

The DCFTA has established a free trade area for trade in goods as part of the EU–Georgia Association Agreement, with provisional application since 1 September 2014.

Both parties have thus abolished import duties for almost all products. Unlike the DCFTAs with Moldova and Ukraine, the Agreement with Georgia does not include transitional periods for the elimination of import duties. That is because of the liberal reforms undertaken earlier by Mikheil Saakashvili's administration, which in 2006 eliminated import tariffs for most products, making Georgia's applied most favoured nation (MFN) WTO tariff rate – at 1.5% – one of the lowest worldwide. Quantitative restrictions on imports and exports are also prohibited by the DCFTA, except if allowed by the relevant WTO rules (i.e. Art. XI GATT).

The DCFTA only sees three limited exceptions to the full liberalisation of trade in goods, all in the area of agricultural products. First, the EU will still apply an annual tariff rate quota on just one agricultural product (which is not a major one), namely garlic. Georgia

may export annually 220 tonnes of garlic to the EU tariff-free. The EU's MFN customs duty rate shall apply to imports exceeding the limit of the tariff rate quota.

Second, certain types of fruits and vegetables are subject to an 'entry price' system for imports into the EU (e.g. tomatoes, courgettes and peaches). Under the entry price system, customs duty is composed of two parts: *ad valorem* duty and specific duty. Through the DCFTA, the *ad valorem* duty, expressed as a percentage of customs value, is abolished. The specific duty, expressed in €/100kg, depends on the extent, if any, to which the customs value (invoice price) of the product imported into the EU is below a certain entry price defined by the EU. The level of the specific duty is zero when the customs value of the product is equal to or higher than the entry price. In practice, it seems that in most cases products imported from Georgia will not be subject to the specific duty, as their customs value will be higher than the entry price.

Third, for trade in most (processed) agricultural products, listed in Annex II-C, an "anti-circumvention mechanism" is foreseen. This Annex defines for each category of these products an average annual volume of imports (i.e. a 'trigger level'). If imports from Georgia into the EU reach 70% of this trigger level in a given year, the EU must notify Georgia about the volume of imports of the products concerned. When 80% of the trigger volume is reached, Georgia can provide the EU with a sound justification that it has the capacity to produce the products or exports to the EU in excess of the volumes set out. In that case Georgia can export to the EU products in excess of the trigger levels free of customs duty. This provision thus does not restrict Georgian exports, but is a safeguard against supplies from third countries passing fraudulently as Georgian products.

The DCFTA also prohibits export duties and includes a standstill clause stating that neither party may increase any existing customs duty or adopt any new customs duty on goods originating in the territory of the other party.

Rules of origin. These are laid down in Protocol I of the Association Agreement. Rules of origin determine when products have been wholly produced in the territory of one of the parties, or when they have been "sufficiently worked or processed" in order to obtain a "certificate [of origin] EUR.1". An annex to the protocol defines four criteria for 'sufficient processing' for each product: i) a change of tariff heading (e.g. a screw will be deemed as originating in Georgia if it is made from imported steel, which is a different tariff heading); ii) a

minimum value added (e.g. for passenger cars, the value of all the non-originating materials used to manufacture the car may not exceed 40% of the total value of the product); iii) specific processing or working requirements determined product by product; or iv) a combination of the first three requirements.

It is important to note that Art. 3 of this protocol envisages ‘diagonal cumulation’ with Turkey for industrial products, given that Georgia now has a free trade regime with both the EU and Turkey. This means that a producer in Georgia may manufacture a product from materials imported from Turkey and export this product to the EU as a ‘Georgian product’, provided that more than the minimal processing requirements took place in Georgia and Turkey taken together. However, before this diagonal cumulation is applicable, Georgia and Turkey first have to amend their bilateral free trade agreement (FTA) to align it with the EU’s system of rules of origin. Moreover, in the DCFTA Georgia has made a commitment to join the Regional Convention on Pan-Euro-Mediterranean (PEM) preferential rules of origin. The PEM Convention allows a much wider scope for diagonal cumulation between the EU, Turkey and the countries of the European Free Trade Association (EFTA), the Mediterranean European Neighbourhood Policy and Western Balkans, providing that FTAs are in place, including protocols on rules of origin consisting of identical rules (i.e. as in the PEM protocol on rules of origin).

Implications for Georgia

As already noted, before concluding the EU–Georgia DCFTA, Georgia had and continues to have one of the most liberal foreign trade policies in the world, with zero or low import tariffs, minimal non-tariff regulations and customs procedures facilitating trade. Since 2006, Georgia has undertaken a number of reform initiatives seeking to further streamline, liberalise and simplify trade regulations and their implementation. As a result, today 84% of goods are free from customs duties. Following this unilateral liberalisation of tariffs, imports into Georgia have increased substantially, alongside increased inflows of foreign direct investment, accounting for a large portion of the imports.

Today Georgia enjoys free trade with markets extending across a population of over 800 million, including the EU, the CIS and Turkey. Negotiations on a free trade agreement with EFTA countries were concluded in February 2016 and the agreement was signed in June 2016. Also, in 2016 Georgia opened negotiations with China, with a view to concluding an FTA within a year.

As regards the likely impact of the DCFTA, there have been several model-based studies. The latest one, conducted by the European think tanks Ecorys and Case (2012),²⁷ concluded that in the short term the DCFTA would increase Georgia's exports to the EU by 9%. Yet after the first year of its provisional application, the situation was somewhat different. Georgia's exports to the EU in 2015 did increase, but only by 4% (see Table 4.1). Still, this figure is relatively favourable compared with the massive decline in total Georgian exports worldwide by 23%. One of the reasons for such a sharp decrease is the economic crisis in the CIS region, especially Ukraine and Russia. In addition, the significant devaluation of the Georgian lari, coinciding with the provisional application of the DCFTA, makes it difficult to analyse the real impact of the DCFTA's application on Georgia's trade.

Table 4.1 Trade turnover between Georgia & EU countries (\$ mn), 2008–15

Year	2008	2009	2010	2011	2012	2013	2014	2015
Total turnover	7,796	5,633	6,934	9,225	10,413	10,921	11,454	9,933
Turnover	2,099	1,578	1,780	2,476	2,781	2,870	2,993	3,165
Growth (%)	16.2	-24.8	12.8	39.1	12.3	3.2	4.3	6
Share (%)	26.9	28	25.7	26.8	26.7	26.3	26.1	32
Total exports	1,495	1,133	1,677	2,186	2,376	2,909	2,860	2,204
Exports to EU	335	237	309	424	352	607	624	646
Growth (%)	24.8	-29.1	30.3	37.1	-16.8	72	2.8	4
Share (%)	22.4	21	18.5	19.4	14.9	20.9	21.8	29
Total imports	6,301	4,500	5,257	7,038	8,036	8,011	8,593	7,729
Imports from EU	1,764	1,340	1,470	2,052	2,428	2,263	2,369	2,519
Growth (%)	14.6	-24	9.7	39.6	18.3	-6.8	4.7	6
Share (%)	28	29.8	28	29.2	30.2	28.3	27.6	33
Balance	-1,429	-1,103	-1,161	-1,621	-2,075	-1,656	-1,745	-1,873

Source: Geostat.

²⁷ See Ecorys and CASE, "Trade Sustainability Impact Assessment in support of negotiations of a DCFTA between the EU and Georgia and the Republic of Moldova", Rotterdam, 2012.

At the sectoral level, exports of agricultural products to the EU fell in 2015 by 4% to \$208 million. The reduction was mainly attributable to alcoholic beverages (reduced by 44% to \$13.7 million), fruit and vegetable juices (reduced by 41% to \$3.3 million) and wine (reduced by 10% to \$12.5 million) (see Tables 4.2 and 4.3).

Table 4.2 EU–Georgia trade structure by commodity (top 10 products by volume), exports to the EU, 2015 (\$ thousands)

HS	Product	646,427	Share of total exports (%)
2603	Copper ores and concentrates	153,098	24
0802	Nuts	149,038	23
3102	Mineral or chemical fertilizers	65,881	10
2208	Spirituos beverages	13,675	2
2204	Wine	12,476	2
2201	Mineral waters	10,703	2
2008	Canned fruits and plants	7,665	1
3004	Medication	4,736	1
2820	Manganese oxides	3,604	1
2009	Fruit and vegetable juices	3,327	1
Subtotal		424,203	66

Source: Geostat.

Table 4.3 EU–Georgia trade structure by commodity (top ten products by volume), imports, 2015

Main imports from the EU (\$ thousands)			
HS	Product	2,518,761	Share of total imports (%)
3004	Medication	607,791	24
2710	Petroleum oils	346,441	14
8703	Vehicles	114,192	5
2603	Copper ores and concentrates	37,639	1.5
8704	Motor vehicles for the transport of goods	34,061	1.4
8410	Hydraulic turbines, water wheels	24,874	1.0
2208	Spirituos beverages	24,881	1.0
207	Poultry meat	18,061	0.7
8406	Steam turbines	15,704	0.6
3304	Beauty or make-up for skin care	13,164	0.5
Subtotal		1,236,810	49

Source: Geostat.

There have been no noteworthy changes in the export structure by commodity since the entry into force of the DCFTA. No entry price system or anti-circumvention mechanism has yet been applied. Since the provisional application of the DCFTA, no new product (except kiwis) has been exported to the EU market, chiefly because at this stage Georgian products cannot satisfy the EU's food safety requirements. Georgia needs to approximate the EU's legislation on sanitary and phytosanitary (SPS) measures in order to receive the required recognition of its products by EU authorities. Georgia has already prepared and agreed with the European Commission a legislative approximation list in the SPS field, which envisaged gradual approximation over the period until 2016 (see chapter 8 for more details).

At the same time, the overall structure of foreign market shares of Georgian export has changed substantially since provisional application of the DCFTA (see Table 4.4). In particular, the EU market has substituted for that of the CIS countries. The share of EU exports among Georgia's total exports rose from 20.9% in 2013 to 29% in 2015 (the years without and with the DCFTA respectively), while the CIS share fell over the same period from 55.5% to 38%, due to the very unfavourable economic situations in Ukraine and Russia.

Table 4.4 Georgia's trade structure by country or region (\$ mn), 2013 and 2015

	2013				2015			
	Ex-ports (\$)	Ex-ports (%)	Im-ports (\$)	Im-ports (%)	Ex-ports (\$)	Ex-ports (%)	Im-ports (\$)	Im-ports (%)
EU	607	20.9	2,264	28.3	646	29.3	2,519	33
Russia	190	6.5	584	7.3	163	7	624	8
Other CIS	1,430	49	1,590	20	677	31	1,341	17
Other Europe	4	0.1	80.3	1.0	31.1	1.4	80	1
US	138	4.7	254	3	104	5	252.3	3.2
China	34	1.2	612	7.6	126	5.7	587	7.5
Rest of world	506	17.6	2,628	32.8	457	20.6	2,325	30.3
Total	2,909	100	8,011	100	2,204	100	7,729	100

Source: Geostat.

As to the *import* structure, the EU's share of Georgia's total imports increased from 28.3% in 2013 to 33% in 2015 (Table 4.4). Over this period, imports from the EU grew by 6% and amounted to \$2,519 million, despite the fact that there was no material change in Georgia's already liberalised trade regime.

It should be underlined that the diagonal cumulation envisaged by the DCFTA is very important for the diversification of Georgia's exports, given the economy's limited raw-material resources. Activation of diagonal cumulation with Turkey will thus substantially increase the benefits of the DCFTA with regard to export and investment promotion. There is already Turkish investment in the textile industry that is primarily oriented towards exports. It is expected that after enactment of diagonal cumulation, these businesses will further expand and new investment will be attracted.

In order to activate diagonal cumulation, Georgia has already started consultations with Turkey on the relevant amendments to the bilateral free trade agreement that has been in force since 2008. Also, at the beginning of October 2015, Georgia officially applied to join the PEM Convention. Turkey, EFTA countries and the EU are already parties to the Convention and when Georgia joins it, diagonal cumulation will be activated among them.

Georgia aspires to succeed in exporting goods that have not yet entered the EU market. It has begun actively working towards EU recognition of priority export goods, such as honey and fish. But there should be prospects for a far more radical expansion and diversification of Georgian exports to the EU. In this context, the prospect now of a free trade agreement between Georgia and China could be of great importance, when combined with China's ambitions to develop its transport corridors through the EU market. China's so-called 'One Belt One Road' programme includes a corridor across Kazakhstan and the Caspian Sea and on to Europe through the South Caucasus and Turkey. Georgia is well placed to profit from these developments, with the possibility that export-oriented Chinese investment could be attracted by the combination of the DCFTA and diagonal cumulation with Turkey.

In this latter respect, Georgia's situation with the DCFTA may be compared favourably with Armenia's choice to join the Eurasian Customs Union. This Customs Union prevents Armenia from making a free trade agreement bilaterally with China or any other country, whereas Georgia is free to do so under the DCFTA.

Market access for goods at a glance

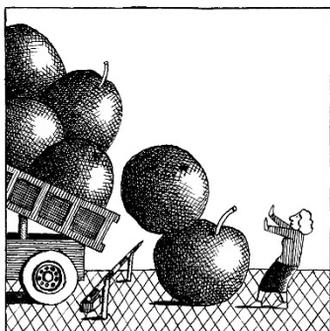
With the DCFTA, Georgia and the EU now enjoy almost completely tariff-free trade for exports and imports.

The first year of the DCFTA saw only a modest growth of exports to the EU. But this compares favourably with massive declines in Georgia's trade with Russia and Ukraine, resulting in a major shift in trade structure in the direction of the EU.

The positive effects of the DCFTA are likely to grow significantly over the medium and long term, with 'diagonal cumulation' of rules of origin with Turkey and progressive approximation of EU legislation on SPS measures and technical barriers to trade.

Georgia is negotiating a free trade agreement with China, and could become a location of choice for Chinese direct investment aimed at exports to the EU market.

5. TRADE REMEDIES



This DCFTA chapter includes rules on 'trade defence' measures that the EU and Georgia can take against imports from the other party that cause or threaten to cause injury to domestic industry, notably anti-dumping, anti-subsidy and safeguard measures. These DCFTA provisions essentially incorporate the relevant WTO rules.

Anti-dumping and countervailing measures. The DCFTA provisions on anti-dumping and countervailing measures rely on Art. VI of GATT (1994), the WTO Anti-Dumping Agreement, and the WTO Agreement on Subsidies and Countervailing Measures. If a company exports a product at a price lower than the price it normally charges on its own home market, it is considered to be 'dumping' the product. The WTO agreement allows governments to act against dumping where there is a 'material' injury to the competing domestic industry. But the government must be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared with the exporter's home market price), and show that the dumping is causing injury or threatening to do so. The importing country may then impose a countervailing (provisional) duty to correct any damage to its industry.

The DCFTA adds specific features of the EU's trade defence practices that go beyond the WTO agreements, such as the "public interest" and the "lesser duty" rules. The former implies that a party may decide not to impose anti-dumping or countervailing measures when it is not in the public interest to do so, for example when the interests of consumers or the employment situation would be negatively affected. The lesser duty rule implies that the amount of (provisional) anti-dumping duty cannot be higher than adequate to

remove the injury to the domestic industry. This rule stresses the remedial rather than punitive character of the EU's approach to trade defence.

Trade defence measures have almost never been adopted in EU–Georgia trade relations,²⁸ but in December 2015 the European Commission initiated an anti-dumping investigation against certain manganese oxides from Georgia.²⁹

Safeguard measures. The DCFTA provisions on safeguard measures rely on Art. XIX of GATT (1994) and the WTO Agreement on Safeguards. These rules regulate when and how WTO members may take a safeguard action (e.g. quantitative restrictions or duty increases higher than bound tariffs) to protect a specific domestic industry from an increase in imports of any product that is causing, or threatening to cause, serious injury to the industry. The key difference here, compared with the anti-dumping provisions, is that it does not require finding an 'unfair' practice by particular supplying enterprises or countries. Correspondingly, the safeguard action has to be applied to all WTO member states, and the country imposing these measures may have to pay compensation to other members whose trade is affected. This largely explains why anti-dumping measures are used much more than safeguard measures.

Georgia does not have domestic legislation on anti-dumping, countervailing or safeguard measures, as its liberal trade and economic policy has considered lower prices to be beneficial for consumers and has not sought to 'punish' trade partners for cheaper imports. Therefore, Georgia has never applied such measures against any of its trade partners, although at the multilateral level it is part of the relevant WTO agreements. The current government has prepared draft

²⁸ It was only in the early 1990s that the EU imposed an anti-dumping duty on ferro-silico-manganese originating in Georgia (Commission Decision 95/418/EC of 26 July 1995 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of ferro-silico-manganese originating in Russia, Georgia, Ukraine, Brazil and South Africa and terminating the proceeding against Georgia).

²⁹ See European Commission, Notice of initiation of an anti-dumping proceeding concerning imports of certain manganese oxides originating in Brazil, Georgia, India and Mexico (2015/C 421/08). The next steps of the procedure can be found at European Commission's website, "Investigations" (http://trade.ec.europa.eu/tdi/case_history.cfm?ref=ong&id=2158&init=2158&sta=1&en=20&page=1&c_order=date&c_order_dir=Down).

legislation on anti-dumping and safeguard measures, but the adoption has been postponed with an unclear timeline.

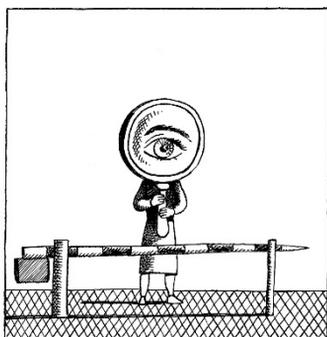
Trade remedies at a glance

There are provisions for anti-dumping, anti-subsidy and safeguard measures to protect the importing economy from serious damage, or threats thereof, based on the relevant WTO rules.

These trade remedies have not been used so far in EU–Georgia trade relations.

Georgia does not have domestic legislation on anti-dumping, countervailing or safeguard measures, in line with its liberal trade and economic policy.

6. CUSTOMS AND TRADE FACILITATION



For the DCFTA to work well there have to be high-quality customs services at the frontiers with efficient and speedy facilitation of traffic, avoiding delays and corruption. This chapter of the DCFTA seeks to fix key principles for customs legislation and procedures, and facilitate operational cooperation between the customs services of the EU and Georgia.

Provisions of the Agreement

The customs chapter is substantive and detailed in terms of key principles, legislative commitments and numerous operational provisions.

Key principles for customs legislation and procedures. At a general level, the EU and Georgia commit to ensure that their customs legislation and procedures shall be stable, transparent and non-discriminatory and shall prevent fraud. They also aim at reducing and simplifying the data and documentation required by customs agencies.

At the legal or operational level, the parties undertake the following commitments:

- Approximate Georgian legislation with the EU's customs code, establish modern transit conditions and cooperation between customs services (see details below).
- Apply relevant international instruments, including those developed by the World Customs Organization and the revised

Kyoto Convention on the Simplification and Harmonization of Customs Procedures.

- Apply a single administrative document for customs declarations.
- Provide for binding rulings on tariff classification and rules of origin.
- Adopt rules that ensure that any penalties imposed for the breach of customs regulation or procedural requirements are proportionate and non-discriminatory.
- Provide effective and transparent procedures guaranteeing the right of appeal against the administrative rulings and decisions of customs and other agencies.
- Prohibit administrative fees having the equivalent effect of import or export duties. Moreover, fees and charges have to be transparent and made publicly available, and may not exceed the cost of the service provided by the customs authority.

Customs code. Annex XIII states that Georgia has to approximate most provisions of the Community Customs Code (CCC), laid down in Regulation (EEC) 2913/92, within four years after the entry into force of the Agreement. Important provisions of the CCC relate to the status of an authorised economic operator (AEO), origin of goods, transparency rules, customs controls and procedures, methods of customs valuation, customs declaration, the release of goods, storage of goods, free zones and temporary admission of goods. Georgia does not have to implement specific CCC provisions that are only relevant for EU member states (e.g. relating to the EU’s common agricultural policy).

Yet because the CCC was considered outdated, as it still relies heavily on paper-based processes, it was replaced in October 2013 by the Union Customs Code (in Regulation (EU) 952/2013).³⁰ The new Code completes the progression to a paperless and electronic customs environment and introduces several new procedures. Within four years Georgia also has to implement the EU rules on the relief of customs duties, enshrined in Regulation (EC) 1186/2009, and on actions against

³⁰ The Regulation entered into force on 30 November 2013 and repealed Regulation (EC) 450/2008. In 2015, the European Commission adopted the Delegated Act and Implementing Act allowing the Union Customs Code to enter into force on 1 May 2016.

goods suspected of, or actually infringing, certain intellectual property rights in Regulation (EU) 608/2013.

Transit traffic. The EU and Georgia shall ensure progressive interconnectivity of their respective customs transit systems, with a view to Georgia participating in the common transit system set out in the Convention of 20 May 1987 on a common transit procedure (referred to as the Common Transit Convention, CTC). This procedure is used for the movement of goods between the 28 EU member states, EFTA countries, Turkey (since 2012) and Macedonia (since 2015). Georgia already has observer status in relation to the CTC and has to fully implement it within four years following the entry into force of the Agreement. A crucial step in this regard will be Georgia's adoption of the CTC's new computerised transit system (NCTS), which enables an economic operator to submit common transit declarations electronically.³¹

Customs cooperation. The EU and Georgia shall also strengthen their customs cooperation. They have to exchange information concerning customs legislation and procedures, cooperate on the automation of customs procedures, exchange relevant information, best practices and data, cooperate in the planning and delivery of technical assistance, etc. The DCFTA outlines procedures for "Mutual Administrative Assistance in Customs Matters", annexed in Protocol II of the Association Agreement. It sets out detailed steps for information exchange in cases of suspected or actual fraud in relation to customs legislation. Customs authorities may also provide "spontaneous assistance".

The DCFTA establishes a Customs Subcommittee to monitor the implementation and administration of this customs and trade facilitation chapter. Georgia will also have to strengthen its relations with the business community by consulting regularly with trade representatives on legislative proposals and procedures related to customs and trade issues. All customs-related legislation has to be transparent and made publically available, as far as possible through electronic means, and a consultation mechanism should be in place to debate proposals for new or amended customs legislation.

³¹ Regarding the accession of EU neighbouring countries to the CTC, see European Commission, Communication, Strategy to prepare certain neighbouring countries for accession to the 1987 EC-EFTA Conventions on a common transit procedure and the simplification of formalities in trade in goods, COM(2010) 0668 final, Brussels, 18 November 2010.

In addition to the DCFTA, the EU and Georgia have developed other instruments for customs cooperation, notably in the context of the Eastern Partnership. For example, in March 2015 the EU and Georgia adopted a strategic framework for customs cooperation.³² This initiative seeks to step up customs cooperation and to facilitate the implementation of the DCFTA customs rules. The focus of this strategic framework will be on risk management and the fight against fraud, the creation of safe and fluid trade lanes, investment in customs modernisation and improvement of transit. One particular point of interest relates to *safe and fluid trade lanes*, to achieve maximum trade facilitation and enable reliable business, with customs acting as a link in the supply chain. For example, the EU and Georgia intend to create fast lanes to move pre-approved eligible goods across the border quickly. Recognition of AEOs could be part of this process. In the EU, economic operators can apply for AEO status to benefit from reduced controls and simplified customs procedures. The AEO status is granted to reliable operators that comply with security and safety standards.

Implementation perspectives

Customs services. Georgia implemented impressive reforms of its customs services starting from 2004, turning one of the most corrupt and complicated customs regimes into a competitive customs system, whereby traders are treated like clients by customs officials. Georgia's customs policy is in line with the country's objective to become a regional hub for trade, transit and transport, given its geographical location. The policy included these specific reforms:

- dramatic reduction of customs duties, whereby 84% of goods are imported customs duty-free, and a cutback of 16 different customs duties to only 3 by 2007, which are set at 0%, 5% and 12% (see chapter 4);
- drastic reduction in the number of documents required for export and import from 54 to only 2;
- increased transparency and the set-up of e-services with full automatised of all customs operations;
- successful introduction of the customs one-stop shops, where customs procedures are fast and efficient;

³² See "Customs cooperation with Georgia, Republic of Moldova and Ukraine" (http://ec.europa.eu/taxation_customs/customs/policy_issues/international_customs_agreements/geomoldukr/index_en.htm).

- establishment of modern customs-clearance zones, which significantly simplify clearance of goods at the border and cover the whole chain of customs clearance. Customs clearance takes on average 15 minutes where standard procedures apply;
- launch of a risk management system at customs based on risk profiles, random selection and selectivity criteria, which also simplify clearance procedures. Based on the risk level, e-declarations are channelled to different risk corridors;
- introduction of different risk corridors for customs procedures, streamlining the clearance of goods, more specifically,
 - a green corridor, where goods are released immediately and are not subject to any checks, either documentary or physical. Approximately 82% of import declarations and 91% of export declarations are channelled through the green corridor;
 - a blue corridor, where goods are examined after being released (post-clearance control). Approximately 2% of declarations are channelled through the blue corridor for both imports and exports;
 - a yellow corridor, where goods are subject to full documentary checks but no physical examination. Approximately 9% of declarations for imports and 5% for exports are channelled through the yellow corridor; and
 - a red corridor, where goods are subject to both documentary checks and physical examinations. Approximately 7% of declarations for imports and 2% for exports are subject to procedures through the red corridor;
- establishment of a so-called 'golden list' of traders, which go through the green corridor;
- physical upgrade and construction of modern customs facilities, and introduction of jointly operated customs checkpoints with neighbouring countries, such as Turkey; and
- institutional unification of the tax and customs authorities into a single entity – the Revenue Service.

Most of the above-mentioned reforms were implemented before the provisional entry into force of the DCFTA. Georgia therefore already complies with the key principles for customs legislation and procedures defined in the DCFTA. The reforms in the customs area, notably increasing transparency, reducing customs duties, simplifying

clearance and introducing e-procedures, have led to the elimination of corruption at customs.

According to the World Bank's latest Enterprise Survey (2013), Georgia achieves the best score in almost all areas covered by the indicator on preventing corruption.³³ The percentage of firms expecting to give gifts to obtain an import licence is 0, compared with 14.6% in Eastern Europe and Central Asia; the average of all 135 countries covered by the survey is 14.7%.

According to the OECD's Trade Facilitation Indicators (2014), Georgia performs better with respect to simplifying and harmonising documents, automation, cooperation of internal border agencies and information availability than (non-OECD) Europe on average, as well as Central Asia and lower-middle-income countries.³⁴

Approximation process under the DCFTA. Reforms implemented before the entry into force of the DCFTA have created a solid basis for the effective fulfilment of obligations undertaken through the DCFTA and for a smooth transition to EU customs norms.

Approximation of Georgian customs legislation, procedures and systems has started and is in progress. New customs legislation in accordance with EU customs regulations has been elaborated and is being discussed among governmental bodies, with the private sector and all interested parties. During the meeting of the DCFTA Customs Subcommittee (held on 20-21 April 2016), Georgia agreed to share its draft customs legislation with the EU side for review.

Georgia is working on acceding to the CTC (see above) and to the Convention on simplification of formalities in trade in goods. Efforts are underway to identify the legislative changes needed to simplify transit procedures with countries that are parties to the CTC, and to introduce the NCTS.

The Revenue Service is working on introducing an AEO institute in Georgia. An assessment of the existing situation has been completed and an action plan for launching the institution has been developed.

³³ Derived from the "Enterprise Survey – Georgia", World Bank, Washington, D.C., 2013 (www.enterprisesurveys.org/data/exploreeconomies/2013/georgia#2).

³⁴ See "OECD Trade Facilitation Indicators – Georgia", OECD, Paris, 2014 (www.oecd.org/tad/facilitation/Georgia_OECD-Trade-Facilitation-Indicators.pdf).

To further streamline the risk-based customs control system, work is in progress to draw up regulations related to the Advance Passenger Information/Passenger Name Records.

In the process of implementing the DCFTA, Georgia is benefiting from various EU assistance projects, such as TAIEX and Twinning, dedicated to capacity building of the customs authority, sharing experience and best practices of EU member states, as well as approximating legislation and improving infrastructure. Georgia actively participates in Integrated Border Management, a flagship initiative of the Eastern Partnership, and its pilot projects, the Customs 2020 Programme and the training, capacity-building efforts and seminars provided by the World Customs Organization.

Customs services at a glance

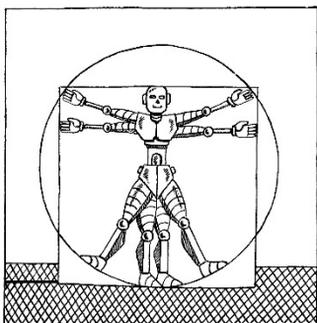
Georgia implemented significant reforms in customs policy for trade facilitation well before the signature of the Association Agreement and DCFTA.

The DCFTA includes key measures to ensure fast, efficient and transparent customs services. Georgia is advancing well towards fulfilling its legislative and institutional commitments.

A high level of transparency and well-developed e-services has made Georgian customs corruption-free and one of the most efficient institutions in the country.

A well-developed and fully modernised infrastructure for customs clearance has made customs procedures easier, faster and cheaper.

7. TECHNICAL STANDARDS FOR INDUSTRIAL GOODS



As the customs tariffs will almost fully disappear between the EU and Georgia, non-tariff technical barriers to trade (TBT), such as technical standards and safety requirements, will become the main obstacle to trade. To tackle these technical barriers, Georgia will approximate its legislation with the relevant EU legislation, standards and procedures. This will be a long and complex operation, but one that will increase the potential for Georgian industrial production to become more modernised and internationally competitive.

Provisions of the Agreement

Basic features of the EU system. While the system is highly complex and has been changing over time, its basic features can be simply described. There is a two-tier system:

- First, there is a limited amount of EU harmonised legislation, of which a few 'horizontal' regulations or directives cover the general methodology and institutional framework, and around 30 harmonised directives (under the EU's 'New Approach' and 'Global Approach') that cover broad, 'sectoral' product groups, such as machinery, lifts, medical devices and low pressure vessels. For these product groups, the directives outline just the 'essential requirements' related to health and safety that products have to meet before they can be placed on the EU market. The precise means for meeting these requirements are dealt with by relevant standards.

- Second, there is a very large number of around 5,000³⁵ product-specific 'harmonised standards', providing the technical means to comply with the essential health and safety requirements defined in the sectoral product directives. These standards are produced at the request of the European Commission by one of the three technical organisations (CENELEC for electrical products, ETSI for telecommunications equipment and CEN for the largest number of other products).³⁶ When the Commission is satisfied with the proposed standards, it publishes them in the *Official Journal of the European Union*, so they then have official status as 'harmonised', which are presumed to meet the essential requirements of the applicable directive. The three technical organisations have produced as many as 25,000 standards in all, including the 5,000 harmonised standards.

An overview of the harmonised standards, grouped by the sectoral product directives, can be found on the website of the European Commission.³⁷ For example, for the important category of 'machinery', the relevant directive that defines the health and safety requirements is listed, followed by several hundred harmonised standards for specific products or components.

The qualitative difference between the directives and standards is that while the directives are binding laws that set the safety and health requirements, the relevant standards outline the ways and means of achieving those requirements. The harmonised standards, while having official recognition, are voluntary for manufacturers, which may choose either to apply them or to use their own specifications. In the latter case, however, the burden of proof shifts to the manufacturer to prove the 'conformity' of the approach it chooses to meet the requirements of the directive. It is usually a more costly procedure than applying the harmonised EU standards, which give the presumption of automatic conformity with the relevant directive.

³⁵ Author's calculation on the basis of the data included in the 2014 annual report of the three European standardisation organisations; see also CENELEC (www.cencenelec.eu/Pages/default.aspx) and ETSI (<http://www.etsi.org/>).

³⁶ CENELEC refers to the European Committee for Electrotechnical Standardisation, ETSI stands for the European Telecommunications Standards Institute and CEN refers to the European Committee for Standardisation.

³⁷ See European Commission, "Harmonised Standards Index" (http://ec.europa.eu/growth/single-market/european-standards/harmonised-standards/index_en.htm).

When placing a product on the EU market covered by the EU's harmonised legislation, the manufacturer has to draw up and sign an EU Declaration of Conformity. In this declaration, the manufacturer ensures and declares (or in some specific cases a third party assesses) that the products concerned satisfy the essential requirements of the relevant product directives and that the applicable procedures for conformity assessment have been followed. By drawing up the EU Declaration of Conformity, the manufacturers assume responsibility for the compliance of the product. A conformity assessment body, accredited or recognised in the EU, must verify the compliance of the product with the relevant directive requirements and issue a certificate of conformity. Only then can the manufacturer affix the *Conformité Européene* (CE) marking to the product. Products bearing the CE marking are presumed to be in compliance with the applicable EU legislation and benefit from free circulation in the EU market.

Horizontal directives. Georgia has committed itself to approximating the principles and practices of the relevant, horizontal EU legislation. Annex III-B to the DCFTA includes a list of horizontal EU laws that give non-exhaustive guidance for Georgia's approximation with EU legislation. This Annex leaves some flexibility for Georgia, as no strict implementation deadlines are included. Important horizontal EU laws that are included in this list are two legal acts of 2008 known as the 'New Legislative Framework', namely Decision 768/2008/EC on a common framework for the marketing of products, and Regulation (EC) 765/2008 on the requirements for accreditation and market surveillance. The decision sets out a common framework of general principles and reference provisions for the marketing of products. It establishes criteria for EU sectoral legislation by providing the definitions of fundamental concepts (e.g. what is "placing on the market" and what are "harmonised standards"). It also defines the obligations for manufacturers, importers and distributors, and defines several "modules" of conformity assessment procedures, which are explained further below together with the accreditation requirements.

In addition, Georgia is required to approximate Directive 2001/95/EEC on general product safety and Directive 85/374/EEC on liability for defective products. The directive on general product safety imposes general safety requirements on any product placed on the market and outlines the criteria for considering a product to be safe. Georgia has to ensure that producers comply with these rules and monitor product compliance with the applicable EU requirements. It will have to identify products that pose a serious risk to health and

safety, and prohibit such products from being marketed. The directive on liability for defective products establishes the principle of objective liability, or liability without fault, of the producer in cases of damage caused by a defective product. The directive also specifies the exemptions of producers from liability in several circumstances.

Sectoral directives. Georgia will approximate the sectoral EU directives listed in Annex III-A of the DCFTA, which reflect Georgia's priorities as defined in the government's strategy document of March 2010.³⁸ This Annex includes 21 sectoral directives (harmonised, under the New and Global Approaches) covering a wide range of products, such as machinery, lifts, the safety of toys, medical devices and simple pressure vessels. These sectoral directives have to be approximated within four, five or eight years after the entry into force of the Agreement. The sectoral directives define for each product group the 'essential' health and safety requirements and the specific conformity assessment procedures to be followed (explained further below). This approximation task is complicated by the fact that the directives are currently being updated in the light of the New Legislative Framework, particularly the EU's Decision 768/2008/EC on a common framework for the marketing of products, aimed at improving market surveillance and boosting the quality of conformity assessments (see further below on conformity rules and procedures).³⁹ The joint Trade Committee may update this Annex to comply with these legislative developments.

³⁸ See Government of Georgia, "Strategy on Standardisation, Accreditation, Conformity Assessment, Technical Regulation and Metrology and Programme on Legislative Reform and Adoption of Technical Regulations", May 2009–March 2010 (http://gov.ge/files/41_32355_330142_TBTStrategy.pdf), later referred to in this chapter as the 'TBT Strategy' and the 'Programme'.

³⁹ In order to bring product harmonisation legislation into line with the provisions of Decision 768/2008/EC on common framework for the marketing of products, on 26 February 2014 the EU adopted – thus after the Agreement was negotiated – an 'Alignment Package'. The package consists of 8 directives:

- Low Voltage Directive 2014/35/EU,
- Electromagnetic Compatibility Directive 2014/30/EU,
- ATEX Directive 2014/34/EU, on equipment and protective systems intended for use in potentially explosive atmospheres,
- Lifts Directive 2014/33/EU,
- Simple Pressure Vessels Directive 2014/29/EU,
- Measuring Instruments Directive 2014/32/EU,
- Non-Automatic Weighing Instruments Directive 2014/31/EU, and
- Civil Explosives Directive 2014/28/EU.

European standards. The Agreement requires Georgia to adopt the corpus of European standards, which consists of 25,000 European standards (i.e. all the standards developed by CEN, CENELEC and ETSI, including the 5,000 harmonised standards). Clearly, this is a huge task, but because the Agreement does not provide a timeframe for transposing the standards, Georgia will be able to prioritise its transposition efforts. Georgia is also required to repeal any conflicting national standards, including conflicting GOST standards (*Gosstandart*, i.e. standards whose origins were from the Soviet Union).

Georgia has to ensure that its relevant national bodies participate fully in the European and international organisations for standardisation and conformity assessment, including accreditation. In particular, Georgia is obliged to progressively fulfil the membership conditions for the European standardisation organisations CEN, CENELEC and ETSI.

Conformity and surveillance procedures. The Agreement envisages wide-ranging cooperation between the two parties in the fields of market surveillance and conformity assessment procedures. Moreover, the parties have to promote cooperation between their respective organisations, public or private, responsible for these matters.

As noted above, Georgia will approximate the principles laid down in Decision 768/2008/EC on a common framework for the marketing of products. This decision establishes a highly complex set of differentiated models (the “modules” referred to in the text) for conformity assessment procedures. The sectoral directives covering different product groups identify which module of conformity

In addition, legislation aligned on Decision 768/2008/EC has also been adopted for the following products:

- Pyrotechnic Articles Directive 2013/29/EU,
- Toy Safety Directive 2009/48/EU,
- Restriction of Hazardous Substances in Electrical and Electronic Equipment Directive 2011/65/EU,
- Recreational Craft Directive 2013/53/EU,
- Radio Equipment Directive 2014/53/EU, and
- Pressure Equipment Directive 2014/68/EU.

Further products are the subject of aligning proposals:

- medical devices,
- gas appliances,
- cableways, and
- personal protective equipment.

assessment is required. For certain groups of products that present a high risk to the public interest (e.g. pressure vessels, lifts and certain machine tools), a conformity assessment by a third party is required before placing the product on the market. These third parties are laboratories, inspection and certification bodies that are known generally as conformity assessment bodies or more formally as 'notified bodies'. Georgia will have to ensure that its notified bodies offer all guarantees of independence, objectivity, confidentiality and professional integrity. For various low-risk products, the manufacturer can make its own 'declaration of conformity'.

Georgia will also approximate Regulation (EC) 765/2008 mentioned above, which lays down rules on the requirements for accreditation of conformity assessment bodies and for market surveillance of products to ensure that products placed on the EU market fulfil the specific health and safety requirements defined in the sectoral EU legislation. This regulation includes detailed rules on how a national accreditation body (i.e. the body that evaluates whether a conformity assessment body meets the specific requirements) should be organised. There has to be a single national accreditation body, operating with impartiality and objectivity, and on a non-profit basis.

In addition, Georgia will have to develop and maintain surveillance authorities that monitor and verify whether products placed on its market meet the EU's health and safety requirements. These market authorities must test the characteristics of products through documentary, physical and laboratory checks. The surveillance authorities must have the competence to withdraw products from the market that present a serious risk. However, a decision to withdraw products from the market has to be proportionate to the risk related to health and safety, communicated to the relevant economic operators and state the exact grounds on which it is based. Moreover, in such a case, Georgia will have to notify the European Commission of the decision and notify it to the Rapid Alert System for dangerous non-food products (RAPEX).

The DCFTA seeks to conclude an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). ACAAs are specific types of mutual recognition agreements envisaged by the EU for any country of the eastern or southern parts of the European Neighbourhood Policy and the Western Balkan countries. By concluding an ACAA, the parties agree that the industrial products to be listed in the annexes of an ACAA, fulfilling the requirements for being lawfully placed on the market of one party, may be placed on the market of the other party without additional testing and conformity

assessment procedures. Thus, an ACAA will be relevant in particular for Georgian producers manufacturing products that in the EU require a conformity assessment of a notified body, since a conformity check by the national Georgian body will be sufficient to place its products on the EU market. But before concluding an ACAA, Georgia would first have to fully implement its obligations related to the EU’s directives, including the harmonised standards, and accreditation and conformity assessment institutions, as described above. These reforms will be closely monitored by the EU institutions. An ACAA would consist of a framework agreement, providing for the recognition of equivalence of the conformity assessment, verification and accreditation procedures, and one or more annexes setting out the product groups covered.

Implementation perspectives

Legislative approximation. In line with its TBT Strategy and Programme (Decree No. 965, 16.7.2010) in 2011 Georgia started to implement the sectoral legislation of the 21 New Approach directives, followed by the relevant harmonised standards.

So far, and in accordance with the schedule of the TBT Programme, Georgia has adopted national regulations based on five sectoral, New Approach directives that cover the following products:

- cableway installations designed to carry persons (Decree No. 320, 15.8.2011);
- lifts (Decree No. 289, 20.7.2011);
- pressure equipment (Decree No. 51, 19.6.2013);
- efficiency requirements for new hot-water boilers fired with liquid or gaseous fuels (Decree No. 49, 17.6.2013);
- simple pressure vessels (Decree No. 50, 19.6.2013); and
- recreational craft (Decree No. 52, 31.12.2013).

The two horizontal EU directives, on general product safety and on liability for defective products, have also been approximated in Georgian legislation, namely in the Code on Product Safety and Free Movement of Goods. Market surveillance of products placed on the market is based on relevant legislation and technical regulations for the specific product groups (i.e. regulated areas).

Standards. In the period from 2009 (when the preparation process for the DCFTA negotiations began) to September 2015, the total number of international and European standards adopted by Georgia reached 7,000.

From 2012, the annual Standards Programme of the Georgian National Agency for Standards and Metrology was implemented and renewed according to the Code of Good Practice of the TBT agreement. The adoption of international and European standards as Georgian ones has taken place according to best practices in this field, which means their adoption either by the 'cover sheet' method (i.e. with a short Georgian reference to the standard without translation of the body text into Georgian) or by full translation.

Out of the total number of registered Georgian standards, around 98% are international and European standards and only about 2% are original Georgian standards, which were developed for specific Georgian products.

According to the Code on Product Safety and Free Movement of Goods, all standards are voluntary. The following types of standards can be used in Georgia:

- international and regional (CIS) standards;
- the standards of any EU or OECD member state;
- Georgian standards, in areas that are not covered by the above; and
- Georgian company standards.

Georgian producers are entirely free to manufacture products for export to third country markets according to those countries' own technical standards. On the import side, for almost a decade Georgia has unilaterally accepted products of a group of countries if conformity assessment documents are issued in accordance with a due legal procedure. These countries are listed in a Georgian government decree and include countries with 'developed quality infrastructures', and notably as indicated above, OECD and EU member states.

GOST standards are still used in Georgia on a voluntary basis, according to the 1998 Agreement signed by CIS countries on the Implementation of Agreed Policies in the Fields of Standardization, Certification and Metrology of CIS countries. Georgian companies interested in exporting goods to CIS countries can use the GOST standards. GOST standards are not adopted as Georgian standards, but can be applied in Georgia based on the above-mentioned CIS agreement.

Conformity assessment. According to the government's policy, conformity assessment of a product is recognised if relevant documents are issued in accordance with a due legal procedure of a country with a 'developed quality infrastructure'. This issue is reflected in the Code

on Product Safety and Free Movement of Goods, Art. 92, which specifies that “conformity assessment documents issued according to the procedures of a country with high product safety standard and well developed quality infrastructure shall be recognised without any additional procedures. In such a case the document proving conformity shall be presented in English or notarised Georgian translation. The list of such countries shall be defined by the Government of Georgia.”

In cases provided for under the legislation, conformity assessment can be conducted by the conformity assessment body accredited in Georgia, or accredited in countries that are signatory parties to the Mutual Recognition Arrangement/Multilateral Recognition Arrangement, which refer, for example, to the International Laboratory Accreditation Cooperation, the International Accreditation Forum and European co-operation for Accreditation.

The Georgian side is working on the sectoral approximation of legislation, and after that, if needed, specific sectors for which ACAAs might be concluded will be identified.

Accreditation. Reforms in the Georgian accreditation system started in 2005, when, in line with international best practice, the accreditation process was institutionally separated from standardisation.

Accreditation in Georgia is given by the national accreditation body – the Accreditation Centre (GAC), established by the Code on Product Safety and Free Movement of Goods. This national accreditation body is responsible for accreditation of conformity assessment bodies in Georgia.

The GAC undertakes accreditation in accordance with international standards in both regulated areas (where accreditation is mandatory) and non-regulated ones (where accreditation is not mandatory), i.e. voluntary areas. It operates in accordance with the international standard ISO 17011, and its goal is to carry out the accreditation process based on best practice and the guideline documents of the relevant, specialised international organisations.⁴⁰ Moreover, GAC operations almost fully comply with Regulation (EC) 765/2008 (explained above): it is an autonomous non-profit organisation, a legal entity of public law and its impartiality is guaranteed by the law. The requirements of this regulation are reflected in the internal documents of GAC.

⁴⁰ Notably, these are the European co-operation for Accreditation, International Laboratory Accreditation Cooperation and International Accreditation Forum.

Market surveillance. The Technical and Construction Inspection Agency (TCIA) is the main market surveillance authority. TCIA has the necessary power for taking all appropriate measures in the case of products posing a serious risk. In case of serious risk, the agency has the power to withdraw such products from the market.

The TCIA conducts supervision of technically hazardous products, such as cranes, pressure vessels, cableway installations, lifts, main oil and gas pipelines and mine extracting sites (pits and quarries).

Conclusion. It is advisable to proceed with the approximation of EU technical regulations in a gradual and careful manner, taking into account the local production and trade structure of Georgia, as quick and careless approximation could result in trade-restrictive outcomes. More specifically, once Georgia approximates its legislation with EU technical requirements and signs ACAAs in respective areas, imports of products (from, for example the CIS countries and China) that are not produced based on EU requirements cannot be placed on the Georgian market. This could result in the restriction of cheaper import possibilities from the CIS, China and other countries, which is undesirable for consumers in a developing market like Georgia. Therefore, while drafting the legislative approximation programme in the TBT area, the government has carefully analysed the local production and import structure to reduce the adverse effects of approximation as much as possible.

Technical standards for industrial goods at a glance

Adoption of EU technical regulations and standards for industrial products is vital for the modernisation and competitiveness of Georgian products.

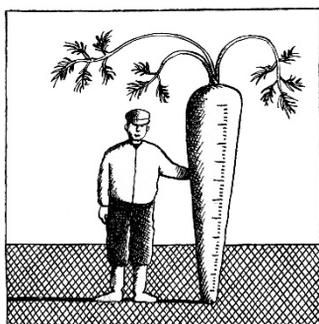
Georgia's roadmap for this domain is defined in a comprehensive strategy and programme for legislative action adopted by the government.

Georgia is making significant advances towards approximating the EU's 'New Approach' directives according to the agreed timeline. In addition, all the relevant standards have been adopted.

The authorities responsible for standards, metrology and accreditation have made good progress in modernising their infrastructure, internal legislation and procedures for similarity with the EU's.

It is advisable to proceed with the approximation of the EU technical regulations in a gradual and careful manner, as quick and careless approximation could result in trade-restrictive outcomes.

8. FOOD SAFETY REGULATIONS



This chapter of the Agreement has the objective of facilitating trade in agricultural and food commodities and plants covered by sanitary and phytosanitary (SPS) regulations, while safeguarding human, animal and plant life or health (Art. 181). The key mechanism for doing so is for Georgia to *gradually* approximate its SPS legislation with that of the EU, with procedures to establish effective equivalence. The

Agreement also aims at reaching a 'common understanding' on animal welfare standards.

Provisions of the Agreement

Approximation. The Agreement does not itself define the list of laws to be approximated, and instead requires Georgia to submit within six months of its entry into force 'a comprehensive strategy' for their gradual implementation (and thus to complete Annex XI-B). The products to be covered are listed (in Annex IV-A), including live animals and animal products.

Underlining perhaps a further degree of flexibility in the Agreement, beyond the *gradual* approximation, is this legally somewhat ambiguous statement: "This approximation list shall serve as a reference document for the implementation of this chapter" (Art. 55.4).

Equivalence. Rules are established for recognising the equivalence of measures taken by Georgia with those of the EU, or for groups of measures, for sectors or subsectors, and commodities or groups of commodities. The process shall be launched by the exporting

party based on the “objective demonstration of equivalence” and the “objective assessment of this demonstration” by the importing party. This process should be interactive. It is then for the importing party to determine equivalence, or not, or to withdraw or suspend equivalence, based on internationally recognised standards or proper scientific evidence. Verifications may be made by the importing party, for which there are detailed rules. Where equivalence is recognised there will be a reduction of physical checks at frontiers and simplified procedures.

Trade conditions. When the approximation has been fully undertaken the import conditions for the products or sectors in question shall apply to the whole territory of Georgia as an exporting country (Art. 60). Yet this still requires that enterprises wishing to export to the EU obtain certification from the “competent authority” of Georgia, which has to guarantee that the establishment meets relevant health requirements of the EU, and has the power to suspend the establishment’s listing in the case of non-compliance.

Pests and animal diseases. There are detailed provisions for handling problems of animal or plant diseases and pests. The diseases and pests in question are listed. Procedures are established to recognise the pest-free status of given regions for the purpose of trade. In addition, there are procedures for notifying risks to public, animal or plant health owing to diseases.

Safeguard measures. Where the importing country needs to take measures to control a serious health hazard or risk, it may take provisional restrictive measures affecting imports, but these have to be suitable or proportional to the risks in order to minimise the disruption of trade.

SPS Subcommittee of the Association Council. This subcommittee has the task of reviewing the implementation of the SPS chapter, and may inter alia decide upon modifications to the annexes. Decisions shall be taken on the basis of consensus of the parties.

Pre-existing import arrangements. The EU maintains a comprehensive system for the regulation of imports of agri-food products from third countries to assure their compliance with its SPS requirements, notably under Regulation (EC) 854/2004 on rules for the organisation of controls of products of animal origin. In particular, this regulation allows for individual exporting enterprises to be recognised as being in conformity with EU regulations even though this may not be the case for the whole sector and not, for example, for enterprises that do not export.

These enterprise-specific arrangements are currently being used by many countries, including Ukraine and Moldova, which have numerous approved enterprises, but not by Georgia so far. That is because from 2006, in the context of economic deregulation reforms and the fight against corruption, the old Soviet-style institutions and SPS procedures were suspended. Since 2009, as part of the DCFTA preparation process, Georgia has been establishing relevant EU-style institutions in the SPS field and approximating its food safety legislation with that of the EU, but this is a lengthy and complex process.

The EU provides substantial technical assistance and capacity building in the SPS field through various initiatives. For example, a Comprehensive Institutional Building Programme (with EU funding of €2.7 million) will support the National Food Agency (NFA) of Georgia, a twinning project supports the Revenue Service of Georgia (€1 million) to improve the food safety border controls and a project with the UN's Food and Agriculture Organization assists Georgia in controlling the foot and mouth animal disease.

Implementation perspectives

Georgia's agricultural sector employs around 50% of the total workforce, including a large share of the socially vulnerable population. The agricultural sector is also characterised by a large number of small subsistence farms: 95% of farmers are small, i.e. own about a hectare of land and approximately two to three cows per family on average, with low levels of efficiency and limited income (see also chapter 22). Taking these basic facts into account, the introduction of EU food safety standards needs to be done carefully and gradually (on which see further below).

Preparing for the DCFTA. Prior to starting the DCFTA negotiations, Georgia's legislative framework and implementation practices were quite different from the relevant EU legislation or international best practice. Therefore, in 2009 the EU requested that Georgia fulfil a number of preconditions before the start of negotiations on the DCFTA, which were launched at the end of 2011.

As a result, the government adopted a Comprehensive SPS Strategy and Legislative Approximation Programme in December 2010, substantially streamlined its SPS, veterinary and plant protection legislation, and approximated it with the EU's major horizontal legislation. The registration of food business operators, both legal

persons and individual entrepreneurs, had already begun in February 2010.

In July 2010, implementation began of suspended provisions of the law on inspections of food business operators and traceability control. At first, only food business operators exporting to the EU were subject to SPS inspections. In a second stage, since January 2011, inspections and traceability controls have been extended to cover all food business operators, which are legal persons. Currently, the NFA undertakes onsite inspections for all kinds of food/feed business operators. Onsite inspections are done without prior notification to business operators, but planned on the basis of risk assessment. According to the latest data, in 2014 the NFA undertook 5,184 onsite inspections.

Georgia adopted the Code on Food/Feed Safety, Veterinary and Plant Protection and legal acts on the following main issues:

- general hygiene rules for food/feed-producing enterprises or distributors;
- specific hygiene rules for animal-origin food;
- monitoring and state control for food safety, veterinary and plant protection areas;
- rules on the destruction of food/feed; and
- a general plan for crisis management in the field of the food/feed safety.

DCFTA implementation. Georgia is continuing to implement reforms to SPS standards, with an ongoing approximation process that includes the following matters:

- approval of food business operators;
- food labelling for the information of consumers;
- a rule for controlling the levels of pests and agrochemicals in food/feed;
- registration and identification of animals;
- official control of animal-origin products;
- preventive and quarantine measures for contagious animal diseases;
- veterinary inspection of animals designated for slaughtering;
- registration and state control of veterinary medicines;
- requirements on traceability in food safety, veterinary and plant protection; and
- technical regulations for milk, dairy products and honey.

Thus, the main horizontal (core) EU regulations are already approximated, but substantial legislative work needs to be done to approximate vertical (i.e. product-by-product) regulations.

To aid completion of the whole process of aligning SPS legislation, the Agreement requires (in Art. 55) that no later than six months after its entry into force, Georgia should submit a list (as defined in Annex IV) of EU SPS, animal welfare and other legislative measures that it will approximate. The list should be divided into priority areas and identify products where trade should be facilitated. The government authorities have accordingly revised the 2010 SPS Legislative Approximation Programme to the point that the revised programme includes almost the entirety of EU regulations in this area (almost 300 in number), which should be gradually approximated, and almost all within a decade. The programme has three parts:

- food safety – 101 EU regulations;
- veterinary – 84 EU regulations; and
- plant protection – 87 EU regulations.

The programme was sent to the European Commission for final approval in February 2016. It has been approved by the Commission, but has not yet been adopted by the Georgian government.

The government is working on obtaining approval of specific Georgian products for export to EU member states, including honey. For the export of animal-origin products there are requirements for obtaining “recognition of equivalence”. According to Art. 57 of the Agreement, equivalence may be recognised in relation to an individual SPS measure, a group of SPS measures or a system applicable to a sector, subsector, commodities or a group of commodities. Georgia shall notify the EU as soon as approximation is achieved in relation to a measure, a group of measures or a system. This shall be the basis for Georgia to initiate requests for recognition of equivalence of the measures concerned. The consultation process in response to a request shall begin without delay and not later than within three months. The EU shall finalise the process within 360 days.

The Agreement envisages the possibility of provisional approval of establishments.⁴¹ This gives the possibility to establishments already in compliance with EC regulations to export their products to EU member states. However, Georgia has not yet made use of this opportunity.

⁴¹ See the Association Agreement, Annex VII, “Provisional Approval of Establishments”.

Institutional infrastructure of “competent authorities”. The institutional framework of the food safety system in Georgia consists of a number of institutions, whose efficient coordination is essential.

The Ministry of Agriculture is responsible for policy-making in the field of food safety, whereas the Ministry of Labour, Health and Social Protection is responsible for participating in efforts to set food safety parameters and norms, and contributing to crisis management.

The NFA under the Ministry of Agriculture is responsible for food safety supervision, monitoring and control, including onsite planned and ad hoc inspection, documentary checks, sampling for testing, monitoring and surveillance. The NFA is also responsible for exercising state control over the compliance of food/feed at all stages of production, processing and distribution with the requirements determined by Georgia’s legislation.

The Revenue Service under the Ministry of Finance is responsible for compliance with SPS regulations at the external borders of Georgia.

A crucial component of the SPS institutional system is a set of public and private laboratories for testing and verification. The majority of public laboratories are responsible for veterinary and disease control. As for the private laboratories, they provide testing for food, alcohol and non-alcoholic drinks. Laboratories are accredited by the Georgian Accreditation Centre, which operates in accordance with recognised international standards.⁴² The laboratory of the Ministry of Agriculture was accredited in March 2014 by the American National Accreditation Board.⁴³ This means that the results of testing are recognised internationally.

⁴² The Accreditation Centre offers accreditation of conformity assessment bodies in different fields according to the following standards: □

- ISO/IEC 17025:2006 General requirements for the competence of testing and calibration laboratories; □
- EN 45011 or ISO/IEC Guide 65 General requirements for bodies operating product certification systems;
- ISO/IEC 17021 Conformity assessment – Requirements for bodies providing audit and certification of management systems; and
- ISO/IEC 17024 Conformity assessment – General requirements for bodies operating certification of persons.

⁴³ The American National Accreditation Board provides accreditation to ISO/IEC 17025 testing, calibration and forensics laboratories; ISO/IEC 17020 inspection bodies and forensic inspection agencies; ISO/IEC 17043 proficiency

Main challenges of the legislative approximation process. The SPS chapter of the DCFTA amounts to an ambitious, extensive and costly process of legislative approximation. These high compliance costs are a particular concern for small businesses and farmers, whose production capacities are limited and which do not have any real prospect of exporting to the EU in the near future. For example, the introduction of general hygiene rules for food business operators imposes requirements regarding the design, structure and operational processes of farms and enterprises. As mentioned above, 95% of Georgian farms are very small, and there is a risk that they may not comply with EU requirements.

Notably, EU legislation provides for exemptions if a) goods are sold on the local market, b) traditional methods are used and c) food is produced in geographically constrained areas, as could be the case for high mountain areas in Georgia.

Yet at the same time, in practice some EU regulations are being transposed in Georgia in the local legislation without taking local sensitivities into account. For example, the Georgian parliament has amended the Code on Food/Feed Safety, Veterinary and Plant Protection, according to which official control of natural persons active in agriculture through subsistence farming should start in January 2020. This amended legislation is silent on the issues of special measures for the cases mentioned above. That means that the NFA may from 2020 undertake onsite inspections of persons who have, for instance two hens and two cows, and these persons will be responsible for setting up modern food safety systems in their households. The NFA actually would need to inspect the houses of these families, as most of them do not have farm buildings and facilities. The 2020 timeframe, however, is sufficiently far off for this issue to be further considered, and for a suitable regime of exemptions to be defined for the special categories in question.

In addition, the Agreement requires that the SPS legislative approximation programme divide the 300 EU regulations into priority areas, which has not been done so far. It is recommended to identify priorities based on Georgia's domestic production structures as well as export potential, in order to reflect local needs in the SPS policy.

As regards the timelines for approximation, certain relatively complex regulations are being approximated ahead of schedule, for

testing providers; ISO Guide 34 reference material producers; and industry-specific programmes. The Board also accredits ISO/IEC 17021 certification bodies.

example the law on the labelling of GMO-designated food/feed and GMO-origin products. A prudent approach is advisable, especially in areas involving significant compliance costs for the private sector and food business operators, and especially where Georgia has no obligation of approximation at a fixed point in time.

The public authorities responsible for food safety in Georgia have substantial powers for conducting official checks, and with the legislative approximation process these powers have been further increased, with corresponding risks of corruption. Preventive measures are called for. For example, for avoiding corruption risks, in 2010 the government elaborated checklists, whereby inspectors are obliged to conduct inspections based on the predetermined questionnaires, and any irregularities have to be agreed and co-signed by the business operator and the inspector representing the NFA.

Thus, overall, a considerable effort is needed to ensure the smooth introduction of a modern food safety system in Georgia. For the increase of exports and the competitiveness of its agricultural products, Georgia needs to gradually introduce and approximate an effective food safety system. This reform effort should be undertaken in a manner that is sensitive to realities on the ground and the social aspects of the farm sector. Relevant European and international standards allow for such an approach through gradual approximation of the regulatory framework and the introduction of exemptions for certain categories of very small farms.

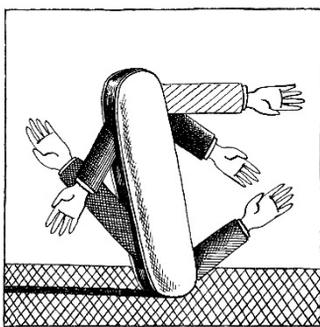
Food safety (SPS) at a glance

In the period before the DCFTA, Georgia's regulatory and institutional framework on SPS measures was characterised by limited regulation and an absence of most forms of state SPS control. Such an approach was adopted in the context of economic liberalisation and the fight against corruption.

Georgia started to introduce an EU-style institutional and legal framework for SPS measures during the preparation process for the DCFTA negotiations. Since signing the DCFTA, Georgia has outlined a strategy for completing approximation of virtually all EU SPS legislation.

Still, a careful and prudent approach is recommended when implementing EU legislation, given that the agricultural sector employs almost half of the labour force, of whom many are subsistence farmers. Provisions in EU law for exemptions for certain categories of very small farmers should be applied.

9. SERVICES



The development of a dynamic and competitive service sector is of huge importance for the modernisation of the Georgian economy. In this regard the DCFTA provides for a comprehensive liberalisation of establishment and trade in services, yet subject to extensive reservations – more by the EU than by Georgia.

Provisions of the Agreement

The provisions of the agreement are organised under three headings: i) establishment, ii) cross-border supply of services and iii) temporary presence of natural persons for business purposes.

Establishment. This means that either enterprises ('legal persons') or individuals ('natural persons') have the right to pursue business in the country of the other party. Enterprises may create or acquire branches or representative offices. Individuals may pursue their business as self-employed persons or set up undertakings that they control.

The Agreement provides for national treatment and MFN treatment for establishment. This means that the EU and Georgia must grant as regards the 'established' enterprises treatment no less favourable than that accorded to its own enterprises, or those of any third country, whichever is better.

However, for several service sectors both the EU and Georgia have reservations that restrict national treatment or MFN treatment. These reservations are laid down in the annexes to the Agreement (Annex XIV-A and E). Georgia has fewer reservations than the EU and

its member states (see Table 9.1). Georgia's liberal approach is mainly due to the fact that the country has only a few reservations at the level of the WTO (i.e. in its Schedule of Specific Commitments on Trade in Services).⁴⁴ As the services sector represents an important part of the Georgian economy, the country opted for a liberalised market in order to allow foreign companies and investors to enter the Georgian market, establish companies in the country and create competition in certain sectors – all of which ultimately leads to the development of the sectors in question. It is important to note that these reservations in the DCFTA are placed on a *negative list*. This means that the EU and Georgia will open up all services sectors, except for those sectors listed where reservations apply (as detailed in the annexes). This approach guarantees automatic coverage for new services not listed as exceptions.

Georgia has for example some important reservations derogating from national treatment and MFN obligations with regard to communication services, notably with respect to postal services, programme transmission services or broadcasting services, construction and related engineering services (for which not less than 50% of the staff must be Georgian citizens), or educational, financial and transport services.

The list of EU reservations is complicated because it includes both EU-wide and member state-specific reservations. With regard to horizontal reservations (i.e. reservations applying to all sectors or subsectors) significant EU-wide reservations concern for example that economic activities regarded as public utilities may be subject to public monopolies. Several member state-specific reservations also exist for real estate purchases. Numerous EU-wide or member state-specific reservations remain in the areas of agriculture and hunting, fishing, energy mining, professional services, financial services, transport services, etc.

The Agreement also includes a standstill clause that forbids, subject to the reservations in the annex, the EU and Georgia from adopting new discriminatory regulations as regards the establishment of enterprises of the other party by comparison with their own enterprises. A soft commitment is included to further negotiate investment protection provisions and an investor–state dispute settlement mechanism.

⁴⁴ For an overview of Georgia's reservations under the GATS, see <http://i-tip.wto.org/services/SearchResultGats.aspx>.

Table 9.1 Reservations with regard to national treatment or MFN for establishment in service sectors

	EU party reservations		Georgia reservations
	<i>EU-wide reservations</i>	<i>Member state-specific reservations</i>	<i>Georgia</i>
Horizontal reservations	2	31	4
Sectoral reservations	30	98	28
Total	161		32

Note: The number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states.

Cross-border supply of services. The DCFTA section on cross-border supply of services covers the supply of a service from the territory of a party into the territory of the other party without the supplier's presence in the importing country (GATS Mode 1), and consumption abroad, where a service consumer (e.g. a tourist or patient) moves to another country's territory to obtain a service (GATS Mode 2).

The EU and Georgia have to accord services and service suppliers of the other party market access and national treatment. But this does not apply to audiovisual services, national maritime cabotage, or domestic or international air transport services.⁴⁵ Contrary to the section on establishment, the section on cross-border supply of services works with a positive list. This means that the EU and Georgia only make market access and national treatment commitments in those service sectors listed in the Annex.

In the sectors where market access commitments are undertaken, the EU and Georgia may not apply the following restrictions:

- (i) a limit to the number of service suppliers (e.g. by quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test);
- (ii) a limit to the total value of service transactions or assets in the form of quotas or the requirement of an economic needs test; or

⁴⁵ The conditions of mutual market access in air transport are covered by the bilateral Common Aviation Area Agreement (explained in Art. 125 of the Association Agreement).

- (iii) a limit to the total number of service operations or the total quantity of service output by quotas or the requirement of an economic needs test.

Table 9.2 Reservations with regard to market access and national treatment for cross-border supply of services⁴⁶

	EU*		Georgia	
	Mode 1	Mode 2	Mode 1	Mode 2
Business services	74	22	0	0
Communication services	2	2	0	0
Construction and engineering	0	0	0	0
Distribution services	12	4	0	0
Educational services	15	8	0	0
Environmental services	8	0	6	0
Financial services	33	13	2	0
Health and social services	3	1	0	0
Tourism and related services	4	0	1	0
Recreational, cultural, sports	5	7	0	0
Transport services	28	14	5	0
Energy services	7	1	-	-
Other services	5	0	-	-
Total	196	72	14	0

* These are EU-wide reservations or member state-specific reservations.

The sectors or subsectors liberalised, including the reservation over market access and national treatment, are listed in great detail in Annex XIV-B (EU and its member states) and XIV-F (Georgia). Still, liberalisation is, similar to establishment, rather asymmetrical: whereas Georgia only has a limited number of reservations or unbound service sectors in its list, the EU has numerous reservations (Table 9.2). Again, this is mainly due to Georgia's liberal approach in the WTO GATS.

⁴⁶ EU-wide and member state-specific reservations are grouped together. The number of member state-specific reservations stands for the number of reservations that are being applied by different EU member states.

Temporary presence of natural persons for business purposes.

This section covers measures of the parties concerning the entry into and temporary stay in their territory of categories of natural persons for business purposes (GATS mode 4), such as key personnel (i.e. senior personnel responsible for the setting-up or operation of an establishment), graduate trainees, business sellers or independent professionals.

Both the EU and Georgia have to allow entrepreneurs of the other party to employ in their establishment natural persons of the other party, provided that they are key personnel or graduate trainees. The temporary stay of key personnel and graduate trainees shall be for a period of no longer than three years for intra-corporate transferees, 90 days in any 12-month period for business visitors for establishment purposes, and one year for graduate trainees. Each party shall also allow the entry and temporary stay of business sellers of the other party for a period of no longer than 90 days in any 12-month period. However, for these three categories (i.e. key personnel, graduate trainees and business sellers), the EU and its member states will apply many reservations (172 in total), such as the requirement of an economic needs test, residency requirements and nationality conditions. Georgia has again a much more liberal approach and only excludes 31 subsectors from liberalisation (i.e. 'unbound').⁴⁷

The DCFTA also liberalises services provided by contractual service suppliers in specific sectors. Each party has to allow the supply of services into their territory by contractual services suppliers of the other party. Nevertheless, this liberalisation is subject to several conditions and reservations. Important conditions are, for example, that the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding 12 months. Moreover, they must possess at least three year's professional experience in the relevant sector and must have a university degree or a qualification demonstrating knowledge of an equivalent level and relevant professional qualifications. The reservations (mostly residency requirements or economic needs tests) are listed in the annexes.⁴⁸ The

⁴⁷ For the lists of reservations on key personnel, graduate trainees and business sellers, see Annex XIV-G (Georgia) and Annex XIV-C (EU and EU member states).

⁴⁸ See the EU's reservations in Annex XIV-D and Georgia's reservation in Annex XIV-H.

EU party has again more reservations than Georgia. Whereas the EU has 73 reservations in 18 sectors, Georgia only imposes a limited number of reservations (i.e. 14 reservations, mainly in the area of computer services).⁴⁹ Similar or identical conditions and reservations also apply to the sectors for which the parties liberalise the supply of services by independent professionals.⁵⁰

Regulatory framework and internal market treatment. The DCFTA requires that licensing and licensing procedures proceed in a clear, transparent and pre-established manner and that it is proportionate to a legitimate public policy objective. Furthermore, judicial, arbitral or administrative tribunals or procedures have to be established to review licensing decisions. These rules also apply to qualification requirements for individuals to supply a certain service. The Agreement envisages the mutual recognition of necessary qualifications and/or professional experience that natural persons must possess to provide a specific service. The EU and Georgia shall encourage their relevant professional bodies to provide the Trade Committee recommendations on mutual recognition of requirements, qualifications, licences and other regulations.

In four services sectors, i.e. i) postal and courier services, ii) electronic communications, iii) financial services and iv) international maritime transport, the DCFTA includes specific rules and procedures on regulatory cooperation. Georgia has committed itself to approximate to the EU's key legislation in these four sectors (included in Annex XV). Although the Agreement does not strictly oblige Georgia to approximate the EU legislation, it states that "with a view to considering further liberalisation of trade in services, the parties recognise the importance of the gradual approximation of the existing and future legislation of Georgia to the list of the Union *acquis* included in Annex XV".⁵¹ It links progress of the implementation of these

⁴⁹ Derived from the authors' own calculations. The EU-wide and member state-specific reservations are grouped together. The number of member state-specific reservations stands for the number of reservations that are being applied by different member states.

⁵⁰ These sectors are for the EU: i) legal services, ii) architectural services, iii) engineering services, iv) computer services v) management consulting services and vi) translation services. For Georgia they are the following sectors: i) (integrated) engineering services, ii) urban planning and landscape services, iii) computer and related services, iv) management consulting services and related services and v) other business services.

⁵¹ See Arts 103, 113, 122 and 126.

approximation commitments with further liberalisation. The Trade Committee can review and modify the annexes with reservations in these four sectors if Georgia implements the relevant EU legislation. The potential scope of further liberalisation is not specified in the Agreement.

Box 9.1 Summary of commitments and reservations of the EU and Georgia for service sectors

EU

Reservations on establishment: *substantial horizontal and sectoral reservations*

Commitments on liberalisation of cross-border supply of services: *large liberalisation, but with extensive reservations*

Reservations on key personnel, graduate trainees and business sellers: *extensive reservations*

Commitments on contractual services suppliers and independent professionals: *extensive reservations*

Georgia

Reservations on establishment: *large liberalisation with few reservations*

Commitments on liberalisation of cross-border supply of services: *almost full liberalisation*

Reservations on key personnel, graduate trainees and business sellers: *extensive liberalisation*

Commitments on contractual services suppliers and independent professionals: *large liberalisation with few reservations*

Implementation perspectives

The services sector is an important part of the Georgian economy and during recent years it developed much faster than other sectors of the economy. This is particularly true with regards to sectors such as financial services, transport, communications and construction.

Moreover, the services sector represents a solid part of Georgia's external balance of payments. It makes for a positive part of the current account, and offsets the negative balance coming from trade in goods. Still, this positive effect mainly comes from the tourism sector, while the export of other services is rather limited.

From the beginning, when joining the WTO, Georgia chose a liberal approach towards trade in services. This can be well observed in

Georgia's GATS schedule, which includes only a very limited number of horizontal and sector-specific reservations. Therefore, Georgia does not have much room for further liberalisation when negotiating free trade agreements. This explains the asymmetry in the number of reservations in the DCFTA between the EU and Georgia (see above). In addition, Georgia does not apply any limitation or discrimination towards foreign services suppliers.

Because the DCFTA envisages special provisions in four sectors (postal and courier services, electronic communications, financial services and international maritime transport), it is useful to look at Georgia's prospects for trade in those services.

As far as postal and courier services are concerned, currently there is no specific legislation regulating this sector. The market is liberalised and open for foreign companies. Legislation, which is under preparation by the Georgian government in this area, is being elaborated in line with EU directives. Yet, as Georgia's postal market itself is mainly represented by foreign companies, there is little chance that Georgian postal companies will be able to operate in the EU market.

With regards to communication services, the situation is much more advanced, as Georgia's legislation was initially (even before signing the DCFTA) broadly in line with EU legislation, and further approximation is underway. However, also in this sector, the Georgian market is represented by mostly foreign-owned companies, including some European ones. Therefore, in the short run, it is very unlikely that these companies will export services to the European market.

In the financial services sector, although the DCFTA includes a comprehensive list of EU legislation to which Georgia's respective legislation should be approximated, there is no clear roadmap for when the EU might open its financial market to Georgia. Therefore, prospects in this area are also very limited.

As regards maritime transport services, the approximation commitments will mainly advance and modernise the standards for maritime transport in Georgia, and this should lead to increased exports of these services across the Black Sea to Romania and Bulgaria in the EU and also to Ukraine.

Thus, while these four sectors have only limited possibilities for exporting to the EU, the provisions of the Agreement for the regulation of service sectors make Georgia an increasingly interesting site for foreign investment in these areas. Such investors may increase Georgia's competitiveness in the sectors concerned, whose products

enter the value added chain more generally, and therefore should boost Georgian exports to the European market.

At a first stage it is more likely that Georgia will benefit from trade liberalisation in sectors such as professional services, where EU requirements are more open for Georgian services suppliers. The most important part of services liberalisation for Georgia concerns the temporary presence of natural persons for business purposes (GATS Mode 4). While Georgian companies might not benefit from trade liberalisation straight away, certain individual services suppliers and in particular independent professionals might do so. At the same time, various reservations in the EU, such as nationality requirements and economic needs tests, effectively limit the possibilities for Georgian services suppliers. This is particularly true for contractual services suppliers and independent professionals.

Services sector at a glance

Trade in services is important for the economic development and competitiveness of the entire economy, including service-related sectors.

Georgia's schedule of specific commitments in the WTO is very liberal, leaving little room for further liberalisation. As a result there is an asymmetry with more liberalisation and fewer reservations on the Georgian side.

In the short term, the prospects for Georgia to increase exports of services to the EU is limited by legislative approximation clauses.

The liberalisation of the temporary presence of natural persons for business purposes is potentially important for Georgia, but market opening by the EU is limited by numerous reservations.

10. PUBLIC PROCUREMENT



Public procurement in the EU and Georgia is of great economic importance. It accounts for around 18% of GDP in the EU and offers an enormous potential market for Georgian companies. The DCFTA provides for the gradual and reciprocal liberalisation of the parties' public procurement markets under the strict condition that Georgia implements the EU's key public procurement rules. Georgia has to ensure that public purchases of goods, works and services are transparent and fair, guarantee sound competition, tackle corruption and ensure that public authorities get the best value for their taxpayers' money.

Provisions of the Agreement

In the DCFTA chapter on public procurement, the EU and Georgia envisage mutual access to their respective public procurement markets on the basis of the principle of national treatment at the national, regional and local levels for public contracts and concessions in the traditional sectors as well as in the utilities sector. It covers any state, regional or local authority, including public undertakings in the field of utilities, such as those by state-owned enterprises and private undertakings operating on the basis of special and exclusive rights. Defence procurement, however, is not covered by the DCFTA.

The DCFTA procurement rules only apply to contracts above certain value thresholds listed in Annex XVI-A (Table 10.1). However, these thresholds will have to be adapted by the Trade Committee after entry into force of the Agreement to reflect the thresholds then in place

under the relevant EU directives.⁵² The negotiations on the adoption of thresholds are ongoing and not yet finalised.

Table 10.1 Thresholds for the application of public procurement rules

Contracts	Threshold (€)
a) Public supply and service contracts awarded by central government authorities	130,000
b) Public supply and public service contracts not covered by point (a)	200,000
c) Public works contracts and concessions	5,000,000
d) Works contracts in the utilities sector	5,000,000
e) Supply and service contracts in the utilities sector	400,000

Source: Annex XVI-A of the DCFTA.

The DCFTA includes provisions relating to i) institutional reforms and the award of procurement contracts, ii) Georgia's approximation with the EU's public procurement *acquis* and iii) market access.

Institutional reforms. Georgia has to establish and maintain an appropriate institutional framework necessary for the proper functioning of its public procurement system. In particular, Georgia has to designate a central executive body responsible for economic policy tasked with guaranteeing a coherent policy in all areas related to public procurement, including implementation of this chapter. In addition, Georgia has to establish an impartial and independent body that will review decisions taken by contracting authorities or entities during the award of contracts. Proper judicial protection for persons having an interest in obtaining a particular contract and who are being harmed by an alleged infringement will have to be ensured.

Award of contracts. The DCFTA also defines "basic standards regulating the award of contracts", which are derived directly from the EU's public procurement legislation, and include the principles of non-discrimination, equal treatment, transparency and proportionality. Georgia has to comply with these basic standards no later than three years from the entry into force of the Agreement. This set of rules lays down key publication requirements. Georgia has to ensure that all its

⁵² More specifically, Regulation (EU) 1336/2013 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC in respect of the application thresholds for the procedures for the awards of contract.

intended procurements are properly published and made public in order to enable the market to be opened up to competition and to allow any interested economic operator to have access to information regarding the intended procurement prior to the award of the contract. Concerning the award of contracts, these basic standards state that all contracts have to be awarded through transparent and impartial award procedures that prevent corruptive practices. This impartiality has to be ensured, especially through the non-discriminatory description of the subject matter of the contract, equal access for all economic operators, appropriate time limits and a transparent and objective approach. Contracting entities may not impose conditions that directly or indirectly discriminate against the economic operators of the other party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity. Georgia has to ensure that contracts are awarded in a transparent manner to the applicant who has submitted the economically most advantageous offer or the offer with the lowest price, based on the tender criteria. The final decisions are to be communicated to all applicants and upon request of an unsuccessful applicant, reasons must be provided in sufficient detail to allow a review of the decision.

Legislative approximation. This DCFTA chapter includes detailed rules on Georgia's approximation of EU public procurement law. Georgia is obliged to approximate Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, as well as Directive 2004/17/EC on coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (i.e. utilities). However, these two directives do not have to be implemented in their entirety or at once. Annex XVI divides these two directives into mandatory elements and those elements that fall outside the scope of legislative approximation.

Directive 2004/18/EC seeks to ensure an open market for public procurement as well as the fair application of the rules for the award of public works, supplies and services contracts. It aims at ensuring that the contracting process is fair and open to bidders from anywhere in the EU. This directive covers most public contracts other than those for utilities, telecommunications and service concessions. It obliges the contracting authorities to treat economic operators in an equal, non-discriminatory and transparent way. It provides for four types of contract procedures: i) open (i.e. any party may submit a bid), ii) restricted (i.e. any party may ask to participate and the contracting

authority decides which parties to invite to submit a bid), iii) negotiated (i.e. the contracting authorities negotiate directly the terms of a contract) and iv) competitive dialogue (i.e. for very complex contracts the contracting authority may discuss requirements and solutions with candidates admitted to a procedure, before the candidates submit their final tender). With regard to transparency, this directive requires the publication of notices on all public contracts in the EU's *Official Journal* and in the TED database, which is the public procurement database of the EU.⁵³ All publications must contain identical information so as not to favour any bidder, such as the deadlines for the bids, the language(s) of the bid, the award criteria and their relative weighting. Most of this directive's provisions are labelled in Annex XVI as mandatory and therefore need to be implemented by Georgia. Only several elements of this directive are not obligatory, such as the provisions on the competitive dialogue or the provisions on statistical obligations and the directive's final provisions.

Directive 2004/17/EC applies to the supply, works and services contracts in the energy, water, transport and postal services sectors. Similar to Directive 2004/18/EC, this directive provides rules on the procedures for the awarding of public procurement contracts (i.e. an open, restricted and negotiated procedures), rules on publication and transparency, contract award criteria and the conditions for participation. Again, most of the relevant provisions of this directive are identified in Annex XVI of the Agreement as mandatory. Finally, Georgia also has to approximate the EU's directives on remedies (covering utilities and the public sector). These directives require that decisions taken by contracting authorities or contracting entities may be reviewed effectively, and in particular, as quickly as possible, on the grounds that such decisions have infringed EU public procurement law.⁵⁴

Market access. This DCFTA chapter clearly links market access to Georgia's progress in approximating the annexed EU public procurement rules and institutional reforms. Annex XVI includes an "indicative time schedule" for institutional reform, legislative approximation and market access. This time schedule foresees five phases for Georgia to implement the provisions of the EU's public

⁵³ See "TED – Tenders Electronic Daily: Supplement to the Official Journal of the EU" (<http://ted.europa.eu/TED/main/HomePage.do>).

⁵⁴ See Directives 89/665/EEC and 92/13/EEC as amended by Directive 2007/66/EC with regard to improving the effectiveness of review procedures concerning the award of public contracts.

procurement directives, and the specific market access that Georgia and the EU will grant to each other (Table 10.2). The market access provided in each phase will imply that the EU shall grant access to contract award procedures to Georgian companies – whether or not established in the EU – pursuant to EU public procurement rules under treatment no less favourable than that accorded to EU companies, and vice versa. Although this schedule envisages a simultaneous market opening, it has to be noted that Georgia’s public procurement market was already open for EU companies before the DCFTA entered into force, and that EU companies can therefore already participate in Georgia’s procurement market. There is no requirement for registration of those companies in Georgia. On the EU’s side, the indicative time schedule foresees that each phase shall be evaluated by the Trade Committee and the EU’s market access will only take place after a positive assessment by this Committee, which will take into account the quality of Georgia’s legislation as well as its practical implementation. The Trade Committee shall only proceed to the evaluation of a next phase once the measures to be implemented in the previous phase have been carried out and approved.

Prior to the beginning of legislative approximation, Georgia has to submit to the Trade Committee a comprehensive roadmap for the implementation of requirements of the procurement chapter (hereafter referred to as the ‘public procurement roadmap’), covering all reforms in terms of legislative approximation and institutional capacity building. This roadmap has to comply with the five phases of the indicative schedule of Annex XVI (Table 10.2). Following a favourable opinion by the Trade Committee, this roadmap will be considered the reference document for the implementation of this chapter.

Table 10.2 Indicative time schedule for approximation of public procurement rules

Phase	Action	Indicative time schedule (after the entry into force of the DCFTA)	Market access granted to the EU by Georgia	Market access granted to Georgia by the EU
1)	Implementation of the “basic standards”, the institutional reforms and the public procurement roadmap	3 years	Supplies for central government authorities	Supplies for central government authorities
2)	Implementation of the basic elements of Directive 2004/18 EC and of Directive 89/665/EEC	5 years	Supplies for state, regional and local authorities and bodies governed by public law	Supplies for state, regional and local authorities and bodies governed by public law
3)	Implementation of the basic elements of Directive 2004/17 EC and of Directive 92/13/EEC	6 years	Supplies for all contracting entities in the utilities sector	Supplies for all contracting entities
4)	Implementation of “other elements” of Directive 2004/18 EC	7 years	Service and works contracts and concessions for all contracting authorities	Service and works contracts and concessions for all contracting authorities
5)	Implementation of other elements of Directive 2004/17/EC	8 years	Service and works contracts for all contracting entities in the utilities sector	Service and works contracts for all contracting entities in the utilities sector

Source: Annex XVI of the DCFTA.

The EU public procurement directives included in the DCFTA have meanwhile been replaced in the EU by a new legislative package. In 2011, the European Commission proposed the revision of Directive 2004/17/EC and 2004/18/EC, as well as the adoption of a directive on concession contracts. This legislative package was adopted in February 2014 and the member states had to transpose the new rules into their national law until April 2016.⁵⁵ These new public procurement rules aim at simplifying the EU procurement regime, introducing more flexibility, establishing better access to EU procurement markets for SMEs and ensuring that greater consideration is given to social and environmental criteria.⁵⁶ Once the Agreement enters into force, it will be crucial that Annex XVI is updated to take into account these new EU procurement directives. Moreover, these new public procurement rules should also be covered in Georgia's public procurement roadmap. Whereas these new directives did not change the basic framework of the EU's public procurement system, which is mainly covered in phase 1 of the DCFTA's indicative time schedule, the numerous novelties need to be transposed into the DCFTA.

Implementation perspectives

Development of Georgia's public procurement system. Since the first Law on Public Procurement was adopted in December 1998 (N1721), Georgia's public procurement system and legislation has been continuously developing. The current public procurement framework – the Law on State Procurement (LSP) – was adopted in 2005 and came into force on 1 January 2006. Since its enactment, the LSP has been streamlined and has undergone a series of amendments. The main aims of the LSP are to ensure the rational use of financial resources; develop healthy competition in the production of goods, supply of services and construction works necessary for the state's needs; ensure a fair and non-discriminatory approach towards participants in the procurement process; assure the publicity of the process; create a unified electronic

⁵⁵ See Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC; see also Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC; and Directive 2014/23/EU on the award of concession contracts.

⁵⁶ For an overview of international best practices on tackling corruption in public procurement, see the following report on Ukraine: <http://eupublicprocurement.org.ua/wp-content/uploads/2015/10/Report-on-anti-corruption-ENG.pdf>.

system of public procurement and build public confidence in it. The scope of the LSP covers purchases of goods and the supply of services and construction works by contracting authorities, using funds from the state, autonomous republics or local budgets, funds of public bodies and grants or loans guaranteed by the state. Substantial parts of the procurement process are regulated by secondary legislation. Provisions regarding avoidance of conflict of interest are stipulated in the LSP.

The main responsible agency is the State Procurement Agency (SPA), an independent legal entity under public law. Between 2012 and 2014, the SPA was merged with the Free Trade and Competition Agency, based on the Swedish model and with the assistance of Swedish experts, and was renamed the Competition and State Procurement Agency. Yet later (in 2014), this agency was split again into the Competition Agency and the SPA.

According to the current Law on State Procurement, there are five methods for awarding contracts:

- 1) *electronic tender*, used for purchases of homogeneous objects with a value equal to or above €75,182;⁵⁷
- 2) *simplified electronic tender*, used for purchases of homogeneous objects with a value up to €75,182;
- 3) *simplified procurement*, used for purchases of a value below €1,880 (with different thresholds for diplomatic missions and procurement related to defence, security and maintenance of public order);
- 4) *design contests*, used for procurement of design-related projects and services, based on the decision of a contracting authority; and
- 5) *consolidated tender*, a unified, centralised state procurement procedure conducted by the SPA, for the purchase of homogeneous procured objects for different procuring entities.

The share of contracts awarded by type of procurement during 2012–15 as a share of the total value of contracts awarded were as follows: electronic tenders, 43.9%; simplified electronic tenders, 12.6%; simplified procurement, 37.5%; design contests, 0.3%; and consolidated tenders, 5.7%. The award criterion used in electronic tenders and simplified electronic tenders is the lowest price. Criteria other than price are used in design contests, where the relative weighting attached

⁵⁷ GEL exchange rate to euros of 2.66.

to the price can be set at between 20 and 30%, and quality criteria between 70 and 80%.

Electronic and simplified electronic tenders are published on the Unified Electronic System in the Georgian language. In the case of supply of goods or services contracts of more than €751,816 and works contracts of more than €1,503,632 in value, notice should be published also in English. Below these values, the notice, apart from Georgian, may be published in English. An electronic tender is conducted by a tender committee set up by the head of a contracting authority.

Under the LSP, a 'White and Black List Registry' is compiled of participants in public procurement, which is maintained on the SPA's website. Blacklisted are those persons/bidders/suppliers who do not submit a guarantee for implementing the contract, or refuse to sign the contract with the procuring entity, and/or fail to perform or improperly perform their obligations under the contract. Blacklisted participants may not participate in public procurement or be awarded a public procurement contract within one year after they are placed on the Black List. White-listed are those suppliers complying with the qualification criteria, and who inter alia have not been registered in the Black Lists for public procurement or by the Revenue Service during the past year, are not undergoing insolvency proceedings, do not have any debt towards the state budget, and during last three years have had no less than €375,940 of turnover. When participating in public procurement, qualified suppliers registered in the White List shall enjoy simplified procedures.

A catalogue of procurement objects using a common procurement vocabulary was developed. The utilisation of codes simplifies the identification of electronic tenders by foreign companies.

DCFTA implementation gap. Georgia's legislation on public procurement underwent considerable changes to bring it into compliance with EU and international standards. The legislative and institutional requirements in procurement under the DCFTA, explained above, provide the detailed roadmap for reform. Georgia has already made substantial progress in implementing the DCFTA public procurement chapter, but there are some gaps that should be addressed during the approximation period.

Streamlining of legislation. The existing legislation on public procurement has to be improved further in order to bring it fully into compliance with EU principles, including but not limited to the following areas:

- *Compliance with the DCFTA basic standards.* Georgian legislation has to be streamlined further to better reflect the principles of equal treatment and proportionality. The time limits for submission of offers are not sufficient.
- *Scope and coverage of public procurement.* The definition of contracting authorities should be streamlined according to the EU definition. Utilities are not specifically mentioned. Specific exclusions are not all consistent with EU directives.
- *Procurement procedures.* The different types of EU contract procedures, explained above (i.e. open, restricted, negotiated and competitive), have to be introduced in the current LSP. Georgia also has to introduce the concept of a framework agreement, which brings certain flexibilities.
- *Time limits and notices.* The minimum time limits provided by the LSP for submitting tenders are shorter than those envisaged by the EU directives. Specific types of notices, such as prior information and periodic indicative notice, as in the EU directives, have to be introduced.
- *Tender documents.* Georgian legislation related to tender documentation needs rules for the mandatory and optional exclusion of economic operators in line with EU directives. The system of the Black List should be revised.
- *Concessions.* The law does not constitute a sufficiently solid legal basis for the development of concessions. The approximation of Georgian legislation with that of the EU is envisaged in phase 4 of the indicative time schedule (see Table 10.2).

Institutional framework and review system. Georgia already complies almost fully with the DCFTA's institutional requirements, explained above. Georgia has a well-established central institutional framework for coordinating, implementing and monitoring public procurement, with the leading role taken by the independent SPA.

A Dispute Resolution Board (DRB) was established at the SPA, consisting of six members – three appointed by the SPA and three elected by civil society organisations. The involvement of NGOs ensures transparency of the process and independence of the DRB. Complaints about the procurement system can be addressed to the DRB, apart from the contracting authority or a court. Submission and hearing of a complaint are not subject to a fee. Complaints are submitted electronically by filling out a form on the tender page. If the legitimacy of a complaint is confirmed, the DRB may, within a maximum of ten days, inform the contracting authority about the error

and require a correction. Alternatively, it may require a total revision or cancellation of the decision of the tender committee or report the case to law enforcement bodies in the event of a serious violation. The decision of the DRB can be appealed to the court.

From its establishment in December 2010 until December 2015, 2,167 complaints were submitted to the DRB, out of which 571 were fully granted, 864 not granted, 324 partially granted, 35 withdrawn, 371 deemed inadmissible and 2 of them still under consideration. During the same period, 69 DRB decisions were appealed to the court, but none successfully.

E-procurement. A significant change to the public procurement system was the introduction of the e-procurement system in 2010, with the establishment of the Unified Electronic System of State Procurement. The traditional paper-based tendering system was entirely replaced with a new electronic system, which has ensured greater transparency and simplicity of the procurement process, significantly reduced administrative costs and increased accessibility. The Unified Electronic Procurement System enables access to all information related to public procurement in Georgia, covering annual procurement plans, tender notices and documents, bids and bidding documents, decisions of tender evaluation commissions, all relevant correspondence, contracts and amendments to the contracts, and payments made through the treasury. Registration is mandatory only for attaining the status of contracting authority and supplier. Registration is simple and easy and it does not require an electronic signature certificate. So far, 4,455 contracting authorities and 27,464 suppliers have registered. Contracting authorities are obliged to publish their annual procurement plans in the system through the so-called 'e-plan module'. Bidding is made by e-auction. Many international organisations have given a high appraisal of Georgia's e-procurement system. For example, the UN awarded the Georgian e-procurement system 2nd place among 471 candidates from 71 countries in the UN Public Service Award in 2012. The EBRD ranked Georgia at the top of its 26 countries in the region with regard to the implementation of e-procurement. The e-procurement system platform is maintained by the SPA.⁵⁸

Taking into consideration that the basic e-procurement requirements of the EU directives have already been met, Georgia will

⁵⁸ See the State Procurement Agency's platform at <https://tenders.procurement.gov.ge/>.

be able to accommodate new legal developments in accordance with the approximation schedule.

Capacity building on public procurement. The SPA is conducting training for contracting authorities through its Training Centre, which was established in 2014. Still, the current capacity of the Training Centre is not sufficient and needs to be expanded. The development of guidelines, instructions and manuals is envisaged to better address the specific training needs of stakeholders.

Public procurement at a glance

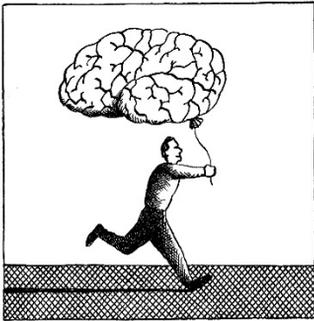
Georgia's public procurement system has undergone significant changes as part of aligning with EU requirements and international best practices. Remaining gaps are to be addressed through, among others, the process of DCFTA legislative approximation.

There is a well-established, central institutional framework for public procurement, with the leading role taken by an independent body – the State Procurement Agency.

Georgia's procurement system has been fully electronic since 2010, ensuring greater transparency and simplicity, significantly reducing administrative costs and increasing accessibility.

The UN awarded Georgia's e-procurement system 2nd place among 471 candidates from 71 countries in the UN Public Service Awards in 2012 and the EBRD ranked Georgia at the top of its 26 countries in the region with regard to the implementation of e-procurement.

11. INTELLECTUAL PROPERTY RIGHTS



In our knowledge-based economies, the protection of intellectual property is important not only for promoting innovation and creativity, but also for increasing employment and improving competitiveness. The DCFTA requires Georgia to modernise its system on intellectual property rights (IPRs). These reforms will contribute to a stable legal environment in Georgia for the protection of IPRs, which is crucial for attracting foreign investment.

Provisions of the Agreement

The DCFTA chapter on IPRs seeks to facilitate the production and commercialisation of innovative products while guaranteeing an adequate level of protection and enforcement of intellectual property rights. It complements Georgia's obligations under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This WTO agreement establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. The DCFTA confirms these WTO rules and even goes beyond them in several areas. This has important implications for Georgia, as in principle it has to extend these 'TRIPS-plus provisions' to all WTO members pursuant to the TRIPS' most favoured nation clause (Art. 4 TRIPS).

Contrary to other DCFTA chapters, the IPR section does not oblige Georgia to approximate a selection of the EU's IPR legislation annexed to the Agreement. The main text of the DCFTA is very

detailed, however, and its provisions reflect – or sometimes even copy – several principles and procedures of the EU’s IPR legislation. The DCFTA lays down rules on copyrights, trademarks, geographical indications (GIs) and designs, including detailed enforcement provisions.

Copyrights. The parties must comply with several international conventions and agreements (e.g. the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the Berne Convention for the Protection of Literary and Artistic Works, and the World Intellectual Property Organisation Copyright Treaty). With regard to the duration of authors’ rights, the DCFTA states that the rights of an author of a literary or artistic work have to be protected for 70 years after his/her death. The Agreement also covers broadcasting and communication to the public, protection of technological measures and rights of management information and resale rights. A provision on cooperation on collective management of rights goes beyond the TRIPs agreement, but only envisages (i.e. a soft commitment) that the parties’ ‘collecting societies’⁵⁹ conclude agreements with each other in order to promote the availability of works, as well as ensure the mutual transfer of royalties for the use of such works.

Trademarks. The DCFTA mainly requires the implementation of international agreements, such as the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks. Moreover, Georgia must establish a fair and transparent system for the registration of trademarks, in which any refusal by the relevant trademark administration is communicated to the applicant in writing and duly reasoned. Georgia also has to provide a publicly available, electronic database of trademark applications and registrations.

Geographical indications. The text of the Agreement recognises that Georgia’s IPR legislation (i.e. the Law on Appellations of Origin and Geographical Indications of Goods) already meets the required conditions with regard to registration and control of geographical indications (GIs) (Annex XVII-A), and therefore does not require further approximation to EU law. This is because Georgia concluded an

⁵⁹ More specifically, these are authorities established under national IPR law that represent the holders of a certain IPR and which have the responsibility of administering the IPRs of its members, such as societies responsible for collecting the copyright royalties for musicians.

agreement on GIs with the EU prior to the DCFTA, which was later simply integrated into the DCFTA. The annexes contain an elaborate list of geographical indications for the agricultural products, foodstuffs and types of wines and spirit drinks of both parties (e.g. for the EU, these include prosciutto di Parma, champagne and feta cheese). Those listed are to be protected against any direct or indirect commercial use or misuse of a protected name for comparable products, going beyond the TRIPS' requirements. A specific subcommittee on GIs shall monitor the implementation of these provisions and report to the Trade Committee. In turn, the Trade Committee is responsible for amending the annexes to this chapter, including the list of protected GIs.

Designs and patents. Georgia also has to provide for the protection of independently created designs that are new and have an individual character. The protection shall be provided by registration and shall confer upon the holder the exclusive right to use the design and to prevent third parties not having his/her consent from using it, in particular to make, offer, put on the market, import or export it. The duration of protection available shall amount to 25 years from the date of filing of the application for registration. Specific rules are provided for patents for medicinal and plant protection products. For example, the provisions on pharmaceutical data protection, which go beyond the TRIPS agreement, require that Georgia shall implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance on data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.

Enforcement of IPRs. The agreement provides a strong section on the enforcement of IPRs. These commitments go beyond the TRIPS agreement. The complementary measures and remedies in the DCFTA have to be fair and equitable and may not result in additional barriers to trade. The section on civil measures and procedures, which is largely based on the EU's IPR Enforcement Directive,⁶⁰ includes detailed procedural provisions on judicial enforcement of IPRs (e.g. on transparency, procedural fairness, right to information, measures for preserving evidence and publication of judicial decisions). Judicial authorities must have the power to recall products from the market that are found to be infringing an intellectual property right or to order the destruction of those goods. Furthermore, judicial authorities must be able to issue an injunction and penalty payments or pecuniary compensation payments against the infringer with the aim of

⁶⁰ See Directive 2004/48 EC on the enforcement of intellectual property rights.

prohibiting the continuation of the infringement. Also, provisions on the liability of intermediary service providers (e.g. online service providers) are foreseen.⁶¹ These are copied from the EU’s E-Commerce Directive⁶² and provide for a ‘safe haven’ regime, under which certain types of intermediary service providers are exempted from liability for IPR infringements, under certain conditions.

Implementation perspectives

Georgia’s IPR system. The intellectual property system in Georgia has been evolving gradually. In 1992, Georgia created its national patent service, which since has evolved into a National Intellectual Property Centre (Sakpatenti). Georgia was the first of the former Soviet Republics to establish such an institution. Sakpatenti is an independent legal entity of public law responsible for protecting intellectual property in the country, as well as defining IPR policy. Sakpatenti reports to the prime minister. Sakpatenti’s mandate consolidates all the branches covering intellectual property. The first laws in this sphere were adopted and enacted in 1999. These regulated patents, copyrights, trademarks, geographical indications, etc. Since then, this legislation has undergone a series of amendments, which have been in compliance with EU standards and offer an increasingly high level of protection for the right holders.

The intellectual property system is evolving gradually. Sakpatenti has introduced a new e-filing system and database, which has made the process of filing applications easier. Sakpatenti, in collaboration with the World Intellectual Property Organization, launched a project for creating an intellectual property educational centre, which will implement a range of educational initiatives and will be involved in a number of capacity-building activities in the field. Signing the Association Agreement/DCFTA has contributed to elevating Georgia from the Caucasus, Central Asia and Eastern European Regional Group to a Central European and Baltic Country Regional Group at the World Intellectual Property Organization. This platform enables Georgia to exchange experience on IPRs with EU

⁶¹ These provisions are included in the DCFTA chapter on “Establishment, trade in services and electronic commerce” (Arts 129–133).

⁶² See the Electronic Commerce Directive 2000/31/EC) on certain legal aspects of information society services, in particular electronic commerce, in the internal market.

countries, which by itself will facilitate an active dialogue on issues of EU integration.

Because the protection of GIs is a priority for the country, there has been a rapidly growing number of registered GIs and appellations of origin. At the time of writing, 18 Georgian wines with an appellation of origin, 8 mineral waters and 16 geographical indications have been registered. A non-profit (non-commercial) legal entity, 'Origin Georgia', was jointly established by Sakpatenti and the National Wine Agency, and will contribute to developing the GI system in the country.

Remaining gaps with the DCFTA. Although Georgian legislation on IPRs was broadly in line with EU standards prior to signing the Agreement, Georgia still needs to reform its system to fully comply with the DCFTA requirements explained above. Legislative amendments to various Georgian laws regulating the intellectual property sphere will include, but will not be limited to, the topics discussed below.

Copyrights and related rights. The Georgian copyright system is mainly in compliance with DCFTA requirements. However, a few amendments will be introduced, which in some circumstances will set different timeframes for protection. For example, with regard to phonograms (i.e. audio recordings), the rights of a performer will expire after 70 years from the date of the first publication or the first communication to the public of the performance (instead of 50 years). The same 70-year timeframe will be applied to producers of phonograms, provided that the phonogram was lawfully published within 50 years.

Trademarks. To comply with the DCFTA transparency conditions for trademarks, the new legislative reforms require that a refusal to register a trademark is duly reasoned.

Patents. The DCFTA chapter on IPRs obliges Georgia to adopt a regulation regarding a supplementary protection certificate, which would extend patent protection for the time necessary for administrative procedures before placing the product on the market. Even though this possibility had previously existed in Georgian patent law, the new regulation will more closely comply with EU legislation. The same rule will be applicable to plant protection products.

The parties are obliged to recognise the importance of the Declaration of the Ministerial Conference of the WTO on the TRIPS Agreement and Public Health, and to contribute to the implementation of its paragraph 6, which addresses compulsory licensing. Accordingly, Georgia will enact a regulation under which, in some cases and under

certain conditions, special permission may be issued to use without the owner's consent inventions protected as a patent or utility model. Amendments to the Law on Medicines and Pharmaceutical activities will guarantee confidentiality, non-disclosure and non-reliance on data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market, as required by the DCFTA. Moreover, clinical test data will remain confidential for six years after placing a product on the market within the territory of one of the member states. In certain cases, this timeframe can be extended to seven years.

Enforcement. After enacting new amendments, Georgia will put in place comprehensive rules regarding civil enforcement of intellectual property rights. These amendments will fully reflect the DCFTA chapter on civil enforcement and ensure proper functioning of the system and effective implementation of sanctions.

Opportunities and challenges. For Georgia, as a producer of agricultural products for export, protection of its geographical indications and appellations of origin on the EU territory is of utmost importance. In that respect, having the possibility of exporting and placing on the EU market Georgian GIs and appellations of origin will bestow substantial benefits to Georgian farmers and companies. Yet along with providing opportunities, the implementation process may pose some challenges for the country. One of the most significant of these is the readiness of Georgian SMEs to adapt to a more knowledge-based economic system.

Furthermore, the planned legislative changes could be challenging for some segments of the Georgian economy. For instance, as a country that heavily depends on imported rather than locally manufactured generic medicines, the imposition of a domestic or regional exhaustion regime – which by itself can hinder parallel importation – may prove to be quite difficult. An exhaustion regime defines the territory within which an IPR will be exhausted after the first sale of the original goods. By adopting a domestic exhaustion regime, the IPR owner will be able to oppose the importation of original goods marketed abroad. In addition, regional exhaustion will exhaust the IPR on the product put for sale within a certain region and the right holder will be able to oppose importation of products outside that region. Another provision that may pose difficulties is the exclusivity of clinical test data for medicinal products, which means that the parties have to guarantee protection of the clinical data that proves the safety and efficacy of a new drug and is necessary to be submitted to a regulatory agency in order to obtain marketing authorisation.

However, the regulation permits the use of clinical test data after six years from placing medicines on the markets of one of the parties. It takes quite some time for medicines already placed on the EU market to reach Georgia, which may take more than six years, and thus by that time this provision will no longer pose an obstacle.

Intellection property rights at a glance

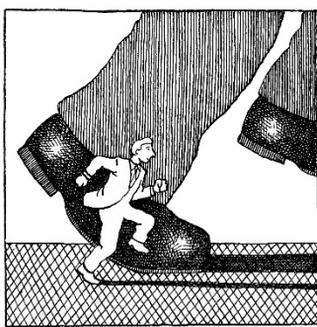
Georgia's system for protecting intellectual property rights is mainly in compliance with international best practices, agreements (e.g. TRIPS) and EU legislation.

IPR legislation will be amended to further comply with the DCFTA's IPR requirements. Important changes relate to transparency in the area of trademarks, supplementary protection certificates for patents and IPR enforcement.

In line with its IPR priorities, Georgia has been registering geographical indications and appellations of origin, and has been protecting them internationally.

Special amendments were enacted in Georgian legislation to promote innovative activities.

12. COMPETITION POLICY



An effective competition policy, controlling abuse of a dominant position by companies and trade-distorting subsidies by the government, is essential for the sound functioning of a modern economy. It leads to a level playing field for economic operators and the benefits of lower prices, better quality and wider choice for consumers, while reducing the scope for corruption.

Provisions of the Agreement

The DCFTA chapter on competition is very limited, especially compared with the corresponding chapter in the Ukraine and Moldova DCFTAs. It only includes a few broad provisions that do not require Georgia to approximate the EU's competition rules and system.

Antitrust and mergers. Georgia is obliged to maintain comprehensive competition laws that affectively address anti-competitive cartels, mergers and the abuse of a dominant position by enterprises. These competition laws should be enforced by an appropriately equipped authority in a transparent and non-discriminatory manner, respecting the principles of procedural fairness and rights of defence. Moreover, they should also apply to state monopolies, state enterprises and enterprises entrusted with exclusive rights in so far as the application of these competition rules does not obstruct the particular tasks of public interest assigned to these enterprises.

State aids. The DCFTA does not create new obligations that go beyond Georgia's obligations under the WTO Agreement on Subsidies and Countervailing Measures. There is only a requirement that both the

EU and Georgia shall report regularly to each other on their subsidy activities.

Institutional aspects. The Agreement is largely silent on how Georgia's competition policy should be administered. The EU's own experience in this regard entails some strong messages. In many member states, the government or parliament (or both) makes the top-level appointments of heads of competition institutions for fixed terms for medium-term periods (five or six years), but the appointees cannot be dismissed at the discretion of the government or parliament. Most importantly, the individual case decisions of these bodies are sovereign, and not subject to approval by the government.

Georgian competition policy

Early developments of competition policy. The Georgian parliament adopted the first competition framework law (Law on Monopolistic Activity and Competition) in 1996. The law was not in compliance with international standards, as it prohibited monopoly (instead of prohibiting abuse of dominant positions) and was oriented towards price control. This first law was thus more an anti-monopoly regulation than a competition law. The responsible authority was the Anti-monopoly Agency, which was empowered to carry out only documentary investigations. The Agency did not have the power to conduct onsite investigations or dawn raids.

In 2005, a new Law on Free Trade and Competition was adopted, replacing the previous one. It formed part of wider reform efforts notably seeking to reduce corruption, and in this case the reportedly widespread corruption in the enforcement of the 1996 law. Its scope was mainly focused on state aids, and therefore was not a framework law for competition policy overall. It lacked key definitions of the abuse of dominant position, concentrations, cartels, etc. While the 2005 law had created the Competition and Free Trade Agency, it lacked independence and investigative powers, and had no powers in the area of anti-trust.

Recent developments and EU practice. As already mentioned, the competition policy chapter of the Association Agreement includes no specific references to EU laws for approximation by Georgia. This means that the relevant Georgian authorities have a considerable degree of discretion on how to define and operate competition policy. The evolution of Georgian competition policy, however, is heavily influenced by EU law and practice. In particular, the new 2012 Law on Free Trade and Competition was elaborated in close cooperation with

experts from the Swedish Competition Authority, and drafted in line with EU practice.

In the new 2012 law, the following topics were added: provisions on state aids, abuse of dominant position, *ex post* regulation of concentrations (prior notification was not required), cartels, relevant market, fines and sanctions. Yet some sectors remained under special competition regulations: energy, communications and financial services. In common international practice, these sectors are referred to as ‘non-liberalised sectors’ because the risk of concentration and abuse of dominant position are rather high, and thus they are regulated by special laws and sector regulators.

The Competition and State Procurement Agency was created as an independent body accountable to the government. The Agency was given investigative powers.

Further amendments to the law were made in 2014,⁶³ covering the following areas:

- *antitrust provisions*, which address abuse of dominant position, *ex ante* regulation of mergers and acquisitions, restrictive agreements, concerted practices, decisions by undertakings, terms of relevant market, principles of block exemptions, leniency programmes, fines and sanctions. The law is in line with the Arts 101 and 102 of the EU Treaty on the Functioning of the European Union;
- *state aid provisions*, covering general rules on procedures for granting state aid, *de minimis* state aid; and
- *institutional provisions* on further institutional independence, investigative powers and decision-making powers.

The Competition and State Procurement Agency was divided into two independent state authorities: the Competition Agency and the State Procurement Agency. Accordingly, the Competition Agency is now responsible only for competition policy issues, and no longer for state procurement. The Competition Agency is an independent regulatory body, subordinated to the prime minister and responsible for the implementation of competition legislation. It has a wide range of powers: to investigate the abuse of dominant positions, cartels and any infringement of competition legislation (including *ex officio* investigations and onsite inspections); to impose sanctions or fines for

⁶³ The legislation that governs competition policy consists of the competition law and secondary legislation (six regulations on competition and one regulation on state aid).

competition legislation infringements; to spin off companies; and to prohibit or control mergers and acquisitions.

The Competition Agency has already undertaken a number of activities involving its consent or investigation of mergers and acquisitions (two cases), the abuse of a dominant position (one case), restrictive agreements and concerted practices (one case) and infringement of state aid provisions (two cases).

Nevertheless, as a result of changes in 2014, the Competition Law still has some important shortcomings. A dominant position is negatively (nominally) defined, which provides that a dominant position per se restricts competition. According to best practices, a dominant position by itself is not something negative by definition and is not prohibited. Only abuse of a dominant position is prohibited by EU and international regulations. Subsequent to recent changes, the current law provides a legal basis for price regulation, and as a result the Competition Agency can act as a price inspectorate, which restricts market competition.

Strict *ex ante* regulation of mergers and acquisitions is envisaged by the new legislation. It defines strict procedures for notification of mergers and acquisitions (for example, economic agents who want to undertake a merger should provide a relevant market analysis themselves). Georgia has a small economy, in which nearly 98% of enterprises are either small or medium-sized. To increase export potential, it is vital for many companies to merge or acquire shares in other companies. For instance, Luxembourg has only *ex post* regulation of mergers and concentrations, which is in line with EU regulations.

Implementing the new competition legislation will involve overcoming the following main challenges:

- lack of knowledge of competition legislation and experience in dealing with competition cases on the part of the responsible judges (at the Tbilisi City Court and Tbilisi Appeal Court);
- insufficient capacity building for the development of the Competition Agency;
- lack of awareness by the private and public sectors and by civil society; and
- lack of efficient coordination among the key regulatory agencies, which diminishes the capacity of the Competition Agency to implement the antitrust policy in an effective manner.

Overall, Georgian legislation is now largely compliant with the key principles of the EU competition *acquis*. There remains the issue of

the extent to which competition legislation designed for the large EU internal market is suitable for Georgia, a country whose market size is around 100 times smaller and is still in transition. This issue can only be assessed properly after the Competition Agency has acquired more experience of competition enforcement.

Competition policy at a glance

The provisions in the DCFTA for competition policy are very limited and do not require approximation with EU competition rules and policies.

Nevertheless, Georgia recently aligned its competition legislation largely with the key principles of EU competition law.

The Competition Agency is independent and has investigative and decision-making powers.

13. STATISTICS



A modern and internationally comparable statistical system is indispensable for informed policy-making and for the work of the business sector and civil society. All the post-Soviet states have had to face the same challenges of radical reform to their statistical systems, notably the move from systems that essentially served the needs of the state to systems that serve the private sector and society as a whole

and, more technically, to a greater use of sampling methods rather than exhaustive data collection.

Provisions of the Agreement

The EU has engaged all six Eastern Partnership (EaP) states and the Central Asian states in extensive cooperation programmes to assist this long and complex process. Many of the projects listed below are 'group activities' for the whole EaP and, in some cases, also with the Central Asian states.

For Ukraine, Moldova and Georgia this is enhanced by collaboration and by the explicit commitments made in the Association Agreements to align their statistical systems to that of the EU: Eurostat, which sets out a huge number of legal regulations in the Statistical Requirements Compendium. This is a highly ambitious programme. The time horizon for compliance with EU regulations is not specified, however, but experience from the accession of the new member states of the EU would indicate that this is a long-term process. For a realistic perspective, it took around 15 years for other new EU members to complete the transition, with much more support from the EU than Ukraine, Moldova or Georgia will be receiving.

Cooperation between Eurostat and partner states is structured as follows:

- three-day seminars on statistical strategies, once a year;
- training courses on current issues and recent developments in statistical systems, about five to six times over a two-year cycle;
- collection of selected data series, about 300 in number (i.e. a selection of key series, though fewer than what the EU member states comply with), in which the partner states submit data in accordance with Eurostat questionnaires, allowing Eurostat to publish comparable data series;
- in-depth assessment of the statistical systems of Ukraine, Moldova and Georgia (called Global Assessments), see below; and
- activities of the EaP multilateral platform and panel on statistical systems. This consists of conferences held in EaP capitals at a rate of about two per year, each taking up a particular theme in depth (such as the labour market and migration).

Developments in Georgian statistics

The legal basis for statistical activities in Georgia is stipulated under the Law on Official Statistics, which came into force in 2010. The aim of the law is to ensure production of independent, objective and reliable statistics in accordance with the fundamental principles of the United Nations and European Statistics Code of Practice. The law defines Geostat as the executive agency for all statistical activities, as an independent legal entity of public law, managed by a board. The Geostat Board consists of seven members and a chair, of which five members are non-public servants.

Eurostat completed a Global Assessment of the Georgian Statistical System in 2013, evaluating its level of conformity with UN and European codes of practice, as specified in the Eurostat Statistical Requirements Compendium.⁶⁴ The main recommendations of the report referred to the institutional framework, and notably the independence of the National Statistics Office of Georgia (Geostat).

Action upon these recommendations is seen in the changes to the law in 2015, which reformed the appointment procedures of non-public members of the Geostat Board, to be based on open competition. In

⁶⁴ See http://ec.europa.eu/eurostat/documents/52535/52745/835697_AGA_Report_GE_FINAL+18+04+2013.pdf/0fd16014-6fcd-4ace-9444-49dce7cfff9b.

addition, Geostat will form an Advisory Board. The law now also makes it mandatory for business respondents to comply with Geostat questionnaires.

The General Population and Housing Census was conducted in 2014, collecting demographic, educational, labour force, migration, housing agricultural and other data. This was the first census in the region conducted with the help of digital (geographical information system) maps.

In 2014, the Quality and Methodology Sub-Division was created at Geostat and the interagency working group was set up to improve the coordination of national statistics. Geostat presented the European Code of Practice to this working group.

Annual national action plans are agreed between the EU and the Georgia for the implementation of the requirements of the Agreement. Geostat's 2015 action plan and draft 2016 plan focus on exploitation of the 2014 Census, foreign trade statistics, dissemination methods, and revision of legislation to conform with international and European practices.

Within the Strategy for Statistical Cooperation in the ENP-East region 2014–20, Georgia hosted a panel meeting on labour force statistics in October 2015. In July 2015, Eurostat experts visited Geostat to review the business statistics and their conformity with the requirements of European Statistics Code of Practice. Recommendations have been prepared and were submitted to Geostat in December 2015.

With the support of an EU TAIEX project, Geostat works on a medium-term strategy for the development of the statistics system for the period 2016–19, with assistance from Statistics Lithuania.

Substantial progress has been made to improve the capacity and performance of the national statistical system over the last decade, but it is still a long way from meeting the Statistical Requirements Compendium of Eurostat.

Georgian legislation provides a strong basis for producing independent, objective and reliable statistics in line with the fundamental principles of United Nations and the European Statistics Code of Practice.

The national statistics agency, Geostat, was established as an independent institution in 2010; its work had been based on the experience of advanced statistical systems and conducted with the support of international organisations.

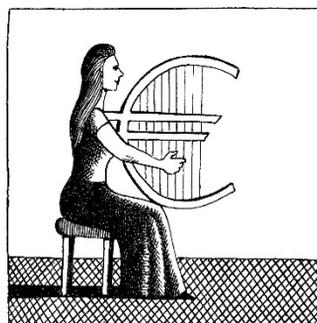
However, Geostat needs more resources to strengthen its professional staff and to improve the quality and coverage of official statistics.

PART III.
ECONOMIC COOPERATION

14. MACROECONOMIC CONTEXT AND FINANCIAL ASSISTANCE

The macroeconomic context

Following the breakup of the Soviet Union, Georgia experienced a period of dramatic social, economic and political change, with bigger losses in output in the first years of independence than any other CIS state (-29% in 1993 alone). Tax revenues dropped catastrophically and the budget deficit reached 26% of GDP in 1993.



The economy began to recover in 1995, and in the period 1995–99 it achieved an average growth rate of 7%, later reaching a double-digit rate in 2003 mainly with a contribution from the Baku–Tbilisi–Ceyhan pipeline construction.

Despite some progress in privatisation and other structural reforms, at the beginning of the 2000s Georgia was still facing serious economic and financial challenges. The government was not able to consolidate its finances, largely because of problems with governance and corruption. Tax collection, as a share of GDP, was among the lowest in the CIS. The country was facing severe difficulties in meeting its external financial obligations and had to engage in a round of debt rescheduling at the Paris Club. The shortfall in public funds was particularly serious for the country's vulnerable population.

After the Rose Revolution in 2003, however, the new government implemented comprehensive reforms aimed at liberalising the economy and at sustainable economic growth, based on private sector development. The establishment of an attractive business environment alongside macroeconomic stability led to significant inflows of foreign direct investment, which reached a peak in 2007 of \$2 billion (almost

20% of GDP). As a result, economic growth surged ahead to impressive double-digit rates, averaging 10.5% in 2005–07 (Table 14.1). The liberalisation reforms and economic performance led to spectacular improvements in Georgia's position in international rankings and surveys of the ease of doing business along with perceptions of corruption, such as the Doing Business report by the World Bank Group and the Corruption Perception Index by Transparency International. Notably, Georgia entered the top ten category worldwide (8th place) in terms of the ease of doing business according to the Doing Business report of 2014, up from 112th place in the Doing Business report of 2006.⁶⁵

Table 14.1 Georgia's main economic indicators, 2005–16

	2005–07 average	2008–09 average	2010–12 average	2013	2014	2015 ^{a)}	2016 ^{b)}
GDP growth (%)	10.5	-0.7	6.6	3.4	2.8	3	3
Inflation (%)	8.9	5.8	4.9	-0.5	3.1	4.0	5.5
Budget deficit (% GDP)	-3.2	-7.2	-4.2	-2.5	-3.1	-3.7	-3.0
Gross external debt (% GDP)	52.0	70.9	83.6	82.1	83.1	107.3	–
Foreign direct investment (\$ mn)	1,217	1,111	947	941	1,758	1,351 ^{c)}	–
Current account (% GDP)	-15.4	-16.3	-11.4	-5.8	-10.5	-11.8	-9.8

a) These are preliminary figures (except for inflation and the budget deficit).

b) Projections are given for 2016.

c) This figure is the sum of three-quarters.

Sources: Ministry of Finance of Georgia, National Bank of Georgia, National Statistics Office of Georgia.

One of the strengths of Georgia's economy during these developments was its diversified structure, with no dependence on a single sector or external market. The policy of diversified growth helped Georgia to cope comparatively well with the Russian trade embargo, unilaterally introduced by Russia in 2006 on all Georgian agricultural products.

⁶⁵ See the World Bank and International Finance Corporation, *Doing Business 2014: Understanding Regulations for Small and Medium-Size Enterprises*, Washington, D.C., 2013 and *Doing Business 2006: Creating jobs*, Washington, D.C., 2006.

Despite the war with Russia in 2008, coupled with the global financial and economic crisis, the economy has proved to be relatively resilient to these huge political and economic shocks. During 2008 and 2009, the Georgian economy did not go into significant recession, although there was a major increase in the budget deficit. The economy soon recovered, with GDP growth averaging 6.6% over 2010–12 (Table 14.1). Foreign investment shrank initially with the global financial crises and the Russian–Georgian military conflict, but in recent years it has returned to high levels, with \$1.7 billion (10.6% of GDP) recorded in 2014.

During 2015, Georgia’s economic performance was less impressive partly owing to the difficult external environment, but importantly to a slowdown of liberal reforms since 2013. This slowdown and the exchange rate depreciation of trading partners, especially Russia, lowered Georgia’s exports and migrant worker remittances. The shortfall in foreign earnings and a worldwide strengthening of the US dollar caused the lari to depreciate by more than 20% against the dollar in 2015. This depreciation increased the debt burden of borrowers with dollar-denominated loans.

Hence, GDP growth was only 2.8% in 2015 and the projection for 2016 is 3% (Table 14.1). The current account deficit remained large in 2015, at 11.8% of GDP according to preliminary calculations. The fiscal deficit in 2015 was 3.7% and is projected to be 3.0% in 2016. Notably, there will be an important election in the second half of 2016, which may also have an impact on growth dynamics.

In this context of slower growth it is important to approach the task of EU approximation with prudence and make sure that additional, new regulatory costs for the private sector and government do not constrain growth. Therefore, approximation within reasonable deadlines and taking into account local realities is advisable.

Provisions of the Agreement and EU financial assistance

The text of the Association Agreement on macroeconomic cooperation is short and simple. It foresees regular dialogue on macroeconomic policy. Georgia shall seek to “gradually approximate its economic and financial regulations to those of the EU, while ensuring sound macroeconomic policies” (Art. 277), but there are no timetables or precise references to EU legislation.

There is a further chapter on the management of public finances (Art. 279), which is entirely about Georgia's system of internal control of public finances and the functioning of the State Audit Office as an independent institution.

While the provisions of the Agreement in the macroeconomic field are thin, in practice the EU is supplying significant macro-financial assistance to Georgia following on from and complementing an agreement on a Stand-by Arrangement between Georgia and the IMF reached in July 2014. A Memorandum of Understanding (MoU) was reached between Georgia and the EU in December 2014, under which the EU would provide Georgia with €46 million, equally divided between grants and loans.⁶⁶ A first grant tranche of €13 million was disbursed in January 2015, followed by a first loan tranche of €10 million in April 2015. Disbursement of second tranches totalling €23 million are pending at the time of writing, subject to satisfactory progress with the policy measures agreed in the MoU and the IMF programme. The MoU stipulates that the measures

focus on reforms to improve public finance management, increase efficiency of the social safety net, strengthen banking regulation, and adopt trade and competition policies supporting the implementation of the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA)... In case of a negative evaluation, the Commission may withhold the disbursement of the second instalment until Georgia demonstrates compliance.⁶⁷

Further grants from the EU budget are programmed for the period 2014–17, for an amount that may range between €335 and \$410 million, to support Georgia's reform agenda through financial and technical cooperation. More than 100 projects are currently being carried out in Georgia. The cooperation is focused on reforming the public administration and justice sectors, as well as on agriculture and rural development, with complementary support being planned for capacity development in support of the Association Agreement and DCFTA.

In addition, the EU budget funds the Neighbourhood Investment Facility (NIF), which usually co-funds investment projects with the European Investment Bank, EBRD and selected financial

⁶⁶ See the "Memorandum of Understanding between the European Union as donor [and] Georgia as beneficiary and the National Bank of Georgia as Beneficiary's Financial Agent", signed in December 2014.

⁶⁷ Derived from the European Commission, DG ECFIN.

institutions of EU member states. The NIF's grant funding eases the financial conditions for the investors. For example, in 2015 the NIF contributed €10 million of grant funding to a project improving electricity grid connections between Georgia and Armenia, alongside €85 million in investment by the German KfW and Georgian and Armenian governments.

In addition, the European Investment Bank and the EBRD are making major contributions to financing investment in the Georgian economy. From a strictly legal standpoint, these financial activities do not derive their basis from the Agreement, but they are important in complementing and helping to fund implementation of the Agreement.

The European Investment Bank is a major investor in Georgia, and has extended a total of €473 million of loans and investment so far. In the course of 2015, the major investment has been in an environmental wastewater project in Kutaisi (€100 million), and two credit lines for small and medium-sized enterprises (€15 and €40 million).

The EBRD has become an even bigger investor in Georgia, having made financial contributions amounting to €1.8 billion towards 157 projects costing a total of €5.1 billion. The EBRD's leading contributions have been in the fields of energy and financial institutions.

Macroeconomics and funding from the EU at a glance

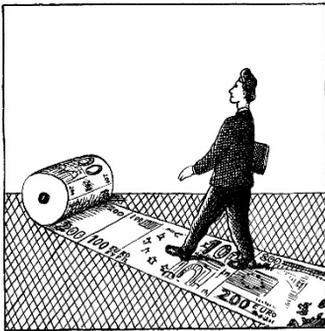
In the years between independence and the 2003 Rose Revolution, Georgia made only slow progress in economic policy reforms. The subsequent change of government led to liberal regulatory reforms, and gave rise to a period of fast economic growth.

The reforms enabled Georgia to achieve impressive improvements in its international rankings related to the ease of doing business and perception of corruption, where Georgia emerged among the best performers worldwide.

The economy has suffered several adverse economic shocks in recent years, first the 2008 war with Russia and then the global financial crisis, but it has proved quite resilient and recovered rapidly.

The EU is supplying significant financial assistance to Georgia, including macroeconomic loans alongside the IMF, budget grants and major investment from the European Investment Bank and EBRD. The latter institutions notably support the energy sector.

15. FINANCIAL SERVICES



The Agreement envisages a comprehensive alignment by Georgia with the EU system for regulating banks, insurance and securities markets with adoption, at least in the long run, of the entire EU legislative body of laws. The objectives are for the financial markets to be safe and efficient for consumers, to be systemically sound for the economy, for the industry to have open access to EU markets and to secure

its competitiveness and modernisation.

Provisions of the Agreement

General provisions. The Agreement commits Georgia to ensuring its financial market regulations are ‘gradually made compatible’ with those of the EU on banking, insurance, securities and asset management. A large number of EU laws, 51 in total (listed in Annex XV-A), are to be approximated with implementation timetables of mostly five to seven years. There is a much more limited number of core regulations of systemic importance, however, and many of the others are technical implementing provisions for the core regulations.

National treatment. In general, the Agreement provides for ‘national treatment’ for the establishment and the cross-border supply of services, meaning that each party shall grant to the other party’s operators treatment no less favourable than for its own. This is in line with standard WTO/GATS principles, where national treatment nonetheless only applies once a service provider has legally entered the market (i.e. this ‘national treatment’ does not in itself grant market access, which is a separate matter – see further below). In addition,

there are detailed provisions facilitating the “temporary presence” of key personnel and suppliers of services.

Further market access. There are numerous specific reservations by individual EU member states (listed in Annex XIV), many of which may be of small significance, but still complicate and limit the openness of the market. The Agreement is cautious about further market opening measures by the EU, as stipulated in Art. 122: “With a view to considering further liberalisation...the parties recognise the importance of the gradual approximation of the existing and future legislation of Georgia” to the international best standards as well as EU laws.

International standards. The Agreement calls in Art. 116 for Georgia to “make its best endeavours” to apply internationally agreed standards, inter alia:

- Basel ‘Core Principles for Banking Supervision’,
- International Association of Insurance Supervisors ‘Insurance Core Principles’,
- International Organisation of Securities Commissions’ ‘Objectives and Principles of Securities Regulation’,
- OECD’s Agreement on exchange of information on tax matters,
- the G20 ‘Statement on transparency and exchange of information for tax purposes’, and
- Financial Action Task Force’s ‘Forty Recommendations on Money Laundering’ and ‘Nine Special Recommendations on Terrorist Financing’.

Banks – Capital requirements. The global financial crisis in 2008–09, with the collapse or near-collapse of major banks of systemic importance, has led to a radical strengthening of the capital reserve requirements of banking systems. The Agreement cites several key laws (subsequently revised):

- Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions, later replaced by the 2013 Regulation (EU) 575/2013 on prudential requirements for credit institutions and investment firms; and
- the related Directive 2006/48/EC on the business of credit institutions, replaced in 2013 by Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

These texts transpose into EU law the latest global standards on bank capital adequacy, commonly known as the ‘Basel’ regulatory norms.⁶⁸ The new texts are a combination of *directives*, which give some leeway to member states on how to implement the provisions, and *regulations*, which in EU law are directly applicable and specify the harmonisation requirements.⁶⁹ While the basic minimum capital requirement of 8% of equity capital is unchanged (as in Basel I and the 2006 directives), the definition of capital has been tightened and further categories of reserve requirements have been introduced, leading essentially to the following regime (under Basel III and the new 2013 laws):

- a minimum capital reserve requirement of 8%,
- a capital conservation buffer of 2.5%,
- a countercyclical capital buffer of 0 to 2.5%,
- a capital buffer for systemically important institutions of 0 to 3.5%, and
- a systemic risk buffer of 0 to 3 to 5%.

As a result, depending on the specific features of individual banks, the requirements could effectively be doubled, although small to medium-sized banks can be largely exempt from the additional requirements. These capital reserve requirements are subject to extremely complex methodologies for definition and calculation, which take up the bulk of the texts in question. There are also new requirements with respect to liquidity to cover stress conditions.

Insurance. The crucial law for regulating the insurance industry is Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance, also known as ‘Solvency II’, which is a fundamental text detailing rules for the conduct of the industry, its supervision and solvency. Georgia will take considerable time to implement these reforms (five to eight years).

Securities (MiFID). The EU has established a comprehensive regulatory regime for investor transactions by stock markets, other

⁶⁸ ‘Basel I’ was the first internationally agreed set of banking regulations negotiated and produced by the Bank for International Settlements (located in Basel), while ‘Basel III’ is the most recent version that takes into account the need for changes in the light of the 2009 financial crisis. While these norms are international, the EU legislates to make them strictly operational and binding.

⁶⁹ For a detailed analysis of the new laws, see Karel Lannoo (ed.), *The Great Financial Plumbing: From Northern Rock to Banking Union*, Brussels and London: CEPS and Rowman and Littlefield, 2016.

trading systems and investment firms, with a single authorisation for investment firms to do business anywhere in the EU. The key law is Directive 2004/39/EC on markets in financial instruments (MiFID), supplemented by an implementing Directive (2006/73/EC). Two other important directives concern rules for the prospectus for issuance of securities (2003/71/EC), and for controlling insider dealing (2003/6/EC). The further large number of directives in this section mostly involves amendments or implementing details of the three main directives cited here.

Investment funds (UCITS). The basic law of the EU for investment funds was revised in 2009 in the wake of the Madoff scandal of 2008, with Directive 2009/65/EC on collective investment in transferable securities (UCITS). The market in question has grown to a substantial size in the EU. Hence, this text underwent a further important revision in 2014 (Directive 2014/91/EU).

Financial derivatives. The EU introduced complex rules to regulate financial derivatives in Regulation (EU) 648/2012 on over-the-counter derivatives, central counterparties and trade repositories (also called 'EMIR'). This was a major development, enabling the EU to deliver the G20 commitments on over-the-counter derivatives agreed at the Pittsburgh summit in September 2009. The regulation ensures that information on all European derivative transactions will be reported to trade repositories and be accessible to supervisory authorities.

Implementation perspectives

Current state of the financial markets in Georgia. Financial markets in Georgia are mainly represented by the banking sector, while other areas, such as insurance, the stock exchange, investment and pension funds, are less developed, of which the insurance sector is the most advanced.

The main institution governing the financial sector is the National Bank of Georgia (NBG), which was established in 1991 when Georgia gained independence from the Soviet Union. The NBG is the single regulator for the financial sector with just some exceptions. In 2008–09, a Financial Supervision Agency (FSA) was established as a regulator for the financial system, separating this function from the broader, monetary policy functions of the National Bank. A similar reform was undertaken in 2015, when a new independent FSA was created, and the supervisory function was kept separate from the NBG. This reform, however, was appealed in the Constitutional Court of

Georgia as being against the constitution, namely Art. 95(1). The case is still pending in the Constitutional Court. Meanwhile, the NBG remains a sole regulator of the financial system.

The main regulations concerning the financial system are based on several pieces of legislation, namely the Law on Commercial Banks, Law on Insurance, Law on Securities Market, Law on Investment Funds and Law on Microfinance Organisations. This legislation has been developed in recent years taking into account international standards of prudential supervision and regulation of the financial market.

There are 19 commercial banks in Georgia, out of which three banks are so-called 'systemically important' banks, and constitute more than half of the entire banking sector. The two largest commercial banks are listed on the London Stock Exchange. The banking sector is well developed in Georgia, showing high growth rates and resilience during the past decade. By the end of 2015, the total assets of commercial banks had increased by 138% since 2010, while total loans had increased by 155%. At the same time, non-performing loans remained low, amounting to 2.7% (using IMF methodology) in 2015.

The development of the insurance market is underway. There are 15 insurance companies in the country, out of which 3 are rather large. There are no mandatory categories of insurance in the country. Market capitalisation is very low and Georgia only recently started the gradual introduction of EU Solvency I requirements for solvency margin and the minimum capital of insurance undertakings.

Other parts of the financial market are very small, with minor roles. There is one stock exchange, one central depository, eight brokerage companies and three independent registrars of securities in Georgia. Capitalisation of the stock exchange is negligible, while over-the-counter trade is rather well developed. Owing to the reforms undertaken in recent years, the stock exchange and central depository institutions act on the basis of self-regulatory principles.

Five companies maintain private pension schemes, with the total funds attracted by them in 2015 amounting to only €1.9 million. Georgia has a pay-as-you-go system for retirement compensation, with no mandatory private pension schemes, for which the demand is limited.

Requirements of the Association Agreement. Although the Agreement itself aims at liberalising trade in goods as well as services, it should be underlined that the EU is not offering Georgia comprehensive market opening in financial services immediately or

unconditionally. Therefore, the process of legislative approximation is the precondition for market opening.

In addition to the Annex on legislation approximation, the main body of the text of the Association Agreement on financial services envisages that the parties will make their “best endeavours” to apply international standards in their financial systems, which is a rather loose commitment (paragraph 3 of Art. 116). That is mainly because these international standards apply to the entire financial market. Yet, as mentioned above only the banking sector in Georgia’s financial market is rather developed. Adopting international standards in areas with limited or almost no development would be very difficult and burdensome for the sector.

For this reason, Georgia has chosen variable time periods for approximation of its financial legislation to that of the EU – from two to eight years. The short period mainly applies to anti-money laundering provisions, where Georgia’s position is already fairly compatible with international standards, and the longest period will be taken for the insurance sector, where market development is limited.

Banking. Georgia currently applies the Basel II/III capital adequacy framework in the banking system and is gradually moving away from Basel I requirements. Full implementation of these requirements is taking place very gradually, taking into consideration developments in the country’s banking sector. Thus, as the core EU directives on banking incorporate Basel requirements, Georgia has chosen to proceed over significant transition periods. Moreover, there is also a clause included in the Annex allowing the country to postpone the implementation of more advanced approaches defined by the EU directives.

Another important aspect in the banking sector is the introduction of deposit insurance. Currently, Georgia does not have a deposit insurance system. For the ‘systemically important banks’, it will take time for a new deposit insurance system to build up sufficient capacity in its reserves to be effective in the event of a failure of these banks. That is why the country is taking six years to approximate this particular EU directive, and it has also considered some deviation from the requirements of the directive (different thresholds for deposits). In order to gradually approximate this directive, Georgia is starting to introduce deposit guarantee schemes, with reforms to be undertaken in the next two years and the creation of an independent agency for this purpose.

Insurance. Although legal approximation with EU legislation in this area envisages approximation to the EU Solvency II directive, due to the limited development and market capitalisation of the sector, Georgia will only start to gradually introduce Solvency I requirements from 2017. As for Solvency II, which envisages a risk-based approach for calculating solvency capital requirements for insurance undertakings, alignment with this regulation will be extremely difficult for the country's insurance market without prior, enhanced market capitalisation.

Another important aspect of legislative approximation is to introduce insurance against civil liability in respect of the use of motor vehicles. This system currently does not exist in Georgia and there are several reasons for that. Among them is that the limited development of the insurance market makes it difficult to administer such a system in an efficient way. Another issue is rather social, with a reluctance of the population to accept mandatory insurance. For these reasons, Georgia is significantly delaying implementation of this directive. To take some steps in this direction, a phased introduction of the system is envisaged. First, it will apply only to foreign vehicles, and then gradually to domestic commercial and finally to all domestic vehicles. It is understood that this mandatory type of insurance will enhance the capitalisation of the insurance market and create a basis for introducing stricter EU solvency requirements.

Capital markets. As outlined above, the development of Georgia's capital market is very limited. As a result of the reforms undertaken, the operation of this market is based on self-regulatory principles. Georgia intends to further develop its capital market. In this process, it is understood that aligning with EU requirements in this area will be extremely difficult, as these requirements have been set for well-developed EU capital markets. Therefore, this process of approximation will require careful analysis and consideration in relation to the development of the local market.

The same point applies in particular to the requirements for drawing up a prospectus. EU legislation in this area stipulates that there should be no offering of securities to the public without a prospectus. Even the resale of securities might be regarded as a situation where the drawing up of a prospectus is required. In Georgia's case, the legislation defines that if the issuer's securities are traded on the recognised stock exchange of a foreign country, the issuer is free to issue securities without any additional regulation. Furthermore, if the entity has provided regular reports to the NBG during the last two years, there are softened requirements for the

prospectus. Approximation to these aspects of EU legislation will involve introducing stricter requirements in the corresponding Georgian legislation.

Anti-money laundering. Georgia is rather well positioned in this area. As one can easily observe, in this part of the annex, Georgia made a commitment to gradually approximate to EU law in the shortest periods (two to three years) compared with other parts of the Annex. That is because Georgia's legislation is basically in line with the international standards in this respect.

Financial markets at a glance

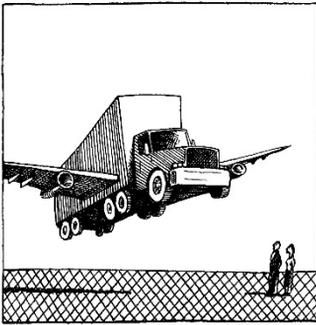
Georgia's financial market is mainly represented by a comparatively well-developed banking sector, while other parts of the financial system are less developed.

Most EU legislation is very complex for Georgia to implement, and for this reason Georgia is taking long transition periods in the approximation of EU laws.

However, the process of approximation, if done properly and taking into account developments of the local market, is an opportunity for Georgia to ensure a sound and prudent financial system.

There is also an issue of market openness. The EU market will only be fully opened to Georgia when the approximation process is completed.

16. TRANSPORT



Transport has been a key sector for the internal market since the early days of the European integration process. As a result, the EU has a well-established body of law and policies in this field. The DCFTA seeks to expand and strengthen Georgia's transport cooperation with the EU and to promote efficient, safe and secure transport operations, as well as greater interoperability of transport systems. This will be crucial for helping

Georgia's industries to integrate into EU supply chains and to boost contact between people, especially now that there is visa-free travel from the EU to Georgia and a realistic short-term prospect of visa liberalisation for Georgia's citizens travelling to the EU.

Provisions of the Agreement

Overall, the DCFTA provides for a progressive liberalisation of transport in road, rail, inland waterways, sea and air, with approximation to many EU rules and standards. In some instances, there are further special agreements, such as the 2010 EU–Georgia Common Aviation Area Agreement (CAA).

Of the transport modes, air and maritime (including intermodal) are of special importance for links with the EU. The main text of the DCFTA spells out the regime for shipping in considerable detail, whereas it simply refers to the CAA and deals with the other modes of transport in the annexes.

Air transport. The DCFTA refers to the 2010 EU–Georgia CAA, which aims at progressively liberalising air transport between the EU and Georgia, "adapted to their reciprocal commercial needs and the

conditions of mutual market access” to routes and capacity. The removal of market access restrictions between the EU and Georgia should attract new entrants to the market and create opportunities to expand the operations of Georgian airports. So far, all but four EU member states have ratified the CAA.

The CAA promotes regulatory cooperation and the harmonisation of regulations and approaches based on EU legislation in aviation safety, aviation security, air traffic management, computer reservation systems (CRS) and the environment (measures listed in Annex III), as well as non-discrimination and the creation of a “level playing field for economic operators”. The CAA foresees the gradual transition of Georgia to the application of the EU’s air transport *acquis* (Annex II). The transitional arrangements provide that the implementation and application by Georgia of the EU legal acts indicated in Annex III is subject to an evaluation by the European Commission and validation by a separate decision of the EU–Georgia Joint Committee.⁷⁰

Yet, the CAA does not confer complete internal market access to Georgian carriers: they only obtain the right to fly between Georgia and an EU destination, either directly or via an intermediate point in the neighbourhood, in the European Common Aviation Area or in Iceland, Liechtenstein or Switzerland (Annex II). That excludes Georgian carriers from operating flights within EU member states (cabotage) and flights between two EU member states unconnected to a flight to or from Georgia.

The legal regime applicable to air transport services is convoluted. In general terms, the DCFTA will defer to the CAA as and when this enters into force. In the meantime, the DCFTA excludes national and most favoured nation (MFN) treatment for domestic and international air transport services, whether scheduled or non-scheduled. There are, however, exceptions to this rule, notably for i) aircraft repair and maintenance services, during which an aircraft is withdrawn from service; ii) the selling and marketing of air transport

⁷⁰ Until a positive evaluation, the right for the air carriers of both parties to exercise “5th freedom rights” other than those already granted by bilateral agreements between Georgia and EU member states, is excluded. The fifth freedom allows an airline to carry passengers from one’s own country to a second country, and from that country to a third country (and so on). Fifth-freedom traffic rights are intended to enhance the economic viability of an airline’s long-haul routes.

services; iii) CRS services; iv) ground-handling services; and v) airport operation services (Arts 78-79 of the DCFTA). Still, the reservations mentioned in the DCFTA have to be regularly reviewed by the Association Council's subcommittee dealing with transport, in order to progressively liberalise the establishment conditions and resolve the legal inconsistencies between the CAA and the DCFTA.⁷¹

International maritime transport. The DCFTA prescribes a regime of "unrestricted access to cargoes on a commercial basis, freedom to provide international maritime services, as well as national treatment in the framework of the provision of such services" and contains a number of standstill clauses to prevent the parties to the Agreement from introducing measures constituting (disguised) restrictions or having discriminatory effects. The right of establishment for service suppliers is excluded for national maritime cabotage.⁷² Annex XIV-A to the Agreement imposes no national or MFN treatment obligations on the Union for the establishment of a registered company for the purpose of operating a fleet under the national flag of Georgia. Conversely, Georgia has no national or MFN treatment obligations with respect to passenger transportation by maritime transport and

⁷¹ This should prevent any problems associated with the hierarchy of legal regimes when the CAA enters into force. In the same vein, Arts 78-79 relate to the freedom of establishment and not to the cross-border provision of services. As these services are typically provided through establishment, one could argue that the DCFTA regime will prevail in practice. In some cases, however, services are provided without establishment (e.g. self-handling), which will mean that the applicable rules will have to be derived from the CAA. Similarly, the DCFTA lists two EU-wide reservations on establishment in the area of air transport services, one relating to the rental of aircraft with crew, the other with respect to CRS (Annex XVI-A). The relevant provision on CRS in the CAA (Art. 13) refers to access to the market, without detailing whether this is through or without establishment; this may indeed create a conflict, in which case one could either argue that the specialised (i.e. CAA) or the later agreement (i.e. the DCFTA) takes precedence.

⁷² Art. 78 states that "[w]ithout prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Georgia or a Member State of the EU and another port or point located in Georgia or Member State of the EU, including on its continental shelf, as provided in the UNCLOS and traffic originating and terminating in the same port or point located in Georgia or a Member State of the EU."

supporting services for maritime transport from entrepreneurs from the Union (Annex XIV-D).

Through the DCFTA, Georgia has committed itself to adopt and implement rules for, inter alia, the qualification of seafarers, safety standards for passenger and cargo ships, and legal acts on the liability of carriers of passengers by sea in the event of accidents. Georgia is also required to harmonise its legislation on, inter alia, ship inspection, port state control and flag state obligations. The timetables in Annex XV-D prescribe such harmonisation within four to five years of entry into force of the Agreement, except for the implementation of the International Safety Management Code⁷³ and the minimum level of training of seafarers,⁷⁴ which are required within a period of three years.

Road transport. Companies, operators and drivers from Georgia are expected to comply in full with the EU's laws. At the same time, eight member states have issued reservations concerning the full liberalisation of the road transport sector with Georgia. These reservations should be regularly reviewed by the Association Council's subcommittee dealing with transport in order to progressively liberalise the market.

This situation puts the onus on the Georgian legislature to approximate domestic rules and standards to those of the EU, and introduce the necessary monitoring, inspection and enforcement mechanisms to assure proper implementation of the EU directives and regulations. Short timetables apply to international transport, whereas vehicles and operators engaged only in national transport usually benefit from double the time to comply with the approximated legislation. For instance, immediate priority should be given to implementing market admission rules and creating a single, electronic state register for international road carriers (within one year; four years for national transport operators),⁷⁵ as well as ensuring working time controls in road transport activities (as of the entry into force of the Agreement for international transport; within five years for national

⁷³ See Regulation (EC) 336/2006.

⁷⁴ See Directive 2008/106/EC.

⁷⁵ See Regulation (EC) 1071/2009 concerning the conditions to pursue the occupation of road transport operator. Annex XIV-A: Residency is required for the transport manager.

transport).⁷⁶ The implementation of legislation pertaining to technical conditions (e.g. dimensions and weights,⁷⁷ speed limitation devices,⁷⁸ and roadworthiness tests)⁷⁹ is two years, with some exceptions.

Annex XIV-D to the DCFTA does not impose national or MFN treatment obligations on Georgia with respect to road transport services, including passenger transportation, the rental of commercial vehicles with operator and supporting services for road transport to entrepreneurs of the EU. Here too, bilateral road transport agreements prevail on the basis of reciprocity, which allow the respective countries to carry out international transportation of passengers and cargo.

Railway transport. Georgia's 1500-km rail network is entirely broad gauge and is not directly connected to the EU. The DCFTA aims at reforming the rail transport sector and gradually liberalising the freight and passenger rail market. As with other modes of transport, this requires improving technical and technological quality standards. The timetables for approximation are quite long (five to eight years). Annex XIV-D to the DCFTA nonetheless points out that Georgia does not extend national or MFN treatment to supporting services for rail transport services, and that the railroad infrastructure is Georgia's state property and its exploitation a monopoly (Annex XIV-D).

Inland waterway transport. Georgia's internal navigable waterway system is negligible and mainly used for recreational purposes. While the DCFTA lists the conditions for progressive approximation to EU standards, i.e. qualifications for operators, a central register and safety standards for vessels, harmonisation of this body of the EU's law is of marginal practical importance.

Implementation perspectives

Transport became one of the fastest growing sectors of Georgia's economy, averaging more than 7% real annual growth between 2003 and 2015. In the same period, the transport sector (in GDP) increased by 89%. In 2015 the share of transport in Georgia's GDP amounted to 8.1%, representing the fifth largest sector of the economy. During 2003–15 the output of the transport sector increased six-fold and employment in the sector increased by 75%. In recent years, the transport sector has

⁷⁶ See Directive 2006/22/EC.

⁷⁷ See Directive 96/53/EC.

⁷⁸ See Directive 92/6/EEC.

⁷⁹ See Directive 2009/40/EC.

attracted a considerable amount of investment, including state funds as well as investment by the EIB, EBRD and other international financial institutions.

Air transport. This transport mode is the economically most vibrant in EU–Georgia relations. The sector has grown exponentially in recent years, thanks to Georgia’s radical liberalisation, internationalisation and modernisation reforms. In line with the 2005 Presidential Resolution on Measures for the Liberalisation of Air Traffic, amendments to existing international (bilateral) agreements were negotiated and new agreements were signed, all aiming at the removal of restrictions on flight frequencies, capacities, tariffs, destination points and the number of designated airlines. Georgia adopted the policy of open skies and has liberalised its air transport market with 21 states, including Switzerland, Turkey and the US.

The market for air travel between the EU and Georgia received a further boost from the granting of visa-free travel for EU citizens by Georgia in 2006. In December 2015, the EU announced its intention to remove visa requirements for Georgian nationals. A visa-free regime is expected to be introduced in 2016.

On 11 July 2014, the Georgian government established an Interagency Council for the elaboration of a CAA Implementation Action Plan. By the end of 2014, Georgia had already approximated and implemented 9 of the 69 EU aviation directives and regulations. This also led to amendments to the Georgian Air Code. The gradual transition of Georgia to the full application of the legislation referred to in Part C of Annex III (aviation safety) is subject to assessments carried out by the European Commission in cooperation with the competent authorities of Georgia. When Georgia has fully implemented that legislation, the Joint Committee determines the precise status and conditions for Georgia’s participation in the European Aviation Safety Agency beyond its current observer status, which is already assisting the country to prepare for the full implementation of the EU’s air safety law.⁸⁰

⁸⁰ Georgian aircraft that did not have a type of certificate issued in accordance with the relevant EU legislation could be managed under the responsibility of the competent Georgian authorities, in line with the applicable national safety requirements until no later than 1 January 2015 for certain aeroplanes engaged in cargo-only operations, and 31 December 2019 for certain helicopters engaged in operations such as search and rescue, aerial work, training, emergency, agricultural and humanitarian flights, provided that the aircraft comply with international aviation safety standards.

As a result of these and other reforms, Georgian airports have experienced a robust 20% compound average growth rate over the past eight years, with annual increases of between 8% and 25%. The traffic in 2015 was nearly four times more than the volume achieved in 2005. The three international airports (in the eastern, central and western parts of the country) are serving more than fifty destinations worldwide. Currently, thirty international airline companies are operating in Georgia, including low-cost carriers (e.g. Wizz Air, Pegasus Airlines and Atlasjet Airlines). In 2016, three new international airline companies will start operation in Georgia. In addition, as a result of opening a base in Georgia (in Kutaisi International Airport), Wizz Air will start flights to seven new destinations in the EU.

International maritime transport.⁸¹ Georgia's main seaports are Batumi and Poti. They are important points of the Trans-Caucasian Corridor (TRACECA), connecting the Romanian port of Constanța and the Bulgarian port of Varna with the landlocked countries of the Caspian region and Central Asia. The Baku–Batumi railway and pipelines make the Batumi Sea Port an important transit point for Caspian oil.

Road transport.⁸² The road network in Georgia consists of 1,600 km of main or international highways that are considered to be in a good condition, primarily as a result of sizeable investment in road infrastructure funded by state as well as by European and international financial institutions. There are some 20,000 km of secondary and local roads that require further upgrade. Passenger transport destined for the EU is marginal. The majority of overland road haulage passes through Turkey.

Silk Road. Due to its favourable geographical location, Georgia is the shortest link for transportation of goods between Europe and Asia. In particular, the following transport projects have an important function in this context:

- Construction and development of the Anaklia New Deep Water Black Sea Port will have the competitive advantages of strategic location, capacity to receive Panamax-type vessels, one-stop shop solutions, simple and fast procedures and year-round safe navigation. The Anaklia Port will give new impulse to increasing

⁸¹ At the time of writing, Georgia has transposed and fully implemented 6 and partially an additional 2 EU maritime directives and regulations (out of 23).

⁸² At the time of writing, Georgia had partially implemented 3 road transport directives and regulations (out of 10).

the competitiveness of the TRACECA corridor and attract additional cargo flows from Europe to Asia and vice versa through the territory of Georgia. Expression of interest in the construction of the Anaklia Deep Water Black Sea Port was announced in 2015 and the winner was announced in 2016.

- The Baku–Tbilisi–Kars New Railway Connection Project, whose construction started in 2008, will connect Azerbaijan, Georgian and Turkish railways, and importantly will connect Georgia to Europe via rail.
- Modernisation of the Georgian railways started in 2011, with the aim of optimising freight and passenger traffic, improving operational safety and maximising freight throughput capacity.
- Construction and rehabilitation of the East–West Highway, which started in 2006, has great importance for Georgia and its neighbouring countries as well as for the EU as a strategic transit route between Europe and Central Asia. At this stage, 130 km of highway has been completed and construction of an additional 125 km highway is planned in the near future. Construction and rehabilitation of the East–West Highway is co-financed by the World Bank, the Asian Development Bank, the Japanese International Cooperation Agency and the European Investment Bank.
- Railway freight transportation from China to Europe created an opportunity for the freight to move from China to the Black Sea ports of Georgia without delay in the shortest possible time. The transit time has been reduced from 40–45 to 7–9 days compared with carriage by sea. The first freight shipment took place in 2015.
- The creation of logistics centres in Georgia is envisaged as part of the East–West Highway Corridor Improvement Project financed by the World Bank. After the feasibility study, government will announce the expression of interest for selecting the investor for the development of logistics centres based on a public–private partnership.

In March 2015, the Ministry of Economy and Sustainable Development of Georgia and the Ministry of Commerce of the People’s Republic of China signed a Memorandum on the Silk Road Economic Belt Development Cooperation. In February 2016, negotiations on a new free trade agreement between Georgia and China were launched, with both sides expressing their desire to finalise talks within a year.

These developments should lead to valuable synergies with the DCFTA with the EU.

Transport at a glance

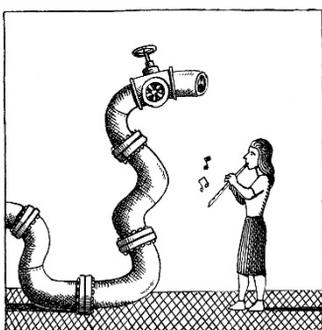
Georgia aims to become a transport and logistics hub in the Black Sea–Caucasus–Caspian Sea region, and fully integrate its infrastructure into international and regional transport systems. Substantial liberalisation of transport policies as well as sizeable investment in infrastructure projects has contributed to this goal.

The DCFTA sets out the EU's detailed regulatory regime for transport by sea, road, rail and inland waterways, notably on the qualifications of transport operators, the technical safety of vehicles and vessels, and the activities of inspection bodies.

For air transport, the DCFTA refers to the EU–Georgia Common Aviation Agreement of 2010, which will eventually further open up and integrate Georgia's air transport market with that of the EU.

Georgia is well positioned to benefit from joining up China's new Silk Road initiative with the transport networks of the EU.

17. ENERGY



The energy sector in Georgia is of the highest economic and geopolitical importance. Adding to its major hydroelectric capacity, in recent years there have been major investments in oil and gas pipeline connections with Azerbaijan, transiting on to Turkey and across the Black Sea. These have also assured Georgia a high degree of energy independence from Russia.

Provisions of the Agreement

The Agreement contains two separate chapters on energy – one under the DCFTA heading on trade-related issues and another on broader cooperation on energy policy. Both chapters include references to the Energy Community Treaty, signed by the EU and several Balkan states in 2005, with Moldova in 2010 becoming a full party to it in 2010, followed by Ukraine later in 2011. Georgia has also applied to join the Energy Community, but at the time of writing, negotiations are underway and the terms of accession are not yet publicly known. Reportedly, the accession procedures should be completed in time for signing the accession document in October 2016.

Trade-related requirements of the DCFTA. The DCFTA chapter on ‘trade-related’ energy applies basic, free trade provisions in the electricity, crude oil and natural gas sectors. Customs duties and quantitative restrictions on the import and export of energy goods are generally prohibited. Energy prices for the supply of gas and electricity to industrial consumers shall be determined solely by market prices.

This chapter also includes provisions on cooperation on infrastructure, the establishment of an independent regulatory

authority and access to and exercise of the activities of prospecting, exploring for and producing hydrocarbons.

Regarding the transit of energy goods, the DCFTA incorporates elements of Art. V GATT 1994 and of Art. 7 of the 1994 Energy Charter Treaty,⁸³ both of which assure the freedom of transit.

Broader provisions on energy cooperation. This chapter envisages cooperation in general terms over virtually the whole landscape of energy policy issues, including energy policy strategies, energy crisis mechanisms, the modernisation of energy infrastructures, enhancement of energy security, energy efficiency and savings, and support for renewable energies. The most precise indications of how this may be done is contained in Annex XXV of the Agreement, which lists numerous EU laws and the timetables for Georgia's 'gradual approximation', mostly within three to five years, unless the terms of accession to the Energy Community Treaty provide otherwise.

Of strategic importance for the EU's long-term energy saving and climate policy goals are directives for energy efficiency, notably on the energy performance of buildings,⁸⁴ and on energy end-use efficiency.⁸⁵ The implementation periods in the EU itself are quite long, extending in some cases to 2020. Both directives have proved difficult to implement in many EU member states, and have recently been replaced by updated directives.⁸⁶ This is one of many instances where the provisions of the Agreement already need to be updated with regard to revisions of EU laws. The new directives introduce the concept of 'nearly zero-energy buildings', to become mandatory for

⁸³ The Energy *Charter* Treaty of 1994 is not to be confused with the Energy *Community* Treaty of 2005. The Energy Charter was an early attempt to establish a wider, international, energy legal order for the post-Soviet era, including the EU, Russia and all other former Soviet Union states, and a number of non-European states. However, Russia never ratified this Treaty, and the enterprise has had only a limited effect, although its transit provisions are legally and operationally significant.

⁸⁴ See the Directive on the energy performance of buildings (2002/91/EC), subsequently replaced by Directive 2010/31/EU.

⁸⁵ See the Directive on energy end-use efficiency (2006/32/EC), subsequently replaced by Directive 2012/27/EU.

⁸⁶ For an analysis of the implementation issues posed by these directives for the EU itself, see Tania Zgajewski, "The Energy Performance of Buildings: Promises Still Unfulfilled", Egmont Paper No. 78, Academia Press, May 2015.

new buildings or major renovations by 2020, albeit with a number of provisions allowing for flexibility.

Energy-using products. The Agreement sets out in Annex XXV two framework directives, accompanied by detailed implementing directives or regulations on energy-using products. The first defines the eco-design requirements of energy-using products, such as household electrical appliances, to be implemented within three years after the entry into force of the Agreement.⁸⁷ The second concerns the labelling of household appliances regarding their energy consumption, to be implemented in two years.⁸⁸ These directives and regulations specify the technical conditions under which the products may bear the CE conformity mark, and are therefore allowed to be placed on the EU market.

Energy Community Treaty. The Association Agreement refers to Georgia's application to accede to the Energy Community. Negotiations are underway, but not concluded at the time of writing. As mentioned above, it is envisaged that the accession document will be signed in October 2016. The blocks of EU law that feature in the Energy Community Treaty cover the following aspects:

- electricity and gas, with rules for internal markets, access to networks, cross-border exchanges and security measures;
- renewable energy promotion;
- energy efficiency measures;
- oil, with a provision for maintaining minimum stocks; and
- the environment (see further in chapter 18).

The content here is basically already covered in the list of EU laws in Annex XXV to the Association Agreement. Implementation periods of three years are stipulated, but with the provision that this will only apply if accession to the Energy Community is not effective within two years of the coming into force of the Agreement.

Among these provisions, of particular importance are the rules for electricity and gas networks in the so-called 'unbundling' directives

⁸⁷ See Directive 2005/32/EC in the Agreement, updated in Regulation (EC) 278/2009.

⁸⁸ See Directive 92/75/EEC in the Agreement, updated by Directive 2010/30/EU.

of the EU's Third Energy Package.⁸⁹ These require that transmission operators, such as electricity transmission lines and gas pipelines, are separated from producers or suppliers of energy, and assure freedom of access to the relevant transmission infrastructure for all suppliers or producers of energy.

Within the EU itself, however, there are derogations from the Third Energy Directive under the "isolated market" clause (Art. 49 of the Directive 2009/73/EC, Third Energy Package), as follows:

Member States not directly connected to the interconnected system of any other Member State and having only one main external supplier may derogate from Articles 4 (Authorization), 9 (Unbundling), 37 (Market Opening) and/or 38 (Direct Lines). A supply undertaking having a market share of more than 75 % shall be considered to be a main supplier. Any such derogation shall automatically expire where at least one of the conditions referred to in this subparagraph no longer applies. Any such derogation shall be notified to the Commission.

In practice, this derogation applies to Cyprus, Latvia, Estonia and Finland.

This derogation does not feature in the Energy Community Treaty, since it was envisaged for direct neighbours with land frontiers with the EU. Yet Georgia has reportedly requested access to this provision, and notably with reference to Regulation (EC) 715/2009 concerning the cross-border natural gas trade.

Implementation perspectives

Georgia's energy sector. During the last decade, Georgia's energy sector has seen a major transformation. An inefficient and corrupt energy system was substantially reformed and restructured starting from 2004 and the country moved from a state of frequent blackouts to a condition where it attracts sizeable foreign direct investment (FDI) and exports electricity to all its neighbours. For Georgia, which aspires to and in reality is emerging as a regional transit hub, ensuring stable and diversified energy transit has a vital importance. Furthermore, as reducing energy dependence on Russia has been Georgia's key

⁸⁹ See Directive 2009/72/EC for common rules for the internal market for electricity, replacing Directive 2003/54/EC; and Directive 2009/73/EC concerning common rules for the internal market in natural gas, repealing Directive 2003/55/EC.

strategic objective since 2004, it has achieved a much higher level of energy security through assuring alternative, diversified sources of energy supply, mainly from Azerbaijan.

In addition, Georgia's energy sector reforms have resulted in a competitive tariff system, capable of attracting FDI to the sector, and privatisation of state-owned energy generation and distribution networks, mainly to foreign companies. There has been an increase of Georgia's transit potential and electricity export capabilities, with greater utilisation of the country's vast renewable energy resources, namely hydropower generation.

Georgia is enhancing its integration into European energy-related institutions. In 2009, Georgia joined the Energy Security multilateral platform of the Eastern Partnership. Since 2010, Georgia has been a member of the International Renewable Energy Agency. As mentioned above, negotiations on joining the Energy Community are underway, and should be completed in 2016. In 2015, Georgia chaired the European Energy Charter.

Georgia's electricity sector is growing fast and seeks to satisfy rising demand for electricity within both the country and the region. Almost 100% of the population has access to electricity. The collection rate of billings to clients increased from a disastrous 50% in 2003 to 100% by 2008. With solid investment in the hydropower sector, Georgia's electricity export capacity is robust. Turkey is one of the key destinations for electricity exports, given the tariff structure and seasonal electricity consumption patterns in Georgia and Turkey: Georgia consumes the bulk of electricity in winter, whereas Turkey's peak demand is in summer.

Georgia currently exploits around 20% of its potential hydropower capacity. The policy directed at developing domestic sources of renewable energy and a suitable legal environment has resulted in high interest among foreign investors and a growing share of the energy sector in the country's FDI. Over the period of 2007–15, the share of energy-related FDI in total FDI was on average 14%. The peak in energy-related FDI was reached in 2011–13 (22% on average), when several hydropower projects began. This followed Georgia's announcement of the construction of a high-voltage transmission line with Turkey and coincided with the start of the promotion of renewable energy projects with prospects of exporting to Turkey.

Since 2007, electricity generation has increased by 28%, reaching 10,832 KWh in 2015. The growth was driven by rehabilitated power

plants, improved efficiency and increased total generation capacity. Local electricity consumption reached 10,871 KWh in 2015.

Along with rehabilitation of the existing transmission infrastructure, the construction of new facilities was initiated. The most important project of the last few years has been the Black Sea Transmission Line, connecting Georgian and Turkish electrical systems with an HVDC convertor station and a 500/400 kV transmission line. Construction started in 2011 and the line was put into operation in 2014, giving an additional 700 MW capacity of transborder exchange. In addition, the construction of a new 500 kV transmission line connecting Georgia and Azerbaijan was completed in 2012. Box 17.1 shows the substantial European participation in the funding of these investments.

Box 17.1 European-funded investment in the Georgian energy sector

European Bank for Reconstruction and Development. Transmission network projects total €285 million; in addition are hydropower plant projects (\$97 million and €20 million), and distribution network projects (\$25 million). These funds have been allocated mainly for the period 2010–16 except for the Enguri HPP project, which started in 1998.

Kreditanstalt fuer Wiederaufbau (KfW). Transmission network projects total €238 million and power plant projects €5 million. Funds have been allocated mainly for the period until 2016.

European Investment Bank. Transmission network projects total €80 million and power plant projects €20 million. Funds have been allocated for the period 2010–16.

European Commission, Neighbourhood Investment Facility. Transmission network projects total €18 million, for the period 2014–16.

European Union. A transmission network project totalled €80 million, with funds allocated for 2010–13.

For further development of the electricity system, Georgia's Ten-Year Network Development Plan for 2015–25 was elaborated and approved by the government in 2015. The goal of the plan is to ensure further security, power quality and sufficient transfer capacity for domestic consumers as well as for power exchange with neighbouring countries.

Natural gas. Over the period 2001–15, natural gas consumption increased almost by 100%. In this respect, the country is import-

dependent and steps towards the diversification of suppliers were taken to ensure security and reliability.

Georgia has continued to support the initiatives related to the transportation of hydrocarbon resources in the framework of the Southern Gas Corridor. The second stage of the Shah–Deniz project started in 2014, in which Georgia plays an important role as a transit country.

For further development of its transit capacity, Georgia is participating in the Azerbaijan–Georgia–Romania Interconnector Project (AGRI) for the transportation of liquefied natural gas via the Black Sea to Europe. Plans are envisaged to promote the AGRI project in conjunction with the European Commission in order to include it in the definitive list of projects to be financed by the European Fund for Strategic Investments.

A main question for Georgia remains the regional context of the Energy Community directives and regulations, notably with regard to cross-border trade in natural gas and utilising transport infrastructure for natural gas. Unlike Ukraine and Moldova, Georgia does not have common borders with any of the Energy Community members. This will impede implementation of certain provisions of the Energy Community Treaty, as none of Georgia's neighbours (Turkey, Russia, Armenia and Azerbaijan) seem likely to become a member of the Energy Community in the foreseeable future, and transit pipelines traversing Georgian territory are not designed to handle reverse flows.

Consequently, some provisions of the Energy Community Treaty, such as Art. 6 (on regional solidarity), Art. 7 (on promotion of regional cooperation) and Art. 42 (on the regulatory regime for cross-border issues) of Directive 2009/73/EC will not apply to Georgia.

The Georgian gas market could be qualified not only as an isolated, but also as an emerging market. Although Georgian legislation enables all consumers to freely choose their suppliers and all suppliers to freely deliver natural gas to their customers, the limited sources of gas supply prevent the formation of a really developed and fully competitive gas market. In particular, Russia cannot be considered a reliable gas supply source in the medium and long term.

Russia was the dominant supplier of gas, covering almost 100% of Georgian gas demand until 2007. Russia's policies towards Georgia, however, have pushed Georgia to diversify its supply portfolio. As a result, Azerbaijan has become the main source of gas supply. The total volume of gas delivered from different suppliers in Azerbaijan, with the State Oil Company of Azerbaijan Republic (SOCAR) as a major

supplier, currently accounts for 90% of total gas consumption in Georgia. Bearing in mind the detrimental impact on the energy security of the country, which could be caused by possible attempts to renegotiate or revise these existing gas supply arrangements, Georgia should negotiate exemptions provided in Art. 49 of the Third Energy Package (Directive 2009/73/EC) for itself as an emerging and isolated market.

Electricity. Membership in the Energy Community creates future potential opportunities for Georgia, which possesses huge potential to develop hydro-electricity trade with European countries through Turkey, and to increase the security of supply. More specifically, the Black Sea Transmission Line connecting Georgia to Turkey could integrate its market with that of the Energy Community. Georgia may potentially receive support from the Community in the event of emergency situations as well.

Yet, similar to the gas sector, Georgia cannot benefit from certain provisions of the Energy Community Treaty related to cross-border exchanges unless it is directly interconnected with Energy Community members, which is not the case. Still, Turkey is now joining the European Network Transmission System Operators for Electricity (ENTSOE), which may open up the possibility for Georgia to receive certain benefits from membership in the long term. A harmonised approach at the regional level related to the establishment of transparent rules for cross-border trade with Turkey would facilitate the transmission of electricity generated in Georgia to the territory of Turkey and encourage Georgia's potential for export not only to Turkey, but also to the EU market through Turkey.

As for the current electricity market in Georgia, the system entails bilateral contracts with multiple buyers and sellers at the wholesale level, combined with an independent regulator, which establishes tariffs for end-users.

One of the challenges for Georgia in the electricity sector may be organisation of the internal electricity market in line with the Energy Community Treaty (Directive 2009/72/EC), and especially the possible implications of requirements related to the privatisation of generators and distributors. According to the Energy Community Treaty, unless other terms are negotiated, Georgia will be obliged to make significant changes for the legal unbundling of transmission and distribution activities, including the unbundling of distribution from supply activities (vertical integration). This will affect at least one significant distribution company, which holds distribution assets together with

generation units and several hydropower plants as well. At the same time, it is building a high-voltage transmission line, connecting Georgia and Turkey.

Renewable energy. The development of renewable energy is central to the overall energy policy of the Energy Community, as it reduces dependence on fossil fuels and improves security of supply. The implementation of the Renewables Directive requires first, the elaboration of a national renewable energy action plan; and second, determination of the national targets that have to be achieved by 2020.

For the elaboration of such an action plan and national targets, a detailed study is needed of the present sources of energy consumption and transport.

For the moment, the Georgian Construction Code does not contain any requirement related to the Renewables Directive. The directive requires not only that new buildings be energy efficient, but also that existing buildings be progressively upgraded, and this process will be very expensive.

Energy efficiency. As in the case of the Renewables Directive, the main challenge regarding the implementation of the Energy Efficiency Directives is that currently there is no legislative basis and no particular policy related to energy efficiency. The majority of buildings were built during Soviet times, and heating and insulation systems are still largely obsolete. Also, newly built buildings may not satisfy EU energy efficiency standards. Therefore, a careful and gradual approach is recommended here to reduce compliance costs at least to a reasonable level.

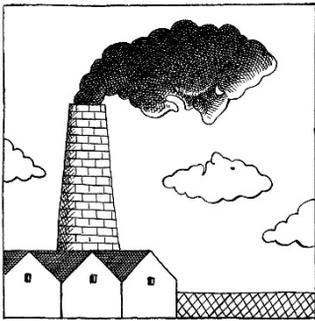
Energy policy at a glance

The Georgian energy sector has undergone a substantial positive transformation, as a result of which Georgia has diversified its energy supply to ensure energy security, and established a competitive regulatory and tariff system to attract significant investment in the sector.

Beneficial cooperation with international institutions and partners in the energy sector, notably the EU, is important for Georgia given its aspirations and emergence as an energy transit corridor, to function among others as an alternative to Russia.

Georgia's anticipated membership of the Energy Community may be beneficial in the long run, but will have limited benefits in the near future, as none of Georgia's neighbours are yet members of the Community.

18. ENVIRONMENT



The environment and climate change chapters of the Agreement are very ambitious and commit Georgia to cooperation across the entire landscape of environmental policy issues. Implementation will be a long and difficult process to be sure, with high costs, given Georgia's starting point, but should ultimately result in a radical improvement in environmental quality and modernisation of the economy.

Provisions of the Agreement

Georgia agrees to undertake a gradual approximation of its legislation to that of the EU in environmental policy and climate change (two separate chapters). This will involve approximation of 23 directives and 4 regulations of the EU within time periods of two to five years in the majority of cases. This list represents virtually the whole corpus of EU environmental law and policy, from general environmental governance methods to specific matters of air and water quality, and others.

Environmental governance. Several directives concern the principles and practices of environmental governance. The central provisions imply significant changes for Georgia. Directives 2001/42/EC and 2001/92/EU require environmental impact assessments (EIAs) for certain plans and programmes affecting the environment. Directive 2004/35/EC establishes rules of financial liability for the environment based on the polluter-pays principle.

These regulations mean certain costs that businesses will have to bear, in order to prevent arguably even bigger costs for the environment itself and the public interest.

Air quality. There are five EU directives included in the air quality section, including Directives 2008/50/EC and 2004/107/EC on ambient air quality and cleaner air. Other rules require controlling the emissions of volatile organic compounds resulting from the storage of petrol and its distribution (Regulation (EC) 1882/2003 and Directive 2004/42/EC), and a reduction of the sulphur content of certain liquid fuels (Directive 1999/32/EC).

Where, in a given zone or agglomeration, ambient air exceeds a certain limit value or target value, the authorities shall ensure that air quality plans are established for those zones to achieve the related limit value. The transport sector and associated activities will be among those that will have to pay a higher price for the benefit of cleaner air.

Water quality and resource management, including the marine environment. There are six directives in this section. The centrepiece is a directive on establishing a framework for Community action in the field of water policy,⁹⁰ for the protection of inland surface waters, groundwaters and coastal waters. Its objective for the EU itself has been to achieve a good status for all waters by 2015. The approach is based heavily on the river basins principle, for which countries must prepare management plans and detailed management programmes. The parties should ensure that the pricing of water encourages consumers to use resources efficiently.

There are further key directives on wastewater treatment,⁹¹ the quality of drinking water,⁹² and marine environmental policy⁹³ to be implemented within three to eight years. These concern the identification of sensitive areas and agglomerations; preparation of investment programmes for urban wastewater collection and treatment; standards for drinking water; and development of a marine environmental strategy.

Waste management. Three EU directives cover the full cycle of managing different types of waste. According to the hierarchy of waste management techniques, landfilling is the least preferable option and should be limited to the necessary minimum, in accordance with the Landfill Directive (1999/31/EC). This defines different categories of

⁹⁰ See Directive 2000/60/EC as amended by Decision 2455/2001/EC.

⁹¹ See Directive 91/271/EEC as amended by Directive 98/15/EC and Regulation (EC) 1882/2003.

⁹² See Directive 98/83/EC as amended by Regulation (EC) 1882/2003.

⁹³ See Directive 2008/56/EC.

waste and sets up a system of operating permits for landfill sites. Existing landfill sites may not continue to operate unless they are brought into compliance with the provisions of the directive. Georgia has a six-year time lag for implementation. A directive on the management of waste from extractive industries requires procedures for the management and monitoring of excavation voids, a permit system, financial guarantees, an inspection system, etc.⁹⁴

Introducing the polluter-pays principle and other regulations listed above imply adding significant responsibilities to the industries that will need to factor the waste management cost into the prices of their products.

Natural habitats. The protection of nature is subject to two directives for natural habitats and sanctuaries for wild birds (92/43/EC and 2009/147/EC). These directives establish principles and procedures for the designation of special protection zones, and would be helpful references for various Georgian stakeholders, including NGOs, in their work in this domain.

Industrial pollution and industrial hazards. There are two directives in the section. The Industrial Emissions Directive (2010/75/EU) covers all industries liable to produce harmful emissions: energy, metals, minerals, chemicals, pulp and paper, large-scale pig and poultry production, waste-management industries, etc. It sets out the main principles for the permitting and control of such installations, specifying limit values for noxious substances. It requires the application of the best available techniques, for which the criteria are specified, such as the use of low-waste technologies, low hazard materials and provisions for recycling.

The ‘Seveso’ Directive (96/82/EC) concerns controls over dangerous substances that risk major accident hazards. In regulated industries, both current and future enterprises may be significantly impacted financially.

Chemical management. Two EU regulations have been agreed. The first one regulates the export and import of dangerous chemicals ((EC) 689/2008), which requires having an export notification, handling and other relevant procedures in place. The second one, Regulation (EC) 1272/2008, deals with the classification, labelling and packaging of substances and mixtures.

Climate change. On climate change the central elements of EU policy identified in the Agreement with Georgia concern ozone layer-

⁹⁴ See Directive 2006/21/EC and amending Directive 2004/35/EC.

depleting substances and certain fluorinated greenhouse gases. Regulations (EC) 842/2006 and (EC) 1005/2009 require the designation of a national authority and a reporting system for acquiring emissions. The government will need to establish bans on the production of controlled substances, except for specific uses, licensing systems for the import and export of controlled substances for exempted uses, and obligations to recover, recycle, reclaim and destruct used controlled substances. Procedures for monitoring and inspecting leakages of controlled substances will need to be in place as well.

Implementation perspectives

The environmental status quo in Georgia. Since 2004, Georgia's overarching national priority has been to liberalise the economy and to stimulate economic growth. As satisfying international environmental requirements are often a costly matter, Georgia has consciously delayed implementation of certain environmental requirements. Yet the Agreement now offers an opportunity, although often complex and costly, to bring Georgia's environmental governance, legislation and implementation practice closer to international best practice.

In terms of policy and the institutional framework, there are certain recent developments that signal progress in relation to existing practices. Environmental planning is now practised and a National Environmental Action Plan (NEAP 2) for the period of 2012–16 was adopted. Development work on NEAP 3 is underway.

The Ministry of Environment and Natural Resources Protection (MENRP) has notably succeeded in improving environmental and hydro meteorological monitoring networks, especially in relation to surface water monitoring. Real time data received from the stations are gathered daily in the central office and published on the official website of the National Environmental Agency.

At the same time, there has been limited progress on revising environmental standards since 2010. The ambient standards are Soviet ones transposed into Georgian law. Computer models used to derive emission standards for individual stationary sources require updating.

A major issue in this area remains the need to improve the quality of EIA reports. Flaws concern the scope, organisation, transparency and enforceability of impact assessment conditions.

Since 2010, no new environment-related economic instruments have been introduced. For example, although the Law on Environmental Protection has provisions on the establishment of eco-

labels, there is no legal framework for executing it. The Law on Public Procurement does not consider environmental criteria in public sector procurement of goods and services. Both the polluter-pays and user-pays principles still need to be satisfied in the water sector. The charges for water are not creating incentives for the rational use of water resources. There are no fees for the drawing on surface waters.

Air quality has been one of the major environmental threats and pressing issues in the past several years in Georgian cities. Since 2008, the general trend of emissions of air pollution substances has been negative, with almost all emissions on the rise.⁹⁵ National air quality standards are still based on maximum allowable concentrations, and cannot be directly compared with the standards used by the World Health Organization or the EU.

While Georgia is rich in water resources, access to safe drinking water is still a challenge in almost all regions. The water supply infrastructure in Georgia needs a further upgrade. Between 55 and 75% of the water consumed by the population has a groundwater origin. Municipal wastewater remains a major polluter of surface waters. Currently, sewage collection systems exist in 41 towns, and most of the wastewater treatment plants are inoperable.

A new legal act on waste management, the Waste Management Code, entered into force in January 2015, as a result of which regular reporting on industrial waste will be required. Targets and measures for waste management and for management of radioactive waste are defined in NEAP 2. Special landfills for hazardous waste disposal will need to be provided by the state, as otherwise legal disposal of such waste remains problematic. Most of the 63 official municipal landfills operational today are inadequate and have negative impacts on the environment. Waste collection in rural settlements also needs improvement. Collection of municipal waste is provided only in urban areas. It is estimated that about 70% of the municipal waste generated is collected by regular services.

The rich nature of Georgian flora is evident from its high level of endemism, with around 21% of Georgian flora (up to 900 species) being endemic. In recent years, more new protected areas have been established. As a result, the area of protected territories has risen from 7.09% of Georgia's territory to 8.62%.

Implementation progress and plans. The MENRP has been identified as a national authority to lead on environmental issues. A

⁹⁵ Exceptions here are for trisodium phosphate and sulphur oxides.

special division for Sustainable Development and European Integration Policy has been created, acting as a coordinator unit within the ministry. In addition, an EU legislation harmonisation unit has been created, which deals with legislative drafting.

Environmental governance. The area of environmental governance covers all environmental sectors. A total of eight activities have been identified in the roadmap developed by an EU-funded project implemented in close collaboration with the MENRP. Five of these activities concern drafting new legislation.

In order to comply with the requirements of the directives on EIAs (2011/92/EC) and strategic environmental assessments (2001/42/EC), a new law and necessary amendments to other affected legislation were completed at the end of 2015. The new law will ensure that all plans, programmes and projects likely to have a significant impact on the environment are subject to EIAs, prior to their approval or authorisation.

A draft code on environmental assessment (which includes EIA and strategic environmental assessment laws) has been developed and should be adopted in the autumn of 2016. Georgia is also devising the applicable methodology for cumulative impact assessment in the framework of impact assessments for hydropower development.

To comply with the Environmental Liability Directive,⁹⁶ the terms of reference for a law on environmental liability have been specified and the drafting process is estimated to be completed on time by 2017. One of the most critical concerns to be addressed by this legislation is the need for an effective system integrating measures for remediation and appropriate calculation of the compensation required in case of environmental damage.

A system for managing environmental information has been developed, but is not yet ready to be launched.

Air quality protection. To comply with the requirements of the EU Air Quality Directive,⁹⁷ a by-law on air quality standards has been drafted. In addition, regular assessments of air quality by passive sampling technique are being implemented in eight regions and Tbilisi. An electronic system for the reporting of emissions into the ambient air from stationary sources has been developed.

⁹⁶ See Directive 2004/35/EC.

⁹⁷ See Directive 2008/50/EC (CAFE) and daughter Directive 2004/107/EC (Arts 3(1) and (3)).

The Association Agenda requires ratification of the Gothenburg Protocol⁹⁸ by Georgia. To meet these requirements a by-law on petrol quality standards has been amended to reach the required standard in 2017. Another by-law on quality standards of heavy fuel oil and gas oil has been drafted in line with Directive 1999/32/EC on emissions from maritime transport.

Water quality and water resources management. The roadmap on water quality and resources management does not include meeting the requirements of the Drinking Water Directive (98/83/EC), as the responsibility for this is shared by the Ministries of Health and Agriculture. The Ministry of Infrastructure takes a lead on activities related to urban wastewater treatment.

A law on water resources management as well as related by-laws have been drafted. A River Basin Management Plan for the Chorokhi-Ajaristskali River has also been introduced as a pilot case. Plans for a bilateral agreement with Azerbaijan for cooperation on the Kura River are still being elaborated.

A by-law on wastewater discharges has been drafted in response to the directive on wastewater treatment.⁹⁹

To satisfy the requirements of the Directive (2007/50/EC) on assessment and management of flood risks, work on a forecasting model/early warning system is underway to protect vulnerable communities of the Rioni River Basin.

Waste management. A number of legislative works have been carried out to meet the requirements of the Waste Framework Directive (2008/98/EC). The Waste Management Code entered into force in December 2015. A by-law on the classification of waste according to its types and properties and on the required records and reports has already entered into force.

A National Waste Management Action Plan and National Waste Management Strategy, as well as by-laws on municipal and hazardous waste collection and treatment, were recently adopted by the government in early 2016.

Protection of nature. On the conservation of wild birds, the elaboration of the new Law on Biodiversity has started, in line with

⁹⁸ The Protocol aims, in the long run, at achieving the protection of health and ecosystems by bringing deposition and concentrations of pollutants below critical loads and levels.

⁹⁹ See Directive 91/271/EEC as amended by Directive 98/15/EC and Regulation (EC) 1882/2003.

Directives 92/43/EC and 2009/147/EC. The law covers regulations on habitat and species protection, along with the conservation of natural habitats, including those of wild fauna, flora and wild birds. The law is expected to be adopted in 2016.

In addition, implementation of an Emerald Network has started. Georgia has engaged in a project under the Council of Europe aimed at establishing an Emerald Network in Eastern Partnership countries. One of the important tasks here is identification of the Important Bird and Biodiversity Areas, as well as their management priorities.

Industrial pollution and hazards. In this area, Georgia is receiving support from the Czech Development Agency for the prevention and management of major industrial accidents, including the strengthening of legislative and technical capacities. Supported activities include the drafting of a new law on major accident prevention, in line with the ‘Seveso’ Directive, and the elaboration of methodological guidelines. A draft by-law “on the Rule of Import and Export of Certain Hazardous Chemicals and Pesticides and Implementation of Prior Informed Consent Procedure” has been elaborated as required by the respective EU regulation.

Climate action. In line with Regulation (EC) 842/2006 on certain fluorinated greenhouse gases, the stakeholders related to the data collection on fluorinated gases (hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride) have been identified and the problems pertaining to the current system for data management have been analysed.

Georgia is fully committed to the negotiation process on the UN Framework Convention on Climate Change, which led to the global agreement at the Paris Conference in December 2015. Georgia plans to reduce its greenhouse gas emissions by 15% unconditionally compared with the business-as-usual scenario by 2030. The 15% reduction target will be increased up to 25% conditionally, subject to a global agreement on access to low-cost financial resources and technology transfer.

Forestry. The MENRP is developing a new forest code. Harmonisation of the respective laws and legal acts is in progress within the framework of the FLEG II programme of the European Neighbourhood and Partnership Instrument. The mapping of Georgia’s forests has been undertaken, and a forest-zoning map is now available. Regulations on non-timber forest products and secondary wood products are also being prepared.

Environment at a glance

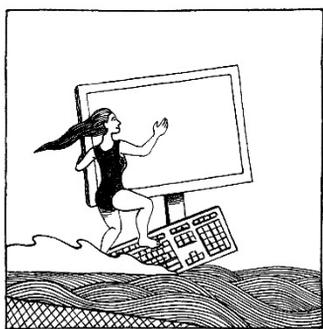
Until recently, Georgia has been deliberately delaying environmental objectives, in order to prioritise economic growth.

Under the Agreement, however, Georgia has committed itself to a highly ambitious programme of environmental and climate change actions. These will come at a significant cost for many businesses, but with predictable long-term health as well as economic benefits.

Measures are now being taken across a wider range of environmental policies, including for environmental impact assessments, air and water quality, and the management of waste and dangerous chemicals.

Protective measures related to forests and natural habitats will need to be further advanced.

19. DIGITAL SECTOR



This chapter on the digital economy and society deals with a family of provisions in the Agreement on related topics, more precisely on electronic communications and postal services, information society and audiovisual policy. It inescapably concerns a strategic dimension to the challenge of creating a modernised and internationally competitive economy.

Provisions of the Agreement

Electronic communications. For electronic communications, there are complex provisions in Arts 104 to 113 of the Agreement setting out the ground rules for a competitive and well-governed telecommunications sector. These pertain to the regulatory authority, principles for the authorisation of licences to service providers, the rights of access to interconnections with other service providers and principles for governing the allocation of scarce resources, such as radio frequencies. Existing EU legislation to which Georgia should approximate gradually within three to five years is specified in Annex XV-B, which includes a set of key directives adopted in 2002 and amended in 2009:

- Framework Directive 2002/21/EC (as amended by Directive 2009/140/EC) on electronic communications networks, which defines the products covered and the need for independent administrative capacity of the national regulator;
- Directive 2002/20/EC (also as amended by Directive 2009/140/EC) on the authorisation of licences for operators in the sector;

- Directive 2002/19/EC (also as amended by Directive 2009/140/EC) setting out the requirements that operators with significant market power must assure open access to network facilities and non-discriminating interconnection charges; and
- Universal Service Directive 2002/22/EC (as amended by Directive 2009/136/EC), which requires respect for the interests and rights of users, such as ‘number portability’ between operators.

Postal and courier services. The regulatory rules aim at preventing anti-competitive practices in this sector, regulating licensing provisions for universal service providers and ensuring the independence of the regulatory body. Several directives are specified in Annexes XV-C, for which there should be approximation within five years. Courier services in the EU are increasingly subject to criticism for their high costs, and action in this regard is planned.

Information society. The objective here is to ensure the widespread availability of information and communication technologies (ICT), with quality services and affordable prices. The accent in the text is on “exchange of information on best practices”.

Audio-visual services. Ground rules for the regulation of television broadcasting are laid down in the Audio-visual Media Services Directives (2007/65/EC and 2010/13/EU). Georgia will implement these provisions within three years.

Digital single market. This broad digital domain, including all of the above, is witnessing one the fastest rates of technological change and development. That means that the stock of EU laws and regulations in this field is also subject to comparatively fast change and development. The European Commission has set out the directions for further developments comprehensively in its 2015 policy paper on a “Digital Single Market for Europe”.¹⁰⁰ It outlines the agenda for action under three broad headings: i) better online access for consumers and businesses, ii) creating the right regulatory conditions for advanced digital networks, and iii) building the digital economy through investment, interoperability and standardisation. Sixteen specific action points are highlighted, several of which will see amendment to the laws cited in the Agreement for approximation, including reform of the directives on electronic communications, copyright regimes,

¹⁰⁰ See European Commission, Communication COM(2015)192 final, of 6 May 2015.

consumer protection, courier services, audio-visual services, and a Priority ICT Standards Plan.

Implementation perspectives

Overview of the ICT sector in Georgia. The ICT sector has seen substantial diversification and growth over the last decade. Transformation of the ICT sector has especially advanced since 2004, when the newly elected government after the Rose Revolution declared ICT as its priority, confirming its critical importance for economic development.

In 2015, the ICT sector represented a 2.5% share of GDP. This share had increased steadily from 2004, although the annual growth rate dropped from an average of 10% (2010–12) to 4% (2013–15).

Since 2004, the government has invested heavily in ICT infrastructure for its own administration, as well as in the provision of electronic services to the public. Some of the governmental institutions, such as the Ministry of Finance, Ministry of Justice and Ministry of Healthcare, have achieved significant results in this regard, providing a wide range of e-services to the public and legal entities. These results are partly owing to the liberalisation of laws regulating the ICT market and innovative solutions for the delivery of government services.

As a consequence of reform efforts in the sector, Georgia has improved its ICT position in international rankings over recent years. With the growth of GDP and the spread of social and economic improvements, the demand for ICT products and services has also grown. For example, the number of Internet users has been increasing rapidly, from 8% in 2010–11 to around 50% in 2015–16. The number of fixed broadband subscriptions has risen from 1 to 12% of the population over the same period.

According to the World Economic Forum’s “Global Competitiveness Report”,¹⁰¹ however, there are many areas where Georgia’s ICT competitiveness could be further improved, such as the commercialisation of science, the efficiency of the goods market and the labour market, financial market development, technological readiness and absorption, and business sophistication and innovation.

The extent of innovation in the country is still unsatisfactory and spending by both the government and the private sector on research

¹⁰¹ See World Economic Forum, “Global Competitiveness Report”, Geneva, 2016 (<http://reports.weforum.org/global-competitiveness-report-2015-2016/economies/#indexId=GCI&economy=GEO>).

and development remains comparatively low, which is reflected in various international evaluations and ratings.

In 2015, the Ministry of Economy and Sustainable Development launched an overall 'Internetisation' project. The goal of this \$150 million project is to provide fibre optic connections to each village and town in Georgia. Currently, it is estimated that about 50% of the population has access to the Internet, out of which 12% has access to a fixed broadband connection. After successful implementation of the project, broadband Internet services should become available to 91% of the population in over 2,000 villages and settlements by the end of 2017. This initiative will further improve the ICT indicators and thus the country's position in international ICT rankings.

Electronic communications. In 2005, the Law on Electronic Communications was approved by the parliament and since then numerous amendments and reforms have been introduced. The law defines the legal and economic basis for operation in the electronic communications sector, principles for developing a competitive environment and regulation, the functions of the Georgian National Communications Commission (GNCC) as a regulatory institution and other relevant aspects.

In response to increased concerns about cyber security issues worldwide, the Georgian Cyber Security Strategy was elaborated, with a principal document outlining state policy, strategic goals and guiding principles, and laying down action plans and tasks.

The National Action Plan for the Implementation of the Association Agreement and the Association Agenda between Georgia and the EU was approved by the parliament. In the Plan, the GNCC along with the Ministry of Economy and Sustainable Development are responsible for bringing Georgian legislation into compliance with EU directives. Regular progress reports are issued on a quarterly basis.¹⁰²

Along with signing the Agreement, Georgia has developed the main features of state policy in ICT and taken responsibility for gradually bringing existing laws and regulations on electronic communications and broadcasting into compliance with the EU *acquis*, which includes the EU legislation and related obligations set out below:

- The provisions of Framework Directive 2002/21/EC on a common regulatory framework for electronic communication networks and services are covered by the latest revision of the

¹⁰² See the Association Agreement Action Plan Reports (www.eu-nato.gov.ge/ge/eu/association-agreement).

Law on Independent National Regulatory Authorities. According to the Law on Electronic Communications, the GNCC has the obligation to draft, within a year, the regulatory act on defining the appropriate market segments and developing the methodology for competitiveness analysis.

- The provisions of the Authorisation Directive 2002/20/EC on authorising electronic communication networks and services, and the Access Directive 2002/19/EC on access to, and interconnection of, electronic communication networks and associated facilities are already covered by the latest revision of the Law on Electronic Communications.
- The current legislation does not cover the universal service obligations defined in Directive 2002/22/EC on universal service and users' rights relating to electronic communication networks and services. The article on universal service was removed from the Law on Electronic Communications. The GNCC was obliged to draft a regulatory act on universal service within a year from the signature date of the law in 2005, but since then no action has been undertaken.¹⁰³
- Number portability is covered by a corresponding GNCC decree, and from February 2011 portability service has been available for customers of Georgian operators.¹⁰⁴
- The GNCC has the obligation to draft, within a year after the entry into force of the Agreement, a regulatory act on the provision of services and protection of users' rights in electronic communications.
- To approximate with the provisions of Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector, the amendments to legislation on personal data protection entered into force in 2014. The amendments, among others, introduced the institution of the Personal Data Protection Inspector, and expanded the mandate of the Inspector towards data processing for police purposes.

¹⁰³ See the Law on Electronic Communications (<https://matsne.gov.ge/ka/document/view/29620?publication=24>).

¹⁰⁴ See the GNCC website (<http://gncc.ge/ge/legal-acts/commission/resolutions/saabonento-nomrebis-portabelurobis-debulebis-damtkicebis-shesaxeb-7547.page>).

- To reflect the relevant provisions of Decision 676/2002/EC on a regulatory framework for radio spectrum policy, the GNCC has the obligation to draft, within a year, the regulatory act on a national plan for radio frequency spectrum distribution.¹⁰⁵ To effectively manage radio frequency resources, the GNCC plans to i) develop and publish an advisory document on the feasibility of implementing the EU's approach to distributing radio frequencies in Georgia; ii) develop the national plan for distributing the radio frequency spectre; and iii) devise an optimal methodology for calculating initial fees for using radio frequency resources, as well as for licence prolongation.
- The provisions of the Audio-visual Media Services Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audio-visual media services are to be implemented within three years of the entry into force of the Agreement.

Although most of the provisions are already covered by existing laws and regulations or recent amendments to them, there is still some room for further legislative approximation. The actions announced and undertaken by the government and the GNCC indicate that work in this direction is continuing.

Audio-visual services. With the signing of the 2006 agreement of the International Telecommunications Union (ITU) on switching terrestrial TV from analogue to digital, the government has defined its strategy for developing digital terrestrial television. The ITU agreement establishes the terms for switching to digital broadcasting, as well as the regulations on usage and coordination of radio frequency-related issues.

The 2004 law on broadcasting is not in full compliance with the existing EU directive on audio-visual media services. The provisions of this directive should be implemented within three years of the entry into force of the Agreement.

There were some complaints from stakeholders regarding recent amendments to the law on broadcasting, according to which the procedures for electing GNCC members have been changed. This amendment specifies that GNCC members will be elected by a majority

¹⁰⁵ See the GNCC decree on the National Plan for Radio Frequency Spectrum distribution (<https://matsne.gov.ge/ka/document/view/65320?publication=9>).

of votes in parliament, thus not giving the opposition or non-parliamentary political entities any influence over the composition of the commission.

Postal and courier services. According to the Agreement, the law on postal services should be based on directives concerning rules for developing the internal market of postal services, improving the quality of service and further opening postal services to competition (Directives 97/67/EC and 2002/39/EC amending 97/67/EC).

The Ministry of Economy and Sustainable Development prepared a draft law in 2014 with the purpose of introducing a new regulatory framework in the postal sector. The draft law identifies the GNCC as the regulatory authority for the postal sector, which has to authorise operators to engage in postal service activities.

Yet the draft law envisages that only one company (Georgian Post) will be assigned the status of national postal service operator, which means that the company will have significant market power and all other companies will have to provide their services through it. Private companies and NGOs have objected that this contradicts the relevant EU Directive (2002/39/EC) and will worsen the competitive situation in Georgia. The Ministry of Economy and Sustainable Development has halted the approval procedures for the law and initiated discussions with the private sector and NGOs. The exact deadline for the updated revision of the law has not been announced.

Overall, for future implementation of the Agreement, the GNCC has an agenda:

- a) to analyse the compliance of Georgian legislation with EU directives on electronic communications and broadcasting;
- b) together with responsible institutions to set out the needed changes to laws on electronic communications and broadcasting; and
- c) to promote a competitive environment for electronic communications and broadcasting, and for the development of ICT services.

The digital sector at a glance

This broad sector, embracing electronic communications and the entire ICT economy, is a vital, strategic part of the economic reform and modernisation process in Georgia.

The ICT sector has been developing rapidly, and notably through the e-services provided by the government.

The Agreement provides for gradual alignment with basic EU regulatory practices, and the programming for approximation mostly within three to five years. Georgian legislation is partly compliant with EU directives and work is underway to implement a National Action Plan for approximation of the remainder.

20. CONSUMER PROTECTION



EU legislation is intended to ensure a consistent and high level of protection for the health and safety of consumers by means of strict common safety rules and standards for products and services circulating within the internal market. Specific legislation on consumer protection, as discussed in this chapter, concerns broad principles and horizontal measures for enforcement.

The bulk of the substantive conditions for the safety of individual foods, industrial products and services, however, are defined in sectoral legislation of the EU's internal market, and are therefore discussed in other chapters.

Provisions of the Agreement

The Agreement's provisions on consumer protection include a number of general commitments. The most fundamental of these is that the Parties to the Agreement "shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection" (Art. 345). This requires, inter alia, the exchange of information on consumer protection systems, consumer education, empowerment and redress, as well as fostering the activities of independent consumer associations (Art. 346).

It further requires Georgia to gradually approximate its legislation to 19 EU legal acts, as set out in Annex XXIX to the Agreement, within timeframes that are generally more relaxed than those applied to, for example, Ukraine (generally five instead of three years).

Product safety is a key objective of consumer policy. Under the Agreement, Georgia is expected to implement the provisions of the General Product Safety Directive (GPSD). The main principles of the GPSD were in fact already laid down in Georgia's legislation in 2012 through the Code on Safety and Free Movement of Products. Notably, new measures have been adopted in the EU to reinforce the safety of the food chain and of cosmetic products under the European Commission's 2013 Product Safety and Market Surveillance Package.

In order to curb unfair commercial practices, misleading advertising and unfair contract terms, Georgia should approximate its legislation to a series of EU directives, all within a period of five years. The same applies to the rules geared towards tightening the regimes for doorstep selling, package holidays, consumer credit and financial services.

For enforcement of consumer rules, the EU adopted in 2013 new legislation on alternative dispute resolution and online dispute resolution, providing fast, low-cost and out-of-court procedures for consumers to seek redress, and these will soon become applicable throughout the EU.¹⁰⁶

Implementation perspectives

As a post-Soviet country, Georgia has had limited experience in the field of consumer protection. Currently, there is no national consumer protection authority, although several regulatory bodies and government agencies do have consumer protection units. The Georgian National Energy and Water Supply Regulatory Commission and the Georgian National Communication Commission, for example, have consumer ombudsmen offices. In both Commissions, the consumer protection units are integral parts of the institution and have the responsibility to protect consumer rights in the setting of tariffs and in assuring access to services. The National Food Agency, responsible for market surveillance of the food and feed markets, and the Ministry of Labour, Health and Social Affairs also have their own consumer protection units, albeit with rather limited powers. Further entities,

¹⁰⁶ See Directive 2013/11/EU on alternative dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC (Directive on consumer alternative dispute resolution) and Regulation (EU) 524/2013 on online dispute resolution for consumer disputes and amending Regulation (EC) 2006/2004 and Directive 2009/22/EC (Regulation on consumer online dispute resolution).

such as internal audit or quality assurance divisions, also offer consumer protection.

A new draft Law on Consumer Rights Protection provides a much wider variety of consumer rights than the 2012 Code of Safety and Free Movement of Products. It takes account of the EU's GPSD and covers requirements for, among others, distance and outdoor contracting, misleading advertisement and the role of NGOs in the protection of consumer rights. The new law was due to be adopted by parliament in 2016 and discussions over its provisions have started. However, the private sector has raised concerns related to the responsibilities of a new consumer ombudsman. Also, the draft law does not incorporate the provisions of a number of directives that Georgia has to approximate, for example, on package travel, package holidays and package tours. It is advisable to review the draft again in the light of the exact obligations assumed by Georgia on the one hand and its impact on and cost for the government and business sectors on the other, in particular as approximation obligations under the consumer protection chapter have to be fulfilled within five years after the entry into force of the Agreement.

The creation of a modern consumer protection system in Georgia, based on European best practices, still requires an investment of effort and resources by the country. Georgia's commitments in the consumer policy area can be divided into two categories. The first part includes requirements for the creation of a system of consumer rights protection and is related to administrative costs, as relevant government institutions in charge of consumer protection will need to be created. The second part is related to costs for the business sector, as such obligations require change in existing practices between businesses and consumers.

To cite some examples, Georgia has an obligation to adjust its existing rules and practices in areas such as banking, tourism and leather products. In the banking sector, certain adjustments will be needed due to the higher protection of clients required. For example, a client will have the possibility to withdraw from a credit agreement in a 14-calendar-day period following its start date without giving any reason. In the tourism sector, tour operators will become liable to the consumer for the proper performance of the obligations arising from the contract, irrespective of whether such obligations are to be performed by that operator and/or retailer or by other suppliers. Such regulations can potentially increase the price of products like package holidays. As far as leather products are concerned, those containing

biocide dimethylfumarate should not be placed or made available on the market.

The regulatory cost involved in the implementation of such requirements varies for businesses and the government, depending on whether the measures are product-specific or are more of a general or administrative nature. For example, one directive prohibits placing 'novelty lighters' on the market that are not child-resistant, but here ensuring compliance is not costly because the lighters are mainly imported from EU countries that are already compliant. Implementation of EU acts belonging to the first category mentioned above requires substantial administrative resources in order to create or adapt the required institutions, functions and procedures.

There is a small number of NGOs active in the area of consumer protection, such as the Federation of Georgian Consumers, the Center for Strategy and Development of Georgia, and the European Foundation. The Center for Strategy and Development of Georgia has created a special web-portal (www.momkhmarebeli.ge), which provides information to consumers and answers their questions.

Consumer protection at a glance

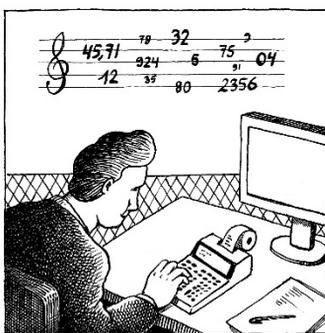
Georgia has limited experience in consumer protection.

The Agreement requires approximation with EU legislation in the consumer protection area within five years after the entry into force of the Agreement.

A new law takes into account a key EU directive for general product safety to a substantial degree.

Examples of obligations requiring changes of existing rules and practice concern the banking sector, tourism and leather products.

21. COMPANY LAW



To further support Georgia's transition into a fully-functioning market economy and to create a stable environment for investment and trade, the Association Agreement includes a brief chapter on i) company law, ii) corporate governance and iii) accounting and auditing. It only includes a short and soft provision stating that Georgia aims to cooperate with the EU in these areas. In view of this aim, the EU and Georgia will set up a regular dialogue in order to share information and expertise on both existing systems and new developments in these three areas. Georgia undertakes to approximate a selection of EU law and international standards (Annex XXVIII).

Company law. Here the objective is to improve the protection of shareholders, creditors and other stakeholders by undertaking to approximate a list of EU company law directives.

An important Directive (2009/101/EC),¹⁰⁷ to be implemented within five years, requires public limited liability companies (PLLCs) to disclose basic information on their constitution and statutes, balance sheets and the profit and loss accounts for each financial year, and on the appointment of the persons authorised to represent the company in dealings with third parties, winding-up or liquidation of the company, etc. With regard to financial accounting documents, prepared in accordance with relevant EU directives, here the Association Agreement provides for a certain waiver, indicating that the exclusion of certain types of companies from this requirement shall be

¹⁰⁷ More specifically, it covers safeguards for the protection of the interests of members and third parties.

communicated to the Association Council and decided by Georgia within one year from entry into force of the Agreement.

This information has to be recorded in a file opened in a central register, commercial register or a company's register. The file must be published in the national gazette or by other means, and be made available in electronic format. This directive also includes rules on the nullity of companies, requiring a court judgment. An exhaustive list of circumstances in which nullity may be ordered is provided (e.g. no instrument of constitution was executed or the objects of the company are of an unlawful nature).

In Georgia, PLLCs (so-called accountable entities) were subject even before the signing of the Association Agreement to rather high regulatory standards, and so the requirements of the directive cited above will not create a significant additional burden.

A second important Directive (77/91/EEC, updated by 2012/30/EU),¹⁰⁸ to be implemented within three years, concerns the maintenance and alteration of the capital of PLLCs, and seeks to protect shareholders and creditors. It requires that the statutes include such information as the objectives of the company, the amount of capital and rules governing the appointment of members responsible for managing the company. Moreover, the value, number and form of the subscribed (company-issued) shares and capital have to be published. The directive sets the minimum capital requirement for EU PLLCs at €25,000, but Annex XXVIII stipulates that the minimum capital requirements for Georgia shall be clarified by a decision of the Association Council. This directive also regulates the distribution of dividends, the issuance and acquiring of shares and any increasing or reduction in a company's capital. It limits the possibility for a PLLC to acquire its own shares. This latter provision will most likely not create any significant problems for implementation, but the minimum capital requirements may prove problematic. Currently, minimum capital requirements are applied only to financial institutions that are licensed either by the National Bank of Georgia or the Insurance State Supervision Service of Georgia. This requirement serves prudential regulation purposes. It may be difficult for other companies (non-financial entities) to meet the minimum capital requirement.

In addition, as outlined in Table 21.1, Annex XXVIII includes several other directives in the area of company law, which Georgia has

¹⁰⁸ These pertain to safeguards in respect of the formation of public limited liability companies and the maintenance and alteration of their capital.

to approximate within three to six years after the entry into force of the Agreement.

Table 21.1 EU company law directives applicable to Georgia

EU directive	Substance
Directive 78/855/EEC concerning mergers of public limited liability companies (replaced by Directive 2011/35/EU)	Deals with mergers between public limited liability companies in a single EU country
Directive 82/891/EEC concerning the division of public limited liability companies, as amended by Directive 2007/63/EC and 2009/109/EC	Deals with the division of public limited liability companies in a single EU country
Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a member state by certain types of company governed by the law of another state	Introduces disclosure requirements for foreign branches of companies
Directive 2009/102/EC on single-member private limited liability companies	Provides a framework for setting up a single-member company (in which all shares are held by a single shareholder)
Directive 2004/25/EC on takeover bids	Establishes minimum guidelines for the conduct of takeover bids involving the securities of companies, where all or some of those securities are admitted to trading on a regulated market
Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies	Establishes rules to help exercise shareholders' rights at general meetings of companies that have their registered office in an EU country and are listed on an official stock exchange

Accounting and auditing. In this area Georgia undertakes to approximate to Directive 78/660/EEC on the annual accounts of certain types of companies and to Directive 83/349/EEC on consolidated accounts. These two directives meanwhile have been

replaced by Directive 2013/34/EU, which significantly simplifies and reduces the administrative burdens for enterprises, with the aim of achieving greater cross-border comparability of accounts. The new directive also introduces mandatory requirements for disclosure of payments by enterprises to governments in the extraction and logging of primary forest industries. Georgia also undertakes to approximate to Regulation (EC) 1606/2002 on the application of international accounting standards. This rule requires EU companies to prepare their accounts in accordance with international accounting standards (IAS)/international financial reporting standards (IFRS), both of which are issued by an international private organisation, the International Accounting Standards Board. Finally, Georgia also must implement Directive 2006/43/EC, which lays down the conditions for the approval and registration of persons who carry out statutory audits, the rules on independence, objectivity and professional ethics applying to those persons and the framework for their public oversight. This directive was amended in April 2014 by Directive 2014/56/EU, which further improves the quality of statutory audits through, inter alia, strengthening the independence of statutory auditors and audit supervision, and making the audit reports more informative.

At present, only the following types of enterprises are obliged to apply IFRS in Georgia: the accountable entities whose shares are traded on the stock exchange, entities subject to licensing by the National Bank of Georgia and enterprises where the number of partners exceeds 100. All those enterprises are subject to mandatory auditing. Accordingly, for these companies the application of EU directives will not create significant burdens. But for other types of companies, especially for the SMEs, this requirement will be burdensome. In addition, the accounting and auditing system in Georgia is currently based on a self-regulatory principle for which there is no public oversight authority. The government is actively working to draw up relevant legislation, which will not only specify types of companies subject to the mandatory application of IFRS and auditing, but also intends to stipulate the creation of a public oversight authority.

Corporate governance. The EU and Georgia agreed to cooperate over corporate governance policy in line with international standards (i.e. the OECD Principles on Corporate Governance), with gradual approximation to the EU legislation listed in Annex XXVIII. This Annex includes Commission Recommendation 2004/913/EC fostering an appropriate regime for remuneration of directors of listed companies, and Recommendation 2005/162/EC on the role of non-executive or supervisory directors of listed companies and on the committees of the

supervisory board, completed after the 2008 financial crisis as per Recommendation 2009/385/EC. These recommendations provide guidelines on best practices for remuneration policy. With regard to directors' remuneration, these recommendations require a balance between fixed and variable remuneration, and make the variable component conditional upon measurable performance criteria. Termination payments ('golden parachutes') should also be subject to certain limitations and should not be paid in the event of inadequate performance. Each listed company should also publish a statement on its remuneration policy, including performance criteria and the variable components of remuneration. These principles of corporate governance are a recommendation for Georgia, as there are no strict deadlines for their implementation (contrary to those in the area of company law, and accounting and auditing). Therefore, their implementation may be timed to avoid undue costs for the Georgian private sector.

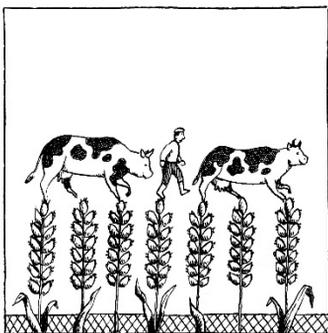
Company law at a glance

The Association Agreement entails obligations for Georgia in the areas of company law, accounting and auditing, and corporate governance.

For PLLCs, implementation of relevant EU directives will not create significant problems. For other types of companies, however, especially SMEs, some requirements may be problematic, for example those related to minimum capital.

Overall, implementation of these company law standards will improve Georgia's business climate, as it will create a transparent and clear environment for enterprises, including an appropriate level of protection for company shareholders and creditors.

22. AGRICULTURE



Agriculture is an important sector of the Georgian economy, as well as for society. It is still characterised by a large number of small family farms, with an average plot size of about 0.2 hectare, which lack modern technology and skills. Only a few sectors, such as wine and hazelnuts, are internationally competitive, making up 12.3% of total exports in 2015.

For this reason, Georgia has abstained from taking on premature commitments to replicate EU farm policies. However, the policy agenda for agricultural and rural development is very substantial and here the EU can contribute valuable assistance.

Provisions of the Agreement

The Agreement states that “the parties shall cooperate to promote agricultural and rural policies, in particular through progressive convergence of policies and legislation”. It goes on to list general objectives, such as improving competitiveness, exchanging best practices, and promoting modern and sustainable agricultural production (Arts 332–334). The Agreement further states that there shall be a regular dialogue on relevant issues.

This text is significant for what it omits. Unlike the Ukrainian and Moldovan agreements, Georgia makes no commitment to approximating any EU legislation in this field. Given the number of small and poorly developed farms in Georgia, this is understandable, because many EU regulations would be unsuited to Georgian realities.

In support of the Agreement, the EU is active in many technical assistance projects. For example, it funded a comprehensive survey conducted by the FAO on the current state of Georgia’s agriculture sector.¹⁰⁹ This identified a broad agenda for action, namely to overcome shortcomings in the agri-food supply chain and policy inefficiencies. The major current EU projects are under the European Neighbourhood Programme for Agriculture and Rural Development (ENPARD), which is receiving €52 million of grants for the period 2013–17, of which €24.5 million is for budget support for the government’s agriculture and rural development activities, and €24.5 million for various projects, including grants for small farmers’ cooperation.

Complementing the Agreement, in May 2015 the European Investment Bank (EIB) signed a Declaration of Intent to set up a financing facility for Georgian small and medium-sized enterprises active in the wine industry and horticulture, which will be the EIB’s first loan to Georgia’s agri-food sector. Under the facility, the EIB would finance up to 50% of eligible projects. The initiative is also expected to be supported by the European Commission through grants from its Neighbourhood Investment Facility.

Georgia’s agricultural sector

Georgia has the potential to further diversify agricultural production and exports. Both agricultural output and incomes suffered significant declines after the end of the Soviet period, when Georgia’s agricultural production suffered the severest collapse in the region, and from 1991 to 2001 it dropped to around 32% of its Soviet level. Even since 2001, the Georgian agricultural sector has recovered by only about 10%, with an average of 0.7% annual growth (2001–15), which is much slower than the rest of the economy.

The share of agriculture in GDP has roughly stabilised at around 8–9% since 2010, which is in line with the global trends of a decreasing share of agriculture and a growing share of services in GDP. This trend is also in line with the development model of Georgia, which sees itself as a major transit, transport and services hub.

The main agricultural products in Georgia are maize, potato, wheat, barley, vegetables and fruits (grapes, citruses, apples and hazelnuts) and livestock (cattle, sheep and goats, pigs and poultry).

¹⁰⁹ See FAO, “Assessment of the Agricultural and Rural development Sectors in the Eastern Partnership Countries: Georgia”, 2102 (www.eesc.europa.eu/resources/docs/georgia_assesment_final_en.pdf).

Table 22.1 Agriculture as a share of GDP, sown area and livestock numbers, 1990–2015

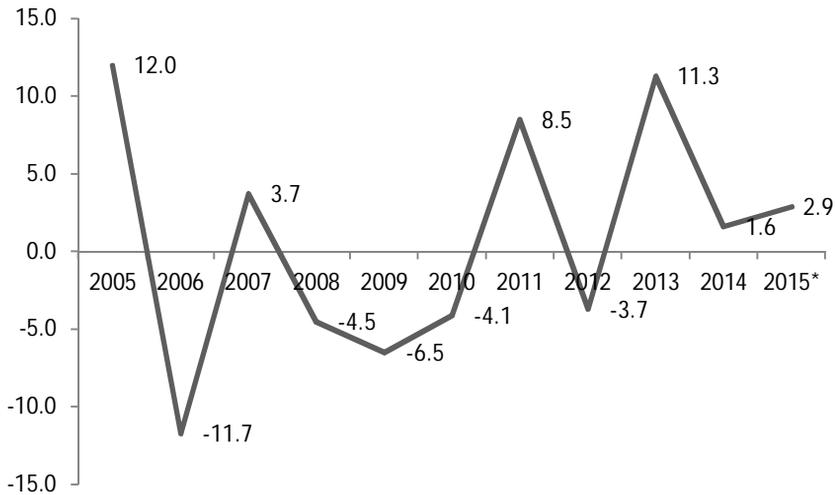
	Sown area (thousands, hectares)	Cattle (thousands, head)	Agriculture* share of GDP (%)
1990	701	1,298	31.6
1995	453	973	44.4
2000	610	1,177	21.9
2005	539	1,190	16.7
2010	256	1,049	8.4
2011	262	1,087	8.8
2012	259	1,128	8.6
2013	310	1,229	9.4
2014	316	1,278	9.3
2015**	293	1,318	9.2

* Agriculture includes hunting, forestry and fishing.

** Preliminary.

Source: Geostat.

Figure 22.1 Real growth rate of agriculture in Georgia



* Preliminary.

Source: Geostat.

As shown in Figure 22.1, the decline in the agricultural sector has levelled out in recent years and output has shown some growth. The real growth rate of agricultural sector, including forestry and fishing, was 11.3% in 2013, 1.6% in 2014 and 2.9% in 2015.

Agriculture provides a safety net for a very large number of jobless people who might otherwise be starving, and thus serves a very important social function. However, many of those employed in agriculture are individual subsistence farmers, lacking skills and resources to move to the next level in terms of productivity. There are about 642,200 agricultural holdings in Georgia.¹¹⁰ The small, fragmented family farms dominate. The high level of fragmentation of agricultural land holdings, which are mostly in private hands, makes substantial private investment challenging, as investors have to buy land from single holders.

Georgian agriculture lacks qualified human resources, capital, access to veterinary and plant protection services, storage facilities and a developed land market. Georgia has low agricultural productivity (more than three times lower than in developed EU countries). There is further potential for growth and diversification in agricultural production. In the past 15 years Georgia has been importing a significant proportion of its food, although the share of food imports among total imports has been declining.

Table 22.2 Food imports to Georgia, 2000–15

	2000	2005	2010	2013	2014	2015
Total imports (\$ mn)	709	2,487	5,257	8,011	8,593	7,729
Food imports (\$ mn)	130	387	785	1,037	1,011	862
Share in total imports (%)	18.4	15.5	14.9	12.9	11.8	11.1

Source: Geostat.

Diversification of the existing markets and the opening of new markets have been the top priorities of Georgia's economic reforms. There are promising trends of growth in the exports of nuts, spirits, wines, mineral waters, citruses, fruits and vegetables, as shown in Table 22.3.

¹¹⁰ See the 2014 Census of Agriculture of Georgia.

Table 22.3 Food exports from Georgia, 2000–15

	2000	2005	2010	2013	2014	2015
Total export (\$ mn)	323	865	1,677	2,909	2,860	2,204
Food export (\$ mn)	39	137	153	327	299	280
Share in total export (%)	12.2	15.8	9.1	11.2	10.4	12.7

Source: Geostat.

The government places great emphasis on the need for investment in increasing output and productivity in agriculture, and in 2015 launched its strategy for Agricultural Development of Georgia 2015–20. The strategy aims to create an environment that will increase competitiveness in the agri-food sector, promote stable growth in high-quality agricultural production, ensure food safety and security, and eliminate rural poverty through sustainable development of agriculture and rural areas.

Georgian agriculture at a glance

Agriculture is a socially important sector of the Georgian economy, accounting for 9.2% of its GDP.

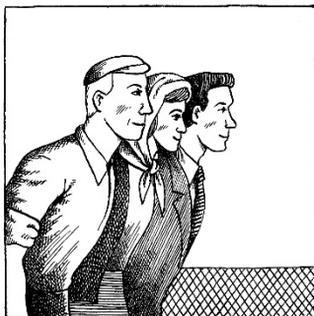
Georgian agriculture suffered disastrous losses of output and capacity in the first two decades of the post-Soviet period.

The current 2015–20 strategy seeks to get the sector on a reform and recovery path.

The seriousness of shortcomings in the sector inherited from the early post-Soviet period meant that it was inappropriate to embark on any premature programme of approximation to the EU regulatory model.

The EU and EIB are funding considerable technical assistance and investment projects.

23. EMPLOYMENT AND SOCIAL POLICY



This chapter seeks to promote cooperation over a large part of EU labour law and related conditions of work. Since 2006, Georgia's Labour Code has been substantially reformed with large reliance on ILO conventions upon which the Association Agreement further builds.

Provisions of the Agreement

The Agreement sets out (in Annex XXX) a comprehensive agenda for Georgia to "approximate gradually" to the employment and social policy laws of the EU under three basic headings: labour law, anti-discrimination and gender equality, and health and safety at work. The first two headings cover basic principles of the Labour Code.

Labour law. There are eight directives requiring approximation within four to six years.

The Individual Employment Conditions Directive (91/533/EEC) establishes the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. The aim of the directive is to provide employees with improved protection, to avoid uncertainty and insecurity about the terms of the employment relationship and to create greater transparency in the labour market.

The Directive (1999/70/EC) fixed-term contracts aims to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and to prevent abuses arising from the use of successive fixed-term employment contracts. A basic principle is that open-ended contracts are and remain the general form

of employment relationships and fixed-term contracts should be the exception. The Part-time Work Directive (97/81/EC) sets out to eliminate unjustified discrimination against part-time workers and to improve the quality of part-time work.

The Collective Redundancies Directive (98/59/EC) sets out requirements for the information to be given to workers on the reasons, the numbers and categories of workers concerned, and of redundancy compensation payments.

Anti-discrimination and gender equality. The Employment Equality Framework Directive (2000/78/EC) is a key part of EU labour law, which seeks to combat discrimination on grounds of disability, sexual orientation, religion or belief and age in the workplace. The directive applies to both public and private sectors and covers all aspects of employment and work. This framework directive accompanies the Gender Directive on equal treatment (2004/113/EC) and the Racial Equality Directive (2000/43/EC).

The Gender Directive on equal treatment prohibits any less-favourable treatment of men or women on grounds of gender, or of women due to pregnancy or maternity. It also prohibits sexual harassment. The directive establishes only minimal requirements, allowing EU countries to be able to maintain higher or more extensive levels of protection.¹¹¹ The Parental Leave Directive (96/34/EC) provides for three months of leave; the Pregnant Workers Directive (92/85/EEC) prohibits work that risks endangering health and safety and also for leave before and/or after confinement of 14 weeks.

The Racial Equality Directive (2000/43/EC) implements the principle of equal treatment between people irrespective of racial or ethnic origin. It gives protection against discrimination in employment and training, education and social protection. It gives victims of discrimination a right to make a complaint through a judicial or administrative procedure.

Health and safety at work. This section includes references to 26 EU laws, which is explained by the need to specify separately the safety requirements for particularly dangerous products, such as carcinogens or explosives, and the working environment in specific industries, such as construction sites or underground mineral extraction. Most of these

¹¹¹ For a detailed analysis, see Susanne Burri and Sacha Prechal, "EU Gender Equality Law – Update 2013", European Network of Legal Experts in Gender Law, European Commission, Directorate-General for Justice Unit JUST/D/1, Theme – Equal Treatment Legislation.

technically specific directives have long implementation delays of seven or ten years.

However, the centrepiece is the Framework Directive on health and safety at work (89/391/EEC). The scope of the Directive is expansive, applying to all sectors, including industry, agriculture, commerce and services. The directive describes employer obligations, which include providing workers with information and safety training, taking necessary measures for first aid and fire-fighting and consulting with workers and their representatives regarding matters of health and safety. Workers are required to correctly use machinery and personal protective equipment, and to inform their employers if a situation poses a danger. This directive is limited to setting out general principles. It is to be approximated by Georgia in a relatively short period of three years, but its concrete implementation will depend more on a family of implementing directives with longer implementation delays of seven to ten years, such as for work equipment, personal protective equipment, protection against asbestos and excessive noise.

Implementation perspectives

Until 2006, labour relations in Georgia were regulated by the labour code, which was adopted in the Soviet period in 1973. In practice Georgia inherited from its Soviet past a system of highly defunct and corrupt labour relations, with a ‘silent’ consensus between the executive government and the sole/monopolistic trade union, the legal heir of the Soviet trade union. There was no right to strike, it was very difficult to fire an employee even during the liquidation process of a company, employment contracts were generally for an indefinite term, and fixed-term contracts were authorised only in exceptional cases (e.g. seasonal work).

In 2006, Georgia adopted a new labour code, bringing the legislative framework more in line with international standards. It aimed at a basic legalisation of labour relations and a reduction in informal employment in the sizeable informal sector of the economy.

ILO conventions. In reforming the Labour Code, Georgia took major recourse to ILO conventions, of which 16 have been ratified, including all the eight fundamental conventions.¹¹² This ensures, *inter alia*, the freedom of association and recognition of the right to collective

¹¹² Below is the list of ratified ILO conventions.

bargaining, the elimination of all forms of forced labour and child labour, and of discrimination in respect of employment and occupation.

In 2006, Georgia also ratified the relevant articles of the Social Charter of the Council of Europe, which notably concerns essentially workers' rights. As explained in Box 23.1, there is a close relationship between many of the ILO conventions and EU directives, and adoption of the conventions provides assurance that there is large degree of compliance with the EU directives.

Box 23.1 Relationship between EU employment and social directives and ILO conventions

"There is an interplay between EU labour law, the European Social Charter and ILO Conventions: EU law, in particular the Charter of Fundamental Rights, takes into account the European Social Charter and ILO Conventions and in turn influences the evolving content and monitoring of the latter instruments.

All EU Member States are also members of the ILO. The EU is committed to promoting the ILO's 'Decent Work' agenda to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen social dialogue on work-related issues.

All EU countries have ratified the core labour standards – that is, the fundamental ILO conventions on freedom of association, collective bargaining, forced and child labour, equal remuneration and the elimination of discrimination. EU countries have also ratified the ILO 'Governance Conventions' on labour inspection, employment policy and tripartite consultations, as well as a considerable number of other ILO conventions.

Fundamental conventions: C029 – Forced Labour Convention, 1930 (No. 29); C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98); C100 – Equal Remuneration Convention, 1951 (No. 100); C105 – Abolition of Forced Labour Convention, 1957 (No. 105); C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111); C138 – Minimum Age Convention, 1973 (No. 138); C182 – Worst Forms of Child Labour Convention, 1999 (No. 182).

Priority convention: C122 – Employment Policy Convention, 1964 (No. 122).

Technical (other) conventions: C052 – Holidays with Pay Convention, 1936 (No. 52); C142 – Human Resources Development Convention, 1975 (No. 142); C181 – Private Employment Agencies Convention, 1997 (No. 181); C185 – Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); C151 – Labour Relations (Public Service) Convention, 1978 (No. 151); C117 – Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).

While ILO standards cover a wider range of areas than those in which the EU is competent to legislate, and EU law often goes beyond the minimum provisions of ILO conventions, the principles that underlie the action of both organisations are similar. There is much common ground in the content of EU Directives and ILO conventions, with EU law reinforcing ILO standards. Directives on issues such as working time and young workers explicitly seek to take into account relevant ILO standards.

The protection, realization and enforcement of core labour standards as well as the promotion of the ratification and effective application of other up-to-date ILO conventions underpinning the Decent Work Agenda, are part of a growing number of bilateral agreements between EU and third countries, such as the new generation of EU free trade agreements. The follow-up mechanisms of these agreements include monitoring mechanisms involving social partners.”

Source: Extracted from *Labour law and working conditions. Social Europe guide*, Vol. 6, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, February 2014. For a detailed analysis, see “Analysis – in the light of the European Union *acquis* – of ILO up to date Conventions”, European Commission Directorate-General for Employment, Social Affairs and Inclusion, June 2013.

References in the Association Agreement to the above ILO conventions are contained in the chapter on trade and sustainable development, where Georgia is already in compliance given its ratification of the main ILO conventions.

In 2009, also in cooperation with the ILO, Georgia set up the Tripartite Commission as a dialogue forum to address labour issues with the Georgian Trade Unions Confederation and Georgian Employers’ Association.

The main remaining challenge in relation to ILO conventions concerns labour inspectorates, notably the Labour Inspection Convention (CO81) and the one for Agriculture (C129). This is a sensitive matter for Georgia, which abolished the labour inspectorate under the new labour code in 2006, as it was a highly corrupt public body. In 2011, the government began to restore some such functions, but given the track record of corrupt practices of the old labour inspectorate, Georgia will need to be vigilant. Importantly, Georgia reformed its entire inspection system starting in 2005, with the objective of downsizing the number of state inspectorates, streamlining

inspection rules and making them more business-friendly, non-corrupt and transparent.

EU approximation. In 2013, Georgia amended the labour code in order to comply with relevant EC directives on labour law, anti-discrimination and gender equality. As a result of legislative reform, the main anti-discrimination and gender-equality principles (including defensive measures for pregnant women) stipulated by the directives are already reflected in labour legislation, as well as among others provisions on notification before firing, collective redundancies, overtime working remuneration and fixed working hours. The main outstanding challenge arises with the directives on fixed-term and part-time contracts, which are considered restrictive.

As for the anti-discrimination and gender-related directives, to be implemented within three to four years there is a risk that some principles of these regulations will be misunderstood and not applied in a proper way by the government. For example, in relation to anti-discrimination regulations, the government was planning to introduce a provision according to which the employer would be obliged to provide a written explanation to candidates as to why they did not meet the requirements of the job vacancy. But this draft provision was not finally adopted because of concerns of employers over the additional bureaucratic burden.

The 26 directives on health and safety envisaged for approximation represent the most difficult challenge, with sizeable compliance costs, even if the implementation periods are long (seven to ten years). The best scenario is for these standards to be gradually introduced, for example when they are embodied in the technology of a new investment. Otherwise, in cases of sharply increased costs, apart from the financial burden, there would be risks of increased corruption in order to avoid compliance costs. The approximation of these directives has not started yet. Nevertheless, institutional reform has been undertaken to supervise health and safety at work, with the creation in 2015 of the Work Conditions Monitoring Service under the Ministry of Labour. The Service started inspections of work conditions in state and private companies under the framework of this monitoring programme.

Employment and social policy at a glance

Fundamental reform of the Georgian Labour Code began in 2006, which led to the adoption of the major ILO conventions, with more recent reforms in 2013 already implementing the requirements of many EU directives on key issues of labour law and anti-discrimination.

The directives on health and safety standards are costly, however, and it is therefore advisable to conduct approximation prudently and gradually (over seven to ten years) to avoid imposing excessive regulatory burdens on the business community and inducing a possible shift to informal labour relations as a result.

24. EDUCATION, TRAINING AND CULTURE

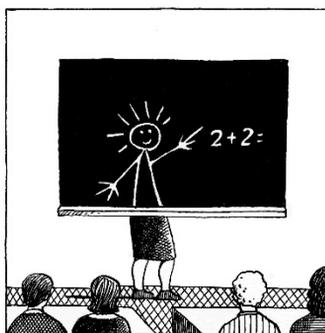
Education and training

The Association Agreement sets out certain aims for the education system, notably its reform and modernisation, and convergence in the field of higher education in the Bologna process, which includes the enhancement of the quality and relevance of higher education.

In 2004, Georgia embarked upon Bologna-related reforms, formally joining the Bologna process in 2005, leading to adoption of the three-tier higher education system (with bachelor, master and doctorate qualifications). Further extensive reform efforts were initiated to bring the Georgian education system closer to European and more broadly Western standards. Georgia adopted a new Law on Higher Education. New mechanisms of quality control were established. Higher education institutions were granted more autonomy.

In 2006, an independent National Centre of Education Accreditation was established, which became an official authority responsible for defining equivalence and authenticity of educational credentials. A National Curriculum and Assessment Centre, and a Centre for Teachers' Professional Development were established.

One of the major milestones in reforming the education system was the introduction of Unified National Exams, which eradicated the old Soviet-style admission rules coupled with deeply rooted corruption. Unified National Exams are conducted in a centralised manner and tests are confidential, electronic and conducted through a transparent and merit-based system.



Georgia introduced a merit-based funding scheme based on the principle of ‘money follows students’, whereby the state funds students, not education institutions. The amount of state funding depends on the scores of students in Unified National Exams, whereby students with higher scores receive higher funding, up to the level of the highest tuition fees of state universities. Students are free to use the funding at public and private universities equally, which means that universities compete for well-performing students. As a result of this competition, the quality of higher education has increased in recent years. Currently, approximately 40% of students study at private universities in Georgia, funding at least part of their tuition through state scholarships.

Georgia has also reformed its vocational, primary and secondary education systems, among others introducing voucher financing, where funding is given to students and not education institutions, thus encouraging a higher level of competition. The EU–Georgia Association Agreement promotes concrete measures, such as implementing of the European Credit System for Vocational Education and Training. The cooperation extends to efforts on improving transparency and mutual recognition of qualifications.

In the field of exchanges, the EU’s major contribution is through the Erasmus+ programme, which has a total budget for the EU plus third countries of €4.7 billion for the period of 2014 to 2020. Up until 2014, 847 Georgian students, researchers and academic staff benefited from Erasmus through scholarships, teaching, training activities and study visits, and the number of beneficiaries is expected to increase in the years ahead.

Georgian higher education institutions are among the consortia of five EU-funded capacity-building projects with a budget exceeding €4 million. The following areas are covered:

- higher education interdisciplinary reform in tourism management and applied geo-information curricula;
- creation of graduate curricula in peace studies in Georgia;
- advocacy enhancement for students through an ombudsman position;
- EUCA-INVEST (investing in entrepreneurial universities in Caucasus and Central Asia); and
- development of programmes for disadvantaged groups of people and regions to improve their access to higher education.

Culture

Cultural cooperation between Georgia and the EU is based on exchanges and the mobility of arts and artists. Georgia participates fully in the EU's Creative Europe programme for the cultural and creative sectors, signing an agreement to this effect with the European Commission in February 2015. The EU and Georgia also pledge to cooperate in the framework of UNESCO and the Council of Europe, to sustain cultural diversity and valorise cultural and historical heritage. Georgia has already elaborated a Culture Strategy 2025 (www.culturepolicy.ge) and the government reiterates its commitment to strengthening all-inclusive cultural policies and supporting the capacities of culture operators in the country.

Projects for cultural cooperation are being implemented under the Culture Programme II launched in September 2015 for the Eastern Partnership countries. The Culture Programme II builds upon the experience of the first programme, and aims at further strengthening cultural policies, as well as the capacities of the culture sector and the culture operators. It seeks to develop cultural and creative industries as vectors of cultural, social and economic development, and create synergies between public and private actors for a more efficient cultural sector.

The programme has a budget of €4.95 million and has two components. A first one is EU support for capacity building and the inclusion of culture on the political agenda. The second is a joint EU and Council of Europe project supporting 6-12 historic towns for the development of urban strategies with the revival of heritage.¹¹³ This Community-led Urban Strategies in Historic Towns (COMUS) project aims not only at preserving and rehabilitating cultural heritage, but also the objective of stimulating social and economic development.

Under the aegis of the Culture Programme II, the Georgian Ministry of Culture and Monument Protection plans to implement a 'Diversity in Culture and Heritage' project with the participation of young people from Eastern Partnership countries, and to take an active part in the work of the Eastern Partnership Culture Forum.

¹¹³ See http://eeas.europa.eu/delegations/georgia/documents/news/2015/20150918_01_en.pdf

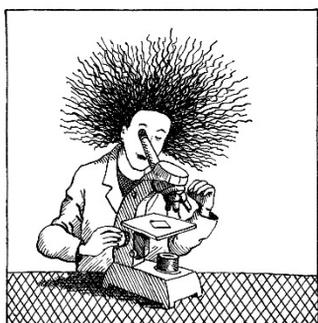
Education, training and culture at a glance

Since 2004, Georgia has been implementing a set of reforms in the education sector to increase competition and quality in public and private education, and prevent corruption, notably in the area of higher education.

Basic education reforms are supported in the Association Agreement, notably for higher education through the Bologna Process and European Higher Education Area, and with concrete programmes such as Erasmus+ benefiting large numbers of Georgian students.

Georgia has joined the EU's Culture Programme, with a new agreement signed in February 2015.

25. SCIENCE AND TECHNOLOGY



The Association Agreement sets out wide-ranging objectives for cooperation in the area of science and technology, aiming to strengthen research capacities, human potential and the sharing of scientific knowledge. It intends to facilitate the involvement of Georgia in the European Research Area.

In April 2016, Georgia joined the EU's Horizon 2020 programme, which is the centrepiece of the EU's scientific and research activity, endowed with very substantial funds (€80 billion) for the period 2014–20. Horizon 2020 offers access to world-class scientific networks and research teams and data, with increased mobility that are essential to the process of Georgia's modernisation and European integration. Horizon 2020 encourages the EU and Georgia to implement joint research projects, conduct training courses and increase the mobility of scientists and researchers. Through cooperation with the EU, Georgia has an opportunity to strengthen its research institutions. The areas eligible for project funding by Horizon 2020 cover both the natural and social sciences (see Table 25.1 below).

Georgia already participates in six projects funded under Horizon 2020:

- enhancing the civilian conflict-prevention and peace-building capabilities of the EU;
- encouraging the research and innovation cooperation between the EU and selected regional partners (Black Sea Horizon);
- improving transnational cooperation among national contact points for information and communication technologies (ICT);
- supporting structural change in research organisations to promote responsible research and innovation;

- expanding e-infrastructures for virtual research environments in Southeast Europe and the Eastern Mediterranean; and
- participating in GÉANT, the pan-European data network for the research and education community.

Table 25.1 Main thematic priorities of Horizon 2020

Excellent science	Industrial leadership	Societal challenges
European Research Council (ERC)	Leadership in enabling and industrial technologies (LEITs): nanotechnologies, materials, biotechnology, manufacturing, ICT and space	Health, demographic change
Future and emerging technologies	Access to risk finance	Food security, sustainable agriculture, marine research
Marie Skłodowska-Curie actions career development	Innovation in SMEs	Energy, transport, climate action
Research infrastructures (including e-infrastructure)		Europe in a changing world; protecting freedom and security

With associate membership of Horizon 2020, Georgia will be able to participate in the programme on the same basis as EU member states, including participation in the governing structures of the fund. Membership comes with a price tag, proportional to its GDP compared with that of the EU, but with substantial rebates.

Georgia had already participated in the predecessor of Horizon 2020, the Framework Programme 7 (FP7) for Research and Development, and demonstrated a strong performance in project implementation. Over seven years Georgian institutes took part in 59 FP7 projects and received funding of €5.49 million in total, among which are the following examples:

- the Chain Reaction project on a sustainable approach to inquiry-based science education;
- a multi-gigabit European research and education network, and associated services;
- the European grid initiative, a pan-European infrastructure for researchers in Europe;
- a high-performance computing infrastructure for research communities;

- a pan-European infrastructure (PESI) for the management of biodiversity in Europe;
- coastal networks of marine-protected areas, with sea-based wind energy potential;
- cooperation on bridging the gap between energy research and energy innovation;
- agri-food research results and innovation; and
- a pan-European infrastructure for ocean and marine data management.

Based on its performance, Georgia is judged to have a strong potential in ICT and in areas such as energy, raw materials and environment-related issues.

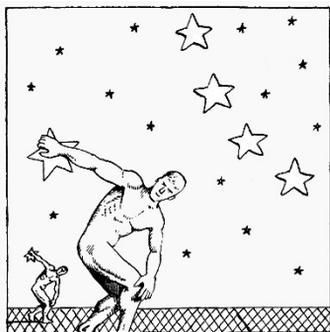
Science and technology at a glance

In accordance with the Association Agreement, it is envisaged that Georgia will become a full participant in the EU's main research funding instrument, Horizon 2020.

Over seven years Georgian institutes took part in the EU's previous programme (FP7) with 59 FP7 projects, receiving total funding of €5.49 million.

Georgian researchers produce high-quality research in nanotechnology, biotechnology and pharmaceuticals, health, agriculture and engineering. These are the domains that could serve as a strong base for closer cooperation with the EU.

26. EU AGENCIES AND PROGRAMMES



The EU operates 46 'agencies', which are semi-autonomous and specialised bodies funded and controlled by the EU, with the objective of supporting the functioning of EU policies. There are also around 45 'programmes', most of which (but not all) are funded and administered by the European Commission. Of these a considerable number are open to participation by Georgia as a partner under the

Association Agreement, notably the 20 agencies and 19 programmes listed in Boxes 26.1 and 26.2. The text in bold indicates the agencies and programmes with which Georgia already has ongoing cooperation at different levels (projects, seminars, study visits, etc.).

*Box 26.1 EU agencies open to Ukraine, Moldova and Georgia**

European Agency for Safety and Health at Work (EU-OSHA)

European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)

European Asylum Support Office (EASO)

European Aviation Safety Agency (EASA)

European Centre for Disease Prevention and Control (ECDC)

European Centre for Disease Prevention and Control (ECDC)

European Chemicals Agency (ECHA)

European Defence Agency (EDA)

European Environment Agency (EEA)

European Fisheries Control Agency (EFCA)

European Food Safety Authority (EFSA)

European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)

European GNSS Agency (GSA)

European Institute for Gender Equality (EIGE)

European Maritime Safety Agency (EMSA)

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

European Network and Information Security Agency (ENISA)

European Police College (CEPOL)

European Police Office (Europol)

European Union Institute for Security Studies (EUISS)

European Union's Judicial Cooperation Unit (EUROJUST)

* Bold type denotes those agencies with which Georgia already has ongoing cooperation at different levels (projects, seminars, study visits, etc.).

*Box 26.2 EU programmes open to Ukraine, Moldova and Georgia**

Asylum, Migration and Integration Fund

Competitiveness of Enterprises and SMEs (COSME)

Copernicus, European Earth Observation Programme

Creative Europe, Programme for the cultural and creative sectors

Customs 2020

Erasmus+

European Maritime and Fisheries Fund

European Statistical Programme

European Territorial Cooperation

European Union Civil Protection Mechanism

Fiscalis 2020 (tax administration support)

Galileo and EGNOS Programmes, Global satellite navigation system

Health for Growth

Hercule III Anti-fraud Programme

Horizon 2020

Internal Security Fund

Life Programme

Environment and climate change

Pericles 2020, Programme for the protection of the euro against counterfeiting

SESAR JU, Air Traffic Management modernisation

* Bold type denotes those programmes with which Georgia already has ongoing cooperation at different levels (projects, seminars, study visits, etc.).

Such participation offers a useful means of in-depth integration of professional experts and administrative organisations with EU counterparts, and aids reform processes.

Membership in an agency requires negotiation of a specific international agreement, and a decision on the financial contribution of the partner. Cooperation with a programme is carried out on the basis of a protocol or Memorandum of Understanding (MoU), stating the details of participation. Participation in these EU agencies and programmes is subject to regular dialogue and review.

Membership of the agencies and inclusion in programmes gives full access to the infrastructure and governing bodies, but also involves costs. To ease the financial burden Georgia is able to pay up to 50% of membership fees from EU aid funds, in addition to which temporary rebates may be negotiated. The process of participating in various programmes can be extremely competitive, such as for research projects under Horizon 2020, but Georgian institutes will normally be joining consortia and counterparts in EU member states in these initiatives.

Georgia has ongoing cooperation at different levels (projects, participation in seminars, study visits, etc.) with the following agencies:

European Aviation Safety Agency (EASA). Cooperation between Georgia and the EASA reflects a shared interest in a high level of civil aviation safety and environmental compatibility. Within this framework several working groups are active, including the pan-European partnership group (EASA–PANEP). In 2011, Georgia and the EU started implementing a twinning project on harmonisation with EU norms of legislation and standards. In 2014, Georgia became the 40th member of the European Organisation for the Safety of Air Navigation (EUROCONTROL), which will help the integration of Georgian air navigation systems into the European system.

European Maritime Safety Agency (EMSA). The cooperation between Georgia and the EMSA seeks to ensure a high, uniform and effective level of maritime safety and security, and to prevent and respond to sea pollution. EMSA organises training seminars and supports analysis, research and other projects that envisage the protection of the environment, port control, vessel traffic management and state flag control. As a result, Georgia has considerably improved its education, training and certification of seafarers, and regained the EU recognition of certificates for Georgian seafarers that had been revoked in late 2010.

European Agency for Safety and Health at Work (EU-OSHA).

Georgia is in the process of developing frameworks to improve workplace health and safety and in this respect the Ministry of Labour, Health and Social Affairs has been largely supported by the EU-OSHA in providing expertise to improve occupational safety and health through sharing EU experience and improving risk assessment capacity. Cooperation with the EU-OSHA follows from the obligations in the Association Agreement to bring its legislation in this field in line with EU directives.

European Defence Agency (EDA). There is significant potential to cooperate between Georgia and EDA, although this has not yet been reflected in practice. The government is currently considering specific opportunities for mutually beneficial cooperation with the Agency.

European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). Georgia has cooperated with the EMCDDA since 2014. The MoU signed by the Ministry of Justice and the EMCDDA aims to help Georgia implement its commitments under the Association Agreement. By applying evidence-based, scientific practical methodologies, Georgia has considerably improved the collection and analysis of information. The parties will regularly exchange information on illegal trafficking of drugs and psychotropic substances, and on their production and use.

European Police College (CEPOL). Cooperation with the European Police College involves sharing experience and importing the best practices of advanced European training institutions. Since 2013, the Ministry of Internal Affairs has been actively engaged in an exchange programme with the European Police College, which enables the ministry's officials to visit the law enforcement agencies of partner states. The programme offers experience-sharing in the fields of illegal migration, human trafficking, cybercrime, organised crime and human rights.

European Union's Judicial Cooperation Unit (EUROJUST).

Since January 2015, Georgia has been officially included in the priority country list of EUROJUST, which triggers the process of concluding a cooperation agreement with EUROJUST.

European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX). In 2013, FRONTEX and the Ministry of Internal Affairs of Georgia signed a cooperation plan for the period of 2013–15, providing for participation in training seminars and operations in various European countries. For 2014–17, FRONTEX implements a project on Integrated Border Management

Capacity, which aims to improve the training capacity of border agencies in Georgia and all six Eastern Partnership states. The Common Integrated Risk Analysis Model methodology, developed by FRONTEX, has been translated into Georgian.

European Environment Agency (EEA). Cooperation between Georgia and the EEA has been underway since 2010 within the framework of the project on extending the Shared Environment Information System to the European Neighbourhood Policy Countries (SEIS). In 2015 this project was extended to 2016–19, and involves the sharing of best practices in analysing, storing and managing environmental information; enhancing capacity in data reporting mechanisms; and producing National State of the Environment Reports.

Of all the EU programmes, Georgia is most actively engaged in the **Horizon 2020**, the **Erasmus+** (on which see the chapters on science and education respectively) and the new **Creative Europe** programmes. Creative Europe enables professionals and organisations in the cultural, artistic and creative sectors from Georgia to work throughout Europe, address new audiences and implement projects with European partners.

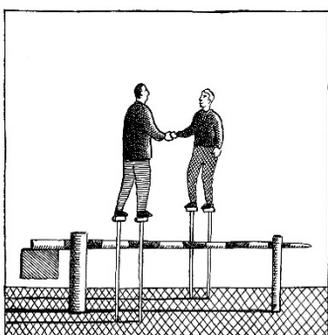
The EU agencies and programmes at a glance

There are extensive possibilities for inclusion in EU agencies and programmes, with the potential to develop institutional capabilities and advance reforms.

Georgia is taking up a considerable number of these possibilities, which relate to important aspects of Georgia's modernisation and integration with Europe, for example health and safety standards, policing and justice, research, education and culture.

The EU offers financial assistance to contribute to the costs of participation.

27. CROSS-BORDER COOPERATION



While Georgia does not have a land border with the EU, it shares a border with two fellow Eastern Partnership countries, namely Armenia (219 km) and Azerbaijan (428 km). The EU assists both Georgia–Armenia and Georgia–Azerbaijan cross-border cooperation through the Eastern Partnership Territorial Cooperation (EaPTC) programme, which establishes and strengthens contacts between the

neighbours with the aim of addressing common challenges. Stakeholders in the programme include local and regional authorities, hospitals, educational and communal services as well as non-state actors and SMEs.

In particular, the EaPTC seeks to support the social and economic development of Georgia's border regions with Armenia and Azerbaijan in three priority areas. First, it works to improve the living conditions of cross-border local communities through joint projects. Second, it addresses common challenges arising over such issues as the environment, employment and public health. Third, through education, sports and cultural exchanges, the programme supports 'people-to-people' contacts.

In this framework, the Kakheti and Kvemo Kartli regions of Georgia cooperate with two economic zones in Azerbaijan: Ganja-Qazakh and Sheki-Zagatala. Regions participating in Georgian–Armenian cooperation are Kvemo Kartli and Samtskhe Javakheti in Georgia and Lori, Shirak and Tavush in Armenia. The funding from the EU has an indicative amount of €1.35 million for Georgia–Armenia cooperation, and a similar amount for Georgia–Azerbaijan cooperation.

The requests for grants can range between a minimum of €20,000 and a maximum of €250,000.

In 2015, the European Commission awarded grants to 10 cross-border territorial cooperation teams for the implementation of projects addressing common challenges in the targeted bordering regions of Georgia and Armenia (see Box 27.1).

Box 27.1 Selected Georgia–Armenia cross-border projects

- Common challenges in youth employment through cross-border tourism development;
- Better Together: Joint Action for Conservation of the Javekheti–Shirak Eco–Region
- Biking and rural combined cross-border tourism
- Charming Highlands
- Improvement of Solid Waste Management Services in Ijevan and Bolnisi
- Cross-border Economic Development
- Fairy-Tales Teaching Trust
- Sustainable Forest and Energy Solutions
- Young Traveller
- Youth voices for change and development

Cross-border tourism and youth. Addressing common challenges in youth employment through cross-border tourism development is one of the major projects that received the support of the European Commission. The project will run for 12 months and the funding for its implementation amounts to €183,248. The cooperation between the communities in the Tavush (Armenia) and Kvemo Kartli (Georgia) regions aims to improve living conditions in cross-border areas by developing of tourism, facilitating youth contacts across the border and highlighting issues related to environmental problems. In particular, the project targets young workers in the beneficiary regions.

The project will set up networks of tourist offices, information centres and hotels in the targeted border regions. Cross-border touristic routes and tour packages will be offered to facilitate cross-border tourism. The project will also work to improve the quality of local tourist providers and train youth working in the sector. Sustainable cooperation will be set up between civil society organisations and

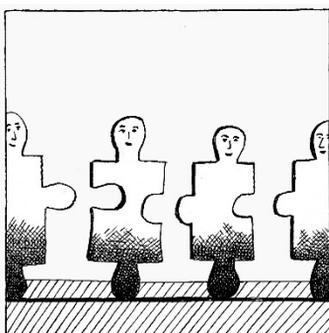
young people as well as between the local and regional media. Specific actions of the project include vocational training on guiding tour groups, maintaining the quality of services and cleaning touristic sites. The project will publish touristic materials, develop mobile applications and produce videos.

Cross-border cooperation at a glance

While Georgia has of course no land border with the EU itself, the EU supports Georgia's cross-border cooperation with Azerbaijan and Armenia.

Several small-scale projects are operational, with an emphasis on boosting cross-border tourism and youth contacts.

28. CIVIL SOCIETY



Georgia's civil society has long been in the forefront of change in the country. Following the Rose Revolution in 2003, many NGO leaders moved to work in the government in high-level positions. Generally, compared with its peer countries, the government in Georgia has demonstrated relatively greater openness to cooperation with civil society.

Currently, there are around 20,000 NGOs registered in Georgia, but only a much smaller number are active. The NGOs cover issues such as democracy and human rights, anti-corruption, elections, development, social services, youth and culture.

In 2015, the international Think Tank Index Report identified 14 think tanks in Georgia as excelling in research, analysis and public engagement on a wide range of policy issues.¹¹⁴

The EU has long supported Georgian civil society, which has played the role of a pressure group vis-à-vis the government, and among others a driver of change. For the period 2014–17, 5% of the EU's budget support to Georgia is allocated to support civil society organisations.

However, one of the relative weaknesses of Georgia's civil society is the deficiency of local funding and hence overdependence on foreign funding, which in turn results in a lack of responsiveness to the domestic agenda, because the latter is often donor-driven.

¹¹⁴ See James G. McGann, "2015 Global Go To Think Tank Index Report", TTCSP Global Go To Think Tank Index Reports, Paper No. 10, 2016 (http://repository.upenn.edu/think_tanks/10).

The formal frameworks of cooperation between civil society in Georgia and the EU consist mainly of three initiatives that should work in parallel: the multilateral Civil Society Forum (of all six Eastern Partnership countries), the bilateral Civil Society Platform and the DCFTA-established Advisory Group. The bilateral Civil Society Platform is currently being established, but with delays due to divergent opinions among the civil society organisations (see further below). There is also some confusion with the overlap of names and functions of these three initiatives, which remain to be resolved.

(Multilateral) Civil Society Forum. One of major avenues for the EU to engage with Georgian civil society has been the multilateral Civil Society Forum of the Eastern Partnership, which was established in 2009, prior to the signature of the Association Agreement. The Forum brings together members of civil society from all six countries included in the Eastern Partnership, each with their individual country platforms. The Georgian National Platform was founded in November 2010, consisting of 95 civil society organisations. The members of the Platform actively participate in the working groups and sub-groups of the Civil Society Forum.

In November 2015, the Georgian government and the Georgian National Platform signed a Memorandum of Cooperation, pledging to strengthen cooperation between the government and civil society on the implementation of the Association Agreement. The National Platform now comprises over 120 members and has five working groups, which further divide into a number of sub-groups. Some of the civil society organisations consider the National Platform overcrowded with too many ineffective NGOs and only a few active members. The recruitment process of the new members to the platform has also been a subject of controversy over the criteria for participation.

Nonetheless, the 2016 National Action Plan¹¹⁵ is an example of this cooperation, since its content reflects recommendations put forward by the Georgian National Platform members and the coalition of the Open Society Georgia Foundation (OSGF).

(Bilateral) Civil Society Platform. The Association Agreement provides for a bilateral Civil Society Platform (Art. 412(2)). This sets out a long list of general goals, from fostering civil society cooperation so as to familiarise the societies of the EU and Georgia with each other,

¹¹⁵ See the National Action Plan for the Implementation of the Association Agreement between Georgia, on the one part and the European Union on the other part, and the Association Agenda between Georgia and the European Union.

through to the involvement of the NGOs in the implementation process of the Agreement.

In 2015, the OSGF and its NGO coalition published a report on “Assessing the First Year of Georgia’s Implementation of the Association Agenda – Progress and Opportunities in the Political Sphere”.¹¹⁶ Throughout this period, NGOs have voiced a number of concerns with respect to the Agreement’s implementation process: while some aspects of the Association Agenda are rightly specific, e.g. judiciary reforms, others are too broad and vague to identify shortcomings in meeting the benchmarks.

The composition of this bilateral Civil Society Platform is still a work in progress. The Agreement indicates that representatives of civil society on the side of the EU should include members of the European Economic and Social Committee, and on the side of Georgia should include representatives of the National Platform of the multilateral Civil Society Forum. Yet there are differing views on its structure, composition and governance, which remain to be resolved.

Advisory Group of the DCFTA. Georgian civil society also participates in monitoring the DCFTA through an Advisory Group. The Commission’s Directorate-General for Trade has made it a general practice to consult with civil society organisations over its free trade agreements. The Advisory Group includes NGOs, and representatives of employers and workers’ organisations. They are expected to meet once a year in a Joint Civil Society Dialogue Forum to discuss issues related to trade and sustainable development. Although the Agreement encourages the exchange of views on the implementation of the DCFTA, the technical know-how on such matters of the civil society organisations is limited. There are nonetheless a number of civil society experts who engaged in the negotiations of the Association Agreement, including the DCFTA. Still, as the DCFTA covers a wide spectrum of issues, capacity building is needed.

Russian interventions. In recent years Moscow has increased its presence in Georgia through funding certain civil society organisations, which have become progressively active in developing anti-EU and anti-NATO discourse in the capital and the regions. The goal is to seed discontent at the grassroots level over the Association Agreement, including the DCFTA, and to influence public opinion about Georgia’s foreign policy, security and economic arrangements. The most used methodology consists of targeted, warped information flows, which

¹¹⁶ See www.osgf.ge/files/2015/2015/publication/Book_ENG_WEB.pdf.

portray European values as contradicting Georgia's cultural and religious heritage.

The exact number of the Russian-funded NGOs is unknown, mostly due to their unrevealed sources of funding.¹¹⁷ Nonetheless, on the basis of observed activity there are two major organisations: the Eurasian Institute and the Eurasian Choice. The latter is a partner of the International Eurasian Movement, led by Alexander Dugin, a prominent advocate of Kremlin expansionist policy. Both organisations sponsor smaller-scale NGOs that express quasi-nationalistic sentiments and also spread xenophobic and homophobic ideas.¹¹⁸ In 2013, the Gorchakov Fund, a Kremlin-favoured organisation, launched projects in Tbilisi. It operates through a locally based Russian–Georgian Public Centre, and offers free tuition in the Russian language, organises meetings with Russian experts and public figures, and puts a particular emphasis on engaging students.

Declaring its adherence to democratic values, the government abstains from direct interference. Instead, in order to counter Russian propaganda, it has increased efforts on strategic communication across the country, and has expressed interest in increasing cooperation with civil society organisations that are actively engaged in the democracy-building process.

Civil society at a glance

Civil society in Georgia has been active in advocacy of democracy and human rights since the country's independence.

The EU supports Georgian civil society organisations, considering them both a driver of democratic change and a watchdog of the government's activities.

Civil Society in Georgia finds the Association Agreement overall a convenient framework to promote the reforms necessary to strengthen democracy in the country.

In recent years, Moscow has increased its presence in Georgia through funding civil society organisations, which develop anti-EU and anti-NATO discourse in the capital and regions.

¹¹⁷ Displaying the source of funding is not mandatory, unless requested to do so by government agencies.

¹¹⁸ See Initiative Group, "Russian influence on the Georgian non-governmental organizations and the media".

PART IV.
LEGAL AND INSTITUTIONAL
PROVISIONS

29. DISPUTE SETTLEMENT



The Agreement has two different dispute settlement mechanisms (DSM), one that covers disputes related to the Agreement in general but excluding the DCFTA, and another more detailed one that covers the DCFTA itself.

The general dispute settlement mechanism

This mechanism is defined in quite simple terms in Arts 421 and 422 of the Agreement. It concerns disputes over the interpretation, application or implementation of the non-DCFTA parts of the Agreement. It is based on a traditional ‘diplomatic’ approach, under which the Association Council has the key role.

A party can initiate this DSM by sending a formal request to the other party and the Association Council. The parties shall then try to resolve the dispute by entering into good faith consultation within the Association Council or other relevant bodies (i.e. the Association Committee or a specific subcommittee). The Association Council can eventually settle the dispute, after a consultation period, by way of a binding decision. Because the Association Council takes decisions “by agreement”,¹¹⁹ both the EU and Georgia would need to approve the decision to resolve the dispute.

As long as the dispute is not resolved, it will be discussed at every meeting of the Association Council. If an agreement cannot be reached in the Association Council after three months, the complaining party is allowed to take “appropriate measures”, such as the suspension of parts of the Agreement, but not of the DCFTA part

¹¹⁹ See Art. 408(3) of the EU-Georgia Association Agreement.

(except in the special case of violations of the ‘essential elements’ of the Agreement – see further below). In the selection of appropriate measures, priority shall be given to those that least disturb the functioning of the Agreement.¹²⁰

The ‘essential elements’ clause. As in other Association Agreements concluded by the EU, the EU–Georgia Agreement includes a suspension clause (in Art. 422(3)) relating to ‘essential elements’ of the Agreement (defined in Art. 2). This refers to “[r]espect for democratic principles, human rights and fundamental freedoms” as defined in several international agreements and conventions, and countering the proliferation of weapons of mass destruction.

In the event of violation of these fundamental principles, the complaining party can immediately suspend the Agreement, including rights and obligations under the DCFTA.

In practice, the EU very rarely uses these suspension clauses. If a reaction of the EU is required to address a specific human rights situation in the territory of the partner country, the EU prefers to act through diplomatic means (e.g. in the Association Council or annual summit meetings), or by using limited restrictive measures, such as arms embargoes, the freezing of assets or visa bans. Total suspension or termination of the Agreement is viewed as the ‘nuclear’ option, best not used.

The DCFTA dispute settlement mechanism

Arbitration. For disputes concerning the interpretation and application of DCFTA provisions, a separate and more sophisticated DSM is laid down in a long and detailed chapter (Arts 244-270) of the DCFTA. The mechanism is largely inspired by the WTO Dispute Settlement Understanding. If there is a dispute regarding the interpretation and application of DCFTA provisions, the parties will first seek to come to an agreement through consultations.

If these consultations fail, the complaining party may request the establishment of an arbitration panel to rule on the dispute. The panel will be composed of three arbitrators chosen by the parties. The arbitrators must be independent, serve in their individual capacity, not

¹²⁰ The requirement of a three-month consultation period and the condition that the measures may not include the suspension of any DCFTA rights or obligations do not apply in the case of violation of the essential elements, referred to in Art. 2 of the Agreement (and further explained below).

take instructions from any government and comply with a Code of Conduct annexed to the Agreement. One party cannot block the establishment of an arbitration panel, because if the parties cannot agree on the composition of the panel, the panellists will be drawn by lot from a permanent list of arbitrators.¹²¹

Rulings of the arbitration panel shall be binding and each party must take the necessary measures to comply with them. If the party to whom the complaint was addressed fails to comply without offering at least temporary compensation, the other party is entitled to suspend obligations arising from the DCFTA at a level equivalent to the violation (e.g. by reinstating the MFN tariff on specific products). Again, in practice the EU very rarely relies on the DSM in its free trade agreements to resolve a trade dispute. It prefers instead to use diplomatic means (e.g. by discussing this in bilateral meetings, such as the Association Council or in unilateral statements) or, in some cases, the WTO Dispute Settlement Understanding.

This DCFTA DSM is without prejudice to possible dispute settlement under the WTO. However, the Parties are not allowed to pursue dispute settlement under both systems at the same time.

The DCFTA DSM includes several specific features. First, some elements of the DCFTA are excluded from this DCFTA DSM, such as parts of the chapter on trade remedies, and competition. Second, as regards energy disputes, the DCFTA DSM foresees quicker procedures if one party considers that dispute settlement is urgent because of an interruption of the transport of gas, oil or electricity, or a threat thereof. This procedure should allow the parties to react in a swift manner to potential energy disputes. Third, there is a procedure that obliges the arbitration panel to ask the Court of Justice of the European Union (CJEU) for a binding preliminary ruling when there is a dispute concerning the interpretation and application of EU law (i.e. EU legislation annexed to the Agreement).¹²² This procedure aims to ensure a uniform interpretation and application of the Agreement's annexed EU legislation without jeopardising the exclusive jurisdiction of the CJEU to interpret EU law.

¹²¹ The Trade Committee has to establish a list of 15 experts who are willing and able to serve as arbitrators. Each of the parties has to propose five individuals and the two parties shall also select five individuals who are non-nationals of either party and one who shall act as a chairperson of the arbitration panel.

¹²² See Art. 267 of the EU–Georgia Association Agreement.

Mediation. A separate lighter mechanism is included (in Annex XIX) for ‘mediation’ rather than ‘arbitration’, and which the parties can use to tackle market access problems, including non-tariff measures. This mechanism functions through the appointment of a single mediator who can advise and propose a non-binding solution within 60 days. The aim of the mediation is not to review the legality of a measure, but to find a quick and effective solution to market access problems without recourse to litigation. If the solution is agreed by the two parties it will be adopted as a decision of the Trade Committee. This mediation mechanism does not exclude the possibility, if a solution is not agreed, to have recourse to the dispute settlement mechanism with arbitration.

Transparency. In addition, the DCFTA includes a chapter on transparency (in Arts 219 to 226). Georgia has to establish “an effective and predictable regulatory environment for economic operators and efficient procedures, including for small and medium-sized enterprises, taking due account of the requirements of legal certainty and proportionality”. For example, laws, regulations, judicial decisions and administrative rulings that have an impact on the Agreement (i.e. measures of general application) must be published and communicated in a proper and timely manner. A contact point has to be established that responds to enquiries from interested persons regarding such measures of general application (proposed or in force). This chapter also includes rules on administrative and “review and appeal” procedures. According to the latter, each party shall establish or maintain impartial and independent courts, or other independent tribunals or procedures, for the purpose of the prompt review and, where warranted, correction of administrative actions in areas covered by the DCFTA.

Dispute settlement, mediation and transparency at a glance

There are two basic mechanisms for dispute settlement – a ‘general’ one applicable to all parts of the Agreement except the DCFTA, and a second one applicable to the DCFTA itself.

The general mechanism relies on the two parties finding a mutually agreed solution in the Association Council, failing which the aggrieved party may take ‘appropriate measures’.

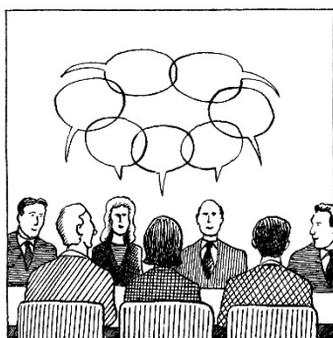
For DCFTA-related disputes there is a more elaborate system that provides two alternative tracks: either binding arbitration or softer mediation for consensual solutions.

There is also provision for the special case of violation of the 'essential elements' of the Agreement (i.e. basic political principles), which can lead to suspension of the entire Agreement.

However, in practice these procedures are rarely used, as the EU generally seeks to resolve disputes by dialogue.

The DCFTA rules on transparency oblige Georgia to establish and maintain a transparent and predictable legal environment to do business.

30. INSTITUTIONAL PROVISIONS



For the most part, the EU–Georgia Association Agreement has been provisionally applied since 1 September 2014, and entered fully into force on 1 July 2016. The institutional arrangements for reviewing and controlling the implementation of this Agreement are well developed.

Ratification and provisional application. After the Association Agreement was signed on 27 June 2014,

several procedural steps were required before the Agreement could enter into force. Not only had the European Parliament to give its consent (which it did on 18 December 2014), but it also had to be ratified by all 28 EU member states because the Agreement is a ‘mixed agreement’, i.e. it includes provisions falling under the competences of EU member states. In order to avoid ratification delays, the EU and Georgia agreed to apply large parts of the Agreement ‘provisionally’ since 1 September 2014, namely most provisions that fall within the Union’s competences, such as almost the entire DCFTA and many chapters on general principles, political dialogue, the rule of law and numerous items of sectoral cooperation. After ratification by all the EU member states, the EU itself and Georgia, the Agreement entered into force on 1 July 2016.

Institutional framework. The Agreement establishes a comprehensive institutional framework, which will play a crucial role in the monitoring and implementation process.

The key institution is the Association Council, composed of members of the Council of the European Union and the European Commission, on the one hand, and members of the Georgian government, on the other. The Association Council meets at least once

a year at ministerial level, and is the core institution to monitor the application and implementation of the Agreement. In addition, it examines all other major issues in the relationship between the two parties. For example, the latest Association Council meeting on 16 November 2015 discussed, *inter alia*, Georgia's progress in implementing the Agreement, the October 2016 parliamentary elections, visa liberalisation and recent developments in the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia.¹²³

The Association Council can take 'binding' decisions where provided by the Agreement. This means that the EU (and its member states) and Georgia are obliged to implement these decisions. It can also adopt non-binding recommendations. Both decisions and recommendations are taken by consensus between the parties.

The Association Council is assisted by an Association Committee, composed of representatives of the parties at senior official level and which in turn is assisted by specific subcommittees. The Association Council adopted rules of procedure for itself, the Association Committee and its subcommittees¹²⁴ and established Subcommittees on Freedom, Security and Justice and on Economic and Sector Cooperation.¹²⁵ The Agreement has already established a Trade Committee to address all issues related to the DCFTA,¹²⁶ complemented by several subcommittees (e.g. on SPS, customs and trade and sustainable development).

Finally, the Agreement calls for a Parliamentary Association Committee, consisting of Members of the European Parliament and the Georgian parliament, and a Civil Society Platform (chapter 28).

Dynamic approximation. These joint institutions also play a crucial role in the process of Georgia's (dynamic) approximation to EU legislation (i.e. the continuous updating of the list of EU directives or regulations in the many annexes to the Agreement in the light of the

¹²³ See the joint press release following the second Association Council meeting between the European Union and Georgia, 16 November 2015 (www.consilium.europa.eu/en/press/press-releases/2015/11/16-joint-press-release-second-association-council-eu-georgia/).

¹²⁴ See Decision 1/2014 of the Association Council adopting its Rules of Procedure and those of the Association Committee.

¹²⁵ See Decision 2/2014 of the Association Council adopting on the establishment of two Subcommittees.

¹²⁶ See Art. 408(4) of the EU–Georgia Association Agreement.

relevant legislative developments in the EU itself). As indicated in the previous chapters, numerous EU acts listed in the annexes of the Agreement have already been replaced or amended in the EU. Therefore, the Agreement allows the Association Council to update or amend the annexes, “including in order to reflect the evolution of EU law”.¹²⁷ However, because the Association Council decides by consensus, both the EU and Georgia need to agree on the updating of the Annexes. Several chapters of the DCFTA include specific provisions to update the annexed EU legislation (e.g. on SPS, services and public procurement). The Association Council delegated to the Trade Committee the competence to amend or update the DCFTA annexes related to export duties, safeguard measures on passenger cars, TBTs, customs and trade facilitation, services and public procurement.¹²⁸

While the Association Council thus has broad powers to amend the annexes, it cannot change the main body of the Agreement, since, being a Treaty, this would require once again the complex procedures of ratification according to the internal procedures of both the EU and Georgia.

Institutional provisions at a glance

The Association Agreement has largely been provisionally applied since 1 September 2014 and it fully entered into force on 1 July 2016.

A comprehensive and joint institutional framework will monitor the implementation of the Agreement and provides a platform for political dialogue.

The Association Council has a broad competence to amend the annexes of the Agreement, but not the main body of the Agreement.

¹²⁷ See Art. 406(3) and 418 of the EU–Georgia Association Agreement.

¹²⁸ See Decision 3/2014 of the Association Council on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration.

The signing of the Association Agreement and DCFTA between Georgia and the European Union in 2014 was a strategic political act to deepen the realisation of Georgia's 'European choice'. Of all the EU's eastern neighbours, Georgia has distinguished itself by pushing ahead in the years since the Rose Revolution of 2003 with the most radical economic liberalisation and reform agenda. It has notably succeeded in reducing corruption and establishing a highly favourable business climate. The Association Agreement and DCFTA thus build on a most promising base. The purpose of this Handbook is to make the legal content of the Association Agreement clearly comprehensible. It covers all the significant political and economic chapters of the Agreement, and in each case explains the meaning of the commitments made by Georgia and the challenges posed by their implementation.

A unique reference source for this historic act, this Handbook is intended for professional readers, namely officials, parliamentarians, diplomats, business leaders, lawyers, consultants, think tanks, civil society organisations, university teachers, trainers, students and journalists.

The work has been carried out by two teams of researchers from leading independent think tanks, CEPS in Brussels and the Reformatics policy consulting firm in Tbilisi, with the support of the Swedish International Development Agency (Sida). It is one of a trilogy of Handbooks, with the other two volumes examining similar Association Agreements made by the EU with Ukraine and Moldova.

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