
GEPLAC ACTIVITIES

The National Programme of the Harmonisation of the Georgian Legislation with that of the European Union

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1. Background

The restoration of independence on 9 April 1991 brought a new era to Georgia's legal development. Political, economic and social reforms that to a great extent determined the present stage of development were conditioned by the aspiration of Georgian society to rapidly shift from a planned to a market economy. As a result, the hasty adoption of many fundamental laws led to the development of interim legislation, a typical feature for societies in transition.

At the same time, the implementation of new foreign policy objectives, including accession to international organisations as the Council of Europe and the World Trade Organisation (WTO) significantly contributed to the development of Georgia's legal system. The fulfilment of accession requirements and the successful co-operation within the framework of these organisations served as a precondition for bringing Georgian legislation into line with that of the European Union (EU). The introduction of a number of European standards into Georgian legislation made the legal system "more European".

The entry into force of the Partnership and Cooperation Agreement between Georgia and the European Communities and their Member States (PCA)¹, and the establishment of a permanent dialogue through such institutions as the Co-operation Council and Committees² gave the opportunity to specify priorities in the transitional period. It should be mentioned that the parties to the PCA view the approximation of Georgian legislation with that of the European Union as an important condition for strengthening the economic links.

As a response to the above the Georgian Parliament adopted Resolution No. 828-IS of 2 September 1997, according to which "all laws and other normative acts adopted by the Georgian Parliament from 1 September 1998 shall be compatible with the standards and rules established by the European Union". The enforcement of this resolution can be considered as a significant step towards the approximation of the Georgian legal system to that of EU. This could be attained through a detailed comparative analysis of the draft and

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¹ Partnership and Cooperation Agreement between Georgia and the European Communities and their Member States was signed on 22 April 1996 and entered into force on 1 July 1999. Published in: the Official Journal of the European Communities (OJ), L/205 of 4 August 1999.

² The establishment and functions of Co-operation Institutions are provided by Art. 81 ff. PCA

existing legislation with that of the EU for the purposes of determination of their consistency.

With due consideration to the difficulties related to the process of harmonisation of the legislation, the EU assumed an obligation to provide Georgia with technical assistance in the areas defined by the PCA. Consequently, GEPLAC, an established consultant body within the framework of the Tacis Programme, became an important instrument for the promotion of economic and legal reforms.

2. The Establishment of the Governmental Commission for the Promotion of Partnership and Co-operation Between Georgia and European Union

From the middle of 2000 the Georgian Government took effective steps to accelerate the complex and time-consuming process of harmonisation. Under Presidential Ordinance No. 317 of 24 July 2000 on the Promotion of the Implementation of PCA, the Governmental Commission for the Promotion of Partnership and Co-operation between Georgia and the European Union (hereinafter the Governmental Commission) was established, chaired by the Minister of Foreign Affairs. The main functions of the established Commission are the promotion of harmonisation of the Georgian legislation with that of the European Union and supervision over the fulfilment of international obligations under the PCA. Governmental Commission was committed to elaborate the Strategy of Harmonisation of the Georgian Legislation with that of the European Union, while the relevant ministries and agencies – to submit the proposals on the elaboration of the joint strategy of Harmonisation of the Georgian Legislation with that of the European Union.

GEPLAC, which has been rendering advice to various ministries and agencies since 1997, became the advisor of the leading coordinating institution of harmonisation – the Governmental Commission. As a result, GEPLAC in close co-operation with government authorities elaborated the Proposals for the Strategy of Harmonisation of the Georgian Legislation with that of the EU at the end of 2000.

Under Presidential Enactment No.1422 of 31 December 2000 on the Elaboration of the Strategy of Harmonisation of the Georgian Legislation with that of the EU the respective ministries and agencies were assigned to comment on GEPLAC proposals, while the Governmental Commission was to set up the strategy. Based on the comparative analysis of legislation, on European standards and on the economic rationale of approximation, the strategy defined priorities of harmonisation of legislation in the PCA-related fields and emphasised the necessity of the elaboration of the national programme for the implementation of the strategy.

As a result, the strategy was approved by Presidential Enactment No. 613 of 14 June 2001 on the Strategy of Harmonisation of the Georgian Legislation with that of the European Communities and the Government Commission was assigned to make the next step towards the alignment of the legislation – the elaboration of the National Programme of the Harmonisation of the Georgian Legislation with that of the European Union (National Programme).

3. Inter-Agency Working Group for the Elaboration of the National Programme

On 19 October 2001 the Government Commission established an Inter-agency Working Group (IWG) to carry out activities related to the elaboration of the National Programme. IWG is composed of representatives of all ministries and other government agencies³ involved in the harmonisation of economic legislation. The representatives of the Parliamentary Committees on Foreign Relations, Economic Policy, Legal Affairs, Rule of Law and Administrative Reforms were also invited to participate in the work of IWG.

GEPLAC's Georgian and EU experts are the advisors of the IWG in the elaboration of the National Programme, which is mainly based on the comparative analysis of the legislation and the study of the economic rationale of harmonisation. GEPLAC submitted the Plan (Terms of Reference) for the Elaboration of the National Programme at the first session of the IWG held on 10 December 2001, which was approved by the Government Commission on 30 January 2002.

As far as the gradual approximation of Georgian legislation to that of the EU is to be conducted in closely interrelated areas provided for by Article 43 of PCA,⁴ the IWG identified the sectors where the exact planning of the approximation process should be conducted. Furthermore, the IWG took due account of the experience gained during the elaboration of the Strategy and decided to follow the already proven approach.⁵

As a result, thirteen independent sectors of the National Programme were identified according to the legislation regulating the following fields: Agriculture, Business, Competition, Consumer Protection, Customs, Environment, Financial Services (comprising Banking, Insurance and Securities), Intellectual Property, Labour, Public Procurement, Taxation, Transport, Technical Rules and Standards. In all these sectors Sub-Working Groups were created, the activities of which are jointly directed by the representatives of the responsible agencies and GEPLAC experts entrusted with co-ordinating and advisory functions. Meetings of the SWGs are held in GEPLAC's premises on a monthly basis.

³ The IWG consists of Ministry of Foreign Affairs; Ministry of Justice; Ministry of Economy, Industry and Trade; Ministry of Finance; Ministry of Labour, Health and Social Affairs; Ministry of Protection of Environment and Natural Resources; Ministry of Transport and Communications; Ministry of Agriculture and Food; Ministry of State Property Management; Customs and Tax Department of the Ministry of State Revenues; Ministry of Education; National Bank; State Antimonopoly Agency; National Securities Commission; Insurance State Supervision Service; Department of the Ministry of State Revenues; Sakstandarti; Sakpatenti; State Procurement Agency; State Telecommunications Regulatory Commission; National Energy Regulatory Commission.

⁴ Under Article 43 the priority fields of harmonization are "the laws and regulations governing investments by companies, customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport".

⁵ Only exception is the field of "protection of workers at the workplace", which has been broadened and now covers the whole labour legislation.

4. Overview of Activities in Particular Sectors of the National Programme

Below is provided an overview of the priority directions for individual sectors, set out during the elaboration of the National Programme.

Agriculture: With a view to harmonise Georgian legislation SWG should pay attention to the introduction of strict controls over the quality of agricultural products, to registration and identification of animals, reinforcement of veterinary and sanitary control. Regulations of *Office international des épizooties* should be fully taken into consideration in the process of improving legislation. Special rules and conditions should be elaborated for small enterprises, especially for slaughterhouses. The introduction of microbiological standards related to meat, milk and other dairy products is also important for further development of agricultural sector.

Company: The SWG should consider the time frame for the introduction of new rules for information disclosure, capital requirements, profit distribution, dividend policy, mergers and division of corporations. International accounting standards are already applied in Georgia. The requirements of the Guidelines on Corporate Legislation for Countries in Transition prepared by the Organisation for Economic Co-operation and Development (OECD) should be analysed in detail.

Competition: SWG should pay particular attention to the elimination of existing shortcomings in legislation related with the insufficient regulation of unfair competition, exemptions, definition of monopolistic practice, mergers and state subsidies. Moreover, issues of specific provisions for state monopolies in Georgian legislation should be considered. Apart from the EC directive applicable to this field, international standards such as the OECD Proposals for a Framework for Competition Law should be taken into account.

Consumer Protection: The provisions of the Civil Code on consumer contracts, standard terms and conditions of contracts and contracts concluded away from business premises are in line with EU legislation. SWG should pay particular attention to the further improvement of the provisions regulating specific issues of consumer protection, such as the provisions on indication of prices in the Law on Consumer Protection and the rules for advertising consumer products in the Law on Advertising. The importance of the introduction of special provisions for consumer credit and package travel should also be considered by the SWG. Special attention should be paid to United Nations Guidelines for Consumer Protection.

Customs: The approximation of the Customs Code with the Community Customs Code is the first priority of this sector. The maximum level of transparency and predictability of customs rules, as well as the simplification of customs clearance procedure should be ensured. The SWG should grant priority attention to the consideration of those issues related to the availability of information on binding tariffs, improvement of transit procedures with regard to conveyances by sea, railway and air, regulation of customs procedures with an economic impact, authorization of the importation of goods with a total or partial

exemption from duties, incurrence of customs debt and submission of securities for their payment, additional specifications in the field of customs valuation and origin of goods.

Environment: The development of environmental legislation is in its embryonic stage. The SWG shall consider the harmonisation of legislation on nuclear safety and radioactive waste; on water protection and management; on monitoring of atmospheric pollution; on prevention of noise pollution; on chemicals and biotechnology; on the management and efficient use of space; environment and natural resources; on the conservation of wild fauna and flora and on waste management and clean technology.

Financial Services: The basic principles of the European *acquis* are already reflected in Georgian legislation: the supervisory body is set up, authorisation is required for taking up the activity and prudential rules have been adopted in each sub-sector. However, in the light of further approximation with EU legislation, particular attention should be drawn to increase the authorised capital of financial institutions, improvement of authorisation terms, sophistication of solvency rules, the creation of deposit-guarantee schemes, as well as the development of rules regulating investment funds.

Intellectual Property: Due to Georgia's accession to the WTO and the direct application of TRIPS provisions, legislation in the field of intellectual property is almost fully approximated. However, the accession to various international agreements listed in the Annexes to the Partnership and Co-operation Agreement remains on the agenda and indeed is a top priority given the rapidly approaching deadline (1 July 2004) agreed upon by the PCA signatories for the full harmonisation of legislation. The necessity of further alignment should be considered in the field of the protection of geographical indications and designations of origin for agricultural products and foodstuffs. The SWG considers that one of the priority issues is the examination of the possibilities for the improvement of the implementation of intellectual property rights.

Labour Legislation: Despite a number of changes made to labour legislation adopted in the Soviet period it does not reflect the social developments of the country for the last decade. The elaboration of a new Labour Code by the Ministry of Labour, Health and Social Affairs has become a cornerstone for the further development of labour legislation and will fully embody such fundamental issues of labour legislation such as the prohibition of discrimination in labour relations, providing an employee with information on labour conditions, working hours and the duration of paid leave, limitation of mass dismissals, protection of employees in the case of the transfer of the organisation to a third person or the insolvency of the employer. The process of harmonisation in this field should be carried out with due consideration of the rights of employees on the one hand and of the social and political situation in the country and the actual material potential of the employers on the other.

Public Procurement: Georgian legislation in this field is almost compatible with the basic principles of EU legislation. The issue of priority of approximation of provisions regulating procurement applied by entities engaged in water, energy, transport and telecommun-

ication sector should be assessed. With a view to further harmonisation of legislation, particular attention should be paid to the transparency and efficiency of procurement procedures. Furthermore, the establishment of relevant legal mechanisms operating in European countries and designed to prevent the non-fulfilment of the law is of particular importance.

Taxation: With a view to harmonisation with the EU fiscal standards it will be expedient to implement provisions on value added tax at an initial stage. Though Georgian legislation provides for some general principles of European legislation on VAT, a number of issues require further improvement. Namely, the provisions on taxable operations and the place of a taxable operation, taxable amounts, deductions and conditions for exemption from VAT require harmonisation with EC legislation. It is also important to develop a VAT refund scheme. At the next stage the SWG is to study the issue of harmonisation of the provisions on excise duty and to set a reasonable time frame for the implementation of basic changes.

Technical Rules and Standards: The renewed legal framework, which on the one hand recognises the principles of voluntary standardisation, i.e., the development of a system of standards elaborated by stakeholders the adherence to which is based on consent, and on the other hand the elaboration of technical regulations by ministries, which safeguard public safety interests, is still at an early stage of development. Further development is urgent due to the forthcoming expiration of the transitional period on June 14, 2003 set at the time of accession to the WTO through which the mandatory "Gosstandarts" (standards still in force from the Soviet Union) temporarily maintain their validity. The adoption of product safety and product liability horizontal legislation as well as technical regulations on the basis of the New Approach Directives, are the first priority for harmonisation of legislation. Besides, the gradual introduction of the requirements of the so-called Sector Approach Directives is also important. Improvement of the accreditation system should be carried out in accordance with EN 45000 standards series. Furthermore certain institutional changes are required for the full implementation of the European system of standardisation and certification. In addition a modern market surveillance system should be created.

Transport: With a view to the harmonisation of transport legislation with that of the EU, individual approaches should be applied for each of the transport fields. Georgia has already adopted a number of laws on various types of transport and acceded to more than forty international conventions in this field. It is noteworthy that the regulatory rules of marine, air and land transport to some extent comply with the European legislation as a result of reforms carried out in these fields.

The National Programme will enable the government to specify the priorities of the harmonisation process and to make gradual steps for securing legal harmonisation. The first draft of the National Programme should be ready by the end of March 2003 and will be submitted to all interested parties for further consideration and improvement.