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## GEPLAC ACTIVITIES

### Aproximation of Legislation and PCA

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#### 1. Introduction

In the framework of rendering support to the implementation of the Partnership and Co-operation Agreement (PCA) between Georgia and the European Union GEPLAC currently assists the Government of Georgia with advice concerning the elaboration of a National Programme for the Harmonisation of Georgian with European Legislation.

Art. 43 of the Agreement – in common with what has been agreed in other PCAs that the EU concluded with most Newly Independent States that emerged from the former Soviet Union – states that “an important condition for strengthening economic links between Georgia and the Community is the approximation of Georgia’s existing and future legislation to that of the Community”. Moreover, the Parties agreed that “Georgia shall endeavour to ensure that its legislation will be gradually made compatible with that of the Community” and the EU took on the commitment to support this undertaking by means of technical assistance. Additionally, Paragraph 2 of Article 43 rules that “the approximation of laws shall extend to the following areas in particular:

- Laws and regulations governing investments by companies;
- Customs law;
- Company law;
- Banking law;
- Company accounts and taxes;
- Intellectual property;
- Protection of workers at the workplaces;
- Financial services;
- Rules on competition;
- Public procurement;
- Protection of health and life of humans, animals and plants;
- Environment;
- Consumer protection;
- Indirect taxation;
- Technical rules and standards;
- Nuclear laws and regulations;
- Transport”.

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Due to the complexity and multiplicity of relevant European legislation and the diverging environment of EU Member States and Candidate Countries on the one hand and PCA Partner Countries in a comparatively early stage of transition on the other, it is evident that a clear concept is needed on how to fill these provisions with life in the context of PCAs and how to gain practical benefits from the agreed legislative undertaking.

Therefore, in the following article the attempt is made to outline in brief how a possible concept for the approximation of economic legislation might be shaped in the context of PCA implementation. It must be kept in mind that PCAs in certain aspects are modelled on the provisions of the EC Treaty, which uses the expressions "approximation" and "harmonisation" widely as synonyms.

## **2. Objectives of PCA**

In order to identify the extent of approximation it is first of all necessary to give due attention to Article 1 of the PCA, which provides for the aims that the Parties endeavour to pursue in implementing the PCA. From these objectives, the following particularly matter for the approximation of economic legislation:

- Completion of PCA partner country's transition to a market economy;
- Promotion of trade and investment;
- Development of harmonious economic relations with the EU and other PCA partners.

## **3. Completion of Transition and Promotion of Trade and Investment**

Reviewing the first two of the above objectives, we can assume that the completion of the transitional process of the PCA partner country to a market economy and the promotion of trade and investment in fact requires the establishment of a modern legal order that is adjusted to existing economic needs and that keeps the costs for economic operators as low as possible. Therefore, predictable legal rules are needed that are transparent and as easy as possible to understand and to apply. To establish such a legal order it is useful to review the experience gained in those countries that have more advanced economies and legal systems, but which went through the process of transition from a command to a market economy as well. Also helpful are international soft law standards, such as best practices, recommendations and model laws that have been elaborated by international organizations that are closely involved in providing expertise to countries in transition. In so doing, a close look at economic implications and compatibility with the overall legal system of the recipient country is essential. A lot has already been done in Georgia in that direction but certainly Georgia, like many other countries, still can benefit much from adapting international experience in many spheres of law and in particular in that of the economy.

Standards of EU legislation could be helpful in this respect as well but due to the complexity, particularities and incompleteness of the EU's legal order, they are only partially suitable to contribute to solving those problems that immediately derive from the process of a country's transition from a state to a command economy.

This is why the approximation of a PCA partner country's legislation with European economic standards in the context of transition forms only a part of the necessity to approximate with internationally proven standards and to establish a modern legal system that is appropriate for the requirements of a market economy.

#### **4. Development of Harmonious Economic Relations with the EU and other PCA partners**

However, the objectives of the PCA go beyond the establishment of a functioning market economy and democracy, but aim at deepening of economic cooperation between PCA partners and their citizens by the gradual establishment of a framework for economic players that consists of common rules and values. Thus, in addition to supporting the establishment of a legislative environment that is suitable for a fully fledged market economy and to complete transition, the PCA aims at facilitating economic relations, particularly with the EU and those countries that join the approximation efforts, e.g. the Newly Independent States that are PCA partner countries of the EU. This follows on from Article 1 of the PCA, which describes the establishment of harmonious economic relations with the EU as an immediate objective of the PCA, and the approximation of legislation is seen as an important tool to attain this.

The commitments of the Parties made in Art. 43 PCA to approximate legislation and respectively to provide support for doing so are clearly not an end in itself, but reflect basic economic common sense. The EU is becoming increasingly important for PCA partner countries as a partner for trade and investment. In the Georgian case for example, Turkey being an important trade partner is seeking accession to the EU. Turkey already is in a customs union with the EU and steadily brings its legislation in compatibility with that of the EU in many spheres, which is determined by the accession-partnership.

Under these conditions of increasing trade on an international level, the integration with a system of common rules is likely to bring benefits to countries that intensively trade with one another and that can reduce costs for economic operators and state economies. For example this can lead to:

- Decreasing costs for legal advice;
- Creation of confidence to accept economic and entrepreneurial risks in a foreign legal environment with more legal certainty;
- Common experience, which facilitates more intensified cooperation and exchange of information;
- Improvement of competition, when commercial decisions are based on prices and other economic indicators and not on the quality of legislation;
- Evolution of common political views, thus increasing security and stability among trade partners.

It is evident that the complete legal order of the EU is not suitable for those countries that are just in the process of starting to develop market economy relations. However, EU legislation contains many rules that could carry importance to the benefit of even those countries that are still in the process of transition. Therefore, the identification of these key pieces of EU legislation that can have a positive impact on the legal and economic system is of high importance. In this respect the White Paper of the European Commission on preparation of the associated countries of Central and Eastern Europe for integration into the internal market of the Union from 1995 - although partly outdated and not written for PCA partner countries but designed as a tool for EU candidate countries – is a starting point.

However, it is strongly advisable for any PCA partner country to review the White Paper and to make it work under the particular local conditions. This can be done in the framework of the elaboration of each PCA partner country's own strategy and possibly a coordinated long-term programme for approximation, which relies on thorough economic and legal analysis for each relevant field of law. The introduction of a first wave of key pieces of EU law that contain basic standards can pave the way for more specific rules that could be introduced in the course of developing economic conditions in order to establish full compatibility in the long run.

At first sight it might seem surprising that the EU so strongly promotes its legal order in relations with its trade partners. However, one has to be aware that globalisation and international integration is a reality today. Moreover, it is a matter of basic reason that at present the EU's legal system has best prospects for becoming a basis for legal orders in the successor states of the former Soviet Union due to geographic and trade policy considerations. The EU's legal system at present is a proven model for many countries having differing historical and cultural backgrounds, some of them being countries in transition. Approximation with basic standards of the EU can bring benefits to the partners already in the near, and not just in some faraway, future.

However, it must also be kept in mind that it is reasonable to start intensification of economic cooperation in coordination with the neighbouring countries, as these are frequently in the closest economic relations with the home country. This is why a coordinated effort among neighbouring PCA partners of the EU is important in order to maximize the benefits of approximation and not to waste precious time and resources under the difficult conditions of the transitional period. In this sense, the PCA explicitly attaches much importance to measures capable of fostering cooperation among the independent states of the Southcaucasus region and with other neighbouring states, in order to stimulate a harmonious development of the region.

## 5. Conclusion

Like other PCAs, the PCA between Georgia and the EU first of all contains a commitment to work towards the establishment of a modern legal order in Georgia, which is suitable for market economy and democracy and that is as close as possible in line with international standards. In order to strengthen economic links of Georgia with the EU and other PCA partner countries, it is seen as important to approximate Georgian national legislation with EU law in order to establish an as much as possible aligned regulatory framework in the economic sector. In the first stages, this would extend to key measures that are fundamentals of the EU's economic system. In the course of developing economic conditions, more specific rules can be introduced, which are subject to thorough economic and legal analysis in order to create a legal environment that is adjusted to the existing economic conditions.