

Alternative Assessment Report

Implementation of the ENP Action Plan and EaP bilateral and multilateral roadmaps of 2013: Trade and trade-related issues

(Report Summary)

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Introduction

The EU-Georgia European Neighbourhood Policy Action Plan (ENP AP), which was adopted in November 2006, identified the development of trade relations as one of the main directions of cooperation between the parties. This goal should be achieved through harmonizing legislation and regulatory practice in trade and trade-related areas (Chapter 4.5 Trade-related issues, market and regulatory reform).

The preparatory stage for negotiations on the Deep and Comprehensive Free Trade Area (DCFTA) between the European Union and Georgia, which started in March 2009 and continued to the end of 2011, gave new impetus to reforms in trade and trade-related areas. During this period, after a rather difficult dialogue with the relevant services of the European Commission (EC), the Georgian side developed “comprehensive strategies” in three priority areas (Technical Barriers to Trade (TBT); Sanitary and Phytosanitary Measures (SPS); and Competition Policy). Certain steps have also been made in yet another area – that of Intellectual Property Rights (IPR).

Convergence of the parties’ positions in the above-mentioned areas was facilitated by a new cooperation format established in May 2009 by the EU with its eastern neighbours, including Georgia – the Eastern Partnership, or EaP – which envisages a deeper integration with the EU through the signing of the Association Agreement. Moreover, the DCFTA became an integral part of the Association Agreement within the EaP format. Negotiations on the Association Agreement were launched in July 2010.

In December 2011, the EC, having satisfactorily considered the measures implemented by the Georgian government in the priority areas, took a decision to commence negotiations on the DCFTA. Over the same period ENP AP term expired, but the EU and Georgia agreed to extend it until significant progress has been achieved in the negotiations on the Association Agreement (including DCFTA) with the EU. The acceleration of these negotiations and the monitoring of relevant reforms (including in trade-related areas) were among the goals of the EaP Bilateral and Multilateral Roadmaps adopted in May 2012. The DCFTA negotiations which continued for 17 months were held in six rounds. In July 2013, they ended successfully and the negotiations regarding the entire Association Agreement were announced closed.

Furthermore, the Association Agreement was initiated at the Eastern Partnership Summit in Vilnius (in November 2013), and is supposed to be followed by its signing within a year’s time. Considering that trade related issues are an exclusive competence of the EU, the DCFTA will probably enter into force before the Association Agreement has been ratified by the EU member states. A decision of the EU Council will be sufficient to this effect.

Recent sociological surveys suggest that interest within Georgian society towards EU integration under the framework of the ENP and EaP is significant. Accordingly: 88% believe that Georgia must become an EU member state, whilst up to 50% would like to receive more information about the EU.¹ Consequently, it is of utmost importance that society be provided with comprehensive information about the process of European integration (including, painful reforms which the Georgian government has committed itself to implement) on the one hand, and on the other hand, to enhance the involvement of society in these processes.

Nonetheless, the implementation of reforms by the government during the preparatory stage for the DCFTA negotiations to fulfil EC recommendations in priority areas was marked with a very low degree of transparency and civil sector involvement. Neither did this situation change after the launch of DCFTA negotiations: society, including the expert community, had access to very little information regarding the course of these talks, hindering them from making a contribution to the process of harmonizing Georgia's regulatory framework with EU standards.

This lack of communication was also admitted by the government. This is proven by the recent adoption of the Communication and Information Strategy of the Government of Georgia in the sphere of EU Integration for the period of 2014-2017.² A remarkable role in the implementation of this strategy must be played by non-governmental organizations which, although possessing relevant experience and intellectual resources, often lack access to corresponding sources of information.

The heightened interest of society in Georgia's European integration begs for the need to conduct civil monitoring on the implementation of ENP AP and EaP Bilateral and Multilateral Roadmaps, especially considering that the Association Agreement, including the DCFTA, has already been initiated. An impartial expert assessment of the implementation of reforms related to those agreements will ensure better awareness among society and the enhanced involvement thereof in policy development processes. This report serves this very aim.

The objective of the research is to assess the fulfilment of obligations set forth in the ENP AP's Chapter 4 - "Trade-related issues, market and regulatory reform" and of the relevant activities which the government of Georgia performed in accordance with the Bilateral and Multilateral EaP Roadmaps in 2013.

This report addresses the following spheres:

1. Trade;

¹ Knowledge and Attitudes towards the EU in Georgia. Eurasia Partnership Foundation; Caucasus Research Resource Center (CRRC). 25 December 2011.

http://www.crrc.ge/store/downloads/projects/EU_Report_GEO_12Jan2012.pdf

² Communication and Information Strategy of the Government of Georgia in the sphere of EU

Integration for the period of 2014-2017. <http://eu-integration.gov.ge/uploads/STRATEGYFINALGE.pdf>

2. Customs procedures;
3. Intellectual property rights;
4. Investments;
5. Competition policy.

The key priority of the ENP AP and the EaP Bilateral and Multilateral Roadmaps in these areas is the approximation of Georgia's relevant legislation and institutional framework with EU standards. Therefore, the objective of the research is to analyse the legislative, institutional or administrative changes which have taken place in the country in 2013 in that light.

The research covers on-going reforms in relevant areas from various angles. It also reflects opinions of public sector, business representatives and independent experts concerning these reforms.

The report consists of an introduction and five chapters. Each chapter ends with conclusions and recommendations which, in the authors' view, will enhance the efficiency of the government policy in trade and trade-related areas and facilitate its further approximation with EU approaches.

The preparation of the report was made by Merab Kakulia, Senior Fellow at the Georgian Foundation for Strategic and International Studies (GFSIS) and Director of the Center for Financial Stability and Competitiveness at the GFSIS (Introduction, Chapters I and IV); as well as invited researchers: Bondo Bolkvadze (Chapter II), Nino Evgenidze (Chapter III) and Irakli Sokolovski (Chapter V).

I. Trade

General Overview

2013 was a remarkable year in terms of Georgia's European integration: negotiations on the Association Agreement, and in particular the Deep and Comprehensive Free Trade Area, were successfully completed. Another notable event of the past year was the initiating of the Association Agreement at the Eastern Partnership Summit in Vilnius (November 2013).

The dynamics of Georgia-EU relations, including in trade and trade-related areas, was largely conditioned by the implementation of obligations assumed by Georgia within the framework of ENP AP and EaP Bilateral and Multilateral Roadmaps.

In the field of trade, the ENP AP aims at enhancing EU-Georgia bilateral trade through the implementation of the obligations envisaged in Partnership and Cooperation Agreement (PCA) and rules of the World Trade Organization (WTO). The external

trade policy conducted by Georgia in 2013 was in full compliance with PCA and WTO requirements, thereby creating favourable conditions for the development of bilateral trade, especially in terms of increasing Georgian exports.

Yet another ENP AP requirement is increased compliance with relevant industrial standards, SPS and veterinary norms with a view to increasing benefits from the Generalized System of Preferences (GSP) and thereby improving Georgia's export performance. In the accounting period, significant steps were taken towards approximation to the EU standards in these areas. However it is difficult to assess their impact in terms of benefits from the use of GSP+.

The ENP AP envisages the signing of a bilateral agreement on geographical indications (including in the wine and spirits sector). Such agreement entered into force in 2012. An annex to that agreement lists geographic indications of 18 types of Georgian wine recognized by the EU. The accounting period did not see the registration of any new geographic indications.

The ENP AP underlines the necessity to identify discrimination and restrictions against imported products (including in non-harmonized EU areas) and, if need be, to progressively remove them. This requirement was unswervingly implemented throughout 2013.

The EaP Roadmaps also defined important objectives for Georgia. Especially worth noting is the achievement of substantial progress in, or completion of, negotiations on the DCFTA as being an integral element of the Association Agreement. This goal, as noted above, was successfully fulfilled in the accounting period: negotiations were completed not only on the DCFTA but also on the entire Association Agreement which was followed by the subsequent initiating of the latter.

The EaP bilateral roadmap envisages a close dialogue between the parties on the agenda of reforms in trade and trade-related areas, within the format of the EU-Georgia trade sub-committee. In 2013, the parties discussed the framework of the Association Agenda within which the ground will be prepared for the enforcement of this agreement.

The EaP bilateral roadmap obliges Georgia to continue reforms in main trade-related areas and to enhance administrative capacities, including in the spheres of TBT and SPS. The accounting period saw significant moves in almost all TBT directions (standardization, metrology, accreditation, and conformity assessment) which were based on the comprehensive state strategy and the plan for harmonizing legislation in this field. Positive tendencies were also observed in the area of SPS. In this sphere, under the aegis of DCFTA negotiations, changes to the relevant comprehensive strategy and legislative approximation program were developed in compliance with the EU recommendations, as well as to the Code on Food/Feed Safety, and Veterinary

and Plant Protection. Moreover, state control over food safety sharply increased in terms of market monitoring and on-site inspection.

In this report, issues of bilateral trade relations are discussed in light of Georgia's trade policy priorities, legislative changes in this sphere and implemented institutional changes.

Conclusions and Recommendations

Georgia's state policy in the sphere of external trade and related areas was implemented in 2013 within the framework of obligations assumed by the country under the ENP AP and EaP Roadmaps. This contributed to the successful completion of talks on the DCFTA, which, in turn, played an important role in the successful completion of negotiations on the Association Agreement (an integral part of which is DCFTA), with the EU.

With the Association Agreement having been initiated at the Eastern Partnership Summit in Vilnius (in November 2013), the Georgian government now faces the objective of conducting consultations with the EU regarding the Association Agenda and the adoption of this document in a timely manner.

It is recommended that urgent legislative and institutional changes in priority areas (TBT, SPS, IPR, competition policy, etcetera) be substantively reflected in the Association Agenda, and that a viable mechanism be developed for the monitoring of their implementation by the government.

2013, when compared to the previous year, saw a sharp increase in Georgian exports to the EU, including under GSP+ format, which does not clearly show the role of approximation EU industrial and SPS standards over the past two years. In light of the prospective enactment of the DCFTA, it is recommended that the impact of harmonization with the EU in the areas of TBT and SPS on the efficiency of the use of GSP+ be analysed and that corresponding conclusions be drawn.

Priority issues in the area of TBT are to continue the recognition of European and international standards as the standards of Georgia; to adopt new technical regulations based on EU directives on new and global approaches; the accession of institutes of national quality infrastructure to international organizations as fully-fledged members; and the institutional strengthening of supervision of the industrial commodities market.

In the sphere of SPS, short-term objectives are the adoption by the government of changes to a relevant comprehensive strategy and legislative approximation with the EU program in accordance with the recommendations of EU experts, and the timely submission, consideration and adoption of a draft law on amendments to the Code on Food/Feed Safety, Veterinary and Plant Protection.

A draft law on the introduction of safeguard measures in trade, prepared by the Ministry of Economy and Sustainable Development, complies with WTO rules and the requirements of the DCFTA component of the Association Agreement. At the same time, before being submitted it to the parliament for consideration, it is recommended that the draft law be improved through the involvement of experts and representatives of business circles in order to avoid possibilities of free interpretation and the unfair application of its provisions.

The drafting of the law on the introduction of anti-dumping measures must also be finalized soon in order to ensure, if need be, the protection of local producers from unfair competition.

The development of a new export promotion scheme, which will be a part of the new institutional framework of the support of small and medium size enterprises, was almost completed during 2013. It will be beneficial to discuss this scheme in detail with foreign and local experts. It is especially important to include a viable mechanism of exports financing in this scheme, taking into accounts the best practices.

The accounting period did not see recognition by the EU of any Georgian geographic indications in accordance with the Agreement between the European Union and Georgia on the protection of geographical indications of agricultural products and foodstuff. The government needs to pay more attention and to better coordinate the activity concerning the recognition of Georgian geographical indications.

II. Customs Procedures

General Overview

The obligations assumed by Georgia under the ENP AP and the Bilateral and Multilateral EaP Roadmaps represent a significant measurement of the reforms implemented in Georgia. The fulfilment of these obligations is aimed at approximating Georgian customs legislation with EU and international standards; improving customs administrative bodies and institutional framework; establishing efficient customs control mechanisms; and enhancing international cooperation in this regard.

In 2013, although the speed of customs reforms did not slacken, priorities did change. In particular, they became more focused on the strengthening of customs control. An important initiative was the start of the drafting of the new Customs Code because for the creation of deep and comprehensive free trade regime it is essential that customs legislation be harmonized with EU standards.

Significant institutional changes undertaken in the accounting period allowed for the establishment of a new customs administration structure, which meets current

priorities and objectives. The management of the administration was largely reshuffled as well.

Other customs-related projects implemented in 2013 include IT development projects; the establishment of a risk module for processing border crossing data; creation of a Trade Facilitation System; and the incorporation of a unified treasury account in the tax system.

The accounting period saw the start of the process of joint border management between Georgia and Turkey. This facilitates the movement of exports and imports across the border and represents a significant factor in trade facilitation.

The inexperience of core personnel and the need for more professional training continued to be a significant challenge to the customs administration in 2013. Although the average work experience of a customs officer ranges between two and three years, this weakness was overcome by correct management, in general, and the mobilization of more experienced employees to key positions.

Yet another important challenge in the accounting period was the development of modern control mechanisms, such as risk management and post-clearance customs audit.

The given report details the fulfilment of obligations under the ENP AP and the Bilateral and Multilateral EaP Roadmaps in terms of customs procedures in 2013.

Conclusions and Recommendations

Overall, it can be said that the projects implemented by the customs administration of Georgia in 2013 comply with the obligations set forth in the Bilateral and Multilateral EaP Roadmaps. However, the assessment of their qualitative aspects and effectiveness by independent experts is still required.

A customs policy priority in the accounting period was the strengthening of control in almost all directions. This may be assessed as a positive development provided that this control is implemented according to international best practice and does not conflict with the facilitation of trade. In this regard, it is recommended that the customs administration pay particular attention to the professional development of human resources.

A new draft customs code will be completed in 2014, which is expected to eliminate the imbalance between the law and bylaw normative acts and to accommodate relevant DCFTA requirements.

Before the draft code is submitted to the parliament, it is necessary to conduct a large-scale public discussion with both private and public sectors. This will ensure their

involvement in the law-making process and will represent a prerequisite for the efficiency of the legislation.

In 2014, along with amendments to the customs code, a whole set of customs procedures will be changed in order to align them with EU standards. The customs administration must analyse whether it has sufficient resources (human, infrastructural, financial, et cetera) to adapt to these new procedures and where it may encounter weaknesses.

Urgent efforts are required to address such issues as the proper administration of customs valuation, the correct organization of customs clearance procedures, the adoption of the European concept of authorized economic operators, the establishment of an effective system for the settlement of customs disputes, et cetera.

The accounting period saw an increase in activity towards the strengthening of customs control. In future, it is recommended to shift focus onto the processing of information and forms of risk-based customs control.

In 2014, the customs administration plans to join a Trade Facilitation System and to allow customers to make payments into a unified treasury account. This should be very beneficial for the private sector.

Despite the progress achieved in the development of IT technologies in the customs sphere, it is necessary to continue the work on ensuring software for customs risk management and trade facilitation measures, including in terms of enhancing a Trade Facilitation System in cooperation with the Data Exchange Agency of the Justice Ministry.

Significant headway was observed in 2013 with regard to integrated border management, and a real precedent of joint border management was set. As a result of the process of cohesion which has been underway during the past few years between Georgia and Turkey, border crossing procedures between the two countries have significantly eased. It is recommended that the Georgian customs administration focus administrative cooperation on border management with other neighbouring countries, especially in the area of operative data exchange.

III. Intellectual Property Rights

General Overview

The protection of intellectual property rights (IPR) is one of the four priority areas identified as a key area by the EU (TBT, SPS, IPR and competition policy). This topic is

also underlined in the Association Agreement which was initiated in 2013. Chapter IX of this agreement is devoted to this very issue.

This report assesses the situation in the area of IPR protection both in terms of legislative framework and its execution in Georgia in 2013; and analyses the compliance of the country's policy in this sphere with the requirements of the ENP AP and with the Bilateral and Multilateral EaP Roadmaps.

The study has shown that at the beginning of the accounting period, the Government of Georgia (GoG) had already fulfilled its obligations in the IPR areas set by the EU. Out of the legislative amendments implemented in 2013, the most noteworthy are the changes made to the Law of Georgia on Border Measures Related to Intellectual Property. According to these amendments, the procedure of IPR registration for the aim of performing border procedures was transferred back from Sakpatenti to the competence of the customs service. Relevant statistics show the move has had a positive impact.

No major institutional changes took place in the area of IPR in 2013. The issue of the efficient operation of IPR interagency coordination council remains a problem.

The study did not prove tangible results for the Technology Transfer Centre established in 2012. Establishing a technological linkage between innovations and business is also challenging and the active involvement of universities in this process remains desirable. The only university in which a similar institution – in this case, a business incubator – was established is Ilia State University.

Court statistics regarding the protection of IPR showed an upward trend over the period of 2008 to 2013. This represents a positive tendency. However, the main complainant continues to be the Copyright Association, which means that the role of independent actors in this sphere remains insignificant. Moreover, the court statistics do not reflect the real scale of unlicensed products on the market.

According to the Copyright Association, the number of intellectual property customers has increased (namely, the number of those customers who sign contracts with the Copyright Association for the use of a piece of music, a film, a shot, et cetera in beauty salons, restaurants, TV, media, cinema or in any other production and pays a copyright fee established by the Copyright Association), which indicates a positive trend.

During the accounting period, an active information campaign was conducted by Sakpatenti – the entity which implements intellectual property policy. The activities of this entity in 2013 can be assessed as positive.

In 2013, the financial police were observed seizing unlicensed products on the market. Such actions did not take place in 2011 and 2012 and, therefore, they may be regarded as a manifestation of the government's will to address this problem.

Piracy remained high in Georgia during the accounting period. The government's intention to tackle this problem by trying to provide its public sector with licensed products (it is, for example, engaged in negotiations with Microsoft) is a positive step, but at this stage, the majority of government entities still use pirated software.

The study showed a lack of statistical surveys and data on unlicensed and pirated products, which makes it difficult to evaluate the situation.

Despite the existing problems, the research showed significant progress in the field of IPR in Georgia in 2013, which, in fact, is one of the prerequisites for the initiating of the Association Agreement with the EU.

Conclusions and Recommendations

In 2013, GoG continued to take significant steps towards the fulfilment of the obligations envisaged under the ENP AP in the area of IPR. We believe that the activity of Sakpatenti should be assessed as positive in this regard.

The legislation on intellectual property has been brought into compliance with the EU obligations, except for those new obligations which are envisaged under the DCFTA and are related to the implementation of the so-called TRIPS-plus in Georgia. This change must be implemented within the next two years.

The country has managed to partially align with the EU in the area of IPR, although the execution of the legislation still remains a problem.

A noteworthy development in terms of improving the enforcement of legislation was the introduction of amendments to the Law of Georgia on Border Measures Related to Intellectual Property, which, among other things, transferred the power of execution to the customs service.

The 2013 statistics showed that this amendment had a positive effect on the enforcement of the customs legislation. However, quite a high level of passivity on the part of the companies that own trademark rights was also observed. This indicates the need to continue information campaigns and training.

Over the period from 2008 to 2013, court statistics showed an upward trend. More than 90 percent of complaints have been filed by the Copyright Association. This speaks to the increasing role of the Copyright Association in IPR protection. On the other hand, court statistics also show the passivity of other actors, including private companies.

The overly-lengthy trial procedure and even the non-completion of some cases represent a problem. It is necessary to conduct an educational campaign in this sphere

and the courts must instruct for expedience upon the request of a complainant (for example, a simplified practice of appointing the so called IT audit). Steps also need to be taken to increase overall trust in courts.

The establishment of the Technology Transfer Center was a significant event but the operation of the centre did not bring about any tangible results in 2013. Efforts should be taken to involve Georgian universities in this process. So far, there are no examples of established linkages between science and technologies in Georgia. The best practices of top world universities should be considered in this regard.

The court and customs statistics, as well as the year-long experience of the Technology Transfer Center, show the need to enhance efforts to encourage private companies to get engaged in the process of IPR protection. To raise awareness about IPR, one can use the experience of conducting joint information campaigns.

Sakpatenti and the Copyright Association carried out quite an active awareness-raising campaign in 2013. However, this process has not produced any major impact on the indicator of enforcement practices, which shows the need to carry on with these activities.

To improve coordination between agencies towards the strengthening of enforcement, an interagency commission is set per the Prime Minister's decree. However the scarcity of commission meetings (once a year, on average) is not conducive to the efficiency of its activities.

A lack of government will is also shown in the criminal statistics on the fight against pirated production and intellectual property: even though the number of criminal proceedings instituted in 2013 exceeds similar indicators in previous years, it is largely inadequate as compared to the scale of the use of pirated products in Georgia.

Even though a large scale suppression of pirated production was seen in 2013, it is important that the activities undertaken in this direction are held consistently in order to create solid ground for the tradition of the protection of intellectual property rights.

At almost 90 percent, Georgia remains the largest consumer of pirated products. Even though a small improvement has been made over the past few years, this indicator is still very alarming. The improvement of the situation is also impeded by social arguments. Nevertheless it is necessary to set positive precedents, for example, the court system, at the very least, and in general, governmental institutions must use licensed software.

Since 2010-2011, Georgia has not conducted a large scale public opinion poll regarding IPR, nor does actual data exist on the consumption of pirated products. It is important to conduct such surveys and to identify obstacles in the way of execution, which will become the basis for the improvement of the strategy in the future.

VI. Investments

General Overview

In 2013, especially in the first half of the year, the Georgian economy faced serious challenges which were largely conditioned by the passivity of investors (both domestic and foreign). Against the background of the tense cohabitation of the new government with the outgoing president, the perception of political risks, including uncertainty concerning the regulatory policy, intensified among investors. The government responded to these challenges with a rather consistent investment policy which was not flawless, but, overall, was in line with the obligations assumed by Georgia under the ENP AP and the EaP Roadmaps.

In accordance with the ENP AP priorities, the government tried to improve the investment climate during the accounting period. In so doing it mainly placed emphasis on protecting ownership rights and freeing investors from the influence of the government. At the same time, significant measures were undertaken towards creating a stable legal environment for investors; maintaining one of the lowest levels of corruption in the world; and easing the burden of tax administration and investment obligations that were due.

Pursuant to ENP AP requirements, in 2013, the investment promotion infrastructure was improved through development in two directions: 1) customer relationship management (CRM), within the framework of which foreign investors benefit from various services – starting from matchmaking to aftercare, and 2) co-investing system which incorporated the JSC Partnership Fund (with the prospect of transforming it into a sovereign fund), Rural and Agricultural Development Fund and a private Co-investment Fund.

The objectives defined in the ENP AP include the free movement of capital related to direct and other investments made, the protection of foreign investments and ensuring the liquidation and repatriation of profits and capital. In the accounting period, similarly to previous years, no problems were observed in these areas, except for the temporary ban on the ownership of agricultural lands by foreigners and companies created by them (until 31 December 2014), which goes counter to the provisions of the EU-Georgia Association Agreement.

The ENP AP also envisages the exchange of information about the present legal and regulatory regime as concerns capital movement. On an official level, this process was carried on intensively in 2013, within both the formats of DCFTA negotiations and the Georgia-EU trade subcommittee. Moreover, the promotion of the investment climate in the country, including the regulatory framework, on the EU and international arena was continued, though, in contrast to previous years, in a comparatively modest mode.

In accordance with the ENP AP, the accounting period saw the signing of a bilateral agreement on the avoidance of double taxation with partner countries. An analogous agreement was signed with Croatia which became an EU member state during that period. Croatia is the 26th EU member state with which Georgia has signed such an agreement.

It is worth noting that in 2013, the government resumed the discussion on the suitability of entering into bilateral agreements on the protection of investments with partner countries. Signing such treaties will contribute to the improvement of Georgia's investment climate.

Conclusions and Recommendations

Georgia's declared investment policy priorities in 2013 fully complied with the obligations assumed under the ENP AP and the EaP Roadmaps.

Despite the worsening of the macroeconomic situation, the year 2013 was, overall, significant in terms of creating long-term guarantees for the improvement of the country's investment climate. At the same time, in order to have investors better perceive the investment climate and forecast the regulatory policy, it is necessary to complete a protracted drafting process of Georgia's Development Strategy – Georgia 2020 to discuss this document with the involvement of civil society and to adopt it in the shortest possible time.

The Law of Georgia on Investment Funds, adopted during the accounting period, complies with the international practice and does not conflict with EU directives in this sphere; however it does not fully reflect the main provisions of the prudential regulation and supervision of investment funds and managing companies.

The draft law on the JSC Sovereign Fund, which was drafted and submitted to the parliament in 2013, meets the requirements, in general, and does not conflict with EU directives. At the same time, a legal status of the fund, the organization of management, accountability, transparency of its activity and other important issues are regulated by the charter of the fund. It is recommended that these issues are regulated by the law itself.

The accounting period saw important steps towards the establishment of an institutional framework for investor support, although operating investment funds (except the Rural and Agricultural development Fund) do not participate in small and medium size projects. Thus, the government's initiative about establishing a National Agency for Enterprise Development which envisages financial support for start-up businesses (including innovative ones), should be welcomed,

Given the size and strategic importance of the Co-investment Fund established in 2013, it is necessary to ensure the maximum transparency of its activity as well as adequate supervision on the part of state according to the best international practice.

Similarly to previous years, the potential of free industrial and tourist zones failed to be realized in the accounting period, which indicates that these investment policy instruments must be analysed thoroughly to identify their weaknesses and the eradication of such.

Before the Association Agreement is signed and the DCFTA enacted, which is scheduled for August 2014, it is recommended that the Law of Georgia on Agricultural Land Ownership be brought in line with the mentioned agreement. Namely, the restriction on the ownership of agricultural lands must not apply to joint enterprise created with the participation of foreigners. To this end, the Law must explicitly define a notion of joint enterprise.

In contrast to previous years, the promotion of the country's investment potential on the international arena was of a rather modest nature. The state needs to mobilize more financial and human resources for the promotion of Georgia as a new investment destination in the light of Association Agreement with the EU and DCFTA enforcement in the near future.

To create additional guarantees for foreign investors, the Georgian government's intention to continue to sign bilateral agreements on investments protection with partner countries must be supported. The signing of further agreements with EU countries should be accelerated (11 countries are left), thus facilitating the inflow of their investments, especially after the DCFTA has entered into force. It is also necessary to continue the signing of bilateral agreements on the avoidance of double taxation, primarily, with the remaining two EU countries with which such agreements have already been initiated.

V. Competition Policy

General Overview

According to the ENP AP, Georgia must ensure the approximation of its legislation in the spheres of competition and state aid with the principles of EU law, including, the optimization of the administrative capacity enhancing the independence of the Free Trade and Competition Agency (hereinafter, Competition Agency).³

The approximation of the competition law with the EU legislation was one of the prerequisites for Georgia to commence negotiations on the DCFTA. On 3 December

³ European Neighbourhood Policy EU-Georgia Action Plan, Paragraph 4.5.5 *Other key areas* <http://eu-nato.gov.ge/sites/default/files/ENPAP.pdf>

2010 the Georgian Government adopted the Comprehensive Strategy in Competition Policy⁴ (hereinafter, strategy) which aims at aligning the Georgian legislation with the best international standards. A special group set the strategy, and prepared the draft Law on Free Trade and Competition together with EU experts, which was adopted by the Parliament of Georgia on 8 May 2012. The Law on Free Trade and Competition (hereinafter, the law) specifies the principles for protecting free and fair competition from undue restriction and defines legal remedies for preventing the violation of competition.

The adoption of the law was considered a step forward in this sphere. However, the regulation offered by the law sparked criticism. Some experts indicated that the law envisages a number of lacunas preventing its effective implementation. These deficiencies, as mentioned by the experts, are: the exceptions from application of the competition law (including the exception by which the Georgian Government shall define priority directions of the activity of the Competition Agency); the absence of ex officio powers of the competition regulatory body, and; insufficient compliance with the European legislation.⁵ Taking these deficiencies into account, the newly formed Georgian Government set the aim of improving the competition law and creating appropriate legal prerequisites for the efficient implementation of competition policy.

During 2013, the efforts of Georgian Government were limited to drafting a package of amendments to the law and discussing it with interested groups. Thus, no substantial steps were taken by the Georgian Government for the efficient implementation of competition policy. In this regard, the year 2013 did not prove to be a watershed.

Conclusions and Recommendations

In accordance with the ENP AP and the EaP Roadmaps, in the accounting period Georgia undertook some steps to approximate its competition policy with those of the EU and international standards. Among those steps, the preparation of new draft law on free trade and competition shall be particularly mentioned. Despite a declared political will, 2013 did not see the launch of reform in the competition sphere. This period can be evaluated merely as preparatory.

The delay of the adoption of the draft law on free trade and competition poses a threat to an already unfavorable situation on the market in terms of competition. Consequently, the draft law must be immediately completed and the document must be submitted to the Parliament of Georgia for consideration.

⁴ Decree #1551 of the government of Georgia, dated 3 December 2010, on the adoption of Comprehensive Strategy in Competition Policy.

⁵ See <http://transparency.ge/node/2247>, also <http://liberali.ge/ge/liberali/articles/112983/>, also a conclusion on Free Trade and Competition Policy of Georgia, prepared by Swedish experts within the framework of the UNDP project, 7 June 2011.

The adoption of the draft law shall be accompanied with the drafting of the respective bylaws, which shall ensure the implementation of powers of the Competition Agency as specified in the law. Unless those bylaws are adopted it will be impossible to implement the draft law and apply it in practice. Thus, the Georgian Government shall commence the drafting of the bylaws in parallel with the finalization of the draft law.

The Georgian Government shall adopt a new strategy for the competition policy. The competition strategy approved by the Government in December 2010 is outdated and requires overhaul.⁶ It is important that the new document lays down a consistent vision of the implementation of competition policy and reflects Georgia's short- and medium-term strategy in terms of competition policy implementation.

Even though the law has not yet been fully enacted, it is recommended that the Competition Agency actively use its powers granted under the law, in particular to conduct monitoring on problematic market segments and to issue recommendations on violations of competition. This will significantly enhance the Competition Agency's administrative capacities and institutional readiness to ensure the efficient implementation of the competition policy.

According to the draft law, the Georgian Government will not define the priority directions of the activity of the Competition Agency. The Competition Agency will be obliged to consider any fact of breach or alleged breach of competition. However, in any case the Competition Agency will have to identify certain priorities. In such a case, it is recommended that the Competition Agency is guided by the public need and give preference to those spheres towards which public interest is especially high.

According to the draft law, the powers of the Competition Agency are significantly broadened. This will require the Competition Agency to enhance its administrative capacity and accommodate adequate human resources. Considering the complexity of competition cases, it is necessary to undertake important measures for strengthening the institutional and intellectual capacities of the Competition Agency.

With the adoption of the new law, the issue of the compliance of economic agents with the law will emerge. It is necessary to create information channels through which direct consumers of the law (entrepreneurial and non-entrepreneurial persons) will receive relevant information about specific content of the competition law and its proper application. It is recommended to develop guiding documents and guidelines in this regard, which, along with the interpretation of the law, will consider case studies and examples.

⁶ In particular, the term of the action plan envisaged by the strategy has expired. Moreover, the draft law envisages materially different approaches to a number of strategy provisions.