

# WHAT IS THE AGREEMENT ON PARTNERSHIP AND COOPERATION?

*A guide* to the Agreement signed in  
Luxembourg on 22 April 1996 between  
the European Union and Georgia

*This guide describes the Agreement on Partnership and Cooperation in a non-legal way. It is meant to allow you to become familiar with the content of its political, economic and cooperation chapters and to serve as a reference guide before you consult the official text of the Agreement. For this purpose,*

- *a reference to the articles of the Agreement is given in the right margin;*
- *a keyword index is included;*

© March 2000 Commission of the European Communities

Published by the Delegation of the European Commission in Georgia  
38, Nino Chkeidze St., Tbilisi

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# THE EUROPEAN UNION

The European Union (EU) has 15 Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. In those areas where the Members of the Union have agreed to pool their sovereignty and resources, the institutions of the European Community implement policy. The Community's major political institutions include the Council of Ministers, the decision-making body composed of Member States' representatives, the European Commission (EC) as main executive body, which also has the right to propose legislation, and the directly elected European Parliament.

The European Union draws its existence from several treaties which have as their underlying aim the safeguarding of peace and stability in post-war Europe and the joint development of the Member States through economic integration. The first treaty, the Treaty on the European Coal and Steel Community (ECSC), was concluded in 1951 to bring the coal and steel production of the countries that had been at war only a few years earlier under one supranational authority. Its fundamental aim was to restore Europe's industrial capacity without giving any country the possibility to build up an offensive army again.

The success of the ECSC led the Member States to conclude a similar Treaty on the European Atomic Energy Community (Euratom), and a much wider Treaty on the European Economic Community (EEC), both in 1957. The treaty on EEC, commonly known as the 'Treaty of Rome', was special in that it was an active dynamic treaty: it provided a programme for closer economic integration which started with a free trade area, evolved into a customs union and, since 1993, into a single European market with common rules and legislation in many areas of economic life.

In the 1970s, the EEC also developed common approaches to foreign policy matters, known as European Political Cooperation (EPC). EPC was first enshrined in the 1986 Single European Act. In the 1992 Treaty on the European Union (TEU), also known as the 'Maastricht Treaty', EPC was transformed into a more coherent and elaborate Common Foreign and Security Policy. The "Maastricht Treaty" also took economic integration a step further by creating the framework for an economic and monetary union and the introduction of a single European currency, the euro, in 1999. Furthermore, the TEU reinforces political integration by instituting EU-wide cooperation in the areas of justice and home affairs, and by transforming the loose EPC into a more elaborate Common Foreign and Security Policy (CFSP). In 1997, the European Union drew up a new treaty for Europe, the Treaty of Amsterdam. Its four main objectives are: employment and citizen's rights, the creation of an area of freedom, security and justice, to give Europe a stronger voice in world affairs and to make the Union's institutional structures more efficient with a view to enlarging the Union.

# WHY THE AGREEMENT ON PARTNERSHIP AND COOPERATION?

The Agreement on Partnership and Cooperation (PCA) was signed on 22 April 1996 in Luxembourg by representatives of the European Union Member States, the President of the European Commission and the President of Georgia. The European Community and each of the Member States are parties to the Agreement in their own right.

The Agreement on Partnership and Cooperation stems from the desire to establish close relations between the European Union and Georgia, based on the existing historical links between them, and the common values that they share. It marks an important step forward, superseding the Agreement on Trade and Commercial and Economic Cooperation which the European Community and the Soviet Union signed in 1989. There have been fundamental political and economic changes since the 1989 Agreement. In 1992, the European Community recognised Georgia as an independent state, and since that time Georgia has opened a Mission to the European Union in Brussels, and four of the Member States so far have established Embassies in Tbilisi. In 1995, the European Commission opened its own representation in Georgia.

The main aims of the PCA are:

- to provide an appropriate framework for political dialogue between the parties allowing the development of political relations;
- to support Georgian efforts to consolidate its democracy and to develop its economy and to complete the transition to a market economy;
- to promote trade and investment and harmonious economic relations between the parties and so to foster their sustainable economic development;
- to provide a basis for legislative, economic, social, financial, civil scientific, technological and cultural cooperation.

The Agreement is concluded for a period of ten years, after which it will be automatically renewed unless either Georgia or the European Union wishes to terminate it. This does not mean that it will not change in the meantime. The Agreement is not a rigid framework, but it can evolve in the direction which the European Union and Georgia want, in accordance with developments in the Union and in Georgia, particularly as regards Georgia's progress in developing a market economy and democracy building

The Agreement on Partnership and Cooperation demonstrates the spirit of mutual commitment to democracy and a market economy in which both parties can strengthen political, commercial and cultural links and pave the way for further economic integration. In all those areas it is much wider ranging than the 1989 Agreement and provides the appropriate framework for Georgia's closer integration with Europe. At the same time, it respects the existing and traditional close links between Georgia and its immediate neighbours, which the parties consider essential for future prosperity and stability. Particular importance is given to initiatives aimed at fostering cooperation and mutual confidence among the Independent States of the Transcaucasus region and other neighbouring States.

With the conclusion of an Interim Agreement, which entered into force on 1 September 1997, Georgia and the EU agreed to implement, rapidly, prior to the final ratification of the Partnership and Cooperation Agreement, those provisions of the PCA concerning trade and trade-related matters.

The PCA entered into force on 1 July 1999.

This guide outlines the aims and principles guiding the Agreement and what it will mean when it is put into practice.

# GENERAL PRINCIPLES

The Agreement is based upon three “essential elements”: respect for democracy, the principles of international law and human rights (as defined in the UN Charter and OSCE documents) and the principles of a market economy.

The PCA specifies that if one of the parties fails to fulfil its obligations, the other may take any “appropriate measures”. The Cooperation Council, which oversees the Agreement, must first discuss any such proposed measures - except in cases of special urgency.

The parties are encouraged to intensify regional cooperation among the countries which were formerly in the USSR.

# POLITICAL DIALOGUE

In addition to the political principles which all the parties have agreed, and which are set out in the preamble to the Agreement, the PCA foresees the development of a strong political dialogue between Georgia and the European Union. It does this by providing an institutional framework for regular contacts. The institutional provisions establish a number of channels between the Governments and Parliaments of the European Union and Georgia (see details on p. 20).

Political dialogue will strengthen political links between Georgia and the European Union at the same time as developing closer economic ties. Moreover, such a dialogue may take place on a regional basis with a view to contributing towards the resolution of regional conflicts and tensions.

Its aims, as set out in the preamble, are:

- to support the political and economic changes underway in Georgia.

This dialogue will be guided by the conviction of both sides of the paramount importance of the rule of law, respect for human rights (particularly those of minorities), the establishment of a multi-party system with free and democratic elections and economic liberalisation aimed at setting up a market economy. It also recognises the efforts of Georgia to create political and economic systems based on these principles.

- to increase security and stability and to promote the future development of the Independent States of the Transcaucasus by helping to harmonise views on international issues of mutual concern.

This dialogue will reflect the commitment of both sides to promote international peace and security, and to observe the principles and provisions of the OSCE (Organisation for Security and Cooperation in Europe). In this context, the European Union recognises that support for the independence, sovereignty and territorial integrity of Georgia will contribute to the safeguarding of peace and stability in Europe.



# ECONOMIC PARTNERSHIP

## Market Access for Goods

The European Union is one of Georgia's main trading partners. The Agreement grants Georgia and the European Union better access to each other's markets, principally by not discriminating against the other party's goods, i.e. by treating each other on an equal footing with other trading partners and by ensuring free and fair competition between imported and domestic goods.

### *Most-favoured-nation status*

The European Union and Georgia have agreed to grant each other most-favoured-nation treatment for trade in goods. This means that each party, in respect of its exports to or imports from the other party, cannot apply higher customs duties and levies than those which are applied to any other member of the World Trade Organisation, i.e. to most other countries in the world. Neither can they apply more cumbersome customs procedures or less favourable conditions for taxes and other charges applied to imported goods, trade-related payments, and rules relating to the sale, purchase, transport, distribution and use of goods on the domestic market than those applied to other countries.

There are only two exceptions to this general rule, both of which are foreseen in the WTO rules. Firstly, special advantages offered by the EU or Georgia to other countries with which they have concluded agreements on Customs Union or Free Trade Areas do not have to be extended to PCA partners (this assumes that these "preferential" agreements are compatible with WTO rules). Secondly the same applies if favourable conditions have been agreed with neighbouring countries in order to stimulate border traffic.

Thus, the European Union is treated as if it was one country and Georgia does not enjoy the duty free trade regime which European Union Member States grant each other. Nor will it benefit from the preferential agreements which the EU has concluded with a number of Central European countries which will eventually become full Members of the Union.

N.B.: in practice, although this is not stated in the PCA the EU will apply even lower duties on Georgian products which come under the Generalised Scheme of Preferences (GSP), the benefits of which were granted to Georgia in 1992.

### *No quantitative restrictions*

The Agreement forbids the use of quotas (quantitative restrictions) on imports to the EU of goods originating in Georgia and vice versa. Only in exceptional cases and following a special procedure can a party impose trade-restricting measures.

However, either party can take action against unfair trade practices (dumping and export subsidies) providing they respect WTO rules.

Trade in textile products is not covered by the trade-related provisions of the PCA, but there is a separate agreement governing Georgia's exports (which are not at present subject to restrictions); this has recently been extended until 2003. Furthermore, the elimination of quantitative restrictions does not apply to trade in those products covered by the Treaty establishing the European Coal and Steel Community. Trade in nuclear materials will be conducted in accordance with the provisions of the Treaty establishing the European Atomic Energy Community (EURATOM). If necessary, a specific agreement governing trade in this sector can be concluded between the EURATOM and Georgia.

### *Transit is free*

The parties will grant each other the freedom of transit over their territories of goods which are destined for third countries. In this context, the provisions of the WTO apply: among other rules, goods in transit must not be subjected to customs duties or be unnecessarily delayed. Moreover, Georgia and the European Union must treat the transit of each other's goods no less favourably than the transit of goods from third countries.

Equally, goods which are admitted temporarily into Georgia or the European Union, i.e. which are imported to be re-exported afterwards, are not subject to import charges and duties.

## **Business and Investment**

The Agreement contains important provisions designed to promote a favourable and stable climate for investment and for the provision of services. In particular, it aims to improve conditions for the establishment and operation of Georgian companies and subsidiaries in the European Union and vice versa. The Agreement also contains related provisions on payments and the movement of investment capital and on conditions for employees and business people.

In addition, as part of their bilateral cooperation, Georgia and the individual Member States of the European Union have or may conclude further agreements governing:

- investment protection and promotion.

In this context, they will also regularly exchange information on laws, regulations and administrative practises in investment fairs, exhibitions, trade weeks and other events.

- the avoidance of double taxation.

It should be noted that advantages granted in any separate bilateral tax agreements do not apply to other countries. As such they constitute an exception to the most-favoured-nation principle.

### *Establishing and running companies (including joint ventures)*

#### **Georgian companies in the European Union**

The European Union will grant most-favoured-nation treatment for the establishment of Georgian companies on its territory. Consequently, it should be as easy for a Georgian company to establish itself in the European Union as it is for a company from most other countries.

Once a Georgian company has established itself, it is granted national treatment for its operation, i.e it is subject to the same conditions as European Union companies. National treatment for operations may not always be granted, however, in a number of sectors such as mining, fishing, real estate, audio-visual services, telecommunications, certain professional services, agriculture and news agencies. In these sectors certain restrictions exist in some parts of the European Union, but the operating regulations for Georgian companies are never more restrictive than for any other third country company. National treatment is also not granted to branches of Georgian companies which have no legal personality. Most-favoured-nation treatment is applied to them.

*(for sectoral exceptions, see p. 13; for rules on the movement of capital, see p. 14)*

#### **European Union companies in Georgia**

Georgia will apply somewhat different rules with respect to European Union companies. When these companies wish to establish a business in Georgia they may choose between national treatment (the rules applied to Georgian companies) or most-favoured-nation treatment (the best rules applied to foreign companies), depending on which regime is the most favourable. In a number of sectors, however, this choice does not exist and the regime applied to other foreign companies is automatically applied to European Union companies. This concerns certain activities in the energy and infrastructure sectors, the issue of securities, bank notes, coins and stamps, the treatment of human beings and animals with dangerous infectious diseases, the production of raw spirit and the exploitation of mineral deposits. Foreign investment is prohibited in the areas of defence and security of Georgia as well as in the preparation and sale of narcotics and the cultivation and sale of plants containing narcotic substances.

As regards the operating regulations for European Union companies in Georgia, once they are established, they may choose between national treatment and most-favoured-nation treatment.

*(for sectoral exceptions, see p. 13; for rules on the movement of capital, see p. 14)*

### **Future development of business conditions**

Although Georgia and the European Union will grant each other favourable business conditions, some restrictions still exist. The Agreement commits Georgia and the European Union to 'use their best endeavours' not to take measures which make the establishment or operation of each other's companies more difficult than they are at present. This means that new restrictions should in principle be avoided from the day preceding the date of signature of the agreement, i.e. the 21 April 1996.

However:

- If Georgia nevertheless intends to pass legislation which makes business conditions less favourable for European Union companies, Georgia must make its intentions known. The European Union may request drafts of such legislation and enter into consultations with Georgia.
- If new restrictions are introduced, they will not apply for a period of three years to those European Union companies which are at that moment already established in Georgia.

Many of the existing restrictions are in the services sector, even though Georgia and the European Union undertake, in principle, to allow the supply of services by each other's companies on their territories. In this area, business conditions will gradually be improved and liberalised. The European Union and Georgia will consult each other on how this may be implemented so that a market-oriented services sector develops in Georgia. The maximum degree of liberalisation to be achieved will be the rules foreseen in the General Agreement on Trade in Services that was concluded in the framework of the WTO.

### **Special sectoral rules: Transport, Financial services**

The provisions governing the establishment and operation of companies do not apply to transport by air, inland waterways or sea. These should be covered by bilateral agreements between Georgia and the individual Member States of the European Union.

However, the Agreement does specify that, for international transport operations entirely or partly involving transport by sea, Georgian and European Union shipping companies benefit like any others under the PCA, if they were correctly registered in the EU or in Georgia.

All administrative and technical obstacles to free and fair competition between maritime transport companies must be removed. The European Union and Georgia grant each other's ships national treatment in their ports.

The PCA explicitly forbids cargo sharing arrangements, even if they are provided for in earlier agreements between a European Union Member State and the former Soviet Union.

Regarding financial services, although normal conditions apply to companies in this sector (banks, insurance companies, etc) the EU or Georgia is still free to take any measures needed to protect the financial system or individual investors or depositors.

### *Foreign personnel*

Georgian companies have the right to employ key personnel such as managers or highly specialised experts, at their subsidiaries or branches in the European Union and vice versa, provided they only work for the company that sends them and provided they have been employed by this company for at least one year.

In general, Georgians employed in the European Union and vice versa will, as far as possible, enjoy the same rights as local workers with regard to working conditions and rules on remuneration and dismissal.

The Agreement should not be read as giving the right to any other person from the European Union or Georgia to enter and stay in Georgia or the European Union

respectively. The Agreement does not change immigration rules, and both parties commit themselves to joint efforts to control illegal immigration. At the same time, the European Union and Georgia will examine how they can improve conditions for Georgian business people travelling to the European Union and vice versa.

## **Payments and Capital Movements**

Georgia and the European Union agree to authorise payments in freely convertible currency for goods or services received or connected to the movement of persons.

Moreover, transfers of capital in connection with the establishment and operation of businesses as described above (direct investment) must be authorised. Profits stemming from such investments may also be freely repatriated and investments may be withdrawn.

The PCA does not lay down rules for payments connected with liquid capital movements such as investments in securities, but Georgia and the European Union will consult each other on how to facilitate such payments as well.

No new restrictions on foreign exchange relating to current payments or capital movements may be introduced, and existing restrictions must not be further tightened. There are only two exceptions to this 'standstill'. Georgia may impose exchange restrictions if they are a condition for a loan from international financing institutions and are specifically approved by the International Monetary Fund. Such exchange restrictions must apply to all Georgian trading partners and not only to the European Union. As a second exception, the European Union and Georgia may restrict capital movements if these threaten to cause serious difficulties for exchange rate and monetary policy, but only if such restrictions are

strictly necessary and on condition that they are not applied for longer than six months.

## **Protection of intellectual, industrial and commercial property**

Both sides must prevent the illegal importation or sale of intellectual, industrial and commercial property for sale or use in production. To this end, Georgia must improve its protection of intellectual, industrial and commercial property rights, in order to prevent the unauthorised use of designs, trade marks, patents, software, artistic works, etc. in order to bring that protection up to the levels which exist in EU.

The PCA refers to the obligations arising from multilateral conventions in this field and states that, within a transitional period of five years, Georgia should have acceded to an agreed list of these conventions. Before that time, European Union companies and nationals must be treated at least as well as any other third country and their nationals, except for the countries of the former Soviet Union or those countries which offer more advantageous conditions on a truly reciprocal basis.

# LEGISLATIVE COOPERATION

Georgia and the European Union recognise that the approximation of Georgia's existing and future legislation to that of the Community, particularly in business-related areas, is an important condition for the development of closer economic links. Georgia will endeavour, gradually, to make its legislation compatible with that of the European Union, which, in turn, will make it much easier for companies from the European Union and Georgia to invest and operate on each other's territory. The European Union, for its part, is prepared to help Georgia achieve this by providing assistance where needed.

The Community will provide Georgia with technical assistance in the field of competition law, mainly as regards agreements between undertakings, the abuse of dominant positions, state aids, state monopolies and public undertakings. Should the application of competition laws lead to problems for trade, the two sides agree to examine ways to solve those problems through cooperation between the respective authorities.



# ECONOMIC COOPERATION

The Agreement specifies a wide range of areas of cooperation between the European Union and Georgia. The overall aim is to contribute to the process of economic reform and to the recovery and sustainable development of Georgia's economy, taking into account the need to address social and environmental problems. For this purpose, the Agreement identifies a number of areas in which the European Union and Georgia wish to increase and expand their cooperation:

- economic and social development
- trade in goods and services, with particular reference to WTO standards
- human resources development
- support for enterprise (including privatisation, investment and development of financial services)
- agriculture and food
- energy
- transport
- tourism
- environmental protection
- regional cooperation

The European Union and Georgia have agreed that special attention will be paid to those measures which foster cooperation among the Independent States of the Transcaucasus and with other neighbouring states, with a view to stimulating a harmonious development of the region.

The main instrument of the European Union to finance economic cooperation is Tacis, the European Union's technical assistance programme. Its key objectives and areas of intervention are laid down in an indicative programme agreed between the two parties. They shall ensure that the Community's technical assistance is developed in close coordination with assistance from other sources such as EU Member States, third countries and international organisations.

## OTHER AREAS OF COOPERATION

### **Cooperation on prevention of illegal activities and the prevention and control of immigration**

The European Union and Georgia agree to cooperate in preventing:

- illegal activities in the sphere of economics, including corruption;
- illegal transactions of various goods, including industrial waste;
- counterfeiting.

Technical and administrative assistance may be provided in the above mentioned areas.

Furthermore, the European Union and Georgia will cooperate in combatting the following:

- money laundering
- the production, supply and traffic of narcotic drugs and psychotropic substances
- illegal immigration. (Both sides agree to readmit their nationals if they are staying illegally on each other's territory. Georgia has also agreed to conclude bilateral agreements with Member States of the EU regarding the conditions under which this readmission clause should be implemented.)

### **Cultural cooperation**

Cooperation in the field of culture will include:

- exchange of information and experience in the field of conservation and protection of monuments, sites (architectural heritage) and museum values;
- cultural exchange between institutions, artists and other persons working in the area of culture;
- translation of literary works

## **Democracy and Human rights**

The parties agree to cooperate on all questions affecting democratic institutions and the protection of human rights. Technical assistance will be provided for the drafting and implementing of relevant laws, for the functioning of the judiciary and for the operation of the electoral system. Contacts and exchanges are foreseen between national, regional and judicial authorities, between parliaments and between non-governmental organisations.

# INSTITUTIONS

As a means of ensuring that its provisions are observed and implemented, the Agreement requires that three monitoring committees be set up: the Cooperation Council, the Cooperation Committee and a Parliamentary Cooperation Committee.

## **Cooperation Council**

The Cooperation Council will meet at ministerial level at least once a year. On the European Union side it may consist of ministers from the European Union Member States and members of the European Commission. This is the principal forum for political dialogue.

The Cooperation Council will supervise the implementation of the Agreement. The Agreement assigns the Cooperation Council a number of specific tasks, but it has the right to discuss any subject of mutual interest and make recommendations.

The explicit tasks include making recommendations on the development of the trade provisions in the PCA, conditions of employment for each other's nationals, conditions for business people, the opening of the services market, the multilateral conventions in the field of intellectual, industrial and commercial property and studying immigration control measures. Furthermore, it can discuss disputes over the Agreement, and refer them, if necessary, to conciliators who can make non-binding recommendations. It can also establish the rules of procedure for dispute settlement.

The Cooperation Council must be informed if it is proposed to use the special conditions on the introduction of restrictions to trade, any new foreign exchange restrictions, the objectives and the areas of the Community's financial assistance and the non-fulfilment of any obligations under the PCA by either party.

## **Cooperation Committee**

The Cooperation Committee will meet at senior civil servant level. It must prepare the meetings of the Cooperation Council and ensure continuity between its meetings. In addition, the Cooperation Council may delegate any of its powers to the Committee.

The Presidency of both the Council and the Committee will be chaired alternately by the European Union and by Georgia.

## **Parliamentary Cooperation Committee**

The Parliamentary Cooperation Committee consists of members of the Georgian and the European Parliament. It is the forum for political dialogue between parliamentarians from

the European Union and Georgia. The Parliamentary Committee will exchange information with the Cooperation Council and may make recommendations to it.

## **Global Exceptions and Dispute Settlement**

### *Global exceptions*

The provisions of the Agreement are binding on the European Union and on Georgia. There are only a few specified cases when the parties may take measures in the public interest that are not in line with the Agreement:

- measures meant to prevent the disclosure of essential state secrets;
- measures relating to the production and trade of weapons;
- special measures to maintain law and order and to safeguard peace;
- measures necessary to respect international obligations and commitments in the control of dual use of industrial goods and technology.

In addition, the European Union or Georgia will retain the right to impose limitations on trade in the following cases, as long as any prohibitions do not constitute a means of arbitrary discrimination or a disguised restriction on trade:

- to protect public morality, public policy or public security as well as the health and life of humans, animals and plants; (this exception also applies to the provisions on business and investment.)
- to protect natural resources including gold and silver, art treasures, intellectual property, etc.

### *Dispute settlement*

#### **Between the European Union and Georgia**

In the event of a dispute over the application or implementation of the Agreement, the Cooperation Council will try to find a resolution by making a recommendation. If this fails, the Council, Georgia, and the European Union may each appoint a conciliator. These conciliators will make a recommendation by majority vote but this will not be binding.

If either party considers that obligations are not being fulfilled, it can take appropriate action but only after notifying the Cooperation Council and giving it time to find a solution. However, if one of the parties repudiates the Agreement or violates the basic principles of democracy and human rights or of a market economy, then the other party may immediately suspend the Agreement without prior consultation. In either case, retaliatory action should cause minimum disturbance to the functioning of the Agreement.

### **Between nationals and companies of the European Union and Georgia**

Naturally, individuals and companies from the European Union and Georgia must also have the possibility effectively to defend their rights arising from the Agreement and other agreements and legislation. For this purpose, the European Union and Georgia will guarantee each other's nationals and legal persons the same access to courts and administrative organs as their own nationals and legal persons. In commercial disputes, the European Union and Georgia will encourage the use of arbitration in accordance with international practice and on the basis of international law.

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