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SANCTIONS FOR THE INFRINGEMENTS OF COMPETITION LAW AND CONSUMER PROTECTION LAW IN GEORGIA

Georgia adopted the first modern competition and consumer rules in 1996. These laws were enforced by the Georgian Antimonopoly Service until 2005. Georgia was obliged to approximate its laws with the EC rules under the Partnership and Cooperation Agreement. The paper discusses the development of the sanctions for the breaches of competition and consumer protections rules from 1996 to 2026 and its practical application. It will examine effectiveness of the sanctions and how the sanctions are complying with its common goal.

From 2005 until 2012 there was gap in application of competition rules. The Antimonopoly Law was replaced by the Law on Free Trade and Competition from 2005. The latter was not applicable to cartels, abuses of dominant position nor concentrations. In 2012 the new Law on Competition was adopted, but the rules were not in compliance with the EU ones, and it was impossible to enforce them until 2014. After the 2014 amendment to the Law on Competition, the Competition Agency was set up. Since 2023 once the law on consumer protection was adopted, the agency's title has been changed and now it is the Georgian Competition and Consumer Protection Agency (thereafter "agency").

Development of Competition and Consumer Protection Rules in 1990's and 2000's

The Parliament of Georgia adopted the Laws on Antimonopoly and Competition and Consumer Protection in 1996.[1] The main goal of the antimonopoly law was to "regulate" monopolies created after privatizing of state-owned companies and properties. The law did not provide itself any provision on the types of sanctions. It said that a person violating the law may face a material, administrative or criminal liability (Article 27). In 1999 the Criminal Code of Georgia was adopted. Its Article 195[2] provided criminal sanctions for infringements of the Law on Antimonopoly and Competition.[3] As for the Code of Administrative Offenses, it did not provide any sanctions for the breach of

[1] https://matsne.gov.ge/ka/document/view/31462?publication=0

[2] The article was amended in 2010's. Nowadays it only criminalizes bid-riggings in case of public tenders.

[3] https://matsne.gov.ge/document/view/16426?publication=0

antimonopoly rules in 1996. Only after the 1998 amendments the law provided administrative sanctions against persons violating antimonopoly law. Namely, Article 159[2] said that a failure to comply with the State Antimonopoly Service's order to cease violations of antimonopoly legislation, consumer protection legislation, and advertising legislation shall entail a fine of three hundred to six hundred GEL for individuals, and of one thousand to three thousand GEL for responsible persons of enterprises, institutions, and organizations.

The Law on Antimonopoly and Competition was abolished by the Law on Free Trade and Competition, which was adopted in 2005. The new law's primary purpose was to curb distortion of competition by the state bodies. It did not provide any rules on cartel activities, mergers, neither on abuse of a dominant position.

After starting a negotiation with Georgia on the Association Agreement, the European Union requested from Georgia an approximation of its competition rules with the EU ones. Georgia adopted the Law on Competition in 2012. Though the law was not in compliance with the European rules. The EU demanded that Georgia adopt comprehensive competition rules as one of its conditions for signing the Association Agreement. The Law on Competition was significantly amended in May 2014 and in June the Association Agreement was signed. According to the law, the Competition Agency of Georgia set up. The initial law of 2012 provided sanctions on the undertakings breaching competition rules up to 10% of their profit (Article 33).[4] The fines were enshrined only for a cartel activity and an abuse of a dominant position. If the undertaking did not have profit, then the maximum fine could be up to 2% of its turnover of the previous business year. After the 2014 amendments the maximum amount of fine increased up to 5 percent of annual turnover for the initial breach, but in case of non-compliance with the Agency's decision or a recidivism, the fine could be up to the 10% of the annual turnover. The fines were provided only for cartels and abuses of a dominant position until 2020. Only after 2020 the Parliament of Georgia adopted the amendment to the law which provides fines for the failure to submit pre-merger notification.

The Law of Competition of Georgia has been amended few times and unfortunately the 2022 amendment that has dealt with the sanctions, can be considered as a step back in the context of approximation of Georgian competition rules with the EU norms. According to the amendment, fines for the infringements of competition rules shall be up to 5 percent of total annual income. This change significantly alters the amount of fine that can be imposed on undertakings violating competition rules (for cartels, abuses of a dominant position and merger notification).

As for the Law on Protection of Consumers' Rights,[5] it was also adopted in 1996. After the abolishing the Law on Antimonopoly and Competition in 2005, the Antimonopoly

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[4] https://matsne.gov.ge/ka/document/view/1659450?publication=0

[5] https://matsne.gov.ge/document/view/32974?publication=0

Service also stopped working. The Law on Protection of Consumers' Rights officially was abolished in 2012. It did not provide itself any sanctions against the breach of the rules. However, the new Criminal Code of Georgia has provided penalties for the breaches of consumer law. Namely, according to Article 219, cheating on consumers as to the size, weight or calculation, or misleading consumers as to the consumer properties or quality of goods, as well as their deception in any other manner when rendering services, which has resulted in considerable damage to the consumers is prohibited. Persons committing such activities may face a fine or corrective labour for a term of one to two years. If such act is committed by a group of persons or in large quantities or by a person convicted for this kind of offence, the offender may face a fine or house arrest for a term of 6 months to two years or imprisonment for up to two years. The note of the Article explains that the large quantity means the amount of damage caused by the cheating and exceeding 20% of the cost payable by the consumers. Article 201 of the Criminal Code provides criminal sanctions for false advertising. Namely, in case of an intentional misleading of the consumer by the advertiser, manufacturer or distributor, which caused significant damage, the person may face fines or corrective labor for up to one year, house arrest for a term of six months to two years or imprisonment for up to one year.

Another important provision of the Criminal Code of Georgia is Article 251. It criminalizes a production or sale of substandard goods not conforming to safety requirements or performance of low-quality work or delivery of low-quality services if it results in harm to human health or death. It should be noted that these articles are still enshrined in the Code.

As for the Code of Administrative Offenses, it also provides the rules on consumer protection. Article 158[1] specifically deals with the consumer protection. According to this provision, in case of intentional violation of consumer rights, resulting in property damage, a person may face a fine in the amount of ten to one hundred minimum wages. The article has been introduced into the Code in 1998.

Practical application of the sanctions for breaching of competition rules

The agency introduced a new Guidance on Calculation of Fines in 2025.[6] The document provides that in case of violation of the law, an undertaking shall be subject to a fine, the amount of which shall not exceed 5% of the undertaking's total income during the financial year preceding the adoption of the relevant decision by the agency, and in case of failure to eliminate the legal basis for the said violation or its repetition - 10%. The law also entitles the agency to impose periodical penalties on the undertakings. Namely, if the

[6] https://gcca.gov.ge/uploads_script/legislation/tmp/php1hXxpx.pdf

undertaking does not fulfill behavioral or structural remedies, the agency shall impose a fine on it, the amount of which for each day of delay shall not exceed 5% of the average daily turnover (total income) of the undertaking during the financial year preceding the adoption of the relevant decision by the agency. The same amount applies in case of nonfulfillment of the commitments.

The agency ensures that the fines it imposes are fair, proportionate and dissuasive. When determining the amount of the fine, the damage caused by the violation (if any), the duration and severity of the violation must be considered.

The agency thinks that annual gross income is an indicator of the financial and economic potential of an undertaking. This, in turn, is a determining criterion for imposing a fair, proportionate and dissuasive fine. For the purposes of determining the maximum amount of the fine, the total annual income of the undertaking shall be taken into account, and not the income derived from the amount of goods or services sold by the undertaking as a result of the violation of the law. This income shall include income derived both in Georgia and abroad.

According to the document, when imposing a fine on an undertaking, the total income is calculated based on its turnover during the previous financial year. For these purposes, the total income of an undertaking during the previous financial year means the total income of the undertaking during the financial year preceding the adoption of the relevant decision by the agency.

The agency thinks that the imposed fine must have a preventive and punitive effect. In addition, the amount of the fine imposed should not endanger the functioning of the undertaking and its future activities. After imposing a fine on an undertaking, overall, the violation of competition law should not bring any benefits.

According to the website of the Agency, from 2014 to 2 June 2026 the agency has carried out investigation of 15 cases on alleged violations of an abuse of dominant position. Only in 4 cases the agency determined abuse of a dominant position.[7]

As for the participation in a cartel cases, out of 14 cases, the agency has determined breach of competition rules only in 4 cases.[8]

Two cases are of interest, which concern the cartels in the oil market. Five major oil companies were found guilty of violating Article 7 by the Competition Agency. The decisions were adopted in 2018 and 2023. The Agency notes in its letter #02/2499 dated 20.09.2023 that despite Article 33 of the Law of Georgia "On Competition", according to which, in case of failure to eliminate the legal basis for the violation provided for in

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[7] https://gcca.gov.ge/index.php?m=352&cat_id=76
[8] https://gcca.gov.ge/index.php?m=353&cat_id=76

Articles 6 and 7 or in case of repetition of the said violation, a fine shall be imposed on the undertakings, the amount of which shall not exceed 10% of its annual turnover during the previous financial year, it did not increase the amount of the fine against these undertakings.[9]

During unofficial conversations, information was leaked by the agency's management that in cases of cartels and abuse of dominant position, the agency has imposed fines of no more than 1% of the turnover of the previous financial year.

According to the website of the agency, it has received 74 pre-merger notifications and all of them were cleared by the agency. Only in two cases, the agency imposed on the merging undertakings the obligation of carrying behavioral remedies.[10]

Practical application of the sanctions for breaching of consumer protection rules

The website of the Georgian Competition and Consumer Protection Agency[11] lists 469 cases in which the agency found violations of the Law of Georgia on Consumer Rights Protection from February 1, 2023, to June 3, 2026. Most of these cases concern violations of the obligation to provide information to consumers.

These cases represent the first instance of a violation of the law by the traders and the Agency, besides establishing the fact of the violation, imposed on the traders the obligations to bring their activities into compliance with the law within 1 month. In most of the cases, in addition to the obligation of the provision of information, the delivery terms of goods and/or services in accordance with the terms of the contracts were violated. In particular, breaches of the obligation of the provision of flawless service/goods and/or violation of delivery terms.

The cases also included various types of violations, which can be conditionally divided into the following violations:

1. Breach of obligation to replace/repair/return a defective item (46 cases):
2. Unfair commercial practices (36 cases)
3. Misleading commercial practices (29 cases)
4. Using unfair standard terms (24 cases)
5. Restriction of the right to withdraw from a distance/off-line contract without giving any reason (24 cases)

[9] http://ilpr.ge/wp-content/uploads/2024/02/ILPR_Competition_Agency_Practice_Analysis.pdf 198pg.

[10] https://gcca.gov.ge/index.php?m=356&page=1

[11] https://gcca.gov.ge/index.php?m=379&cat_id=103

6. Violation of the obligation to provide information in the state language (13 cases)
7. Making changes to the reference (food) menu, which reflects the final price of the goods (including VAT and other taxes) (4 cases)
8. Restriction of the right to return an item without specifying any grounds (3 cases)
9. Violation of the terms of warranty service provided by law (3 cases)
10. Aggressive commercial activity (3 cases):
11. The requirement to indicate the price of goods/services (3 cases):
12. Refund of the platform service fee to the user after the event is canceled (2 cases)
13. Providing inaccurate information about the main characteristics of the goods (1 cases)

It should be mentioned that on-site inspections were carried out in 3 cases.

In addition to the information provided above, the agency on its website provides information on the traders who did not fulfil the obligation of bringing their activities into compliance with the consumer protection law within 1 month from the imposition of this obligation by the agency. In these cases, the agency may impose on the traders fine up to 2 percent of their turnover, but at least 600 GEL. During the same period, 201 traders have been fined. The maximum fine was 31,000 GEL.

Conclusion

The exciting rules on competition protection provide for a maximum fine for the violation of up to 5% of total income of the undertaking in previous financial year. As for the violation of consumer protection rules, the fine may be up to 2 percent of the trader's annual turnover. Practical application of the provisions on fines shows that, undertakings and traders can easily pay fines imposed by the agency. Especially large traders may easily bear the burden of financial penalties. They may not be sufficiently dissuasive and deterrent for larger traders. Georgian provisions provide for lower maximum thresholds for fines compared to EU legal framework. The agency imposes minimal penalties that are enshrined by the law. Even in case of commitment of violation of competition rules repeatedly, the agency did not impose the maximum amount of fine on undertakings operating in a petrol market. The application of the laws by the agency is not effective, particularly in case of competition rules. The purpose of sanctions and fines is to appropriately punish offenders and to discourage others from committing violations. In my opinion, for the effective enforcement of competition and consumer protection rules, it is very important for Georgia to harmonize maximum amount of fines with the EU ones. Namely, to increase up to 10% of fine which should be calculated from the turnover of the undertaking's previous financial in case of violation competition rules[12] and in case

[12] https://eur-lex.europa.eu/eli/reg/2003/1/oj/eng

of consumer law violation, the maximum amount of fine should be up to 4% of trader's annual turnover.[13]

[13] https://eur-lex.europa.eu/eli/dir/2019/2161/oj/eng

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DEVELOPMENT OF POLISH COMPETITION LAW

1. Introduction[14]

This brief overview of developments of Polish competition law,[15] very different from the European Community (EC) competition rules at the beginning, captures its changes caused by a number of factors within and outside Poland. The analysis leads to two questions – both related to EC (later, EU) competition rules, being an important part of "framework conditions" for economic activity. First, how was Polish competition law harmonized with them before joining the EU (May, 1 2004)? How were the legislations and judicial standards amended in order to offer compatible conditions for the Polish companies to act on the EC markets and EC-based companies to act on the Polish market? The second basic question is: how did and does Poland improve and refine endlessly the legal framework for competition protection after May 1, 2004?

2. A century ago

The beginning of the development of Polish competition law dates back to the 1930s, when in the Second Republic of Poland, in line with the European trend, cartel law was introduced.[16] However, it differed from later antimonopoly law in that it did not protect competition understood as a market mechanism, but by allowing its restriction

[14] This paper expresses only personal views. This paper draws from my analyses contained in particular in: A. Jurkowska-Gomułka, A. Piszcz (eds), *Ustawa o ochronie konkurencji i konsumentów. Komentarz*, Warszawa 2024; A. Piszcz, A Note on 2015 Developments in Polish Competition Law: Is it Really a Drive Towards the European Model?, Yearbook of Antitrust and Regulatory Studies 2016, No. 9(14), p. 79-98. All Internet references were last accessed on May 31st, 2026.

[15] In this paper, I will be using interchangeably also the term "antitrust" that is a rather American-style convention. However, decades ago European Commission started using this term alongside the traditional term "competition law"; see W.P.J. Wils, Is Criminalization of EU Competition Law the Answer?, in: C.D. Ehlermann, I. Atanasiu (eds), *European Competition Law Annual 2006: Enforcement of Prohibition of Cartels*, Oxford – Portland 2007, p. 278.

[16] A detailed analysis can be found in: A. Podolska, Polska ustawa kartelowa w II Rzeczypospolitej, Czasopismo Prawno-Historyczne 2000, vol. 1-2, p. 151 ff; A. Podolska-Meducka, *Polskie ustawodawstwo kartelowe w latach 1918-1939*, Warszawa 2003, p. 89 ff; A. Podolska-Meducka, Projekty ustawy kartelowej w Polsce międzywojennej, Czasopismo Prawno-Historyczne 2002, vol. 2, p. 215 ff; A. Podolska-Meducka, Sąd kartelowy w Polsce i jego orzecznictwo w latach 1933-1935, Czasopismo Prawno-Historyczne 2001, vol. 2, p. 85 ff; D. Miąsik, Rozwój polskiego prawa konkurencji i prawa antymonopolowego, Studia Prawa Prywatnego 2013, No 1, p. 39-40.

through the phenomenon of cartelisation, it created tools for state control of cartels and for using cartels to implement state policy.[17]

As early as 1933 the Act on cartels was issued[18] that encompassed agreements, resolutions, and provisions aimed at controlling or regulating – through mutual obligations – production, sales, prices, and conditions of exchange of goods in the fields of mining, industry, and trade. Cartels existed in various legal forms, ranging from a simple agreement, through associations, to various types of companies.[19] Cartels – generally permitted – had to be reported to the Minister of Industry and Trade within a statutorily specified period from the date of their conclusion. The Minister was competent to make a declaratory entry into the cartel register. The Minister assessed *ex post* whether they (or the manner of their implementation) threatened the public good. Sanctions were decided by the Cartel Court established at the Supreme Court, at the request of the Minister. Criminal fines, however, were imposed by district courts composed of three judges.[20] After the entry into force of the 1935 Decree of the President of the Republic of Poland[21] amending the 1933 Act on cartels, sanctions were decided by the Minister himself, and his decision was subject to an application to the Cartel Court to have the ruling annulled.[22] These solutions fell far short of directly protecting competitors' interests, as defined by the 1926 Act on Combating Unfair Competition.[23]

The Act of July 13, 1939, on Cartel Agreements,[24] which was supposed to come into effect three months after its promulgation, was characterized by the legislator's reorientation from *ex post* supervision to *ex ante* supervision. Entry into the cartel register was to be constitutive in nature, and the Minister of Industry and Trade was to have the authority to refuse entry. However, it was never implemented in practice due to the outbreak of World War II.

3. One regime later

In the several decades after World War II, monopolies were not only permitted but even protected in the centrally-planned economy of the communist Poland. In the late 1980s, communist decision-makers decided that Poland should adopt and implement laws to address monopolistic practices. The first post-war Polish legislation on

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[17] See D. Miąsik, *Reguła rozsądku w prawie antymonopolowym*, Kraków 2004, p. 348.

[18] Journal of Laws No. 31, item 270, as amended.

[19] See discussion in J. Wiszniewski, *Zrzeszenia przemysłowe a kartele*, Wilno 1936, p. 10 ff.

[20] See A. Podolska, Polska ustawa kartelowa w II Rzeczypospolitej, Czasopismo Prawno-Historyczne 2000, vol. 1-2, p. 185-186.

[21] Journal of Laws No. 86, item 529.

[22] This set of issues is addressed in detail in A. Piszcz, *Sankcje w polskim prawie antymonopolowym*, Białystok 2013, p. 107–109, 237–239, 375–376, available at: https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/10403/1/A_Piszcz_Sankcje_w_polskim_prawie_antymonopolowym.pdf

[23] Consolidated text: Journal of Laws of 1930, No. 56, item 467, as amended; see also K. Stefański, *Zwalczanie nieuczciwej konkurencji*, Warszawa 1938, p. 4 ff.

[24] Journal of Laws No. 63, item 418.

competition protection was the Act of January 28, 1987 on Counteracting Monopolistic Practices in the National Economy.[25] From a legal standpoint, this fairly extensive Act (30 articles) did not play a significant role in the history of competition protection in Poland. However, it could be perceived as a "new quality" in the legal system.[26] The first national post-war competition authority was the Minister of Finance. There is a general question whether a minister should be an authority exercising antimonopoly supervision over economic entities. While such evaluations are to certain extent subjective, I think that with such a competition authority it was impossible to force changes to communist economic policy expressly involving preferences to state-owned enterprises. From the literature side, there appears to be agreement that this solution was ineffective and out of step with reality.[27]

The 1987 Act was intended to protect the domestic market against monopolistic practices (including monopolistic agreements) by economic entities that harmed the public interest or the interests of other economic entities or consumers. The Act specified practices that were strictly prohibited by the Act (which the Minister of Finance could order the cessation of) and practices that were relatively prohibited (conduct which the Minister of Finance could prohibit). It also introduced the obligation to notify the Minister of Finance of intended mergers, but its disadvantage consisted in that failure to do so was not subject to any competition law sanctions. However, the Minister of Finance had the authority to object to a merger.

The 1987 Act embodied rules on both monetary and non-monetary sanctions. Sanctions were imposed by the Minister of Finance, including – by way of a decision – (1) declaring voidness of an agreement constituting a manifestation of monopolistic practice or individual provisions thereof, (2) declaring voidness, ruling on voidness or invalidating a monopolistic agreement).[28] This last competence intersected unnecessarily with the invalidation of an agreement carried out by a provincial court or a district arbitration commission at the request of an economic entity affected by the use of absolutely prohibited monopolistic practices. If monetary sanctions failed to stop the entity from infringing the Act – depending on the circumstances and the organizational and legal form of the entity – the Minister of Finance could order its division, liquidation,

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[25] Journal of Laws No. 3, item 18, as amended.

[26] See J. Trojanek, Ustawa antymonopolowa z 1987 roku (próba oceny podstawowych rozwiązań), Ruch Prawniczy Ekonomiczny i Socjologiczny 1987, vol. 4, p. 4. See also, M. Stefaniuk, Zakres i kierunki rozwoju ustawodawstwa antymonopolowego w Polsce w latach 1987-1997, in: M. Mozgawa, M. Nazar, J. Stelmasiak, T. Bojarski (eds), *Polska lat dziewięćdziesiątych. Przemiany państwa i prawa. Tom 3*, Lublin 1997, p. 200.

[27] See C. Kosikowski, T. Ławicki, *Ochrona prawna konkurencji i zwalczanie praktyk monopolistycznych*, Warszawa 1994, p. 52-53; M. Martyniszyn, M. Bernatt, Implementing a Competition Law System – Three Decades of Polish Experience. Journal of Antitrust Enforcement 2020, No. 8(1), p. 6 ff.

[28] See S. Sołtysiński, Sankcje w ustawie o przeciwdziałaniu praktykom monopolistycznym w gospodarce narodowej, Ruch Prawniczy Ekonomiczny i Socjologiczny 1987, vol. 4, p. 21–30; S. Gronowski, Ustawa antymonopolowa. Komentarz, Warszawa 1999, p. 273; I. Wiszniewska, Praktyki monopolistyczne w świetle ustawy antymonopolowej, Państwo i Prawo 1987, No. 7, p. 42; I. Wiszniewska, Polska ustawa antymonopolowa z 1990 r., Przegląd Ustawodawstwa Gospodarczego 1990, No. 8-9, p. 131; resolution of the Supreme Court of 20 September 1990, III AZP 8/90.

limitation of business activity in a way that would prevent monopolistic practices, or revoke the entity's permit to conduct such activity.[29] A question is whether the 1987 Act was effective at all, especially that only nine decisions were issued based on its rules.[30]

4. The democratic change

Poland's 1989 democratic transition had a direct effect on economy which required restructuring to free market standards. This effect gave rise also to a new antitrust regime. The new antimonopoly Act was issued and entered into force on April 13, 1990, and from January 1, 1999, its name was changed to the Act on Counteracting Monopolistic Practices and Protecting Consumer Interests. There were more than just protective objectives of the Act set in its preamble. In addition to protecting entrepreneurs exposed to monopolistic practices, it also set the protection of consumer interests (although it did not contain substantive provisions aimed at protecting consumers) and ensuring competition. The objective of protecting entrepreneurs could only be achieved when monopolistic practices infringed the public interest.[31] Their private interests were traditionally protected by rules on combating unfair competition (the 1926 Act replaced by the new one in 1993).

It is worth to look first at the institutional design of post-communist competition policy. Generally speaking, if the post-communist legislature decided to use the institutional framework already in place, it might exacerbate the enforcement and effectiveness problems that already had existed. However, the legislature took substantially different approach in this area. Poland became the first post-communist country in Central and Eastern Europe that – under 1990 Act – established the Antitrust Office as a central government body responsible for the application of antitrust law.[32] The legislature chose to favour the most common model of competition proceedings in Europe i.e. the administrative model, where a single administrative authority investigates cases and takes enforcement decisions subject to judicial control. A judicial model with a limited role for an competition authority to play (carrying out the investigation and bringing the cases before a court, either for a decision on substance and on sanctions, or in relation to the imposition of sanctions only) was not chosen.

On October 1, 1996, the name of the Office was changed to the Office of Competition and Consumer Protection (Pol. *Urząd Ochrony Konkurencji i Konsumentów*, UOKiK). In turn, the President of UOKiK was designated as the competent authority. Until now, the President of the UOKiK is an authority competent in matters of competition and consumer protection.

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[29] See, for example, J. Olszewski, Nadzór nad koncentracją przedsiębiorców jako forma prewencyjnej ochrony konkurencji, Rzeszów 2004, p. 471.

[30] This is not based on my empirical study but on: C. Kosikowski, T. Ławicki, *supra*, note 14, p. 52–53.

[31] D. Miąsik, *supra*, note 4, p. 364-365.

[32] See A. Fornalczyk, Początki polityki konkurencji w Polsce, w: M. Krasnodębska-Tomkiel (ed.), *Zmiany w polityce konkurencji na przestrzeni ostatnich dwóch dekad*, Warszawa 2010, p. 419, 426. See also B. Sagan, D. Sagan, Ewolucja statusu Prezesa UOKiK, Ius et Administratio 2008, vol. 1, p. 42.

The scope of the 1990 Act included counteracting monopolistic practices and influencing the structure of economic entities. On the one hand, with respect to entities holding a monopoly position and entities holding a dominant position equivalent to them, an absolute prohibition of certain monopolistic practices was provided for. On the other hand, it was possible to "legalise" so-called specialization agreements and certain monopolistic practices.[33]

The competition authority could impose fines on entrepreneurs. It could also apply non-monetary sanctions, the harshest in the history of Polish competition law.[34] The non-monetary sanctions included the obligation to temporarily restrict the business activity of an entity with a dominant position on the market. In the literature, this last solution was met with criticism and the proposal to limit its application to cases of abuse of a dominant position.[35] In the area of mergers, rules on fines for failure to comply with the notification obligation regarding the intended merger were introduced on May 19, 1995.[36] With respect to the 1990 Act, extensive case law of the competition authority and courts has developed.[37] The practice of imposing fines was characterized by a moderate and prudent use of the opportunities provided by the 1990 Act, so as not to hinder economic entities from effectively competing on the market, including with foreign entities.

5. The European shift

The post-communist Polish competition law underwent thorough amendments harmonising its provisions with the standards of EC competition law. On December 16, 1991, the Europe Agreement establishing an association between the EC and their Member States, of the one part, and the Republic of Poland, of the other part, was concluded.[38] By the mid-1990s it entered into effect (i.e. on February 1, 1994). Chapter III of Part V of the Agreement concerned the approximation of existing and future Polish legislation, including competition rules, to Community law.[39] The adoption of a new competition act had a direct correlation with a need to address these obligations. As a result of painstaking work to draft a new Polish competition law, the Act on Competition and Consumer Protection was finally adopted on 15 December 2000. The 2000 Act entered into effect on April 1, 2001. Also its subsequent amendments (in particular

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[33] See P. Podrecki, Porozumienia monopolistyczne i ich cywilnoprawne skutki, Zeszyty Naukowe Uniwersytetu Jagiellońskiego 2000, vol. 24, p. 210-211; T. Ławicki, *Ustawa o przeciwdziałaniu praktykom monopolistycznym. Komentarz*, Warszawa 1998, p. 49.

[34] See A. Piszcz, *supra*, note 9, p. 117–120, 244–247, 378–379.

[35] W. Rakoczy, Zastosowanie instrumentów demonopolizacyjnych w restrukturyzacji gospodarki, Przegląd Ustawodawstwa Gospodarczego 1993, No. 11, p. 7.

[36] See P. Lissoń, Kontrola koncentracji gospodarczej w procesach komercjalizacji i prywatyzacji przedsiębiorstw państwowych, Ruch Prawniczy Ekonomiczny i Socjologiczny 1998, vol. 2, p. 56 ff.

[37] C. Kosikowski, T. Ławicki, *supra*, note 14, p. 54–55.

[38] Journal of Laws of 1994, No. 11, item 38, as amended.

[39] See T. Skoczny, *Harmonising Polish antimonopoly law with EC competition rules*, Yearbook of Polish European Studies 1997, No. 1, p. 89-103.

effective from May 1, 2004, i.e., the date of Poland's accession to the EU) were related to the obligation to harmonise Polish law with the *acquis Communautaire*.[40]

The 2000 Act avoided some of the flaws that burdened provisions of the 1990 Act. Its Article 1 clearly indicated that interests of entrepreneurs and consumers are legally protected under the principles set out in the Act in the public interest. While the 2000 Act did not explain what the objectives of competition law were and a question was if perception thereof shifted over the years, some attempts to identify them were made in the literature.[41]

The scope of the 2000 Act included a prohibition of restrictive practices, i.e., a prohibition of anti-competitive agreements (subject to exceptions) and a prohibition of the abuse of a dominant position, as well as ex ante control of concentrations between undertakings. This scope of competition law essentially referred to the scope of EC competition law. Rules on the prohibition of restrictive practices (substantive rules) were modelled on Arts. 81-82 of the Treaty establishing the European Community (TEC), however, the open lists of prohibited practices were expanded compared to those contained in Arts. 81-82 TEC. The *de minimis* rule was arranged consistently with the soft law EC model. Conditions for individual exemptions were addressed in a way similar to the one employed in Article 81 TEC (section 3). Additionally, in 2002 regulations governing block exemption were adopted related to insurance sector, vertical agreements research & development (R&D) agreements, specialisation agreements and technology transfer agreements. Furthermore, the 2000 Act provided for administrative fines for breaches of competition law, be it substantive law or procedural law, as well as periodic penalty payments.[42]

Worth mentioning here, in particular, are important amendments which came into force on May 1, 2004, the date of Poland's accession. The amendments adopted in 2004 were an attempt to bring the 2000 Act in line with Council Regulation (EC) No. 1/2003[43] and certain EU soft laws, including the rules resulting from the establishment of the European Competition Network.[44] They extended the role of the competition authority to include the performance of functions and responsibilities expected of a national competition authority within the meaning of Regulation 1/2003. Other than

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[40] M. Stefaniuk, Wpływ prawa wspólnoty europejskiej na publicznoprawne reguły konkurencji w Polsce, in: Z. Janku, Z. Leoński, M. Szewczyk, M. Waligórski, K. Wojtczak (eds), *Europeizacja polskiego prawa administracyjnego*, Wrocław 2005, p. 662; T. Skoczny, Konsekwencje przyszłego systemu stosowania art. 81 i 82 TWE dla prawa i orzecznictwa w zakresie ochrony konkurencji i w Polsce, Prawo Unii Europejskiej 2001, No. 4, p. 8.

[41] Z. Jurczyk, Cele polityki antymonopolowej w teorii i praktyce, in: C. Banasiński, E. Stawicki (eds), *Konkurencja w gospodarce współczesnej*, Warszawa 2007, p. 36-38; D. Miąsik, *supra*, note 4, p. 429 ff.

[42] M. Sachajko, Istota i charakterystyka prawna antymonopolowych kar pieniężnych, Ruch Prawniczy Ekonomiczny i Socjologiczny 2002, vol. 1, p. 77; A. Piszcz, *supra*, note 9, p. 121, 247–249, 379.

[43] Council Regulation (EC) No. 1/2003 of 16.12.2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 04.01.2003, p. 1-25; hereinafter, Regulation 1/2003 (reference to unadjusted TEC numbering, now Arts. 101 and 102 TFEU).

[44] Commission Notice on cooperation within the Network of Competition Authorities, OJ C 101, 27.04.2004, p. 43-53.

that, developments in three particular fields were evident: provisions on commitment decisions, interim measures and leniency programme were introduced. A detailed set of provisions on leniency programme inspired by EC Commission's soft law[45] was added, though Polish decision-makers took a different approach including all the anti-competitive agreements (not only cartels) in a range of practices suitable for the leniency programme.[46] Anyway, from May 1, 2004, the provisions of the 2000 Act concerning fines had been given a shape that was largely replicated in the future provisions of the 2007 Act.

The currently binding statute involving competition rules is the 2007 Act on Competition and Consumer Protection.[47]

The 2007 Act entered into effect on April 21, 2007, and repealed the 2000 Act. It was in many respects similar to the 2000 Act. Hence, the adoption of a new statute instead of an amendment to the 2000 Act was criticised in the literature.[48] The most significant difference between these two acts was not related to the transposition of EC competition law at all. Under the 2000 Act, there was two ways of the initiation of competition proceedings, which is – by the way – a feature of competition proceedings of European Commission. The first was the initiation *ex officio*. The second was the initiation upon complaint. Under the 2007 Act, this second way of the initiation of competition proceedings was made impossible, though concern were raised that this change had been unwarranted.[49] Complaints typically were unfounded, hence from a pragmatic standpoint, this change cannot be considered just as subsiding volume of competition proceedings. It also relieved the competition authority from the duty to conduct potentially costly unfounded cases and thus increased the possibilities for proceeding more better-founded cases initiated *ex officio*. The explanatory notes to the draft bill[50] stated that the said amendment was in fact inspired by EU's aim to promote

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[45] Commission notice on immunity from fines and reduction of fines in cartel cases, OJ C 45, 19.02.2002, p. 3-5. It was replaced by Commission Notice on immunity from fines and reduction of fines in cartel cases, OJ C 298, 8.12.2006, p. 17-22.

[46] On the impact of EU law and the application of law within the EU governing leniency programme on the Polish leniency programme see: P. Korycińska-Rządca, Europeanisation of the Polish Leniency Programme, Yearbook of Antitrust and Regulatory Studies 2018, No. 11(18), p. 61-83, available at https://doi.org/10.7172/1689-9024.YARS.2018.11.18.3. See also P. Korycińska-Rządca, A. Mendoza-Caminade, Harmonisation of National Leniency Programmes in the EU: Is This Mission Accomplished? Remarks on the Case of France and Poland Compared with Other EU Member States, IIC - International Review of Intellectual Property and Competition Law 2022, vol. 53, p. 1506–1540, available at https://doi.org/10.1007/s40319-022-01268-6.

[47] Consolidated text Journal of Laws 2025, item 1714.

[48] A. Jurkowska, D. Miąsik, T. Skoczny, M. Szydło, Nowa uokik z 2007 r. – kolejny krok w kierunku doskonalenia podstaw publicznoprawnej ochrony konkurencji w Polsce, Przegląd Ustawodawstwa Gospodarczego 2007, No. 4, p. 2.

[49] M. Bernatt, *Sprawiedliwość proceduralna w postępowaniu przed organem ochrony konkurencji*, Warszawa 2011, p. 158 ff. But see M. Krasnodębska-Tomkiel, D. Szafrański, Skuteczność prawa antymonopolowego, in: T. Giaro (ed.), *Skuteczność prawa*, Warszawa 2010, p. 107–108.

[50] Available at http://orka.sejm.gov.pl/proc5.nsf/opisy/1110.htm.

private enforcement of competition law. The explanatory notes also stressed that public enforcement was not meant to protect individual interests.[51]

It should be added that under the 2007 Act the President of UOKiK has mirrored the approach of the European Commission and produced several acts of non-binding guidance (soft laws) on a wide range of issues – from methods of calculating fines to commitment proceedings.

It is also important to recall that changes were by no means confined to legislative means, but this is an issue that may be addressed also in relation to jurisprudence. Polish jurisprudence was of the opinion that national law enforcers should use purposive interpretation in order to achieve an outcome consistent with the objectives pursued by EU law. The Polish Supreme Court emphasised that such consistency could be obtained by referring not only to the letter of the law (legislation) but also to EU case law.[52] The Supreme Court often analysed solutions offered by EU legislation and jurisprudence carefully, and concluded that its own views were additionally supported by the results of this analysis.[53] The Supreme Court spoke in favour of interpreting national laws so as to eliminate basic procedural discrepancies between application of EU legislation and application of national law.

6. Further amendments

So far, the 2007 Act was extensively amended with respect to competition law only twice. The first such amendment,[54] adopted on 10 June 2014, came into force on January 18, 2015. From drafters' standpoint shown in the explanatory notes accompanying the draft amendment Act (performing a largely justificatory function), several of new legal concepts reflect lessons learned from the experiences of other jurisdictions, including the EU. It is fair to say that the above statement is likely to have been made in order to avoid the accusation that some of the amendments perhaps go too far in an attempt to protect competition to the detriment of the freedoms of undertakings. This section attempts to focus on changes made to those aspects of Polish competition law that remained the most divergent from EU law until 2015. They include remedies and fines as well as merger (concentration) proceedings.

Sections 4-9 added to Article 10 of the 2007 Act provide for remedies (remedial measures). An argument might be made that these provisions were intended to be modelled (to some extent at least) on Article 7 sentences 2 and 3 of Regulation 1/2003.[55] However, under the 2007 Act the label of "remedies" or rather "measures"[56] is attached to

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[51] Id.

[52] Judgment of the Supreme Court of 29 May 2001, I CKN 1217/98.

[53] Recalling, in particular, resolution of the Supreme Court of 23 July 2008, III CZP 52/08. See also A. Piszcz, Still-unpopular Sanctions: The Private Antitrust Enforcement Developments in Poland after the 2008 White Paper, Yearbook of Antitrust and Regulatory Studies 2012, No. 5(7), p. 64.

[54] Journal of Laws 2014 item 945.

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[56] In Polish "remedies" are called *środki zaradcze* and "measures" are called *środki*; the 2007 Act uses the second term.

measures which in fact are regulated in a way suggesting not only a link between the Polish provisions and the EU model, but also divergences. There are two groups of measures in question and each of them is regulated by a specific section in Article 10 of the 2007 Act sections 4 and 5. Section 5 establishes preference that remedies of the first type be imposed first. It provides that remedies of the second type can only be imposed where remedies of the first type might prove to be either ineffective or effective, but more burdensome for the undertaking concerned than a remedy of the second type. Remedies should be proportionate to the type and significance of the infringement committed as well as necessary to bring the infringement to an end or eliminate its effects (section 6). These circumstances do not differ from those specified in Regulation 1/2003. However, it is impossible to distinguish behavioural remedies and structural remedies on the very basis of placing them in separate sections, dissociated from each other with criteria of effectiveness and burdensomeness. Remedies specified in paragraph 5 shall not necessarily be of structural nature as they shall not necessarily consist of changes in the structure of the business.[57] Second, an important difference is manifested in the purposes of the remedies. The European Commission may impose remedies on infringers in order to bring an infringement to an end. By contrast, the President of UOKiK may impose remedies in order to cause the infringement to cease, or in order to eliminate its effects.

Competition law enforcement might gain from strengthened rules; however, the first 11 years of the new rules related to remedies have not shown practical examples of their use. The problems are not rooted in the language of the 2007 Act. A critical aspect is, in my opinion, that the use of remedies would bring about a change in the role of the competition authority – from merely a policing role, to a more proactive role in the enforcement of competition law, including the monitoring of the imposed remedies. It would require that the competition authority receives additional financial resources, training of personnel etc.

In the area of fines, the so-called procedure of a voluntary acceptance of a fine was introduced (Article 89a of the 2007 Act) applicable not only in cartel cases but with regard to all anti-competitive practices. Even if such a set of rules embodying the "settlement" was planned to rely upon the EU's settlement scheme, they contradict what is known in the EU by settlements. In the context of EU law, it is typical to view settlements in terms of their procedural qualities, that is, shortening the proceedings and achieving procedural efficiencies[58]. Would they be the objectives of the Polish procedure? Accomplishment of the shortening of the proceedings might be considered impossible, because: (1) the procedure may be initiated prior to the completion of proceedings, and

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[57] J. Sroczyński, Tzw. środki zaradcze (*remedies*) w znowelizowanej ustawie antymonopolowej: istotny wzrost uprawnień Prezesa UOKiK, Przegląd Ustawodawstwa Gospodarczego 2015, No. 2, p. XIII.

[58] See e.g. K. Dekeyser, R. Becker, D. Calisti, Impact of Public Enforcement on Antitrust Damages Actions: Some Likely Effects of Settlements and Commitments on Private Actions for Damages, in: C.-D. Ehlermann, M. Marquis (eds), *European Competition Law Annual 2008: Antitrust Settlements under EC Competition Law*, Oxford and Portland Oregon 2010, p. 684-686.

the President of UOKiK will be obliged to provide proof of the infringement anyway,[59] (2) the first letter of the President of UOKiK and the parties' responses to it declaring if they agree to the proposal or not, are followed by a series of three further letter of the President of UOKiK and the parties' responses expected within 14 or at least 14 days, (3) the procedure does not result in the possibility to adopt a streamlined final decision similar to that of the European Commission issued in line with the acknowledgements made by the settling companies in their settlement submissions,[60] (4) the procedure does not lead to the restriction of the party's right to access the case file. This may give this procedure the reputation of a very time consuming one that leads to the extension of proceedings. Differences in the importance of the Polish procedure of a voluntary acceptance of a fine and EU settlement may also arise from the fact that while the latter requires an acknowledgement of the parties' liability for the infringement, the Polish procedure does not. The party's position should contain the declaration that the party: (1) submits to a fine voluntarily, (2) confirms the amount of the fine and (3) confirms that the party was: (a) informed of the objections, (b) afforded the opportunity to communicate their views to the President of UOKiK, and (c) informed of the consequences of appealing the decision. In return, the President of UOKiK grants the party a reduction of the fine by 10%. The Commission specifies the same level of reduction of the fine to the parties. Similarly to the EU context, it is a power of the President of UOKiK as a policy maker if and when to propose the procedure of a voluntary acceptance of a fine. It is up to him and the parties to decide whether they are willing – respectively – to initiate the procedure, to participate therein, to make it work in practice or to quit it.

Another change consisted in the introduction of the so-called leniency plus (Article 113d of the 2007). Whereas the EU model does not contain a provision for what is known as leniency plus, the Polish new solution meant a reduction of 30% of the fine which would otherwise be imposed on the participant in the first agreement, if such an applicant is the first to disclose a different agreement. The new provisions gave rise to serious doubts about how to interpret them. The change seemed to be driven by demands for greater access of the competition authority to information on anticompetitive agreements, particularly secret cartels and tacit collusions. It was meant to encourage infringers to reveal information and cooperate even more with the President of UOKiK.

The 2015 amendment also introduced rules regarding administrative liability of managers, i.e. solution having no equivalent under EU law. Policy makers from the very beginning focused not on criminal sanctions as a possible solution, but only on administrative fines.[61] If the predicate of a fine imposed on the undertaking is satisfied,

[59] K. Kowalik-Bańczyk, Reforms of Polish Antitrust Law: Closer to, or Further From, the European Model? Journal of European Competition Law & Practice 2014, No. 5(10), p. 706.

[60] See Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No. 1/2003 in cartel cases, OJ C 167, 2.07.2008, p. 1-6.

[61] A. Piszcz, *supra*, note 9, p. 356-360.

the President of UOKiK may, by way of a decision, impose a fine of up to PLN 2,000,000 (approx. EUR 472,000) also on a person who acted/acts as a manager (Article 106a(1)-(2) of the 2007 Act). Such persons may be brought to account if they, in the performance of their tasks, intentionally let the undertakings they manage to infringe the prohibition of certain anti-competitive agreements (listed in Article 101(1)(a)-(e) and Article 6(1)(1)-(6) of the 2007 Act).[62] In the first five years, it seemed unlikely to commentators that the Polish competition authority would make use of this competence in conducted proceedings related to such anti-competitive practices. The first two decisions addressing managerial liability were issued in December 2020,[63] and more followed in the next years. It remains to be seen whether this set of rules will afford opportunity for more deterrence and effectiveness of competition law.

The legal framework for competition policy subject to changes included also the merger control system. It is worth emphasising that the President of UOKiK rarely refuses his consent to intended concentrations. As a result, there were very few appeals from his decisions regarding concentrations and courts did not receive an opportunity to inspire revisions of the provisions on concentrations to be proposed.

In the area of merger control, the new system of "1 plus 4 months" was introduced which was still not largely oriented on the model established in EU law found in Regulation 139/2004.[64] Two-phase proceedings are a standard in case of concentration control by the Commission, and the major characteristic of the amended Polish legal regime is described by certain authors as two-phase proceedings.[65] In fact, however, the proceedings appear to be just a shorter and a longer version of the same. Two important arguments have been made in support of the latter position.[66] First, various procedural standards do not apply to the different phases; quite the contrary, uniform standards exist for the entire process. Second, interested third parties have the opportunity to be heard by the President of UOKiK neither in the first nor in the second part of merger (concentration) proceedings.

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[62] Abusive practices infringing Article 102 TFEU and/or its national equivalent are not within the scope of these rules.

[63] Decision of the President of UOKiK of 03.12.2020, No. DOK-5/2020; decision of the President of UOKiK of 30.12.2020, No. DOK-6/2020. A notable aspect thereof is that the competition authority, using flexibility (discretion) existing in the 2007 Act, imposed relatively low fines on managers, for example EUR 200,000 (10% of the statutory maximum). Both decisions were challenged to the Court of Competition and Consumer Protection: one unsuccessfully, and the other is subject to further scrutiny in court proceedings pending.

[64] Council Regulation (EC) No. 139/2004 of 20.01.2004 on the control of concentrations between undertakings, OJ L 24, 29.01.2004, p. 1-22 (hereinafter, Regulation 139/2004).

[65] T. Skoczny, 2014 Amendment of the Polish Competition and Consumers Protection Act 2007, Yearbook of Antitrust and Regulatory Studies 2015, No. 8(11), p. 180; D. Wolski, Kierunek zmian w zakresie kontroli koncentracji przedsiębiorców w projekcie nowelizacji ustawy o ochronie konkurencji i konsumentów, internetowy Kwartalnik Antymonopolowy i Regulacyjny 2013, No. 1, p. 9.

[66] S. Dudzik, Kontrola koncentracji w świetle ostatnich zmian ustawowych, internetowy Kwartalnik Antymonopolowy i Regulacyjny 2015, No. 2, p. 30-34.

7. ECN+

Whereas national substantive competition rules, modelled very closely on Articles 101 and 102 TFEU prohibiting anti-competitive agreements and abuses of a dominant position, were relatively convergent throughout the EU, considerable divergences existed in procedures and, in some cases, in sanctioning powers[67]. National competition law systems deviated on important aspects such as fines, criminal sanctions, liability within undertakings, liability of associations of undertakings, succession of undertakings, limitation periods and the standard of proof, as well as the power to impose structural remedies. Some of national systems appeared unsuitable to effectively enforce Arts. 101-102 TFEU in individual cases. In order to address problems in this area, Directive (EU) 2019/1 (ECN+ Directive)[68] was adopted.

The Polish system of public enforcement of competition law was – to certain extent – adapted to the requirements of the ECN+ Directive and made more compatible with its standards through the 2023 amendment Act modifying the 2007 Act. It came into force on May 20, 2023.

It increased the independence of the competition authority.[69] It introduced a term of office for it (five years). Furthermore, the dismissal regime for the President of UOKiK was modified. Now, the President of UOKiK may, before the end of his term of office, be given – by the prime minister – one of eight specified reasons for dismissal.

Drawing a parallel to the EU law, the 2023 amendment introduced the rules of liability within undertakings, i.e. parent companies' liability for infringements committed by their subsidiaries, both infringements of the prohibition of anti-competitive agreements (Article 6b of the 2007 Act) and infringements of the prohibition of abuses of a dominant position (Article 9a of the 2007 Act). They included the rebuttable presumption, that, in the particular case where a parent company holds, directly or indirectly, over 90% of the capital in a subsidiary (the entity that committed the infringement of competition rules), the parent company actually exercises a decisive influence over the conduct of its subsidiary, and may be held responsible for the infringement on the same basis as that subsidiary. Hence, the 2023 amendment set rather high standard of proof for rebutting the presumption of decisive influence.

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[67] See the Communication from the Commission to the European Parliament and the Council – Ten Years of Antitrust Enforcement under Regulation 1/2003: Achievements and Future Perspectives, COM(2014)453, p. 3.

[68] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market (OJ 2019 L 11, 14.1.2019, p. 3), hereinafter the "ECN+ Directive" or "Directive (EU) 2019/1".

[69] A. Piszcz, C. Grynfogel, Overview of Compliance with the Requirements of Directive (EU) 2019/1 with Regard to the Independence and Resources of National Competition Authorities: The Examples of France and Poland, IIC - International Review of Intellectual Property and Competition Law 2022, vol. 53(8), p. 1071-1102, available at https://doi.org/10.1007/s40319-022-01215-5.

Some changes were made in connection with Article 3 of the ECN+ Directive.[70] The instrument of a statement of objections was implemented (Article 49 of the 2007 Act); however, it shows significant weaknesses and raises serious doubts as to maintaining a balance between the respect of the fundamental rights of undertakings and the effective enforcement of competition rules. Provisions regarding inspections and dawn raids involving protected information (legal professional privilege) were added; however, it is fair to say that this legal framework is of rather poor quality and does not follow the EU pattern (Article 105da of the 2007 Act).[71]

Furthermore, rules on fines and periodic penalty payments were changed, and in this case the 2023 amendment went beyond the scope of the ECN+ Directive. The upper limit of EUR 50,000,000 set in Article 106(2) of the 2007 Act with regard to fines for procedural infringements was replaced by limit established in proportion to undertaking's turnover. The threshold of the fine is set at maximum up to 3% of total worldwide turnover. The 3% cap raised many reservations as it is higher than the 1% limit set in Regulation 1/2003. It may lead to imposition of disproportionate fines.[72] Also, the catalogue of procedural infringements was extended.

Moreover, the 2023 amendment introduced the new cap for periodic penalty payments replacing the daily lump sum with 5% of average daily total worldwide turnover (Article 107 of the Act). Importantly, the grounds for imposing periodic penalty payments were extended in comparison to the previous framework, and now are relatively similar to catalogue of procedural infringements. A weakness thereof is rooted in the risk that undertaking might be fined twice for the same behaviour.

8. Private enforcement

The enforcement of competition law in Polish legal order has two legs: the public enforcement leg and the private enforcement leg. In a nutshell the thesis of this chapter is that private enforcement of competition law in Poland in its second decade after the adoption of the EU Directive 2014/104 (Damages Directive) is very limited, while the

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[70] A. Piszcz, M. Petr, (Dis)Respect for Fundamental Rights in EU Competition Law Enforcement Proceedings Before National Authorities: In What Way Does Article 3 of the ECN+ Directive Prove To Be too Open-Ended?, IIC – International Review of Intellectual Property and Competition Law 2023, vol. 54, p. 1081–1104, available at https://doi.org/10.1007/s40319-023-01353-4.

[71] P. Korycińska-Rządca, E. Zorková, Harmonisation of the Powers of NCAs in EU Member States. A Few Remarks on the Basis of the Experience of the Czech Republic and Poland After the Deadline for Transposition of the ECN+ Directive Has Passed, internetowy Kwartalnik Antymonopolowy i Regulacyjny (internet Quarterly on Antitrust and Regulation) 2023, No. 12(1), p. 8-31, available at https://doi.org/10.7172/2299-5749.IKAR.1.12.1.

[72] M. Knapp, D. Costa Cunha, Antitrust Fines and Limitation Periods After the Implementation of Directive (EU) 2019/1 Throughout Member States: Focus on French and Polish Perspectives, IIC – International Review of Intellectual Property and Competition Law 2023, vol. 54, p. 891–915, available at https://doi.org/10.1007/s40319-023-01337-4.

ineffectiveness of private antitrust enforcement in Poland has been known for decades.[73] In particular before the implementation of the Damages Directive when no specific law governing private enforcement of competition rules was in force, courts had to deal with great complexity of such suits.

O. Blažo has recently completed an in-depth study of private enforcement of competition law in selected (eight) Central and Eastern European Union countries.[74] The Polish report[75] found that whereas Polish courts still are deciding cases today that originated in 2010s, in general, at present, it is still very difficult to win a private antitrust enforcement case in Poland, even though effective private enforcement of competition law might yield significant benefits to antitrust infringement prevention. The overall picture of private enforcement that emerges from the study could be described as follows: (1) the Damages Directive imposed on Member States certain obligations that appear to be in favour of those pursuing competition-based claims, and the Polish 2017 Act on Claims for Damages for Infringements of Competition Law[76], that came into force on 27 June 2017, properly implemented substantive law following the Damages Directive; (2) in general, the same can be said about procedural aspects of private enforcement of competition law; (3) however, private antitrust enforcement cases are complex, long-lasting and difficult to win. In some authors' opinion that I share, "(…) there are not many final judgments, which is probably, among other factors, due to the nature, complexity, and the long duration of an average damage action case as well as the relatively limited activity of the OCCP, which results in a small number of follow-on cases".[77]

9. Conclusion

Broad, but piecemeal, legislative works conducted in Poland and concerning various aspects of competition law (public enforcement rules, substantive rules,

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[73] P. Podrecki, *supra*, note 20, p. 282. This author already in 2000 addressed difficulties in competition damages actions.

[74] Bulgaria, Czechia, Lithuania, Latvia, Poland, Romania, Slovenia, Slovakia; see O. Blažo (ed.), *Private Enforcement of Competition Law and Public Procurement Rules in Selected Central and Eastern European Union Countries*, Wolters Kluwer ČR 2025), available at: https://www.scribd.com/document/1012212160/Private-Enforcement-of-Competition-Law-and-Public-Procurement-Rules-in-Selected-Central-and-Eastern-EU-Countries. Previous in-depth studies of private enforcement of competition law in selected Central and Eastern European Union countries were edited by A. Piszcz. See Yearbook of Antitrust and Regulatory Studies 2015, No. 8(12); and later: A. Piszcz (red.), *Implementation of the EU Damages Directive in Central and Eastern European Countries*, Warsaw 2017, pp. 307, available at https://cars.wz.uw.edu.pl/images/publikacje/podreczniki/137/CARS_24_Piszcz_Implementation.pdf.

[75] A. Piszcz, D. Wolski, Private Enforcement of Competition Law in Poland: Where We Are and How to Accelerate the Use of Private Litigation, in: O. Blažo (ed.), *supra*, note 61, p. 155-176.

[76] Journal of Laws 2017, item 1132.

[77] OCCP is UOKiK here. See D. Hansberry-Bieguńska, M. Krasnodębska-Tomkiel, G. Materna, D. Podsiedzik-Malec, Poland – Law and Practice, [Online], available at: https://hansberrytomkiel.com/en/poland-law-and-practice/.

procedural rules, institutional rules, private enforcement rules) obviously have not made this law the same as the EU model. To some extent, national competition law underwent a spontaneous (soft) harmonization without any formal obligations being placed on Member States in that respect. The amendments approximated Polish legal framework to the EU competition law in many instances, thus increasing its convergence.

Worryingly, in recent years Poland, even though required by the directive, used 'distortive' arguments based on compliance with EU case law in order to cover up an actual decline in the quality of the national legal framework, as compared to the previously existing one, and to maintain divergences.

The example of the ECN+ Directive proves that successful implementation of the requirements of directives needs greater attention. Legislative works should be accompanied by careful scrutiny of the proposals with respect to both their pro-EU aspects and prospective effectiveness. At the moment, safeguards for the fundamental rights of undertakings in competition law proceedings required by the ECN+ Directive are insufficient, but they should be, first of all, addressed in a much more concrete manner in the very EU legislation.

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DEVELOPMENT OF POLISH CONSUMER LAW

1. Introduction

Consumer protection law serves to protect the interests of the consumer, who is the weaker party in a legal relationship, as they lack full knowledge of its content, which is possessed by the entrepreneur who is a professional participant in economic trade. The issues concerning consumer protection law are very broad, and discussing them would significantly exceed the volume constraints of this study. Consequently, the study is divided into two sections: a general part, which provides an overview of consumer protection law in Poland, and a specific part, dedicated to the analysis of consumer protection law in the financial market. Therefore, at the outset, the main issues related to the development of this law in Poland are analyzed. These include, among others, the objectives of this law, its concept, essence, as well as the institutions serving its protection. Next, the focus shifts to one of the areas where consumer protection law operates, namely consumer protection in the financial market. The choice of this specific subject of analysis was dictated by the rapid increase in the use of artificial intelligence systems (AI) in this market, which poses challenges for the protection of consumers using financial services (especially in the banking market).

The research objective undertaken in this study is an attempt to identify the challenges for consumer protection law in the financial market that are associated with the dynamic development of AI systems.

The study employs the dogmatic-legal method.

2. Consumer Protection Law in Poland – General Characteristics

The consumer is the weaker party in a legal relationship, the other party of which is an entrepreneur, and thus a professional participant in economic trade. Therefore, one of the main objectives of this law is consumer protection related to the fact that they do not possess full knowledge regarding the content of the legal relationship, which the entrepreneur has at their disposal. In the literature, it is pointed out that: *"The object of consumer protection in the sphere of public law is the interest of consumers, understood as a specific relationship between the possibility of satisfying citizens' consumption needs and the evaluation of these possibilities from the perspective of individual benefits they bring to consumers. Depending on the extent to which this interest is recognized by legal provisions, it is a legal interest or a legally protected factual interest."*[78]

It should also be noted that the obligation to protect consumers stems from Article 76 of the Constitution of the Republic of Poland, according to *which "public authorities shall protect consumers, customers, hirers, and lessees against activities threatening their health, privacy, and safety, as well as against unfair market practices."*[79] This constitutional norm establishes the principles of state policy, from which specific obligations arise, subsequently concretized in ordinary statutes[80]. In connection with Article 76 of the Constitution of the Republic of Poland, the Polish Constitutional Tribunal emphasized that: *"the concept of consumer protection is based on enabling them to act truly freely and independently when making consumer choices, and the consumer's participation in market processes should be shaped in such a way that they can freely and in accordance with their own interest satisfy their conscious needs, based on the provided knowledge and information."*[81]

As indicated earlier, the market participants who are simultaneously parties to a legal relationship are two types of entities whose knowledge, market power, and capital levels are different, namely consumers and entrepreneurs. According to the definition of

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[78] C. Banasiński, E. Piontek (eds.), The Competition and Consumer Protection Act: Commentary, LEX\el 2009, Article 24.
[79]The Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended), hereinafter as the Constitution of the Republic of Poland.
[80] Constitutional Tribunal judgment of 2 December 2008, K 37/07, OTK-A 2008, No. 10, p. 172.
[81] Ibidem.

a consumer set out in Article 22[1] of the Act of 23 April 1964 – Civil Code[82], it was established that a consumer is considered to be a natural person[83] performing a legal transaction with an entrepreneur that is not directly related to their economic or professional activity[84]. Based on this provision, the following elements of the definition of a consumer can be formulated: it is a natural person who must perform a legal transaction, which cannot be directly related to their economic activity, and the other party to the legal relationship must be an entrepreneur within the meaning of Article 43 para. 1 of the Civil Code (*i.e.*, a legal person or an organizational unit endowed with legal capacity, conducting economic or professional activity in its own name)[85]. On the other hand, according to Article 4 (1) (2) of the Act of 6 March 2018 – Entrepreneurs' Law[86], an entrepreneur is a natural person, a legal person, or an organizational unit that is not a legal person, to which a separate act grants legal capacity, performing economic activity. Partners in a civil law partnership are also entrepreneurs within the scope of the economic activity they perform.

Institutions serving consumer protection in Poland consist of entities including, among others, public administration bodies, as well as local government and social entities. Reference should be made to the content of the previously cited Article 76 of the Constitution of the Republic of Poland, from which a mandate can be interpreted for the State to protect the weaker market participants, including consumers, in relationships with entities holding a stronger economic or market position (*e.g.,* entrepreneurs, banks). In Poland, the institutional system of consumer rights protection is formed by entities such as, among others, the President of the Office of Competition and Consumer

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[82] The Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2025, item 1071, as amended).
[83] See also P. Kukuryk, Definitions of a consumer in the Civil Code (current and future) in the context of the latest EU consumer directives' Przegląd Prawa Handlowego 2014, no. 5, pp. 18–25.
[84] On the concept of the consumer in EU law, see A. Nadolska, The Consumer and the Customer in the Financial Services Market. The problem of the subjective scope of protection in the financial market, [in:] J. Monkiewicz, E. Rutkowska-Tomaszewska (eds.), Consumer…, pp. 53–56.
[85] On the concept of the consumer in EU law, see A. Nadolska, The Consumer and the Customer in the Financial Services Market. The problem of the subjective scope of protection in the financial market, [in:] J. Monkiewicz, E. Rutkowska-Tomaszewska (eds.), Consumer…, pp. 53–56.
[86] Journal of Laws of 2025, item 1480, as amended.

Protection (UOKiK), the district (*miejski*) consumer ombudsman[87], or permanent arbitration courts[88].

The main body responsible for the protection of consumer rights is the President of the Office of Competition and Consumer Protection (UOKiK). His tasks include, among others:

- issuing decisions in cases concerning the recognition of provisions of a standard agreement as prohibited and in cases concerning practices violating collective consumer interests;
- preparing draft government programs for the development of competition and draft government consumer policy;
- cooperating with national and international bodies and organizations whose scope of activity includes the protection of competition and consumers;
- performing tasks specified in the Act of 23 September 2016 on out-of-court resolution of consumer disputes[89];
- developing and submitting to the Council of Ministers draft legal acts concerning the protection of competition and consumers;
- submitting periodic reports to the Council of Ministers on the implementation of government programs for competition development and consumer policy;
- cooperating with local government bodies within the scope resulting from government consumer policy;
- developing and issuing publications and educational programs popularizing knowledge about competition and consumer protection, as well as collecting and disseminating case law in matters concerning the protection of competition and consumers[90].

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[87] The Act of 16 February 2007 on the Protection of Competition and Consumers, Journal of Laws 2025, item 1714, as amended, Articles 31 and 42.
[88] See the Act of 15 December 2000 on the Trade Inspection, Journal of Laws 2026, item 656, as amended.
[89] Journal of Laws, item 1823, as amended.
[90] Article 31 of the Act of 16 February 2007 on the Protection of Competition and Consumers.

At the local level, an important role is played by consumer rights ombudsmen. Their tasks include, among others:

- providing free consumer counseling and legal information regarding the protection of consumer interests;
- submitting applications regarding the enactment and amendment of local government laws in the field of protecting consumer interests;
- addressing entrepreneurs in matters concerning the protection of consumer rights and interests;
- cooperating with the President of UOKiK, Trade Inspection bodies, and consumer organizations[91].

The institutional system of consumer rights protection also includes permanent arbitration courts, which enable the out-of-court resolution of consumer disputes (Alternative Dispute Resolution – ADR). Operating under the Voivodeship Inspectorates of Trade Inspection, they enable the amicable resolution of conflicts without the need to initiate prolonged processes before common courts[92]. Mention should also be made of social organizations that deal with the protection of consumer rights. By way of example, the Consumers' Federation (*Federacja Konsumentów*) should be noted, which offers, for instance, opinions on draft legal acts concerning consumer rights or conducts various educational initiatives[93].

There are also bodies that handle the protection of consumer rights in specific sectors of the economy. Mention should be made of the Financial Ombudsman (*Rzecznik Finansowy*)[94]. His tasks include taking actions to protect the clients of financial market entities whose interests he represents, in particular: reviewing applications in individual cases brought as a result of the financial market entity's failure to consider the client's

[91] Ibidem.
[92] The Act of 15 December 2000 on the Trade Inspection Authority.
[93] Consumer Federation, Who we are, how we operate, https://www.federacjakonsumentow.org.pl/n,55,1021,22,1,kim-jestesmy-jak-dzialamy.html, accessed 24 May 2026.
[94] The Act of 5 August 2015 on the handling of complaints by financial market entities, on the Financial Ombudsman and on the Financial Education Fund (Journal of Laws of 2024, item 1109 as amended).

claims during the complaint review process; informing the appropriate supervisory and control authorities of noticed irregularities; cooperating with *non*-governmental, social, and professional organizations whose statutory objectives include the protection of consumer rights; and collaborating with associations, civic movements, other voluntary associations and foundations, as well as with foreign and international bodies and organizations for the protection of consumer rights[95].

The institutional system of consumer rights protection in Poland is based, on the one hand, on the intervention of a central authority (UOKiK) in the case of systemic violations, and on the other hand, on local support (district consumer rights ombudsmen), alternative dispute resolution methods, and consumer rights protection bodies in given economic sectors (*e.g.,* the Financial Ombudsman). The effectiveness of this system depends not only on the legal awareness of consumers themselves but also on the coordination of actions and cooperation among the aforementioned entities.

3. The Consumer in the Financial Market – Challenges for Consumer Protection Law Related to the Use of AI Systems

At the outset, the concept of the financial market should be defined. There is no doubt that the market is one of the fundamental mechanisms for the allocation of goods and services, which is intended to guarantee the optimal use of limited resources in the economy through the operation of competition[96]. In microeconomics, the market *"is divided according to various criteria. The basic division is based on two fundamental criteria, i.e., the separation of partial markets based on the geographical criterion and the objective criterion."*[97] Various segments of the financial market are mentioned in the literature: the money market, the capital market, the derivatives market, and the foreign exchange market[98], which are generally distinguished based on the liquidity of the traded

[95] Ibidem.
[96] See also S. Gronowski, Polish Antitrust Law: An Outline of the Course, Warsaw 1998, p. 39 et seq.
[97] D. Kopycińska (ed.), Microeconomics, Szczecin 1996, p. 33 and seq.
[98] M. Frańczuk, K. Gałązka, Theory of Finance, Financial Market, in A. Paździor (ed.), Finance: The Functioning, Institutions and Instruments of the Financial Market, Public Finance, Corporate Finance and Household Finance, Lublin 2014, p. 21.

assets[99]. Usually, the division of the financial market into three traditional sectors is taken into account, assigning financial services to them such as banking, insurance, investment, and payment services[100]. On the other hand, the financial market encompasses buy-sell transactions concerning money and other financial instruments. This stems from its definitions formulated in the literature. By way of example, it can be pointed out that the financial market is defined as "*the totality of transactions in securities, which are instruments for granting short-, medium-, and long-term credits.*"[101] According to another definition, the financial market is *"a place where cash and financial assets (instruments) that are not money but can be treated as a kind of money substitute are traded for profit or speculative purposes.*"[102]

In the financial market, the goal of consumer protection is to introduce regulations ensuring that the consumer obtains full knowledge and information about a given financial service[103]. It should be emphasized that financial services are usually complex and also require providing the consumer at the *pre*-contractual stage with many different, often equally complex pieces of information. In domestic case law, it is emphasized that the consumer should adjust their level of prudence to the degree of complexity of the financial service. In the judgment of the District Court in Łódź of 8 September 2015, it was indicated that Article 22^1 of the Civil Code: *"does not determine the personal characteristics of an entity considered a consumer, such as the required scope of knowledge and experience in trade, or the degree of reasonableness and criticism toward received commercial information. The definition of these attributes occurs in the course of applying provisions on consumer protection. From a consumer who decides to*

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[99] R. Mącik, The Money Market as a Segment of the Financial Market, Annales Universitatis Mariae Curie-Skłodowska. Sectio H, Oeconomia 1997, no. 31, p. 65.
[100] See D. Lubasz, E. Rutkowska-Tomaszewska, Commentary on Article 4 of the Consumer Rights Act, [in:] M. Namysłowska (ed.), The Consumer Rights Act: Commentary, LEX\el 2015.
[101] M. Frańczuk, K. Gałązka, Theory..., p. 20.
[102] G. Ancyparowicz, ‘Characteristics and segments of the financial market’, http://www.kdmp.org/images/news/spotkania/prezentacje/17_01_14/tekst6.pdf, p. 1 (accessed 30 April 2026).
[103] E. Rutkowska-Tomaszewska, Practices infringing collective consumer interests in the financial services market, with particular reference to the banking services market, as illustrated by selected recent decisions of the President of the Office of Competition and Consumer Protection (UOKiK), Online Antitrust and Regulatory Quarterly 2014, No. 5, p. 69.

conclude a long-term contract, the subject of which is a service with a complex legal construction requiring relatively extensive knowledge of the functioning of financial markets, a corresponding level of diligence and prudence must also be required."[104]

Similarly, in the judgment of the Court of Appeal in Warsaw of 20 April 2017, it was held that *"the degree of attention and caution of an average consumer must depend on the type of product or service and the characteristics of the entity offering that product or service.*"[105]

Additionally, the consumer's situation in the financial market is complicated by the increasingly widespread use of various AI systems to convey information (in the form of, *e.g.*, text or voice chatbots) or to assess creditworthiness (in the form of credit *scoring*). The use, especially in the banking market, of various algorithms for financial services to which consumers are a party, gives rise to specific challenges for consumer protection law. They can be presented using the example of credit *scoring*, within which an algorithm is used to assess the consumer's creditworthiness. The conclusion regarding the insufficient protection of consumers in the financial market in Poland is also confirmed by the results of an audit conducted by the Supreme Audit Office (NIK)[106] in 2013, which showed that the protection of the rights of clients of financial market entities during the audited period was not effective. The reasons listed for this state of affairs included, among others, that over 60% of the standard agreements evaluated contained provisions non-compliant with regulations or infringing upon consumer interests, and there was limited functionality of the register of prohibited clauses[107].

The rapidly growing use of AI systems in recent years creates new challenges regarding the protection of consumer rights in the financial market. These include, among others, the so-called *"black box"* problem concerning the explanation of the methodology based on which a fully (or indirectly) automated decision was made, as well

[104] Judgment of the Regional Court in Łódź of 8 September 2015, case no. II C 150/15, LEX no. 1994331.
[105] Judgment of the Court of Appeal in Warsaw of 20 April 2017, VI ACa 67/16, LEX No. 2331726.
[106] Report on the findings of the audit. The functioning of the legal framework for the protection of financial market customers, NIK, Warsaw 2014, passim.
[107] Ibidem.

as the risk of errors related to automated decision-making. The literature lists the following risks here: (1) incorrect assessment of a given person and discrimination, (2) "*violations of the right to privacy (in particular, through the data subject's lack of knowledge that they are being profiled)"*, (3) undermining the *"informational autonomy of the individual (lack of knowledge about which data are used for profiling and what conclusions about characteristics or future behavior are formulated)*"[108] or the violation of information asymmetry which may *"disrupt the principles of balance between the parties—between the data subject (consumer) and the controller (entrepreneur*)."[109] A comprehensive analysis of all risks would exceed the volume constraints of this study; therefore, the focus is placed on discussing and analyzing issues related to automated decision-making regarding the bank's assessment of a borrower's creditworthiness, which utilizes so-called credit scoring[110].

Automated decision-making is also used by financial institutions for profiling consumer data. Profiling was defined in Article 4 point 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (hereinafter: GDPR)[111]. According to this provision, profiling means: *"any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements.*"[112]

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[108] M. Czerniawski, in: E. Bielak-Jomaa & D. Lubasz (eds.), GDPR: General Data Protection Regulation. Commentary. LEX\el 2018.
[109] M. Ciechomska, Legal aspects of profiling and automated decision-making under the General Data Protection Regulation. European Judicial Review, 2017, No. 5, p. 38.
[110] See more K. Nizioł, The use of artificial intelligence systems in the financial market: the case of creditworthiness assessment – challenges for consumer protection law', Business Law Journal 2025, no. 1, DOI 10.33226/0137-5490.2025.1.2.
[111] OJ (EU) L 2016/119, p. 1.
[112] M. Ciechomska, Legal…, p. 38.

Profiling in Article 4 point 4 of the GDPR consists of three elements: it has to be an automated form of processing, it has to be carried out on personal data, and the objective of the profiling must be to evaluate personal aspects about a natural person. Automated data processing is a broader concept than profiling, because in its course, no evaluation of the *"personal factors of the data subject"* is performed, and profiling in practice constitutes a subcategory of automated decision-making.

In Article 22 (1) of the GDPR, requirements are set out for a data subject not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her. Therefore, a person will not be subject to automated decision-making if a human has a real influence on its content. It can be considered that in order to avoid the prohibition in Article 22 (1) of the GDPR, a decision may be suggested by an automated mechanism, but the final choice will be made by a human. The extent of human involvement in the decision-making process required to avoid the application of Article 22 (1) of the GDPR can be problematic. A risk arises here that, in processes such as machine learning, due to the complexity of the algorithm, human monitoring of it may exceed human cognitive capacities. Furthermore, so-called "automation bias" may appear, which is a psychological phenomenon of excessive human reliance on automated decision-making systems, thereby blurring the line between a decision made with their assistance and a decision made in a fully automated manner[113]. Secondly, it is necessary for the automated decision to produce legal effects or another significant impact on a given person[114].

An example of a regulation of Polish banking law that concerns automated decision-making is Article 105a (1a) of the Act of 29 August 1997 – Banking Law[115], which specifies that for the purpose of assessing creditworthiness and analyzing credit risk, banks may make decisions based solely on automated processing, including profiling,

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[113] F. Geburczyk, Criteria for the admissibility of automated decisions in the light of Article 22(1) of the GDPR. Review of Economic Legislation 2022, No. 5, p. 37. https://doi.org/10.33226/0137-5490.2022.5.5. and M. Ciechomska, Legal…, p. 40.
[114] M. Ciechomska, Legal…, p. 40.
[115] The Banking Act of 29 August 1997, Journal of Laws of 2026, item 38, as amended.

of personal data (including data constituting banking secrecy). In such a case, this provision grants the person concerned by the automated decision the right to receive appropriate explanations regarding the grounds of the decision made, to obtain human intervention in order to make a new decision, and to express their own stance. The scope of data subject to profiling is specified in Article 105a (2) of the Banking Law, with the proviso that the aforementioned decisions may be made solely based on data necessary due to the purpose and type of credit. Thus, making an automated decision, including profiling, does not mean the complete exclusion of human involvement from this process. Indeed, the bank *"is obliged to provide the person concerned by the automatically made decision with the right to receive appropriate explanations as to the grounds of the decision made, to obtain human intervention in order to make a new decision, and to express their own stance,"* and the very scope of decisions made in this way concerns solely data necessary due to the purpose and type of credit (i.e., data relating to a natural person and the obligation)[116].

An example of the use of AI systems to evaluate a consumer is so-called credit *scoring*, which is a method of credit scoring a borrower where points are awarded for specific characteristics. The assessment is made based on various characteristics, according to the state available at the date of submission of the application, based on data available to the lender. These can be demographic data (*e.g.,* age, period of employment), existing relationships (*e.g.,* payment history), credit information bureaus, etc.[117] The determination of credit risk thus occurs on the basis of a model that uses up to several dozen parameters concerning the individual characteristics of the borrower (*e.g.,* age, profession), their financial situation, the financial services they have used, or their credit history. Using AI systems for credit *scoring* allows for the creation of an advanced profile

[116] L. Kociucki [in:] B. Bajor, J. M. Kondek, K. Królikowska, L. Kociucki, Banking Law. Commentary on Civil Law Provisions, LEX\el 2020, Article 105(a). See also Polish Financial Supervision Authority. Statement by the Polish Financial Supervision Authority on the exercise by banks and other institutions statutorily authorised to grant loans of the right of a loan applicant to obtain explanations regarding the creditworthiness assessment carried out, Warsaw 2020.
[117] N. Siddiqi, Intelligent credit scoring. Building and implementing better credit risk scorecards. SAS Instituite 2017, p. 11.

of the borrower and its comparison with other borrower profiles and their payment history. This is possible because the system can evaluate each credit application by additionally utilizing various databases[118]. Credit registers can be helpful for assessing the consumer's creditworthiness, enabling the exchange of credit information and, among other things, limiting the "information asymmetry" between the borrower and the lender[119].

One of the risks is also the previously mentioned incorrect assessment of a given person and their discrimination. Reference should be made here to the already cited Article 22 (1) of the GDPR concerning the prohibition of automated data processing without the consent of the given person. Indeed, a threat to consumers in the financial market related to the automated processing of personal data is the use of such a system without proper notification to the persons whose data are processed. Such a problem occurred, for example, when Apple introduced its credit card[120].

4. Final Remarks

The study briefly characterized the development of consumer protection law in Poland. Subsequently, the protection of the consumer in the financial market and the associated challenges regarding the use of AI systems were discussed and analyzed.

In Poland, an extensive system of institutional consumer rights protection operates, which also covers the consumer in the financial market. The dynamic development of AI systems has meant that they are increasingly used in the financial market. Consequently, this gives rise to many risks and challenges for consumer protection in the financial market. AI systems are used for the automated processing of personal data and for issuing fully (or indirectly) automated decisions.

[118] M. Rojszczak, Artificial Intelligence in Financial Innovation – Legal and Regulatory Aspects. Online Antitrust and Regulatory Quarterly 2020, No. 2, pp. 66–67; see also K. Markowski, Objectives, Functions and Dilemmas in the Operation of Credit Information Exchange Systems, in: L. Kurkliński, K. Markowski (eds.), Credit Information Exchange Systems. Credit Information Bureau 2012, Judgment of the CJEU of 7 December 2023, C-634/21, LEX No. 3634999.

[119] K. Markowski, Objectives…, p. 8.

[120] Ch. Baumohl and others, Disrupting Data Abuse: Protecting Consumers from Commercial Surveillance in the Online Ecosystem, 2022, pp. 88-89.

The consumer, who is the weaker party to a transaction (including those concerning financial services) in a situation where a stronger market entity (e.g., a bank) utilizes AI systems, requires special protection. Therefore, challenges regarding consumer protection in the financial market should minimize the risks associated with the use of AI systems, such as the black box problem, the failure to inform the consumer about the scope of processed personal data, or explaining the motives and premises of a fully (or indirectly) automated decision. An example of such a solution is the protection of a consumer applying for credit. The person concerned by the automated decision (regarding the assessment of their creditworthiness) has the right to receive appropriate explanations as to the grounds of the decision made, to obtain human intervention in order to make a new decision, and to express their own stance.

Due to the highly dynamic development of AI systems used also in the financial market toward consumers, it can be considered that in the near future, the importance of consumer protection law regulations aimed at strengthening consumer protection may also increase.

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ONE AUTHORITY, TWO MISSIONS: DOES INSTITUTIONAL INTEGRATION DISTORT COMPETITION LAW ENFORCEMENT IN GEORGIA?

Keywords: Competition Law; Consumer Protection; Institutional Design; Integrated Enforcement; Competition Authorities; Consumer Protection Authorities; Enforcement Substitution; Regulatory Governance; Europeanization; EU Approximation; Georgia

Introduction

The relationship between competition law and consumer protection has become increasingly important within modern systems of economic governance. Although traditionally treated as distinct legal disciplines, both fields pursue closely connected objectives linked to market efficiency, consumer welfare, economic fairness, and the preservation of competitive market structures. Competition law seeks to prevent distortions of market processes by prohibiting anti-competitive agreements, abuses of dominance, and anti-competitive concentrations, while consumer protection law primarily addresses informational asymmetries and unfair commercial practices affecting consumers.

The conceptual interconnection between these fields is not entirely new. European legal scholarship, particularly the Nordic market law tradition associated with Bernitz,[121] conceptualized competition law, consumer protection, marketing regulation, and unfair commercial practices as interconnected mechanisms governing market behavior. More recent scholarship similarly emphasizes the growing overlap between the two regimes. Cseres argues that competition law and consumer protection increasingly operate as complementary mechanisms addressing different dimensions of market failure.[122]

The growing overlap between competition law and consumer protection has encouraged numerous jurisdictions to consolidate both functions within integrated regulatory authorities,[123] particularly in smaller and developing economies where coordinated enforcement may improve administrative efficiency and market oversight. OECD and

[121] U. Bernitz, *Market Law*, Kluwer Law International, 2013.
[122] K.J. Cseres, *Competition Law and Consumer Protection*, Kluwer Law International, 2005. M. Ioannidou, *Consumer Involvement in Private EU Competition Law Enforcement*, Oxford University Press, 2015.
[123] K.J. Cseres, *Comparing Laws in the Enforcement of EU and National Competition Laws,* 3(1) *European Journal of Legal Studies* 7. 2010

UNCTAD reports repeatedly emphasize the institutional advantages of integrated structures, including information-sharing, coordinated enforcement, and reduced fragmentation of regulatory competences.[124]

At the same time, integrated structures may generate tensions concerning resource allocation, enforcement priorities, and institutional balance. OECD studies also warn that multi-mandate authorities operating under limited capacity may prioritize more visible forms of enforcement, while Cseres notes the risk of weakening specialized expertise within integrated institutions.[125]

Georgia represents a particularly important case study within this broader context. Georgia adopted a modern competition law framework in 2012-14 as part of the EU Association Agreement and DCFTA process,[126] forming an integral part of a broader Europeanization project, rebuilding competition enforcement after years of deregulatory governance. The extension of the Agency's mandate to include consumer protection enforcement in 2022 introduced significant new institutional dynamics. While integrated enforcement may generate important synergies, competition law and consumer protection differ substantially in their complexity, public visibility, political sensitivity, and dependence on democratic governance structures, creating potential tensions within multi-mandate authorities.

Drawing on the Georgian experience, this article argues that integrated enforcement structures may create incentives for what it conceptualizes as "enforcement substitution", a gradual institutional shift away from structurally significant competition enforcement toward more visible and administratively manageable consumer protection activities. This process does not necessarily result in the abandonment of competition law enforcement itself. Rather, competition policy may gradually be reoriented toward forms of intervention that are politically safer, publicly visible, and institutionally advantageous, while economically sophisticated and structurally disruptive antitrust enforcement becomes comparatively less central within the authority's practical priorities.

The article proceeds as follows. The first section examines the conceptual relationship between competition law and consumer protection, highlighting both their shared objectives and structural differences. The second section discusses the principal advantages associated with integrated enforcement models, while the third section provides a comparative overview of institutional diversity within the European Union. The fourth section examines the Georgian model of integrated enforcement and the developments following the expansion of institutional competences after 2022. The fifth section develops the concept of "enforcement substitution" and analyzes the structural

[124] OECD, *Changes in Institutional Design of Competition Authorities*, Organisation for Economic Co-operation and Development, 2014; UNCTAD, *Model Law on Competition*, United Nations Conference on Trade and Development, 2020.

[125] Ibid; K.J. Cseres, *Competition Law and Consumer Protection*, Kluwer Law International, 2005.

[126] K. Zukakishvili, *Two Years after the Legal Transplantation in Georgian - the Best yet to Come,* Sofia Competition Forum Newsletter 42, 2016

asymmetries capable of producing regulatory imbalance within integrated authorities. Finally, conclusion summarizes the findings and provides some recommendations.

1. Competition Law and Consumer Protection: Conceptual Synergies and Structural Differences

Competition law and consumer protection law constitute two central pillars of modern market regulation. Although historically they developed as distinct legal disciplines, contemporary scholarship increasingly recognizes their functional interdependence and complementary regulatory objectives. Traditionally, competition law focused on preserving competitive market structures and preventing excessive concentrations of economic power through prohibitions of cartels, abuses of dominance, and anti-competitive concentrations. Consumer protection law, by contrast, emerged primarily in response to unequal bargaining positions and informational asymmetries between traders and consumers. However, over time these distinct fields of law very increasingly viewed as complementary mechanisms addressing interconnected market failures and pursuing common objectives related to market efficiency and consumer welfare. This convergence is reflected in both academic scholarship and the institutional practice of competition authorities.[127]

The concept of consumer welfare occupies a central position within both competition law and consumer protection regulation, although the two fields pursue this objective through different institutional approaches. Modern competition policy generally assumes that competitive market structures generate lower prices, higher quality, innovation, and wider consumer choice.[128]

At the same time, consumer welfare cannot be reduced solely to the existence of formally competitive market conditions. Markets characterized by significant informational asymmetries or exploitative commercial practices may continue to generate harmful outcomes even in the absence of classical anti-competitive conduct.

[127] K.J. Cseres, *Competition Law and Consumer Protection*, Kluwer Law International, 2005; I. Lianos, *Competition Law for the Digital Economy*, Oxford University Press, 2022. U. Bernitz, *Market Law*, Kluwer Law International, 2013. OECD, *Changes in Institutional Design of Competition Authorities*, Organisation for Economic Co-operation and Development, 2014; UNCTAD, *Model Law on Competition*, United Nations Conference on Trade and Development, 2020.

[128] A. Jones, B. Sufrin and N. Dunne, *Jones & Sufrin's EU Competition Law*, Oxford University Press.

There is strong interdependence between the fields. Competition law preserves competitive market structures, while consumer protection seeks to ensure that consumers can exercise meaningful market choice under conditions of transparency and fairness. Although both fields contribute toward consumer welfare, they do so through different legal instruments, institutional cultures, and enforcement priorities.[129]

Despite their conceptual synergies and overlapping policy objectives, competition law and consumer protection differ substantially in their institutional logic, procedural structure, enforcement culture, and political dynamics. These differences become particularly important where both functions are consolidated within a single authority.

Competition law enforcement is generally characterized by high evidentiary complexity and substantial reliance on economic analysis. Investigations involving cartels, abuse of dominance, or anti-competitive mergers frequently require detailed market definition exercises, econometric assessments, and sophisticated analysis of competitive effects. Effective competition enforcement therefore depends heavily upon institutional independence, specialized expertise, long-term strategic capacity, and the existence of broader supporting enforcement mechanisms, including effective leniency programs, whistle-blower protection frameworks, professional investigative capacity, and experienced dawn raid procedures.[130] In addition, successful competition enforcement often presupposes relatively high levels of trust in state institutions and judicial systems, since cartel detection and cooperation mechanisms rely heavily upon institutional credibility, procedural predictability, and confidence in the fairness of enforcement processes.

Consumer protection enforcement operates under considerably different institutional conditions. Cases involving misleading advertisements, unfair commercial practices, abusive contractual terms, or consumer information violations are generally easier to investigate and communicate publicly. Consumer protection enforcement frequently produces visible and immediate outcomes capable of generating direct public legitimacy for regulatory authorities.

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[129] Z. Gvelesiani, *The Necessity of Consumer Law for Effective Competition and a More Robust Enforcement of Competition Law; A Comparative Analysis of the EU and Georgian Legal Systems,* Central European University, 2018

[130] F. Jenny, *Competition Authorities: Independence and Advocacy*, OECD Global Forum on Competition, 2016.

These asymmetries create important institutional consequences. Multi-mandate authorities operating under limited resources may gradually prioritize forms of enforcement capable of producing measurable and publicly visible outcomes. Overlapping competences within integrated authorities may generate internal prioritization tensions, particularly where institutional capacity remains limited.[131]

2. Advantages of Integrated Enforcement

The integration of competition and consumer protection enforcement within a single regulatory authority has become an increasingly influential institutional model within contemporary systems of economic governance. Although significant institutional diversity continues to exist within the European Union and beyond, numerous jurisdictions have adopted integrated or partially integrated structures based on the assumption that competition policy and consumer protection pursue interconnected regulatory objectives and therefore benefit from coordinated institutional implementation. Integrated authorities may improve coordination, reduce fragmentation, and strengthen enforcement capacity. The integration of competition and consumer protection functions within the GCCA was similarly justified through administrative efficiency, coordinated oversight, and broader Europeanization objectives.[132]

2.1. Administrative Efficiency and Resource Sharing

One of the most frequently cited arguments supporting integrated enforcement concerns administrative efficiency and resource optimization. Maintaining separate competition and consumer protection authorities may produce duplication of investigative capacities, technical expertise, administrative infrastructure, and operational expenses. Particularly within smaller jurisdictions and transitional economies characterized by limited institutional resources, integrated authorities are often viewed as more economically rational and administratively sustainable.

OECD studies concerning the institutional design of competition authorities emphasize that smaller economies frequently face difficulties maintaining multiple highly specialized agencies with sufficiently developed expertise and investigative capacity. Institutional integration may therefore reduce fragmentation and allow authorities to pool expertise and operational resources more effectively. In numerous sectors competition and consumer issues frequently overlap. Therefore, integrated authorities

[131] OECD, *Changes in Institutional Design of Competition Authorities*, Organisation for Economic Co-operation and Development, 2014

[132] Parliament of Georgia, Committee on European Integration, *Explanatory Note to the Draft Law of Georgia on Consumer Rights Protection*, 2016. 1–2, available at: https://share.google/CR4NFwFfwi9dnYl1l

may centralize information collection and coordinate enforcement strategies more efficiently than fragmented institutional systems.

Cseres similarly argues that integrated structures may facilitate institutional learning and cross-fertilization between different regulatory functions. Consumer complaints may reveal broader structural competition concerns, while competition investigations may uncover harmful commercial practices affecting consumers.

2.2. Coordinated Market Oversight and Enhanced Consumer Welfare Protection

A second major advantage associated with integrated enforcement concerns the possibility of developing more coordinated market oversight. Contemporary markets increasingly generate conduct simultaneously affecting competition, consumer welfare, and market transparency. Georgian pharmaceutical sector might be a good illustration of competition concerns regarding concentration and pricing may overlap with consumer-oriented concerns relating to accessibility and transparency.[133] Separate institutional structures may therefore struggle to address interconnected market problems effectively; particularly where regulatory competences overlap.

The enhancement of consumer welfare represents another central argument supporting integrated enforcement structures. Although competition law and consumer protection pursue this objective through different legal mechanisms, both ultimately seek to improve market outcomes for consumers.

Modern competition policy generally assumes that competitive market structures generate lower prices, higher quality, innovation, and wider consumer choice. At the same time, consumer welfare cannot be reduced solely to the existence of formally competitive market conditions. Consumer protection law therefore performs an important corrective role by addressing informational asymmetries, behavioral biases and cognitive limitations of consumers that competition law alone may not adequately resolve.[134]

Integrated enforcement structures may additionally improve regulatory coherence by reducing fragmentation between different areas of market governance. Integrated authorities may develop more unified enforcement strategies and avoid inconsistent approaches toward overlapping regulatory issues. Integrated authorities additionally

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[133] Z. Gvelesiani, *Europeanization of Georgian Competition Law*, Yearbook of Antitrust and Regulatory Studies, Vol. 18, No. 32, 2025.

[134] G. Howells, *The Potential and Limits of Consumer Empowerment by Information,* Journal of Law and Society, Vol. 32, 2005, pp. 349–356. A.-L. Sibony and A. Alemanno, *The Emergence of Behavioural Policy-Making: A European Perspective*, European Journal of Risk Regulation, Vol. 6, No. 2, 2015, p. 13

simplify institutional interaction by providing centralized complaint systems and unified public communication channels.

3. Institutional Diversity Within the European Union

3.1. The Lack of Harmonization Within the EU

Despite the extensive harmonization of substantive competition rules, the European Union has historically refrained from imposing a uniform institutional model for competition enforcement.[135] Member States retain considerable discretion in designing their enforcement authorities and procedural frameworks, reflecting the broader principle of national institutional autonomy. This principle was recognized by the Court of Justice in *International Fruit Company NV v Produktschap voor groenten en fruit*, where the Court held that, while Member States are obliged to fulfil obligations arising under EU law, it remains for them to determine which national institutions are empowered to implement those obligations.[136] This flexibility has contributed to significant institutional diversity across the European Union, including differences in the allocation of competition and consumer protection responsibilities.[137]
The same approach was reaffirmed in Article 35 of Regulation 1/2003, which requires Member States to designate competition authorities capable of ensuring the effective application of EU competition law, while leaving them free to determine the institutional structure, number of authorities, and allocation of administrative and judicial functions.[138] Following decentralization, national competition authorities became central actors within the European Competition Network (ECN), applying Articles 101 and 102 TFEU alongside the European Commission itself.[4] According to European Commission statistics, more than 90% of antitrust decisions applying EU competition law between 2004 and 2021 were adopted by national competition authorities rather than by the Commission.[139][5]

Although substantive competition rules are largely harmonized, enforcement outcomes continue to depend heavily upon national institutional arrangements. As Trebilcock and Iacobucci observe, substantive rules are mediated through the institutions responsible for their investigation, enforcement, and application, meaning that differences in

[135] M. Sousa Ferro, *Institutional Design of National Competition Authorities: EU Requirements*, Working Paper, 2017

[136] *International Fruit Company NV and Others v Produktschap voor Groenten en Fruit* (Joined Cases 51–54/71) [1971] ECR 1107, paras 3–4.

[137] See: https://competition-policy.ec.europa.eu/antitrust-and-cartels/european-competition-network/national-competition-authorities_en

[138] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 101 and 102 TFEU, OJ L 1/1, Art. 35; *VEBIC* (Case C-439/08) [2010] ECR I-12471, paras 63–64.

[139] European Commission, *European Competition Network: Achievements and Statistics 2004–2021*

institutional design may generate significantly different enforcement outcomes even where the applicable legal framework remains largely identical.[140]

Some Member States maintain separate institutional structures for competition and consumer protection enforcement, while others employ integrated or hybrid systems combining multiple regulatory functions within unified agencies. The effectiveness of these arrangements is generally understood to depend not only on formal organizational structures but also on broader factors such as administrative capacity, legal traditions, institutional independence, and political conditions. As Cseres argues, questions of institutional design cannot be resolved solely through organizational considerations, since enforcement effectiveness is heavily influenced by the wider governance environment.[141]

3.2. Separate Enforcement Authorities

A significant number of European jurisdictions continue to maintain separate institutional structures for competition law and consumer protection enforcement. Under this model, competition authorities focus primarily on preserving competitive market structures and investigating anti-competitive conduct, while consumer protection functions are exercised by separate agencies or ministries.

The traditional justification for institutional separation rests upon the assumption that competition law and consumer protection differ substantially in terms of methodology, expertise, and enforcement culture. Supporters of institutional separation therefore argue that each field requires highly specialized expertise and distinct institutional approaches. Jenny similarly emphasizes that competition authorities perform uniquely complex functions requiring substantial economic sophistication, institutional independence, and the capacity to confront politically and economically influential market actors.[142] Germany provides one of the clearest examples of relatively separate institutional structures. While the Bundeskartellamt[143] serves as a specialized competition authority, consumer protection competences remain distributed across other institutions and

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[140] M.J. Trebilcock and E.M. Iacobucci, *Designing Competition Law Institutions: Values, Structure, and Mandate*, Loyola University Chicago Law Journal, Vol. 41, 2010; D.J. Gerber, *Competition Law and the Institutional Embeddedness of Economics*, in J. Drexl, L. Idot and J. Moneger (eds), *Economic Theory and Competition Law*, Edward Elgar Publishing, 2009.

[141] K.J. Cseres, *Comparing Laws in the Enforcement of EU and National Competition Laws*, European Journal of Legal Studies, Vol. 3, No. 1, 2010.

[142] F Jenny, 'The Institutional Design of Competition Authorities: Debates and Trends' (European Parliament Workshop, 2016).

[143] Bundeskartellamt, Official Website, available at: Bundeskartellamt (accessed 28 May 2026).

ministries. France similarly maintains a differentiated structure where competition enforcement and consumer protection functions are institutionally separated.[144]

From the perspective of GCCA particularly interesting and relevant might be Lithuanian and Austrian models, as the Agency participated in an EU-funded Twinning project implemented jointly with both Lithuanian authorities, alongside the Austrian Federal Competition Authority.[145] Despite close cooperation between competition and consumer protection authorities, Lithuania maintains both the Competition Council of the Republic of Lithuania[146] and the State Consumer Rights Protection Authority[147] as separate institutions with distinct mandates and enforcement cultures. Austria similarly maintains a relatively specialized competition enforcement structure. The Austrian Federal Competition Authority (Bundeswettbewerbsbehörde – BWB)[148] primarily focuses on competition law enforcement, while consumer protection functions remain distributed across ministries, courts, and consumer organizations rather than consolidated within a single integrated authority. The Austrian model therefore reflects a more traditional European approach emphasizing specialization and institutional differentiation between competition policy and consumer protection enforcement.

Separate systems may additionally reduce risks of internal prioritization conflicts. Competition authorities operating under narrower mandates may devote greater attention toward structurally significant and politically sensitive investigations without simultaneously managing large volumes of consumer complaints and public-facing enforcement activity. At the same time, critics of fragmented institutional structures argue that separation may weaken coordination and reduce regulatory coherence. Separate institutions may duplicate investigative efforts or struggle to address conduct simultaneously affecting both competition and consumer welfare.

3.3. Integrated Competition and Consumer Protection Authorities

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[144] Autorité de la concurrence, Official Website, available at: Autorité de la concurrence (accessed 28 May 2026).
[145] European Union, *Strengthening Capacity of the Competition Agency of Georgia* (EU Twinning Project 2022–2024); GCCA, "The Steering Committee Meeting in the frame of the EU-funded Twinning Project was held" (20 March 2023). See also: https://gcca.gov.ge/index.php?m=370&news_id=1253&lng=eng
[146] Competition Council of the Republic of Lithuania, Official Website, available at: Competition Council of the Republic of Lithuania (accessed 28 May 2026).
[147] State Consumer Rights Protection Authority of Lithuania, Official Website, available at: State Consumer Rights Protection Authority (accessed 28 May 2026).
[148] Austrian Federal Competition Authority (Bundeswettbewerbsbehörde), Official Website, available at: Austrian Federal Competition Authority (accessed 28 May 2026).

Integrated enforcement models combine competition law and consumer protection functions within a single institutional framework. Supporters of integrated models generally emphasize administrative efficiency, coordinated oversight, improved information-sharing, and stronger regulatory coherence.

Integrated or substantially integrated institutional structures are increasingly common within Europe. Several Member States employ authorities combining competition and consumer protection competences within unified frameworks, including the Netherlands Authority for Consumers and Markets (ACM), the Irish Competition and Consumer Protection Commission (CCPC), the Polish Office of Competition and Consumer Protection (UOKiK), the Malta Competition and Consumer Affairs Authority (MCCAA), and the Danish Competition and Consumer Authority.[149] Other jurisdictions, such as Italy, additionally grant significant consumer protection powers to competition authorities even where integration is not fully comprehensive.[150] Between fully separate and fully integrated institutional structures, several Member States also employ hybrid or cooperative arrangements under which competition and consumer protection functions remain formally divided but are coordinated through information-sharing, joint investigations, market studies, and other institutional cooperation mechanisms.

The existence of multiple integrated models demonstrates that combining competition and consumer protection functions is not institutionally unusual within contemporary European economic governance. The Netherlands ACM is among the most frequently discussed examples of integrated economic regulation because it combines competition law, consumer protection, and sectoral regulatory functions within a single authority. Similarly, although no longer an EU Member State, the United Kingdom's Competition and Markets Authority (CMA) remains influential within comparative institutional discussions because of its broad integrated competences.[151]

Integrated models are particularly common within smaller economies and transitional

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[149] Netherlands Authority for Consumers and Markets (ACM), Official Website, https://www.acm.nl/en; Competition and Consumer Protection Commission (Ireland), Official Website, https://www.ccpc.ie; Office of Competition and Consumer Protection (UOKiK), Official Website, https://uokik.gov.pl; Malta Competition and Consumer Affairs Authority (MCCAA), Official Website, https://www.mccaa.org.mt; Danish Competition and Consumer Authority, Official Website, https://www.en.kfst.dk.

[150] Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato – AGCM), Official Website, https://www.agcm.it.

[151] Competition and Markets Authority (United Kingdom), Official Website, https://www.gov.uk/government/organisations/competition-and-markets-authority.

jurisdictions where administrative consolidation may improve institutional sustainability. OECD studies repeatedly emphasize that multifunctional authorities may be especially appropriate where maintaining multiple highly specialized institutions would prove financially or administratively difficult.

The Georgian model increasingly resembles this broader trend toward integrated enforcement. The transformation of the Georgian Competition Agency into the Georgian Competition and Consumer Agency reflected both international regulatory developments and practical institutional considerations connected to resource-sharing, market oversight, and administrative efficiency. At the same time, comparative experience demonstrates that integrated authorities may encounter tensions concerning strategic prioritization, resource allocation, and institutional balance. These risks become particularly important within institutionally fragile systems and transitional democracies.

4. The Georgian Model of Integrated Enforcement

Georgia's competition law evolution reflects the country's broader post-Soviet political and economic transformation. Following independence, Georgia introduced antimonopoly regulation relatively early compared to several other former Soviet states. However, weak institutions, economic instability, and limited administrative capacity prevented the emergence of meaningful competition enforcement during the initial transition period.

After the Rose Revolution of 2003, Georgia adopted a radically deregulatory economic model based upon extensive market liberalization, privatization, and minimal state intervention. Within this framework, the antimonopoly authority was dismantled. Although the liberalisation reforms were frequently credited for reducing bureaucracy and improving the ease of doing business, they also contributed to concentrated market structures, emergence of oligopolies and weak competitive discipline across several sectors of the economy.[152]

Georgia's trajectory shifted again following closer institutional engagement with the European Union. Obligations deriving from the EU–Georgia Association Agreement and the DCFTA required approximation of Georgian competition law with EU standards. The

[152] Paul Rimple, 'Who Owned Georgia 2003–2012' (Transparency International Georgia 2012).

modern Law on Competition adopted in 2014 largely reflected the structure of Articles 101 and 102 TFEU and re-established institutional competition enforcement in Georgia.[153]

The reintroduction of modern competition law in Georgia occurred in the absence of a functioning consumer protection framework, further illustrating inconsistencies in the country's approach to market regulation.[154] During the radical deregulatory reforms of the 2000s and early 2010s, the Georgian government significantly weakened consumer protection mechanisms in the name of market liberalization and reduction of administrative barriers. Existing consumer protection legislation was ultimately repealed in 2012, leaving Georgia without a comprehensive consumer rights protection framework for nearly a decade.[155]

Consequently, modern competition law was introduced and enforced after 2014 within a market environment where consumers formally constituted the central beneficiaries of competition policy, yet lacked effective legal mechanisms protecting consumer autonomy, informational rights, and transactional fairness. The Georgian model therefore represented an unusual form of partial market regulation in which competition law approximation advanced considerably faster than the development of consumer protection institutions and enforcement mechanisms. Comprehensive consumer protection legislation was only reintroduced in 2022 through the Law of Georgia on Consumer Rights Protection and the subsequent expansion of GCCA competences,[156] that fundamentally transformed both the institutional profile and public role of the Agency.

4.1. Expansion of Institutional Competences

When consumer protection reform was introduced in Georgia, assigning enforcement powers to the Competition Agency was justified through several interconnected institutional and European integration arguments. The reform was not presented as the creation of an entirely new regulatory system, but rather as the logical expansion of an already existing market governance institution.

[153] K. Zukakishvili, *Two Years after the Legal Transplantation in Georgian - the Best yet to Come,* Sofia Competition Forum Newsletter 42, 2016

[154] Z. Gvelesiani, *Europeanization of Georgian Competition Law*, Yearbook of Antitrust and Regulatory Studies, Vol. 18, No. 32, 2025.

[155] L. Todua, 'Who is Protected by the Georgian Government – Entrepreneur or the Consumer?', DFWatch, 2011. available at: http://dfwatch.net/who-is-protected-by-the-georgian-government-%E2%80%93-entrepreneur-or-the-consumer-16054-2575

[156] Law of Georgia on Consumer Rights Protection (2022).

One of the principal justifications concerned Georgia's obligations under the EU-Georgia Association Agreement. The explanatory note to the draft legislation emphasized that effective consumer protection forms an essential component of the European internal market model. Within EU systems, consumer protection is not treated merely as a matter of private dispute resolution, but as a public regulatory function requiring active market supervision and administrative enforcement.

Institutional efficiency additionally constituted a major argument supporting the reform. The Competition Agency already possessed expertise in market analysis, investigation of commercial conduct, and market monitoring. Policy discussions surrounding the reform emphasized that consumer protection and competition supervision frequently overlap because both fields concern market behavior and economic relations between businesses and consumers.

The reform additionally sought to address the longstanding fragmentation and institutional weakness of consumer protection enforcement in Georgia. Prior to the adoption of the Law on Consumer Rights Protection, consumer rights were regulated only through scattered legislative provisions without a centralized administrative enforcement mechanism. This situation created a broader constitutional inconsistency, since Article 26(4) of the Constitution of Georgia explicitly provides that "consumer rights shall be protected by law," despite the absence of a comprehensive legislative framework capable of ensuring effective consumer protection in practice. The Competition Agency was therefore entrusted with investigative powers, sanctioning authority, and broader responsibility for supervising unfair commercial practices and consumer rights violations. Overall, the reform reflected a broader shift toward coordinated market governance in which competition policy and consumer protection increasingly operate within interconnected institutional frameworks.

4.2. Consumer Protection Mandate and Enforcement Practice

The practical impact of the consumer protection reform became visible almost immediately following the introduction of the new framework. Consumer protection enforcement rapidly emerged as one of the most active and publicly visible dimensions of the Agency's activity. This institutional transformation was formally reflected in the

renaming of the authority as the Georgian Competition and Consumer Agency from 1 January 2024, intended to better represent its expanded regulatory functions and public role. The agency acquired broad enforcement powers relating to unfair commercial practices, misleading advertising, deceptive pricing, abusive contractual conditions, and broader violations of consumer rights.

Unlike competition law investigations, which generally involve lengthy economic analysis and complex evidentiary procedures, consumer protection enforcement created direct and continuous institutional interaction between citizens and the authority. Following the reform, the GCCA established a consumer hotline through which individuals could directly contact the agency and receive legal guidance regarding potential violations of consumer rights. The submission of complaints was also simplified through the introduction of accessible online complaint mechanisms. These developments substantially increased both the accessibility and public visibility of the institution.

The expansion of consumer protection competences also transformed the GCCA's public communication strategy and institutional outreach activities. The agency began organizing public awareness campaigns, educational events, and outreach initiatives across universities, professional associations, and regional communities. These activities became particularly visible during the annual Consumer Rights Protection Week held each March, during which the GCCA intensified public engagement and consumer education efforts throughout the country.[157] The agency also increasingly emphasized consumer-oriented communication through public consultations, informational meetings, and regional outreach initiatives aimed at strengthening awareness of consumer rights protections and enforcement mechanisms.[158] Such initiatives further reinforced the consumer-oriented public identity of the institution and increased its direct interaction with society in ways previously uncommon within Georgian competition law enforcement practice.

Publicly available data demonstrates that consumer applications increased rapidly after 2022. According to GCCA materials, the agency reportedly received approximately 495 consumer applications in 2023, around 890 applications in 2024, and more than 1,400

[157] GCCA, "Consumer Rights Protection Week" (2025), available at: https://gcca.gov.ge/index.php?m=370&news_id=1885

[158] GCCA, public outreach and awareness activities (2025), available at: https://gcca.gov.ge/index.php?m=370&news_id=1924

applications by 2025.[159] This growth significantly altered the operational profile of the institution.

4.3. Enforcement Trends Since 2022

The period following 2022 represents a particularly important phase in the institutional evolution of the GCCA because it reveals broader changes in enforcement priorities and institutional orientation following the integration of consumer protection competences. Importantly, the strongest evidence of institutional transformation does not necessarily lie in proving that competition law enforcement disappeared after 2022. Rather, the more accurate observation is that competition law gradually became comparatively less central to the visible institutional activity of the authority, while consumer protection increasingly dominated public communication, measurable outputs, and institutional identity.

This trend becomes visible through analysis of GCCA annual reports themselves. Earlier reports issued between 2014 and 2021 primarily focused on competition investigations, merger control, market monitoring, and legislative approximation with EU competition law standards. Following 2022, however, annual reports increasingly devoted attention to consumer complaint statistics, awareness campaigns, hotline activity, favourable outcomes for consumers, and consumer-oriented enforcement narratives.

The GCCA repeatedly emphasized the effectiveness of the new enforcement system within annual reports and public communication. According to public statements by the Chairman of the agency, approximately 90% of reviewed consumer cases were resolved in favor of consumers.[160] The statistic became one of the most visible indicators of institutional success and was frequently highlighted in media appearances and official communication.

Consumer protection enforcement naturally generates highly visible institutional outputs. Consumer disputes frequently involve concrete and easily understandable forms of harm directly affecting ordinary citizens. Enforcement outcomes therefore produce measurable success indicators, rapid procedural resolutions, and substantial public engagement. As a

[159] GCCA, *Annual Report 2023*; GCCA, *Annual Report 2024*; GCCA, *Annual Report 2025*.
[160] GCCA Chairman Irakli Lekvinadze, interview reported by Commersant.ge, 2024 https://commersant.ge/news/society/momkhmareblis-momartvianoba-gaormagda-konkurentsiisa-da-momkhmareblis-datsvis-saagento

result, the GCCA rapidly gained public visibility and recognition beyond professional and legal circles, becoming significantly more familiar to wider society than during its earlier period as a primarily competition-focused authority.

The agency increasingly began appearing in social media discussions and consumer-oriented online communities, including the widely followed Georgian Facebook group "Desperate Consumers."[161] GCCA officials also frequently shared public feedback and letters of appreciation from consumers whose disputes had been successfully resolved by the agency. Consequently, the GCCA gradually acquired levels of public awareness and institutional trust that remain relatively uncommon within the broader Georgian administrative system.

This differs substantially from competition law enforcement, which remains more technical, resource-intensive, and institutionally demanding. Competition investigations frequently require extensive economic analysis, sophisticated evidentiary procedures, and confrontation with powerful economic actors. As a result, competition enforcement rarely produces similarly immediate and publicly visible demonstrations of institutional effectiveness.

Successive European Commission reports demonstrate a noticeable asymmetry between the assessment of consumer protection developments and competition law enforcement in Georgia. Prior to 2022, Commission evaluations generally acknowledged substantial legislative approximation with EU competition acquis, particularly regarding antitrust and merger control rules, while repeatedly expressing concerns relating to institutional capacity, effective implementation, and incomplete alignment in politically sensitive areas such as state aid control.[162] Following the adoption of the Law on Consumer Rights Protection and the expansion of GCCA competences, Commission reports became significantly more positive regarding consumer protection policy, emphasizing rapid legislative approximation, institutional development, enforcement mechanisms, and public awareness initiatives.[163] By contrast, assessments of competition policy continued to highlight structural challenges concerning enforcement effectiveness, institutional capacity, and broader governance conditions. This asymmetry reflects a broader distinction between forms of approximation capable of generating visible and politically uncontroversial progress, and areas of competition policy requiring sustained institutional

[161] https://www.facebook.com/groups/236748710503354

[162] European Commission, *Georgia Reports* 2016–2024

[163] European Commission, Georgia Report 2024; GCCA, *Georgia Makes Progress in Competition Policy and Consumer Protection, Says European Commission*, 2024.

independence, economic expertise, and willingness to confront structurally significant market actors.

The statistical contrast between the two fields is particularly revealing. Consumer protection enforcement experienced rapid expansion following the introduction of the new framework. By contrast, competition law enforcement remained comparatively modest in numerical terms. According to GCCA materials, over approximately a decade the authority completed around 57 competition investigations, conducted approximately 15 market monitorings, and issued roughly 102 recommendations.[164]

More broadly, Georgian competition enforcement continues to demonstrate significant institutional limitations characteristic of an underdeveloped antitrust system. Despite nearly a decade of modern competition law enforcement, the GCCA has shown zero practical use of sophisticated investigative instruments commonly associated with mature competition authorities, including effective leniency mechanisms, whistleblower-based cartel detection, extensive dawn raid practice, and the acquisition of direct evidence relating to anti-competitive agreements. Enforcement practice continues to rely predominantly upon indirect evidence, market monitoring, and economic assessments rather than proactive cartel detection tools and complex adversarial investigations.[165] This suggests a broader stagnation within the competition law dimension of the authority and contrasts sharply with the rapid institutional expansion, visibility, and procedural dynamism characterizing consumer protection enforcement after 2022. At the same time, competition law enforcement increasingly relied upon softer forms of intervention such as market monitoring, sector inquiries, recommendations, and advisory mechanisms rather than classic adversarial cartel enforcement.[166]

Recent GCCA initiatives further illustrate the broader transformation of the institution toward consumer-oriented market governance. Particularly revealing in this respect is the Agency's development of an electronic "Household Basket" information platform designed to provide consumers with real-time comparisons of prices and promotional offers relating to essential goods across major retail chains.[167] The initiative, developed following recommendations of the Parliamentary Temporary Commission on the Study of

[164] GCCA, Institutional Statistics and Annual Reports 2014–2025

[165] Z. Gvelesiani, *Europeanization of Georgian Competition Law*, Yearbook of Antitrust and Regulatory Studies, Vol. 18, No. 32, 2025.

[166] GCCA, *Annual Report 2023*; GCCA, *Annual Report 2024*; GCCA, *Annual Report 2025*.

[167] See: https://gcca.gov.ge/index.php?m=370&news_id=1932&lng=eng

Food, Pharmaceutical, and Fuel Prices, reflects a significantly broader and more interventionist conception of the Agency's role within market regulation.

While market transparency instruments and consumer information tools are not entirely unknown within contemporary regulatory practice, the Georgian model represents a comparatively unusual extension of competition authority activity into highly visible and consumer-facing forms of economic governance. Traditional competition authorities generally focus upon structural market enforcement through cartel investigations, abuse of dominance proceedings, merger control, and state aid supervision rather than direct facilitation of retail price comparison mechanisms for everyday consumer goods.

The broader political context surrounding the initiative is equally significant. The Parliamentary Temporary Commission on the Study of Food, Pharmaceutical, and Fuel Prices operated in areas already substantially connected to the GCCA's institutional competences, particularly concerning market monitoring and competition assessment. Nevertheless, the Commission itself became a highly visible public and political platform through televised hearings, public questioning of private sector actors, and direct engagement with socially sensitive pricing issues. In this sense, the process reflected a broader tendency toward politicized and publicly performative forms of market governance operating alongside and at times overshadowing technocratic competition enforcement mechanisms traditionally associated with independent regulatory authorities.

The initiative therefore illustrates a broader institutional shift toward forms of regulation centered around market monitoring, transparency mechanisms, consumer awareness, and publicly visible governance tools. The increasingly politicized character of these processes is particularly visible in the GCCA's evolving public communication strategy. Prior to recent parliamentary and governmental initiatives concerning household prices, GCCA officials repeatedly emphasized that direct price control did not fall within the authority's mandate.[168] Nevertheless, following the work of the Parliamentary Temporary Commission and the launch of the "Household Basket" initiative, the agency's social media communication increasingly began focusing on pricing issues and consumer-facing narratives concerning price fairness. Particularly illustrative in this respect was a public

[168] Business Partner, *Irakli Lekvinadze: The Competition Agency's Mandate Is Not Price Control,* available at: https://old.business-partner.ge/biznesi/irakli-lekvinadze-konkurentsiis-saagentos-mandati-fasebis-kontroli-ar-aris

informational post emphasizing that dominant undertakings are prohibited from imposing "unfairly high prices" on consumers.[169]

Formally, such statements accurately reflect abuse of dominance principles recognized within competition law. However, excessive pricing cases traditionally constitute one of the most economically complex, controversial, and rarely enforced areas of antitrust regulation, both within EU and comparative competition law practice. The fact that the agency chose to emphasize precisely this aspect of competition law within simplified public-facing communication is therefore institutionally revealing. It demonstrates a broader shift toward politically resonant and socially communicable narratives of market regulation centered around consumer pricing concerns rather than technically sophisticated competition enforcement discourse. In this sense, competition law itself increasingly becomes reframed through the language of visible consumer protection and public economic sensitivity.

Consequently, the strongest evidence supporting the concept of "enforcement substitution" is not necessarily a direct statistical collapse of competition law enforcement after 2022. Rather, the evidence points toward a broader process of institutional reorientation. Consumer protection increasingly became the dominant public-facing activity of the authority, while competition law remained formally important but comparatively secondary in terms of visibility, public engagement, and measurable institutional success.

This process is also reflected in the GCCA's public communication strategy. Recent agency announcements increasingly emphasize consumer-oriented activities, complaint statistics, accessibility mechanisms, and direct assistance provided to citizens. Particularly revealing in this respect was the GCCA's recent announcement highlighting the rapid growth of consumer applications and the expansion of consumer rights enforcement mechanisms.

Importantly, this does not suggest that competition law enforcement ceased to exist or became institutionally irrelevant. Rather, it demonstrates how integrated authorities may gradually develop public identities increasingly centered around consumer protection activities because such enforcement generates visible and politically valuable indicators of institutional effectiveness.

[169] GCCA Facebook informational campaign concerning unfairly high prices imposed by dominant undertakings.
https://www.facebook.com/GeorgianNationalCompetitionAgency/posts/pfbid0qHp9SjJaYNN84fBnNg76CSfjbVoUTY3rMDjv2eWhs6QZzzou7aRQmjubcej38g7jl

5. "Enforcement Substitution" and the Risk of Regulatory Imbalance

Integrated enforcement structures generate important advantages, including coordinated market oversight, administrative efficiency, and stronger institutional accessibility. At the same time, they may also create structural tensions affecting long-term enforcement balance and institutional priorities.

This chapter develops the article's central conceptual argument concerning "enforcement substitution." The term refers to a gradual institutional shift within integrated authorities whereby competition law enforcement, traditionally complex, resource-intensive, and politically sensitive risks becoming comparatively marginalized in favor of consumer protection activities that are procedurally simpler, publicly visible, and institutionally advantageous.

The argument is not that consumer protection enforcement constitutes a problem or that integrated authorities are inherently flawed. Rather, integrated authorities operating under conditions of limited institutional capacity, political fragility, or democratic decline may gradually develop incentives favoring forms of enforcement capable of producing rapid and visible institutional outputs.[170] Under such conditions, competition law enforcement may become comparatively secondary despite its broader structural importance for market governance, eventually harming consumer welfare.

5.1. Conceptualizing Enforcement Substitution

The concept of enforcement substitution describes a structural tendency within integrated regulatory authorities whereby institutionally difficult competition enforcement gradually becomes displaced by more visible and administratively manageable forms of consumer protection activity.

The argument builds upon broader institutional design scholarship concerning multifunctional regulatory authorities and competing enforcement priorities.[171] It has already been discussed how OECD has long emphasized that overlapping competences and limited resources may generate internal prioritization pressures, particularly where certain forms of enforcement produce clearer institutional outputs and stronger public legitimacy.[172] Similarly, Cseres noted years ago that integrated competition and consumer

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[170] M. Bernatt, *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, Cambridge University Press, 2022, 98–99.

[171] William E. Kovacic and David A. Hyman, *Competition Agency Design: What's on the Menu?*, Public Law and Legal Theory Research Paper No. 2012-135. George Washington University Law School, 2012.

[172] OECD, *Changes in Institutional Design of Competition Authorities*, Organisation for Economic Co-operation and Development, 2014.

protection authorities may experience tensions arising from the coexistence of distinct enforcement cultures and institutional objectives.[2]
Existing scholarship has largely framed enforcement challenges through concepts such as institutional, procedural, and epistemic fragmentation, focusing on coordination failures, resource asymmetries, and informational deficits within regulatory systems.[173] The concept of enforcement substitution developed in this article seeks to describe a more specific dynamic. Whereas fragmentation identifies structural weaknesses within enforcement architectures, enforcement substitution focuses on the practical consequences of those weaknesses for institutional prioritization. It explains how integrated authorities may gradually reallocate attention toward forms of enforcement that generate greater visibility, lower political costs, and more readily measurable outcomes.[174]

Existing scholarship generally approaches these concerns through the language of coordination, expertise, or institutional efficiency. The concept of enforcement substitution attempts to describe a more specific dynamic: the structural tendency of integrated authorities to prioritize enforcement activities capable of generating measurable success with comparatively limited political and administrative costs.

The Georgian experience demonstrates that this process does not necessarily emerge through explicit political decisions or formal abandonment of competition policy. Rather, it may develop gradually through cumulative institutional incentives. Consumer protection enforcement naturally generates large numbers of complaints, rapid procedural outcomes, visible statistics, and direct public interaction. Competition law enforcement, by contrast, requires long-term investigations, sophisticated economic analysis, and confrontation with politically influential market actors.

5.2. Structural Asymmetries Between Competition and Consumer Cases

One of the principal factors contributing to enforcement substitution concerns the structural asymmetry between competition law investigations and consumer protection cases. Although both forms of enforcement contribute toward market governance, they differ substantially in terms of evidentiary complexity, procedural duration, institutional visibility, and resource requirements.

Competition law enforcement is inherently difficult. Investigations involving cartels, abuse of dominance, or anti-competitive agreements generally require detailed market

[173] OECD, *Changes in Institutional Design of Competition Authorities*, OECD Competition Committee Roundtable, 2014.
[174] L. Zoboli and J. Mazur, *Enforcement Design in EU Digital Regulation: Lessons for the Digital Fairness Act,* European Journal of Risk Regulation, 2026. p. 1, 8–9.

definition exercises, sophisticated economic analysis, and extensive evidentiary procedures. Competition authorities frequently confront powerful economic actors possessing substantial legal, financial, and political resources. Consequently, investigations are often lengthy, uncertain, and institutionally demanding.

Jenny emphasizes that competition authorities perform uniquely difficult functions because they frequently challenge entrenched economic interests and politically influential market structures.[3] Effective competition enforcement therefore requires not only technical expertise, but also strong institutional independence and sustained political commitment.

Consumer protection enforcement operates under considerably different conditions. Cases involving misleading advertising, deceptive pricing, or unfair commercial practices are generally easier to investigate and communicate publicly. Violations frequently involve direct and identifiable consumer harm and often produce immediate tangible outcomes. The investigated entities rarely even challenge the Agency and majority of the cases end with commitment agreements, under which the trader restores the consumer's rights, aligns its commercial practices accordingly, and the proceedings are subsequently terminated.[175]

The Georgian experience illustrates this asymmetry particularly clearly. Following the introduction of consumer protection powers in 2022, consumer enforcement rapidly generated high volumes of complaints, visible outcomes, and easily measurable indicators of success. Competition law enforcement, by contrast, remained comparatively limited in quantitative terms and substantially more demanding from an institutional perspective. Despite important progress in developing the competition law framework, the Agency has yet to utilize advanced enforcement tools available to modern competition authorities and has shown limited willingness to challenge powerful market actors in complex competition cases. As Lowe observes, "*good rules remain a dead letter if there is no efficiently run organisation with the processes to implement them.*"[176]

5.3. Political Visibility and Institutional Incentives

Political visibility represents another important factor shaping enforcement priorities within integrated authorities. Consumer protection enforcement is not only procedurally simpler, but also politically attractive. Consumer disputes involve concrete and easily understandable forms of harm affecting ordinary citizens directly. Successful interventions therefore generate immediate public approval and strengthen perceptions

[175] GCCA, *Annual Report 2025*.
[176] P. Lowe, *Competition Policy Institutions in the 21st Century*, Centre for Competition Policy, University of East Anglia, 2013.

of governmental responsiveness.

Competition law enforcement rarely produces comparable political benefits. Anti-competitive conduct is frequently technical, abstract, and difficult to communicate to broader audiences despite its significant long-term economic consequences.

Tagiuri's scholarship concerning politicization and economic regulation is particularly relevant in this context. Tagiuri argues that regulatory institutions do not operate in politically neutral environments. Even formally independent regulators remain influenced by broader political incentives, public visibility, and governmental expectations.[177]
Similar concerns have been identified in comparative scholarship. Bernatt observes that competition authorities operating under political and institutional pressures may increasingly focus on consumer protection activities, which attract greater public visibility and political support, while competition enforcement receives comparatively less attention. This dynamic may incentivize a gradual reallocation of resources and expertise away from complex antitrust investigations toward more politically salient consumer-facing interventions.[178]

The GCCA's post-2022 enforcement practice strongly reflects this dynamic. Consumer protection increasingly occupied the central position within public communication strategies, annual reports, media appearances, and institutional messaging. Complaint statistics, favorable outcomes for consumers, and awareness campaigns became highly visible indicators of institutional success. The latest development of abovementioned electronic "Household Basket" information platform is a clear demonstration of this trend.

5.4. Resource Constraints and Enforcement Prioritization

Resource constraints further intensify these institutional dynamics. Effective competition law enforcement is exceptionally resource-intensive. Authorities require highly specialized economists and lawyers, advanced analytical capabilities, technical expertise, market data, and long-term investigative capacity.[179] Competition authorities operating under limited budgets may therefore prioritize forms of enforcement capable of producing visible results with comparatively lower institutional costs.

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[177] G. Tagiuri, *Limited Politicisation: Strengthening, Not Undermining, Economic Regulation in the EU*, European Papers, 2026.
[178] M. Bernatt, *Populism and Antitrust: The Illiberal Influence of Populist Government on the Competition Law System*, Cambridge University Press, 2022, 98–99.
[179] W.E. Kovacic, *The Digital Broadband Migration and the Federal Trade Commission*, Columbia Business Law Review, 2010.

Similar concerns have recently been identified in the broader context of EU digital regulation. Analysing the enforcement architecture of the Digital Services Act, Digital Markets Act, AI Act and GDPR, Zoboli and Mazur argue that uneven expertise, limited technical capacity, and resource asymmetries among enforcement authorities create structural incentives that influence enforcement outcomes. They describe these problems as forms of "institutional" and "epistemic fragmentation", whereby authorities increasingly focus on areas where enforcement is easier and less resource-intensive. Although their analysis concerns digital regulation, the underlying institutional dynamics are equally relevant for integrated competition and consumer protection authorities operating under resource constraints.[180]

The Georgian context illustrates this problem particularly clearly. Despite substantial legislative approximation with EU standards, the GCCA continues to operate within a relatively constrained institutional environment. Building sophisticated competition enforcement capacity requires years of institutional development, stable funding, judicial support, and highly specialized personnel. Consumer protection enforcement, by contrast, generally requires lower levels of economic sophistication and produces higher case volumes with comparatively fewer resources. Consequently, integrated authorities facing institutional constraints may rationally allocate greater attention toward consumer-oriented enforcement.

The result may be a gradual transformation in institutional identity. Competition law formally remains part of the authority's mandate, yet practical enforcement increasingly focuses upon areas capable of producing measurable and publicly visible outputs.

5.5. Democratic Governance and Market Regulation

The effectiveness of competition law enforcement depends heavily upon broader democratic and institutional conditions. Competition authorities do not operate in isolation from political systems. Meaningful competition enforcement frequently requires confrontation with politically connected economic actors and structurally concentrated markets. Consequently, competition law enforcement is deeply connected to institutional independence, rule of law, and democratic governance.

Recent scholarship increasingly recognizes this relationship. Anna Gerbrandy and Viktorija Morozovaite argue that competition law cannot be viewed solely as a technocratic field isolated from democratic governance.[181] Effective market regulation

[180] L. Zoboli and J. Mazur, 'Enforcement Design in EU Digital Regulation: Lessons for the Digital Fairness Act', *European Journal of Risk Regulation*, 2026, 8–9.
[181] V. Morozovaite and A. Gerbrandy, *Exploring the Nexus between European Competition Law and Democratic Society: A Case of Political Microtargeting*, Yearbook of Antitrust and Regulatory Studies, Vol.

depends heavily upon institutional independence, judicial resilience, administrative professionalism, and broader political commitment to competitive market structures.

This relationship is particularly important in transitional democracies and candidate states. Competition law frequently forms part of broader Europeanization processes aimed at limiting oligarchic economic structures and strengthening institutional accountability. In such contexts, weakening democratic governance may directly affect the effectiveness of competition enforcement itself.

The Georgian experience illustrates this relationship particularly clearly. The reconstruction of Georgian competition law occurred largely within the broader framework of EU approximation and Europeanization. However, recent democratic decline, political polarization, and governance concerns raise important questions regarding the long-term trajectory of competition enforcement.

Competition law is uniquely vulnerable to political disengagement because effective enforcement may directly affect economically influential actors connected to political structures. Consumer protection enforcement, by contrast, rarely generates comparable political risks.

5.6. Institutional Independence and Effective Enforcement

Institutional independence constitutes one of the central preconditions for effective competition law enforcement.[182] Competition authorities frequently investigate powerful corporations, politically influential sectors, and entrenched market structures. Consequently, authorities must possess sufficient autonomy to resist both direct political interference and indirect institutional pressure.[183]

The ECN+ Directive reflects broader European recognition that national competition authorities require adequate independence, resources, and enforcement powers to function effectively within decentralized EU competition law enforcement. At the same time, institutional independence depends not only upon formal legal guarantees, but also upon broader political culture and governance conditions. Formal safeguards may prove insufficient where political systems increasingly discourage robust market oversight or institutional confrontation with economically influential actors.

The Georgian experience demonstrates the fragility of institutional independence within

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17, No. 30, 2024. R.J.G. Claassen and A. Gerbrandy, *Rethinking European Competition Law: From a Consumer Welfare to a Capability Approach*, Utrecht Law Review, Vol. 12, 2016.

[182] M. Sousa Ferro, *Institutional Design of National Competition Authorities: EU Requirements*, SSRN, 2017.

[183] F. Jenny, *Competition Authorities: Independence and Advocacy*, OECD Global Forum on Competition, 2016.

transitional regulatory systems. Although the GCCA formally possesses substantial powers and increasingly sophisticated legal competences, the practical effectiveness of competition enforcement continues to depend heavily upon broader political and institutional conditions. Another critical factor regarding Georgia is also stalled Europeanization process.

5.7. The Weakening of Europeanization and Its Implications for Competition Enforcement

The risks associated with enforcement substitution become particularly significant within candidate states and transitional economies. Such jurisdictions frequently experience weaker institutional capacity, unstable political environments, and incomplete democratic consolidation.[184] Competition law within these systems often emerges primarily through external Europeanization pressures rather than strong domestic political demand.

The development of modern Georgian competition law was closely linked to EU approximation and the broader objective of European integration, which provided both political incentives and external pressure for institutional reform. However, the Georgian government's decision in November 2024 to suspend active EU accession efforts until 2028[185] has introduced significant uncertainty regarding the future trajectory of these reforms. While Georgia formally retains its candidate status, the slowdown of the accession process may reduce external incentives for strengthening competition institutions, preserving regulatory independence, and pursuing difficult structural reforms. More broadly, recent concerns regarding democratic backsliding and deteriorating EU–Georgia relations suggest that the weakening of Europeanization may itself become a barrier to effective competition enforcement, particularly in areas requiring strong institutional independence, political neutrality, and a long-term commitment to market-based governance.[186]

More broadly externally driven reforms may remain institutionally fragile where domestic political commitment weakens over time. Consumer protection enforcement may continue functioning effectively because it produces visible public benefits and limited political costs. Competition enforcement, by contrast, may gradually weaken where governments lose interest in structurally transformative market regulation.

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[184] A. M. Mateus, *Competition and Development: Towards an Institutional Foundation for Competition Enforcement*, 2009.

[185] D. Parulava, *Georgia Hits Brakes on EU Accession Bid*, Politico, 28 November 2024.

[186] V. Morozovaite and A. Gerbrandy, *Exploring the Nexus between European Competition Law and Democratic Society: A Case of Political Microtargeting*, Yearbook of Antitrust and Regulatory Studies, Vol. 17, No. 30, 2024. Z. Gvelesiani, *Europeanization of Georgian Competition Law*, Yearbook of Antitrust and Regulatory Studies, Vol. 18, No. 32, 2025.

This creates an important paradox for candidate states. Europeanization initially strengthens competition law institutions, yet broader democratic decline may subsequently undermine the political incentives necessary for meaningful competition enforcement.

Conclusion

This article examined the relationship between competition law and consumer protection within integrated regulatory structures through the example of the Georgian Competition and Consumer Agency. The analysis demonstrated that competition law and consumer protection are closely interconnected fields of market governance and that integrated enforcement models may generate important advantages, including administrative efficiency, coordinated market oversight, stronger accessibility, and enhanced consumer welfare protection.

At the same time, the Georgian experience illustrates that integrated enforcement may also generate unintended institutional consequences. Following the expansion of consumer protection competences after 2022, consumer-oriented enforcement rapidly became the most visible and publicly accessible dimension of GCCA activity. Competition law enforcement remained formally important, yet increasingly occupied a less prominent position in terms of institutional visibility, public communication, and measurable indicators of success.

To explain this development, the article introduced the concept of "enforcement substitution." The concept describes a gradual tendency within integrated authorities operating under conditions of limited capacity, institutional fragility, or political pressure to prioritize forms of enforcement that are more visible, less resource-intensive, and more readily capable of generating public legitimacy. Rather than implying the abandonment of competition law, enforcement substitution captures a process through which competition enforcement becomes comparatively less central to the authority's practical priorities and institutional identity.

The Georgian case further demonstrates that the effectiveness of competition law depends upon factors extending far beyond formal legislative approximation. Competition enforcement requires specialized expertise, institutional independence, adequate resources, long-term strategic commitment, and a political environment capable of supporting intervention against concentrated economic power. These conditions become particularly important within transitional democracies and candidate states, where

competition law frequently develops through broader Europeanization processes and remains sensitive to changes in democratic governance and political priorities.

The article does not suggest that integrated competition and consumer protection authorities should be abandoned. Comparative experience demonstrates that integrated models can function successfully and are widely represented across Europe. However, the Georgian experience suggests that integration alone cannot guarantee balanced enforcement outcomes. Without deliberate efforts to preserve competition-specific expertise, maintain strategic enforcement priorities, and protect institutional independence, integrated authorities may gradually drift toward more visible and politically attractive forms of regulation.

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CONSUMER PROTECTION IN GEORGIA: PROGRESS AND CHALLENGES UNDER THE EUROPEAN UNION ENLARGEMENT PACKAGE (2023-2025)

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Abstract

The paper examines the state of consumer rights protection in Georgia within the framework of the EU's Enlargement Package (2023-2025). Approved annually by the European Commission, the Enlargement Package is an important strategic tool for assessing candidate and potential candidate countries' alignment with EU legislation and standards. In this context, protecting consumer rights is considered one of the key areas in need of fundamental reform.

The research shows that Georgia has made certain progress in this area, as evidenced by the establishment of an institutional framework and the development of relevant legislation. The main body responsible for protecting consumer rights - The Georgian Competition and Consumer Agency - is gradually strengthening its capabilities, as evidenced by an increase in the number of applications and a rise in decisions made in favour of consumers.

Despite progress having been made, Georgian legislation still only partially aligns with the EU's legal framework. Significant gaps remain in areas such as the regulation of digital content, representative actions, consumer rights relating to the sale of goods and product safety standards. Although there has been some progress in regulating timeshares and related contracts, ensuring that the market surveillance system complies with EU requirements remains problematic.

Methodologically, the study is based on desk research and qualitative analysis of official EU documents, specifically the enlargement package and the implementation reports of the Association Agreement from Georgia. This approach enables progress to be assessed, trends to be identified, and key reform directions to be determined.

Despite the positive trends, the results of the study indicate that further reforms are needed in Georgia to protect consumer rights. These reforms should include legislative harmonisation and strengthening institutional mechanisms to ensure full compliance with European Union standards.

Key words: European Union, Georgia, enlargement package, consumer protection.

Introduction

Following the signing of the Association Agreement (AA) between the European Union and Georgia, the country has made significant progress in the process of approximation with the EU through the implementation of a wide range of reforms across various sectors of governance. In addition to political, economic, judicial, and trade-related dimensions, the Association Agreement provides for cooperation in numerous sectoral areas, aiming at the modernization of public policies and the adoption of European standards, including in the field of consumer protection.

The process of Georgia's European integration gained particular relevance following the country's receipt of potential candidate status in 2022 and candidate status in 2023. At the same time, the future of Georgia's European integration has become increasingly complex in light of the stalled negotiations between Georgia and the European Union. In this context, the study of the EU Enlargement Packages, which since 2023 have assessed the progress achieved by candidate countries on their path toward EU membership, has become especially significant.

Following Georgia's application for EU membership in 2022, the EU Enlargement Packages have become one of the principal indicators for assessing the dynamics of the country's integration process. The Enlargement Communication adopted by the European Commission includes recommendations related to the enlargement process and is accompanied by annual reports that evaluate the status of candidate and potential candidate countries, as well as the progress achieved on their path toward European Union membership. These assessments focus on the implementation of fundamental reforms and provide detailed guidance regarding reform priorities.

This paper examines the state of consumer rights protection in Georgia within the framework of the EU Enlargement Packages for 2023-2025, considering consumer protection as one of the significant components of the broader reform agenda.

Methodology

To achieve the objectives of this paper, an appropriate methodological framework was developed to ensure a systematic and comprehensive analysis of the research topic. Within this framework, relevant sources examining both the dynamics of consumer protection policy in Georgia and the European Union's policy in this field were critically analyzed. The application of this approach made it possible to develop a comprehensive understanding of the country's progress, as well as the existing challenges in the process of aligning Georgia's consumer protection policy with European standards.

This study is based on the desk research method and relies on the collection and analysis of a wide range of sources, including official documents, strategies, and reports adopted by Georgia and the European Union, as well as relevant academic publications addressing the implementation of obligations under the Association Agreement, the EU enlargement process, and consumer protection policy in Georgia.

The research identifies the main trends, challenges, and opportunities related to Georgia's alignment with the requirements of the EU consumer protection policy framework. The findings provide a solid theoretical and analytical basis for further discussion, including the assessment and comparative analysis of Georgia's position within the context of the EU Enlargement Packages for 2023-2025.

Although the desk research method provides a broad and multifaceted analysis of the research topic, certain limitations should nevertheless be acknowledged, as they may affect the depth and accuracy of the findings. The European Union enlargement process is highly dynamic and continuously evolving, which may require the revision of certain conclusions over time.

Despite these limitations, the methodological approach employed in this study enables an objective analysis consistent with the research objectives, thereby ensuring the reliability of the study and its academic value.

Association Agreement between Georgia and the European Union and Consumer Rights

The Association Agreement obliges Georgia to gradually approximate its legislation to the legal standards of the European Union and to implement political, economic, and institutional reforms. Particular emphasis is placed on the protection of democracy, the rule of law, and human rights; the development of effective public administration; the

harmonization of economic and trade legislation with EU standards; the strengthening of consumer, competition, and labour rights protection; and the implementation of European standards related to product safety, market surveillance, and consumer information.

The Association Agreement required Georgia to establish a legal and institutional framework in the field of consumer protection that ensures the safeguarding of consumer interests, fair trading practices, and the availability of safe products on the market. This process is particularly significant for Georgia's economic integration into the European Union's internal market.[187]

In accordance with Article 345 of the Association Agreement, the Parties cooperate with the objective of ensuring a high level of consumer protection and achieving compatibility between their consumer protection systems. Furthermore, pursuant to Article 346, such cooperation, where necessary, includes the approximation of consumer legislation alongside the avoidance of trade barriers; the promotion of information exchange on consumer protection systems, including consumer legislation and its enforcement, consumer product safety, information exchange mechanisms, consumer education, consumer awareness and empowerment, as well as the provision of effective consumer redress mechanisms.[188] Annex XXIX of the Association Agreement provides for support aimed at the gradual approximation of Georgian legislation to the relevant European Union legislation and international legal instruments in accordance with the established timetable. [189]

Following the signing of the Association Agreement, Georgia undertook a number of important steps toward the approximation of its legislation in the field of consumer rights protection. Legislative activity in this area intensified, accompanied by the introduction of relevant regulatory mechanisms. As a result, a significant positive breakthrough was

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[187] *Asotsirebis Shesakheb Shetankhmeba Ertis Mkhriv, Sakartvelosa da Meores Mkhriv, Evrokavshirs da Evropis Atomuri Energiis Gaertianebas da Mat Tsevr Sakhelmtsipoebs Shoris* [Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand] (Ministry of Foreign Affairs of Georgia)

[188] *Asotsirebis Shesakheb Shetankhmeba Ertis Mkhriv, Sakartvelosa da Meores Mkhriv, Evrokavshirs da Evropis Atomuri Energiis Gaertianebas da Mat Tsevr Sakhelmtsipoebs Shoris* [Association Agreement between Georgia, on the one hand, and the European Union and the European Atomic Energy Community and their Member States, on the other hand] (Ministry of Foreign Affairs of Georgia

[189] ibid

achieved in the regulation of consumer rights, effectively overcoming the period of legislative stagnation that had persisted for nearly two decades.[190]

Consumer protection in Georgia was already recognised in the 1995 Constitution; however, the relevant legislation in force was repealed in 2012 and replaced by the Code on Product Safety and Free Circulation. From that time until 2022, consumer relations were primarily governed by the general provisions of the Civil Code, which did not adequately respond to modern challenges or to European Union standards. In the European Commission's working document *"Report on the Implementation of the Association Process with Georgia"*, it was noted, for instance, that in 2017 in the area of consumer policy, Parliament continues to review the draft law on consumer rights protection initiated in 2015, however, without tangible progress.[191] The situation did not change in the following years, and the 2021 report also directly pointed out the still-existing shortcomings: "Currently, there is no unified consumer protection framework in Georgia. Regulatory bodies, which cover the financial, communications, and energy sectors, implement consumer protection measures in their respective sectors. The Market Surveillance Agency ensures technical regulations related to the safety of consumer products. Georgia has developed a consumer protection law, which, as of the end of 2020, has not yet been adopted."[192]

To address the legislative gap, the Law of Georgia *"On the Protection of Consumer Rights"* entered into force on 29 March 2022.[193] The law provides a detailed framework defining consumer rights and the obligations of traders. It regulates standards of consumer information, distance and off-premises contracts, conditions for returning goods, the protection of fair commercial practices, as well as other key aspects of consumer protection. The law established institutional mechanisms for consumer protection. Enforcement is the responsibility of the Georgian Competition and Consumer Agency and the relevant regulatory bodies, while consumers have the opportunity to protect their rights by turning to the courts, arbitration, or mediation. These regulations

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[190] Vakhtang Zaalishvili, "Individual Aspects of the Implementation of the Private European Standard of Consumer Protection in Georgian Law", *Transposition of EU Policies in Georgia: Collection of Research Articles*, Part II, Caucasus University, 2024, p.24

[191] Commission Staff Working Document, *Report on the Implementation of the Association Agenda by Georgia* (Brussels, European Commission, SWD(2017) 371 final, p.18

[192] Commission Staff Working Document, *Report on the Implementation of the Association Agenda by Georgia* (Brussels, European Commission, SWD (2021) 18 final, p.16

[193] *Kanoni Momkhmareblis Uplebis Datsvis Shesakheb* [Law of Georgia on Consumer Rights Protection]

contribute to protecting consumer interests, as well as fostering a fair and stable market and the development of democratic processes in the country. [194]

In addition to the Law of Georgia *"On the Protection of Consumer Rights"*, Georgia has several other legislative acts that regulate specific aspects related to consumer protection, including:

1. Organic Law of Georgia *"On the National Bank of Georgia"*;
2. Law of Georgia *"On Energy and Water Supply"*;
3. Law of Georgia *"On Insurance"*;
4. Law of Georgia *"On Advertising"*;
5. Law of Georgia *"On Broadcasting"*;
6. Law of Georgia *"On Electronic Communications"*;
7. Law of Georgia *"Code on Product Safety and Free Circulation"*;
8. Law of Georgia *"Food/Feed Safety, Veterinary and Plant Protection Code"*;
9. Law of Georgia *"On Tourism"*;
10. Law of Georgia *"On Electronic Commerce"*;
11. Law of Georgia *"On Energy Labelling"*.

In the process of fulfilling the obligations under the Association Agreement, the Standards Manual issued by the Georgian Competition and Consumer Agency for 2022-2025 was developed, consolidating the practices gradually established by the Agency in its enforcement activities. Importantly, the guide serves as a supplementary instrument to the Law of Georgia *"On the Protection of Consumer Rights"*, explaining its provisions in clear and accessible language for both consumers and traders, as well as for businesses and all other entities involved in the offering or purchasing of goods and services.

Regarding the steps taken to strengthen consumer rights protection, the Competition and Consumer Protection Agency began enforcing new legal provisions as of 1 November 2022. According to data from January 2024, over a twelve-month period, the Agency received 509 consumer complaints, of which 63% concerned online purchases and 37% related to in-person (physical) transactions. It is also noted that in 2024, compared to 2023, the number of consumer rights complaints submitted to the Georgian Competition and Consumer Agency (GCCA) nearly doubled, with 890 applications filed in 2024

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[194] Lika Moralishvili, *Momkhmarebelta Uplebebis Samartlebrivi Regulireba - Tsin Gadadgmuli Nabiji Evrointegratsiisken* [Legal Regulation of Consumer Rights - A Step Forward towards European Integration], p.65

compared to 495 in 2023; In 2024, violations of collective consumer rights were confirmed in 198 cases, compared to 82 cases in 2023. As for conditional undertaking agreements, in 2024 such agreements were concluded in 193 cases, while in 2023 they were reached in 161 cases between traders and the Agency. This indicates that traders committed to restoring infringed consumer rights and, in accordance with the law, to adjusting their commercial practices."[195] Consumers are now entitled to request the repair or replacement of defective goods, or to obtain a refund. The majority of cases reviewed were resolved in favour of consumers. It should also be noted that twenty individual traders were fined for failing to comply with obligations imposed by the Agency.[196] During the implementation process, the Agency also developed a number of guidelines, including the standardisation of price reference practices, the standardisation of consumer information, the provision of services in the state language, and the regulation of SMS advertising. Notably, the Agency actively cooperates with international organisations: it is a member of the International Competition Network (ICN) and, since 2023, a partner of the International Consumer Protection and Enforcement Network (ICPEN), which brings together agencies and member organisations from more than 80 countries worldwide in the field of consumer protection. The Agency also maintains close cooperation with the United Nations Conference on Trade and Development (UNCTAD), the Organisation for Economic Co-operation and Development (OECD), and the United States Agency for International Development (USAID). Following the signing of the Association Agreement, memoranda of cooperation have been concluded with 24 countries, which facilitates the exchange of best international practices and experience. In 2023, Georgia hosted the Second International Conference on Competition and Consumer Protection, which was assessed as highly successful both domestically and internationally. With the support of international experts, the Georgian Competition and Consumer Agency, within the framework of the EU-funded Twinning project, developed Georgia's first National Consumer Protection Strategy. The Strategy is a four-year policy planning document that sets out the objectives and priorities of consumer protection policy. It addresses the current state of consumer protection regulation and enforcement, reflects the challenges faced by various stakeholders, and outlines the measures necessary to achieve a high level of consumer protection in Georgia. The Strategy was prepared by the Georgian Competition and Consumer Agency.

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[195] Georgian Competition and Consumer Agency - *2024 wels momkhmareblis mkhridan saagentoshi momartvianoba gaormagebulia* [In 2024, consumer complaints submitted to the Agency have doubled], 1TV, https://1tv.ge/news/konkurenciisa-da-momkhmareblis-dacvis-saagento-2024-wels-momkhmareblis-mkhridan-saagentoshi-momartvianoba-gaormagebulia/

[196] ibid

It should be noted that in 2024, Georgia was recognised for its high standards in consumer rights protection and enforcement. The World Bank Group named Georgia a winner in one of three categories for the protection of consumer rights, the efficient handling of complaints, and the resolution of disputes in line with consumer interests. As Irakli Lekvinadze stated, "The award won by Georgia highlights the high standard of consumer rights protection in business-consumer relations and the successful functioning of mechanisms for the effective implementation of EU legislation.".[197]

If we examine at the measures implemented in Georgia regarding the development of consumer rights, The dynamics of the processes show a positive trend, which is very interesting in itself; however, the purpose of this paper is not to analyze the legal aspects of consumer protection itself, On which numerous studies have been written, the paper aims to discuss, alongside the existing results, the weaknesses that still deserve attention in the context of the policy of rapprochement with the European Union.

EU enlargement packages and consumer rights in Georgia

The EU Enlargement Package is based on a cluster-based negotiation structure and systematically assesses the alignment of candidate and potential candidate countries with the EU's legal and institutional standards. The clusters group together interrelated negotiation chapters and facilitate the coordinated implementation of reforms.

The thematic recommendations and proposed next steps are particularly important, as they support candidate countries in implementing the reforms required for EU membership. In this sense, the Enlargement Package represents a key instrument in the EU enlargement process, as it outlines both the progress achieved and the remaining challenges in candidate countries.

Among the clusters presented in the document, one of the most significant is the Internal Market Cluster, as it covers the areas essential for economic integration and the functioning of the EU Single Market. This cluster includes consumer and health protection, which are closely linked to the effective safeguarding of consumer rights, product safety, market surveillance, and standards for consumer information.

[197] Georgian Competition and Consumer Agency - *Msoflio bankma sakartvelo momkhmarebelta uflebebis dacvisa da aghsrulebis maghali standartistvis daajildova* [The World Bank awarded Georgia for high standards of consumer rights protection and enforcement], 1TV, https://1tv.ge/news/konkurenciisa-da-momkhmareblis-dacvis-saagento-msoflio-bankma-saqartvelo-momkhmarebelta-uflebebis-dacvis-da-aghsrulebis-maghali-standartistvis-daajildova/

The assessment of consumer rights places particular emphasis on the harmonisation of national legislation with EU law, the effectiveness of enforcement mechanisms, and the strengthening of the institutional framework for consumer protection. This area is considered an important indicator of a country's readiness for the full implementation of the rules governing the European Union's internal market.

The 2023[198], 2024[199], and 2025[200] Enlargement Packages, in chapter 28 of the second cluster, *"Consumer and Health Protection,"* provide an overview of the key requirements in this area, noting that the EU's legal and institutional framework places particular emphasis on the protection of consumers' economic interests. This policy area includes ensuring product safety, preventing the circulation of unsafe or counterfeit products, and establishing liability rules for defective goods. It is against this definition that the European Commission assesses the state of consumer protection in Georgia. It should also be noted that, according to the 2023 Enlargement Package, within the assessment of competition policy in Georgia, consumer protection issues are addressed in the context of the transposition of EU competition and consumer protection standards into the Georgian legal framework. This is also highlighted by Solomon Menabdishvili in his article, *"Transposition of EU Competition Policy in Georgia."*[201]

A further examination and analysis of consumer rights protection within the framework of the Enlargement Package reveals the following picture:

Table 1: Development dynamics of Georgia's consumer protection system according to the European Commission's 2023, 2024, and 2025 Enlargement Packages

[198] *Commission Staff Working Document, Georgia 2023 Report* , Brussels, 8.11.2023, SWD (2023) 697, final
[199] *Commission Staff Working Document, Georgia 2024 Report* , Brussels, 30.10.2024, SWD (2024) 697 final
[200] *Commission Staff Working Document, Georgia 2025 Report* ,Brussels, 4.11.2025, SWD (2025) 757 final
[201] Solomon Menabdishvili, "Transposition of EU Competition Policy in Georgia", *Transposition of EU Policies in Georgia: Collection of Research Articles*, Part II, Caucasus University, 2024, pp. 67-70

Assessment component	European Commission's 2023 Enlargement Package	European Commission's 2024 Enlargement Package	European Commission's 2025 Enlargement Package
Institutional Development	Strengthening the enforcement capacity of the Georgian Competition and Consumer Protection Agency (GCCA); and attaining partner status within international networks	Enhanced institutional activity	Further strengthening of enforcement mechanisms and deepening of international cooperation
Legal harmonization	Partial alignment; initiation of regulation of timeshare and related areas	Continued alignment with EU directives	Development of guidelines based on Directive (EU) 2019/2161
consumer complaints	849 applications; violations were confirmed in 39% of cases	Increased number of complaints and expanded monitoring	1,158 applications; nearly 90% of cases were resolved in favour of consumers
Effectiveness of enforcement mechanisms	Strengthening the investigation of complaints	Improvement of response mechanisms	Significantly improved effectiveness and quality of decisions
Product safety	Partial alignment with EU standards	Limited progress	No significant progress has been recorded towards full harmonisation
Market surveillance	Non-compliance with EU requirements	Persistence of problems	Systemic inconsistency persists
Overall assessment	Initial stage of reforms	Institutional consolidation	Increased effectiveness, but persistence of systemic shortcomings

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Dynamics of the Development of Georgia's Consumer Protection System, Conclusions and Recommendations (2023-2025)

Assessing Progress and Challenges in Consumer Protection

The period from 2023 to 2025 has witnessed significant institutional and legal developments in the field of consumer protection in Georgia, closely linked to the process of alignment with European Union legislation and the fulfilment of obligations under the Association Agreement. During this period, the institutional activity of the Georgian Competition and Consumer Protection Agency (GCCA) increased substantially,

enforcement mechanisms were strengthened, and the number of consumer complaints rose significantly.

Data from 2023 indicate that, although Georgia already had an institutional framework for consumer protection in place, its legal framework demonstrated only partial alignment with European Union legislation. During the same period, significant steps were taken to approximate legislation on timeshare and other resale and exchange contracts with EU standards. In addition, the Agency strengthened its enforcement capacity and obtained partner status in the International Consumer Protection and Enforcement Network (ICPEN), which represents an important indicator of deepened international cooperation.

Data for 2024 and 2025 indicate a further increase in institutional activity. The number of applications processed by the Agency increased significantly, reflecting, on the one hand, greater consumer awareness and, on the other hand, increased trust in institutional mechanisms.[202] Of particular importance was the development, in December 2024, of guidelines on the indication of prices of goods and services, based on Directive (EU) 2019/2161 of the European Parliament and of the Council. This development can be considered a significant step towards strengthening consumer information, transparency, and fair trading practices.

It is also noteworthy that in the 2025 reporting period, nearly 90% of cases were decided in favour of consumers, indicating a significant increase in the practical effectiveness of consumer rights protection. This indicator clearly demonstrates that the Agency's enforcement capacity and response mechanisms have become more effective.

It should also be noted that on 13 November 2020, the European Commission adopted a new agenda for consumer protection, setting out a renewed overarching strategic framework for EU consumer policy.[203] The *New Consumer Agenda: Strengthening Consumer Resilience for Sustainable Recovery* represents the European Union's updated strategic vision for consumer policy for the period 2020-2025. The five key priority areas

[202] Georgian Competition and Consumer Agency-*Momkhmareblis uflebebis dacvis mimartulebit statistika* [Consumer rights protection statistics] https://gcca.gov.ge/index.php?m=406&search=%E1%83%A1%E1%83%A2%E1%83%90%E1%83%A2%E1%83%98%E1%83%A1%E1%83%A2%E1%83%98%E1%83%99%E1%83%90

[203] Communication from The Commission to The European Parliament and The Council, New Consumer Agenda Strengthening consumer resilience for sustainable recovery, COM/2020/696

outlined in the document are also of particular relevance for Georgia, especially in the context of consumer rights protection and the ongoing legal and institutional reforms in areas such as digital market regulation, product safety standards, and sustainable development.

Despite positive trends, several systemic challenges remain evident for the period 2023-2025. First, in the area of consumer protection and product safety, Georgian legislation demonstrates only partial alignment with the EU legal framework. Particular shortcomings persist in the field of market surveillance, as national legislation and enforcement practices are not yet fully harmonised with EU requirements. Moreover, no significant progress has been achieved towards full alignment with EU legislation in the area of product safety.

The findings of this study indicate that, over the period 2023-2025, Georgia demonstrated institutional development in the field of consumer protection, including a positive dynamic of institutional strengthening, enhanced enforcement capacity, and increased consumer engagement. However, the continuation of legal and institutional reforms remains necessary in order to achieve full compliance with EU standards.

Table 2: Progress and Challenges in the Field of Consumer Protection (2023-2025)

Direction	Progress	Key Challenges
Institutional development	Strengthening of GCCA enforcement capacity	Limited institutional resources
International cooperation	Obtaining partner status in international networks	Ongoing approximation of legislation and guidelines with EU acquis
Legal harmonisation	Improvement of legislation based on individual directives	Only partial compliance of legislation with EU standards
Consumer protection	High rate of decisions in favour of consumers	Existence of consumer rights violations across various sectors

Market surveillance	Increase in applications and monitoring mechanisms	Incompatibility of the market surveillance system with EU requirements
Product safety	Use of mechanisms for controlling unsafe products	Insufficient progress in the field of product safety
Consumer engagement	Increase in the number of complaints and applications	Challenges in protecting consumer rights in the digital market

This paper provides an opportunity to identify a number of recommendations aimed at improving consumer rights protection. In order to ensure the approximation and effective enforcement of EU legislation in the field of consumer protection, the following steps are recommended:

1. ***Full harmonization of legislation with the EU legal framework*** - It is necessary to eliminate remaining legislative gaps in the field of consumer protection and product safety and to fully transpose the relevant EU directives into national legislation.
2. ***Reform of the market surveillance system*** - Market surveillance legislation and practical mechanisms need to be aligned with EU standards, including the introduction of a risk-based surveillance model.
3. ***Strengthening product safety mechanisms*** - It is important to enhance mechanisms for identifying, monitoring, and removing unsafe products from the market.
4. ***Development of digital market regulation*** - With the growth of online and distance selling, it is necessary to further refine the legal framework governing digital content, online platforms, and e-commerce.
5. ***Strengthening institutional capacity*** - It is necessary to enhance the Agency's human, technical, and financial resources to ensure the effective implementation of consumer protection and market surveillance functions.
6. ***Raising consumer awareness*** - It is necessary to continue information and educational campaigns, particularly in relation to online trading and digital consumer rights.

7. ***Deepening international cooperation*** - It is advisable to further strengthen cooperation with relevant EU agencies and international networks in order to exchange experience and implement best practices.

Conclusion

Between 2023 and 2025, Georgia demonstrated positive developments in institutional capacity, strengthened enforcement mechanisms, and increased consumer engagement in the field of consumer protection. The expansion of the Agency's activities, the rising number of consumer complaints, and the high rate of decisions in favour of consumers indicate an improvement in the practical effectiveness of the system.

Furthermore, the degree of approximation to EU legislation can be characterized as partial alignment, indicating an ongoing but incomplete harmonization process. While gradual progress has been observed in certain areas, systemic and structural gaps persist in other sectors, hindering the achievement of full alignment. Therefore, despite significant institutional progress, the continuation of legal and institutional reforms remains essential for full compliance with EU standards.

Moreover, it should be noted that this research is based solely on the 2023-2025 period and on the analysis of the available data and Enlargement Package reports; therefore, it does not capture the full dynamics of the long-term reform process. The ongoing nature of these reforms is evidenced, inter alia, by the expansion of the activities of the Georgian Competition and Consumer Agency, increased transparency and openness of its operations, a high number of cases decided in favour of consumers, participation in international forums, and awareness-raising initiatives. Accordingly, a comprehensive analysis of the current reform trajectory and its long-term implications falls beyond the scope of this paper and may be addressed in future research.

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COMMERCIAL GUARANTEES IN CONSUMER LAW: APPROXIMATION OF GEORGIAN LAW TO EU STANDARDS – A COMPARATIVE ANALYSIS

Abstract
This article examines the institution of commercial guarantee within the consumer protection legal frameworks of Georgia and the European Union, using a comparative legal method. Following the EU-Georgia Association Agreement, Georgia adopted the Law "On Consumer Rights Protection," approximating its national legislation to EU standards, including those established under Directive (EU) 2019/771 on the Sale of Goods. The study analyzes the legal nature of the commercial guarantee, its distinction from the statutory guarantee, and identifies similarities and differences between the two jurisdictions, while highlighting remaining challenges related to consumer awareness and transparency of guarantee conditions.
Keywords: *commercial guarantee, consumer law, consumer rights, EU, approximation, consumer protection.*

Introduction

The development of civil transactions and public relations is a dynamic process, of which the effective protection of consumer rights forms an integral part. In the contemporary economic environment, consumer protection is no longer perceived solely as a matter of individual interest; rather, it is recognized as a determinative factor in market stability and fairness.

In independent Georgia, the legal regulation of consumer relations was initially governed by the 1996 Law "On Consumer Rights Protection.[204]" However, that legislative act failed to ensure a level of protection consistent with modern standards and proved inadequate in addressing the practical challenges of the time, leading to its repeal in 2012. As a result, a legal vacuum emerged in the field of consumer relations, which placed on the agenda the urgent need for new, modern-standard-based regulation.

The development of consumer protection law in Georgia was significantly influenced by the Association Agreement between Georgia and the European Union, under which Georgia undertook the obligation to ensure a high level of consumer protection and to approximate its

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[204] Law of Georgia "On Consumer Rights Protection" of 1996 (repealed by the Law of Georgia of 8 May 2012, No. 6157). Available at: https://matsne.gov.ge/document/view/32974?publication=12 (accessed 08.04.2026)

national legislation to the legal standards of the European Union.[205] In fulfillment of this obligation, the Parliament of Georgia adopted the Law "On Consumer Rights Protection," which laid the foundation for a unified and systematic legal regulation of consumer relations.

Under this Law, alongside other important institutions of consumer law, the institution of commercial guarantee was also regulated — an instrument that constitutes an additional mechanism of consumer protection operating in parallel with the rights established by statute. It is precisely for this reason that particular importance attaches to assessing the extent to which the Georgian legal regulation of commercial guarantees corresponds to the standards established in EU consumer law.

The present paper, on the basis of the comparative legal method, examines the concept of guarantee and its types, including the relationship between legal and commercial guarantees, as well as their legal frameworks under both EU and Georgian law. The aim of the paper is to determine the degree to which Georgia's legal regulation of commercial guarantees has been harmonized with the relevant EU standards, to identify existing similarities and differences, and to assess how closely Georgia's consumer protection system has approached the European model.

1. The Concept and Purpose of Guarantee in Consumer Law

In general terms, a guarantee denotes a commitment to ensure something. In consumer law, the term is used to express an obligation assumed by a trader or manufacturer, whereby, in the event of a defect in the goods they produce, they undertake to repair or replace those goods[206] - even where the goods are sold to the consumer by a third party.[207]

In consumer law, a guarantee encompasses the following components: "consumer," "trader," "scope of business or commercial activity," and "service.[208]" These four elements together constitute the guarantee relationship. Accordingly, the principal subject of this relationship is the consumer a natural person to whom goods or services are offered, or who acquires or uses them, for personal use and not for commercial, trade, or other business purposes.[209] The other party to this relationship is the trader a person acting within the scope of commercial activity[210], who may be a natural person, a legal entity, or an association of such persons.[211]

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[205] See Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, Articles 345, 346, and 347, which define consumer policy and the key measures to be taken by Georgia in order to achieve these objectives.

[206] Tina Astola, Manufacturers' Guarantees and EEC Competition Law, *Journal of Consumer Policy* 7, No. 1, 1984, 65.

[207] *Ibid.*, 65.

[208] Stephen Corones, Consumer Guarantees And The Supply Of Educational Services By Higher Education Providers, *University of New South Wales Law Journal*, vol. 35, No. 1, 2012, 4.

[209]See also the definition of "consumer" under Article 4(i) of the Law of Georgia "On Consumer Rights Protection." See further Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, Article 2(2).

See the definition of "commercial activity" under Article 4(g) of the same Law.

[210] See the definition of "commercial activity" under Article 4(g) of the same Law.

See the definition of "trader" under Article 4(h) of the same Law and Directive (EU) 2019/771, Article 2(3).

[211] See the definition of "trader" under Article 4(h) of the same Law and Directive (EU) 2019/771, Article 2(3).

A guarantee consists of three core elements: the guarantee promise; the procedure for applying appropriate remedies in the event of non-performance of that promise; and the conditions under which the guarantee is issued.[212] According to a view expressed in the literature, "conditions" may be interpreted as referring to certain actions related to the activation of the guarantee and the commencement of the guarantee period for example, completing a warranty registration card and similar formalities. Alternatively, "conditions" may refer to the terms of the guarantee itself both what the consumer is required to do and what the guarantee promises in return.[213]

Guarantee service for goods covers a broad spectrum and ensures the conformity of goods with such components as unencumbered title, quality indicators, fitness for purpose, and the identity of the goods with their description or presented sample. In addition, guarantee obligations may extend to special conditions, including the provision of spare parts, technical maintenance, service completion deadlines, and price stability guarantees[214] all of which, taken together, are directed toward the protection of consumer rights.

Accordingly, a guarantee constitutes an independent legal protection mechanism, the application of which is available where goods covered by the guarantee exhibit a manufacturing defect.[215]

2. The Interrelationship Between Types of Guarantee

2.1. The Relationship Between Legal and Commercial Guarantees

A legal (conformity) guarantee is a specific obligation under which the seller (trader) is required to deliver goods to the consumer in accordance with the terms of the contract and to be liable for defects existing at the time of delivery.[216]

A commercial guarantee is an additional guarantee that may be offered voluntarily by the trader, the manufacturer, or any other person in the distribution chain of the goods.[217] Accordingly, this type of guarantee is discretionary in nature.[218] Unlike the legal guarantee, therefore, a commercial guarantee constitutes an additional obligation assumed voluntarily and not by operation of law by the seller or manufacturer in respect of the relevant goods or services. Its existence depends not on the force of law, but on negotiation between the parties.[219]

Christian Twigg-Flesner, *Consumer Product Guarantees*, Ashgate, 2003, 29.

[212] Christian Twigg-Flesner, *Consumer Product Guarantees*, Ashgate, 2003, 29.

Christian Twigg-Flesner, A Response To EC Directive 99/44/EC On Certain Aspects Of The Sale Of Consumer Goods And Associated Guarantees — First Consultation Of 2001, Nottingham Law Journal 10, No. 1, 2001, 98–99.

[213] Christian Twigg-Flesner, A Response To EC Directive 99/44/EC On Certain Aspects Of The Sale Of Consumer Goods And Associated Guarantees — First Consultation Of 2001, Nottingham Law Journal 10, No. 1, 2001, 98–99.

Cynthia Hawes, Agents and Consumer Guarantees, 6 Canterbury L. Rev. 164 (1995), 164.

[214] Cynthia Hawes, Agents and Consumer Guarantees, 6 Canterbury L. Rev. 164 (1995), 164.

[215] Christian Twigg-Flesner, Consumer Product Guarantees, Ashgate, 2003, 50.

[216] Camelia Spasici, Considerations Regarding the Conformity of Goods and Commercial Guarantees at the Sale of Consumption, under the Conditions of O.U.G. No. 140/2021, *Revista Universul Juridic*, No. 10, 2022, 27.

[217] Felisa Mara Corvo López, Comparative Legal Studies on the Sale of Consumer Goods and Guarantees in Spain and Portugal in the Light of the Directive EU 2019/771, Cuadernos de Derecho Transnacional 12, No. 1, 2020, 120.

[218] Ibid., 166.

[219] Stephen Weatherill, EU Consumer Law and Policy, Elgar European Law, 2005, 131.

It is termed a "commercial guarantee" because it is grounded in the commercial decision of the seller (trader/manufacturer) whether or not to offer a guarantee on goods or services at all.[220]

The legal guarantee, deriving from law, is a consumer protection mechanism present in every national legal system, the waiver of which is impermissible; it entails the trader's liability to the consumer for defects in the goods sold.[221]

The commercial guarantee has certain advantages over the legal guarantee, in that it may introduce new rights, extend the time limits for exercising rights provided by law, and offer further benefits.[222] It is therefore permissible for a commercial guarantee to be more advantageous than the legal guarantee for example, a guarantee that provides for replacement of goods, a refund, or the right to withdraw from the contract in the event of any defect (including a minor one) constitutes more favorable terms for the consumer than those that may be established by law in the case of a defect.[223] Thus, the legal guarantee is mandatory and gratuitous, whereas the commercial guarantee is a voluntary service offered to the consumer by the seller, manufacturer, or a third party.[224] It must complement the provisions of the legal guarantee.[225] A commercial guarantee cannot annul or affect the legal guarantee; rather, it is an additional service that strengthens consumer rights for example, a commercial guarantee covering accidental damage to goods and operating for a longer period than the legal guarantee.[226]

It follows that the principal requirement is that the commercial guarantee must supplement and not restrict the rights provided for under the legal guarantee.[227]As noted, the commercial guarantee does not replace the legal guarantee; the two complement one another. A question arises, however, as to which takes precedence and whether claims under both guarantees may be brought simultaneously.

In order to answer this question, it is important to note that two principles govern the relationship between the legal and commercial guarantees.

The first is the principle of complementarity, whereby the consumer has the right to invoke both types of guarantee simultaneously in order to obtain full compensation for example, invoking the commercial guarantee for repair of a product and the legal guarantee for compensation for other damage caused by the defect in the product.[228]

The second is the principle of subsidiarity, under which the consumer's use of the commercial guarantee must not preclude recourse to the legal guarantee for example, where

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[220] Elspeth Deards, The Proposed Guarantees Directive: Is It Fit for the Purpose?, Journal of Consumer Policy 21, No. 1, 1998, 107.

[221] Felisa Mara Corvo López, Comparative Legal Studies on the Sale of Consumer Goods and Guarantees in Spain and Portugal in the Light of the Directive EU 2019/771, Cuadernos de Derecho Transnacional 12, No. 1, 2020, 119.

[222] Ibid., 166.

[223] Elspeth Deards, op. cit., 107.

[224] European Consumer Centres Network, Legal Guarantees and Commercial Warranties on Consumer Goods in the EU, Iceland and Norway, Update April 2019, 50.

[225] Ibid., 50.

[226] Ibid.

[227] Elspeth Deards, op. cit., 107.

[228] Aneta Wiewiórowska-Domagalska, Consumer Sales Guarantees in the European Union, Doctoral (PhD) Dissertation, 2011, 132.

the consumer is dissatisfied with the commercial guarantee and wishes to rely on the rights established under the legal guarantee provided by law.[229]

It follows that the two guarantees may coexist simultaneously, affording the consumer the right to choose between them; alternatively, the law may expressly determine which type of guarantee takes precedence.[230] However, with respect to Article 6 of Directive 1999/44/EC, scholarly opinion has identified certain deficiencies that have not been adequately addressed: these concern the voluntary nature of the commercial guarantee, the absence of minimum standards applicable to it, the scarcity of relevant practice, and the fact that the Directive does not regulate which guarantee takes precedence or whether transition from one regime to the other is permissible that is, from commercial to legal and from legal to commercial guarantee.[231]

Accordingly, these two guarantees complement one another,[232] in the sense that while the legal guarantee is an obligation imposed on the trader by law, the commercial guarantee though regulated by law derives directly from the obligation assumed by the trader itself.

3. Legal Regulation of the Guarantee

The legal guarantee denotes "the minimum contractual standard of quality established by law.[233]"

In EU law, the legal concept of guarantee was established by Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999, the purpose of which was to approximate the laws of the Member States in the field of consumer goods sales so as to ensure a uniform minimum level of consumer protection within the context of the single market.[234] Although this Directive does not employ the term "legal guarantee" as such confining itself to the concept of "guarantee" it nonetheless establishes the fundamental principles that distinguish the legal guarantee from the commercial guarantee.

The Directive creates the concept of the "legal guarantee of conformity," meaning that while it does not expressly define the legal guarantee, Articles 2 and 3 of the same Directive concerning conformity with the contract and the rights of the consumer respectively establish the legal framework of the legal guarantee.

Specifically, the seller is obliged to deliver goods to the consumer in conformity with the contract of sale,[235] which entails conformity with the relevant description, characteristics, sample, the consumer's particular purpose, and the purposes for which goods of the same type are ordinarily used, and satisfaction of the reasonable expectations that may be held regarding the characteristics of the goods in light of public statements made in

[229] See *ibid.*, 132.
[230] See Ibid 132
[231] See ibid., 138–139.
[232] Camelia Spasici, Considerations regarding the Conformity of Goods and Commercial Guarantees at the Sale of Consumption, under the Conditions of O.U.G. No. 140/2021.Revista Universul Juridic 2022, N 10, 2022, 29
[233] Stephen Weatherill, *EU Consumer Law and Policy*, Elgar European Law, 2005, 131.
[234] Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (no longer in force; date of end of validity: 31/12/2021), Article 1.
[235] See *ibid.*, Article 2(1).

advertising or labeling.[236] Furthermore, the seller is liable for any lack of conformity existing at the time of delivery of the goods.[237] Accordingly, where the standard of conformity established under Article 2 of the Directive is breached, Article 3 grants the consumer the right, in the case of non-conformity, to demand free-of-charge repair or replacement of the goods,[238] or an appropriate reduction in price, or rescission of the contract.[239]

As regards the commercial guarantee, the Directive employs solely the term "guarantee," the content of which corresponds to the essence of the commercial guarantee. Specifically, under the Directive, a guarantee is defined as any undertaking given to the consumer, free of charge, by a seller or producer, providing for reimbursement of the price paid, replacement, repair, or any other form of service in connection with the goods, in the event that the goods do not conform to the specifications set out in the guarantee statement or in the relevant advertising.[240] Article 6 of the same Directive establishes the conditions required of a guarantee, pursuant to which the guarantee is legally binding on the guarantor under the conditions set out in the guarantee statement and in the associated advertising; the guarantee must state that the consumer has rights conferred by law and must make clear that the guarantee does not affect those rights;[241] the content of the guarantee must be set out in plain and intelligible language and must specify the following particulars: the duration of the guarantee, its territorial scope, the name and address of the guarantor.[242] It must be made available in written form or in another durable medium.[243] Member States may provide that the guarantee may be drawn up in one or more official languages of the Community, as determined by the parties.[244]

In addition, Article 6(5) of the same Directive establishes an important precondition from the standpoint of consumer protection: where a guarantee fails to comply with the requirements set out above, this circumstance shall not affect the validity of the guarantee, meaning that the consumer may still rely upon it and demand performance of its terms.[245]

The Directive establishes a time limit pursuant to which the seller is liable for any lack of conformity existing at the time of delivery, provided that such lack of conformity becomes apparent within two years of that delivery.[246] Member States may, however, extend this period.[247] The time limit within which the consumer must notify the seller of the lack

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[236] See *ibid.*, Article 2(2).
[237] See *ibid.*, Article 3(1).
[238] Under the Directive, "free of charge" means the necessary costs incurred in bringing the goods into conformity, including postal, labour, and material costs. See *ibid.*, Article 3(4).
[239] Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (no longer in force; date of end of validity: 31/12/2021), Article 3(2)(3).
[240] See *ibid.*, Article 1(2)(e).
[241] See ibid., Article 6(2).
[242] See *ibid.*, Article 6(2).
[243] See *ibid.*, Article 6(3).
[244] See *ibid.*, Article 6(4).
[245] See *ibid.*, Article 6(5).
[246] See *ibid.*, Article 5(1).
[247] For example, Sweden operates a three-year period; Member States take varying approaches to guarantee periods — some apply fixed periods, others tie the period to the expected lifespan of the goods, and others to the limitation period for claims. For a detailed discussion, see European Consumer Centres Network, Legal Guarantees and Commercial Warranties on Consumer Goods in the EU, Iceland and Norway, Update April 2019, 16–18.

of conformity is two months.[248] It is noteworthy that Member States have the right and not the obligation to impose this two-month notification period under the Directive.

The Law of Georgia "On Consumer Rights Protection" is fully aligned with this Directive and, similarly to it, establishes a two-year period for the legal guarantee, running from the moment of delivery of the goods to the consumer.[249]

The Law of Georgia "On Consumer Rights Protection," in conformity with the Directive, establishes the principal conditions of the legal guarantee, pursuant to which the trader is obliged to transfer goods to the consumer in accordance with the terms stipulated by the contract.[250] At the same time, the Law establishes the conformity of goods, meaning conformity with the description provided by the trader to the consumer, the same characteristics, and the sample presented to the consumer.[251]

In the event that goods are found to be defective, the consumer has the right to demand from the trader the remedy of the defect by way of free repair or replacement of the goods, a reduction in price or withdrawal from the contract.[25222]

With regard to the legal guarantee, noteworthy is the decision adopted by the Georgian National Competition Agency[25323] (hereinafter — the Agency) in the case of LLC "Iplus," in which the Agency established a violation of the legal guarantee. The violation consisted in the fact that the commercial guarantee issued by LLC "Iplus" limited the guarantee period to one year only, which was inconsistent with the two-year legal guarantee period; accordingly, that condition was declared void pursuant to Article 19(5) of the Law.

Furthermore, a review of the Agency's most recent decisions in Georgia confirms that violations of the obligation to inform consumers about the legal guarantee by traders are frequent. For example, in numerous analogous cases the Agency found that traders natural persons had violated the legal requirements, in that the trading pages on social media platforms contained no information compatible with the legal guarantee, in contravention of Article 5(1)(f) of the Law,[254] and accordingly failed to ensure that consumers were informed of the conditions and duration of the legal guarantee, thereby depriving consumers of the opportunity to become acquainted with their rights arising from that guarantee and to obtain information on its duration and the allocation of the burden of proof. [255]

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[248] Directive 1999/44/EC, Article 5(2) (no longer in force; date of end of validity: 31/12/2021). For a detailed discussion of the implementation of this Article in Member States, see European Consumer Centres Network, Legal Guarantees and Commercial Warranties on Consumer Goods in the EU, Iceland and Norway, Update April 2019, 16–18.

[249] See Article 20(2) of the Law of Georgia "On Consumer Rights Protection."

[250] See Article 16(1) of the Law of Georgia "On Consumer Rights Protection."

[251] See *ibid.*, Article 16(2).

[252] See Article 17 of the Law of Georgia "On Consumer Rights Protection."

[253] As of 1 January 2024, the "Georgian National Competition Agency" was renamed the "Georgian Competition and Consumer Protection Agency."

[254] Decision of the Chairman of the Georgian National Competition Agency No. 04/303 of 1 June 2023 in the case of LLC "Iplus." Available at: https://gcca.gov.ge/uploads_script/user_rights/tmp/phpn3xgCC.pdf (accessed 07.04.2026)

[255] Decision of the Chairman of the Georgian Competition and Consumer Protection Agency No. 04/539 of 6 April 2026. Available at: https://gcca.gov.ge/uploads_script/user_rights/tmp/phpbQlM2E.pdf (accessed 10.04.2026). See also Decision of the Chairman of the Georgian Competition and Consumer Protection Agency No. 04/525 of 3 April 2026. Available at: https://gcca.gov.ge/uploads_script/user_rights/tmp/phpCva3nn.pdf (accessed 10.04.2026). See also Decision

The Directive establishes a presumption under which any lack of conformity that becomes apparent within six months of delivery is presumed to have existed at the time of delivery, unless that presumption is incompatible with the nature of the goods or the nature of the lack of conformity.[256] It should be noted that the new EU Directive 2019/771, which repealed Directive 1999/44/EC, extended this period from six months to one year,[257] thereby setting a higher standard of consumer protection. Under the Georgian model, the trader bears liability for an initial lack of conformity for a period of six months, meaning that Georgia aligns with the standard established by Directive 1999/44/EC as it stood prior to the adoption of Directive 2019/771.[258]

By virtue of the guarantee, the seller is obliged to ensure the conformity of the goods with the contract,[259] meaning that the legal guarantee also applies where the goods do not correspond to the description provided by the sellerand do not possess the characteristics of the sample or model presented by the seller to the consumer;[260] where the goods are not fit for the specific purpose required by the consumer, of which the consumer informed the seller in advance;[261] where the goods are not fit for the ordinary purposes for which goods of the same type are used;[262] or where the goods do not possess the qualities and characteristics typical of such goods having regard to their nature.[263]

The legal guarantee does not apply where the consumer knew or could not reasonably have been unaware of the lack of conformity at the time of conclusion of the contract, or where the lack of conformity is caused by materials supplied by the consumer.[264]34 The Georgian model likewise establishes this standard in law.[265] Georgian law also regulates, in a manner identical to the Directive, the question of the trader's liability in respect of public statements made about goods or services: where the trader proves that he was not, and could not reasonably have been, aware of the statement in question; where the statement had

pursuant to Order No. 04/1275 of 30 October 2025 of the Chairman of the LEPL Georgian Competition and Consumer Protection Agency. Available at: https://gcca.gov.ge/uploads_script/user_rights/tmp/phpiXG9jD.pdf (accessed 10.04.2026). See also Decision of the Chairman of the Georgian Competition and Consumer Protection Agency No. 04/430 of 20 March 2026. Available at: https://gcca.gov.ge/uploads_script/user_rights/tmp/php5dAz8M.pdf (accessed 10.04.2026). See also Decision of the Chairman of the Georgian Competition and Consumer Protection Agency No. 04/431 of 20 March 2026. Available at: https://gcca.gov.ge/uploads_script/user_rights/tmp/phpDRt94X.pdf (accessed 10.04.2026).

[256] Directive 1999/44/EC, Article 5(3) (no longer in force; date of end of validity: 31/12/2021).

[257] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, Article 11(1).

[258] See Article 20(1) of the Law of Georgia "On Consumer Rights Protection" and Directive 1999/44/EC, Article 5(2) (no longer in force; date of end of validity: 31/12/2021).

[259] European Consumer Centres Network, *Legal Guarantees and Commercial Warranties on Consumer Goods in the EU, Iceland and Norway*, Update April 2019, 10.

[260] European Consumer Centres Network, *Legal Guarantees and Commercial Warranties on Consumer Goods in the EU, Iceland and Norway*, Update April 2019, 10. See also Directive 1999/44/EC, Article 2(a).

[261] See *ibid.*, Article 2(b).

[262] See *ibid.*, Article 2(c).

[263] See *ibid.*, Article 2(d), Article 2(4).

[264] See Article 16(7) of the Law of Georgia "On Consumer Rights Protection."

[265] See *ibid.*, Article 2(3). For a detailed discussion of the implementation of these provisions at the national level in EU Member States, see European Consumer Centres Network, *Legal Guarantees and Commercial Warranties on Consumer Goods in the EU, Iceland and Norway*, Update April 2019, 10–11

been corrected prior to conclusion of the contract; or where the statement could not have influenced the consumer's decision to purchase the goods or services.[266]

Accordingly, Directive 1999/44/EC laid the foundation for the development of the guarantee institution in the field of consumer protection. In addition to the legal guarantee, the Directive established a legal definition of the commercial guarantee and the rules governing its legal regulation, pursuant to which the determination of the conditions of the commercial guarantee is the prerogative of the trader; it established rules under which the guarantee may not be used to deceive or mislead consumers; it remains effective even where it does not fully satisfy the requirements prescribed by law, and the trader remains obligated to perform the promise made under the guarantee in favor of the consumer. The Directive also established time limits for the protection of consumer rights including in relation to guarantees which facilitates the allocation of the burden of proof between the parties. The Georgian model fully adopted the rules established by that Directive and implemented them through national legislation, thereby laying the legal framework for the institution of commercial guarantee in the country for the purposes of consumer rights protection.

4. The Development of the Legal Framework of Commercial Guarantee in the European Union and Its Influence in Georgia

Notwithstanding the establishment of minimum requirements applicable to guarantees, Article 6 of Directive 1999/44/EC defines the legal framework of the guarantee, pursuant to which the commercial guarantee is voluntary in nature and depends on the seller's decision whether or not to offer it to the consumer. Furthermore, the Directive does not prescribe the form the guarantee must take, and confers upon the guarantor the freedom to determine its conditions. According to a view expressed in the literature, in the initial version preceding the adoption of the Directive (the 1993 Green Paper[267]), the European Commission had sought to create a single mandatory legal framework for all commercial guarantees on goods of the same brand, operating across all links of the distribution chain from manufacturer to seller.[268] However, this idea was not realized in the final text of the Directive.[269] This indicates that EU law, in respect of commercial guarantees, opted for the principles of freedom of contract and private autonomy, meaning that the parties have the right and the capacity to regulate matters relating to the commercial guarantee between

[266] See Article 16(8) of the Law of Georgia "On Consumer Rights Protection." Cf. Directive 1999/44/EC, Article 2(4) (no longer in force; date of end of validity: 31/12/2021).

[267] The Green Paper played a significant role in stimulating discussion and shaping the direction of legal regulation in the field of EU consumer relations, including with respect to guarantees. For a detailed discussion of the debate formulated in the Green Paper, see Frances E. Zollers, Sandra N. Hurd, Peter Shears, Consumer Protection In The European Union: An Analysis Of The Directive On The Sale Of Consumer Goods And Associated Guarantees, University of Pennsylvania Journal of International Economic Law 20, No. 1, 1999, 103–105. See also Commission of the European Communities, Green Paper on Guarantees for Consumer Goods and After-Sales Services, COM(93) 509 final, Official Journal C 338, 1993. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51993DC0509 (accessed 08.04.2026).

[268] Stephen Weatherill, EU Consumer Law and Policy, Elgar European Law, 2005, 132.

[269] See *ibid.*, 132.

themselves, with the trader being granted the right to determine its terms. The Directive confines itself to establishing minimum requirements imposed upon it.

Accordingly, having regard to the foregoing circumstances, addressing the challenges present in the contemporary consumer sphere necessitated the development and improved regulation of the institution of commercial guarantee under EU consumer law. It was precisely for this purpose that, on 25 October 2011, the EU adopted a new Directive on consumer rights — Directive 2011/83/EU. Unlike Directive 1999/44/EC, this Directive establishes full harmonization, meaning that its provisions must be transposed into national law in exactly the same form as set out in the Directive.[270]

This Directive expressly formulated the definition of the commercial guarantee, pursuant to which a "commercial guarantee" means:

"any undertaking by the trader or a producer (the guarantor) to the consumer, in addition to his legal obligation relating to the guarantee of conformity, to reimburse the price paid or to replace, repair or service goods in any way if they do not meet the specifications or any other requirements not related to conformity set out in the guarantee statement or in the relevant advertising available at the time of, or before the conclusion of the contract.[271]"

From this definition of the commercial guarantee, it follows that it encompasses not only commercial guarantees offered by traders but also those offered by manufacturers.[272]

The same Directive further emphasized the obligation to provide consumers with information in advance — whether under a contract or a corresponding offer — and in the case of distance contracts, off-premises contracts, or any offer concluded under such arrangements, the trader must provide the consumer, in a clear and comprehensible manner, with information among other things on the existence of a commercial guarantee and its conditions.[273]

Under this Directive, information about the commercial guarantee at the pre-contractual stage is of considerable practical importance, since the consumer has a legitimate interest in receiving information about the guarantee when deciding whether to conclude a contract with the trader; it is precisely this legitimate interest in information about the commercial guarantee that gives rise to the trader's obligation to provide the

[270] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, Article 4. Cf. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, Article 8 (no longer in force; date of end of validity: 31/12/2021).

[271] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, Article 2(14).

[272] See *ibid.*

[273] See *ibid.*, Article 5(1)(e) and Article 6(1)(m).

consumer with information about the manufacturer's commercial guarantee and not merely because that guarantee happens to exist.[274]

The existence of a legitimate interest is directly linked to the question of whether the commercial guarantee offered by the trader or manufacturer constitutes a key or decisive component of their offer. In this context, essential significance attaches not only to the promised conditions but also to the substance of the offer itself, its overall structure, and the indications that shape the consumer's expectations. Ultimately, the assessment must be grounded in the objective need for consumer protection and all accompanying circumstances that confer binding contractual force on the guarantee conditions associated with specific goods.[275]

As regards whether the information about the existence and conditions of a commercial guarantee required at the pre-contractual stage under Directive 2011/83 must contain the same particulars as those established by Article 6(2) of Directive 1999/44, the Court of Justice of the European Union clarified in one case that the information to be provided to the consumer regarding the conditions of the manufacturer's commercial guarantee encompasses all particulars concerning the conditions for invoking and exercising that guarantee, enabling the consumer to decide whether to conclude a contract with the trader.[276]

Accordingly, the aforementioned Directive directly formulated the concept of the commercial guarantee and established, in the field of service contracts, the obligation of pre-contractual disclosure of information about the commercial guarantee to consumers, among other matters.

On 20 May 2019, the EU adopted a new Directive on contracts for the sale of goods — Directive (EU) 2019/771 (entering into force on 1 January 2022) — which replaced (repealed) the previously applicable Directive 1999/44/EC. The repeal of that Directive was prompted by contemporary market-economic demands, digital-technological progress, and the challenges in this field that the old Directive could no longer adequately address.

Under the new Directive, the concept of the commercial guarantee is formulated identically to that set out in Directive 2011/83/EU.[277] The commercial guarantee constitutes a voluntary obligation of the trader or manufacturer, existing in addition to the statutory guarantee, and provides for conditions covering reimbursement of the price, replacement, repair, or service in the event that the goods do not conform to the specifications set out in the guarantee document or in the relevant advertising. Accordingly, the definitions of the commercial guarantee formulated in both Directives are aligned with one another, thereby precluding any ambiguity or lack of clarity between the concepts.

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[274] Court of Justice of the European Union, Case C-179/21, *Victorinox AG v absoluts-bikes and more- GmbH & Co. KG* [2022]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62021CJ0179 (accessed 7 April 2026).

[275] See *ibid.*

[276] See *ibid.*

[277] Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, Article 2(12). Cf. Directive 2011/83/EU, Article 2(14).

Article 17 of the Directive establishes the legal framework of the commercial guarantee and the requirements applicable to it, among which it is noteworthy that the conditions set out in the commercial guarantee or in the relevant advertising are binding on the guarantor (trader).[278] Furthermore, the Directive provides that where a manufacturer offers the consumer a commercial guarantee of durability for specific goods for a defined period, the manufacturer is directly liable to the consumer throughout the entire duration of that commercial guarantee of durability for the repair or replacement of the goods, and may offer the consumer more favorable conditions.[279] However, where those conditions are less favorable to the consumer than those set out in the relevant advertising, the conditions contained in the advertising shall prevail, unless the advertising was corrected prior to the conclusion of the contract in the same or a comparable manner to that in which it was made.

This provision of the Directive aims to ensure transparency, improve legal certainty, and prevent consumer deception, so that in the event of a conflict between commercial guarantee conditions established in different forms, preference is given to the more favorable conditions.[280]

A further innovation of the Directive compared to its predecessor — is the more clearly and exhaustively defined rules on the content of the guarantee statement and the manner of its communication to the consumer. Specifically, under the Directive, the commercial guarantee statement must be provided to the consumer no later than the time of delivery of the goods, in an appropriate form, with the text drafted in plain and intelligible language. It must include the following: information that the consumer is entitled, free of charge, to rely on the seller's remedies in the event of non-conformity of the goods (the statutory guarantee) and that the commercial guarantee does not affect those remedies; the name and address of the guarantor; the procedure for invoking the commercial guarantee; the designation of the goods covered by the commercial guarantee; and the conditions of the commercial guarantee.[281] Should these requirements not be complied with, this shall not affect the binding force of the commercial guarantee.[282]

The Directive grants Member States discretionary authority to establish rules on aspects of the commercial guarantee beyond those regulated by the Directive itself — such as determining the language or languages in which the commercial guarantee statement must be made available to the consumer.[283] However, this does not mean that Member States are entitled to reduce the level of protection established by the Directive or to deviate from the scope of harmonization in transposing the Directive into national law. This means that Member States must not retain or introduce provisions in their national legislation that differ from those laid down by the Directive.[284]

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[278] Directive (EU) 2019/771, Article 17(1).
[279] Directive (EU) 2019/771, Article 17(1).
[280] See ibid., Recital 62.
[281] See *ibid.*, Article 17(2).
[282] See *ibid.*, Article 17(3).
[283] See ibid., Article 17(4).
[284] See *ibid.*, Recital 62 and Article 4.

The conclusion of the Association Agreement between Georgia and the European Union led the Parliament of Georgia to adopt the Law "On Consumer Rights Protection" on 29 March 2022. In addition to this, the adoption of the Law was prompted by the absence of a unified legislative act governing consumer relations in Georgia and the lack of enforcement mechanisms for consumer protection.[285]

The purpose of the Law is to define the legal foundations of consumer rights and to promote a culture of conduct oriented toward respect for the consumer.[286] The Law is grounded in the European experience and legal instruments in the field of consumer protection.[287]

The Law of Georgia "On Consumer Rights Protection" regulates the principal rights and obligations between consumers and traders, distance contracts, off-premises contracts and consumer contracts and related matters, unfair standard contractual terms, the conduct of unfair commercial practices, and the institutional guarantees of consumer rights protection.[288]

As the enumerated matters demonstrate, this Law creates a solid foundation for the protection of consumer rights in Georgia. The commercial guarantee forms part of these protection mechanisms. This institution is regulated by Article 4(f) and Article 19 of the Law.[289]

Under the Law, a commercial guarantee constitutes an obligation assumed additionally and free of charge by a trader or manufacturer (the guarantor) in favor of the consumer, over and above the obligation to ensure conformity with the contract, comprising obligations to reimburse the price paid, replace, repair, or otherwise service the goods obligations that do not arise from the duty to remedy a lack of conformity with the contract.[290]

In Georgian consumer practice, instances of confusion between the statutory and commercial guarantees have been observed. Specifically, in the case of LLC "Omega," the Agency found that the trader had failed to distinguish between the statutory and commercial guarantees, which caused confusion and constituted a violation of Article 19(2) of the Law on Consumer Rights.[291]

As can be seen, the concept of the commercial guarantee established under the Law "On Consumer Rights Protection" corresponds to the definition of the commercial guarantee set out in Directives 2011/83/EU and 2019/771 of EU consumer law. This indicates that Georgian consumer law has adopted the definition of the commercial guarantee as formulated by the European Union.

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[285] See Explanatory Card on the Draft Law "On Consumer Rights Protection" (Registration No. 07-3/368/9), 3–4.

[286] See Article 1 of the Law of Georgia "On Consumer Rights Protection."

[287] See Explanatory Card on the Draft Law "On Consumer Rights Protection" (Registration No. 07-3/368/9), 3, 6. The Law is grounded in the following EU Directives and Regulation: Directive 2011/83/EU, Directive 98/6/EC, Directive 2005/29/EC, Directive 1999/44/EC, Directive 93/13/EEC, Directive 2009/22/EC, Regulation (EC) No. 1935/2004.

[288] See the Law of Georgia "On Consumer Rights Protection" in full.

[289] See *ibid.*, Article 4(f) and Article 19.

[290] See Article 4(f) of the Law of Georgia "On Consumer Rights Protection."

[291] Decision of the Chairman of the LEPL Georgian National Competition Agency of 29 December 2023 in the case of LLC "Omega."

With regard to the establishment of the legal framework applicable to the commercial guarantee, the Law was guided by Article 6 of Directive 1999/44/EC and Article 17 of Directive 2019/771(EU). In a manner analogous to those Articles, under Georgian law the trader is obliged to comply with the commercial guarantee issued by them; furthermore, this obligation extends to the conditions set out in the advertising of the goods or services.[292] The Law also establishes the basic requirements as to what a commercial guarantee must contain: first, information to the effect that the consumer's rights established under the Law are not limited by the commercial guarantee;[293] and second, clearly formulated guarantee conditions, which must also specify the duration of the commercial guarantee, its territorial scope, information on the procedure for making a claim, the limitation period for claims, and the name and address of the trader.[294]

As regards form, the Law prescribes written form, while alternatively providing for delivery in any other form acceptable to the consumer, subject however to the consumer's request.[295] Furthermore, in a manner analogous to Article 17 of Directive (EU) 2019/771, failure to comply with the statutory requirements set out above shall not affect the validity of the commercial guarantee.[296] Equally, any condition in a commercial guarantee that restricts the consumer's rights established by law is void.[297]

With regard to the provision of information to consumers, similarly to Directive 2011/83/EU, the Law imposes upon the trader an obligation to provide the consumer, clearly and comprehensibly, in the Georgian state language, with accurate and complete information prior to the conclusion of the contract — including information on the statutory guarantee and, where applicable, on the commercial guarantee, as well as the conditions of any after-sales service to be provided.[298] This obligation to provide information is also imposed on the trader in the case of distance contracts or off-premises contracts.[299]

From the foregoing, it may be concluded that the concept of the commercial guarantee and the requirements applicable to it correspond to the definitions established by EU Directives 1999/44/EC, 2011/83/EU, and 2019/771(EU), which unequivocally indicates that the Georgian Law "On Consumer Rights Protection" is aligned and harmonized with the said EU Directives, and that the norms pertaining to the institution of commercial guarantee have been directly received from EU consumer law. This demonstrates that the primary source for the regulation of the institution of commercial guarantee in Georgian law was the standards established in EU consumer law. Accordingly, a comparison of the two jurisdictions reveals that in both legal systems the commercial guarantee constitutes an additional, complementary obligation assumed by the trader or manufacturer over and above the consumer rights provided by law; both systems establish identical requirements

[292] See Article 19(1) of the Law of Georgia "On Consumer Rights Protection."
[293] See *ibid.*, Article 19(2)(a).
[294] See *ibid.*, Article 19(2)(b).
[295] See *ibid.*, Article 19(3).
[296] See *ibid.*, Article 19(4).
[297] See *ibid.*, Article 19(5).
[298] See Article 5(1)(f) of the Law of Georgia "On Consumer Rights Protection."
[299] See *ibid.*, Articles 10, 11, and 12.

for the formulation of the commercial guarantee; and both equally emphasize that the consumer rights established by law are paramount, and that any condition in a commercial guarantee that restricts those rights is void.

Conclusion

The analysis presented in this paper demonstrates that the commercial guarantee, alongside the statutory guarantee, constitutes an additional and gratuitous mechanism for the protection of consumer rights, ensuring the conferral of additional rights upon the consumer in the event that a defect in the goods is identified. Accordingly, the commercial guarantee plays a significant role in strengthening the consumer protection system and enhances the level of legal protection afforded to consumers.

The comparative analysis with European standards has shown that the legal regulatory framework of the commercial guarantee in Georgian law substantially corresponds to the model established in EU consumer law, as developed on the basis of Directive 1999/44/EC on the Sale of Consumer Goods, Directive 2011/83/EU on Consumer Rights, and Directive (EU) 2019/771 on the Sale of Goods. The Law of Georgia "On Consumer Rights Protection" has adopted the European approach to the institutional regulation of the commercial guarantee and has established the principal standards set out in EU law.

This circumstance indicates that Georgia has made significant progress toward fulfilling the obligations it assumed under the Association Agreement between the EU and Georgia with respect to the approximation of legislation in the field of consumer protection.

At the same time, notwithstanding the high degree of harmonization of the legal framework, certain practical challenges persist relating to the effective realization of rights arising from the commercial guarantee — including its distinction from the statutory guarantee, the level of consumer awareness, and the transparency of guarantee conditions.

In conclusion, it may be stated that the legal regulation of the institution of commercial guarantee in Georgia has been significantly approximated to EU standards; however, its effective practical implementation continues to require further development and institutional strengthening within the Georgian consumer sphere.

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RESTORATION OF A VIOLATED RIGHT WITHIN THE FRAMEWORK OF UNFAIR COMMERCIAL PRACTICES

Unfair commercial practice is commercial activity that contradicts the requirements and principles of good faith and negatively affects the economic behavior of a consumer. For an activity to be considered unfair in commercial terms, the economic behavior of the average member of a particular group of consumers must be taken into account. Unfair commercial practice consists of two elements: aggressive and misleading commercial practice.

„A commercial practice shall not be deemed unfair if the information provided in advertising is exaggerated or is not intended to be taken literally. A commercial practice is considered aggressive if, though harassment, coercion, including the use of physical force, or undue influence, it negatively affects the consumer's freedom of choice or alters and/or is likely to alter the consumer's behavior in relation to a product or service".

It is necessary that the consumer, as the weaker party, will be protected from unfair commercial practices. This reasoning is reinforced within contractual relationships as well as under the law of Georgia „On Consumer Rights Protection". Therefore, it is desirable that the consumer will be provided with complete information regarding a product. On the one hand, consumer rights must be protected due to legislative objectives; on the other hand, such protection contributes to the establishment of reasonable business practices: consumers are more likely to trust a brand, and as a result, the brand becomes more popular.

"Unfair commercial practice may include anything that misleads the consumer or includes them to make an incorrect decision. For example, disseminating false information about a product or sending unsolicited offers. A similar approach is reflected in Directive 2005/29/EC of the European Parliament and of the Council".

It is important to consider why unfair commercial practice may be dangerous and undesirable.

1. When a consumer realizes that they were not provided with adequate information about a product and its quality, they cease to be a victim of marketing and no longer use the brand's services.

2. Unfair commercial practice leads to undesirable consequences because it damages the company's reputation. It should also be noted that if a brand engages in aggressive and/or misleading commercial practices, it will be subject to sanctions under Georgian legislation.

It is worth considering what happens if a consumer's rights are violated through unfair commercial practice and how consumers can be protected in such cases.

There are several mechanisms to address this. First and foremost, legislation - specifically, Article 7 of the Law of Georgia "On Consumer Rights Protection" - provides that: „If the provision of false or incomplete information regarding a product or its manufacturer has resulted in:

- the purchase of goods that do not meet consumer requirements;

- the impossibility of using the purchased goods for their intended purpose;

The consumer is entitled to request the provision of proper information within the shortest possible time. If such information is not provided within the agreed period, the consumer has the right to terminate the contract and claim compensation for damages, including damages caused to natural objects in their possession".

This means that the consumer's right to receive reliable and complete information about a product or service is not neglected but, on the contrary, is protected.

2. Consumers should be informed and educated about their rights so that they can protect themselves.

3. An effective complaint mechanism should be implemented, including procedural safeguards enabling a consumer, upon discovering a violation of their rights, to file a complaint against the relevant company that allegedly caused harm and violated those rights.

Consumer rights protection is expressed at the legislative level as follows:

According to Article 26(4) of the Constitution of Georgia, consumer rights are protected by law.

The Association Agreement between Georgia and the European Union emphasizes the importance of ensuring a high level of consumer protection and cooperation aimed at compatibility between their respective consumer protection systems.

The purpose of the Law of Georgia „On Consumer Rights Protection" is to define the legal basis for consumer rights and to promote a culture of conduct based on respect for

consumers. The legal provisions concerning the obligation to provide information ensure the consumer's right to make an „informed choice" prior to purchasing goods or services.

Chapter II of this Law defines consumer rights and obligations, particularly those related to information, delivery of goods, accidental loss or damage, and additional costs. This is especially important in establishing a legal relationship between the consumer, as the weaker party, and the trader.

This was clearly demonstrated in a decision issued by the Legal Entity of Public Law (LEPL) - the Georgian Competition and Consumer Protection Agency - concerning a legal dispute between a citizen and LLC "Fresco West Georgia" (ID No. 404504158).

According to the descriptive part of the decision and the analysis of both the applicant's and the trader's positions, the dispute concerned a possible violation of the Law of Georgia „On Consumer Rights Protection".

Within their legal argument, the applicant asserted that: „On January 27, 2025, the consumer purchased a weighted product - pumpkin kernels - at a Fresco retail outlet. At the moment of weighing (23:59), the price amounted to 58.98 GEL, as confirmed by the price label generated by the scale. However, at checkout, the consumer was charged 81,35 GEL, as confirmed by Letter No. 01/490 dated January 27, 2025, and the attached payment receipt".

Based on these circumstances, the consumer believed that their legally guaranteed rights had been violated.

The trader, conversely, argued that: „The consumer weighted the shelled pumpkin kernels on January 8, 2025, at 23:59, when a promotional price was in effect. The consumer approached the checkout approximately 10 minutes later, at 00:11 on January 9, 2025. By that time, the promotional period had ended and the product was subject to its pre-promotion price. Thus, a checkout (00:11), the price per kilogram was 39.00 GEL instead of 28.00 GEL. Upon detecting a discrepancy between the price on scale-generated label and the price at checkout, the cashier informed the consumer about the end of the promotional period and the new price. If the consumer chose to proceed, the transaction would be completed at the updated price. Regarding price information, the trader noted that all products in Fresco supermarkets display clearly visible price tags in readable font and size".

The trader maintained that there was no violation of consumer rights.

According to Paragraph 4.2 of the reasoning section (obligation of price transparency and misleading commercial practice by action): „It is particularly noteworthy that when purchasing a large quantity of products, a consumer cannot independently verify the expiration of promotional discounts for each item. Such circumstances significantly

increase the risk that the consumer may fail to notice the end of a discount and may not realize that the price of the product in their basket no longer corresponds to the information displayed on the shelf".

Taking this into account, the LEPL - Georgian Competition and Consumer Protection Agency - decided: ,,To establish that LLC ,,Fresco West Georgia" (ID No.404504158) committed unfair commercial practice as defined in Article 25(2) of the Law of Georgia ,,On Protection of Consumer Rights".

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SERBIAN CONSUMER LAW: CHARACTERISTICS AND EVOLUTION

Abstract: The paper proceeds from the legal and political commitment of the Republic of Serbia to harmonise its legislation with that of the European Union, stemming from the Stabilisation and Association Agreement (SAA) concluded in 2008. Under the Agreement, Serbia assumed the obligation to ensure a policy of active consumer protection in accordance with the acquis communautaire and to align its consumer protection legislation with the level of protection in force within the European Union. The paper examines the legislative approach to the regulation of the consumer protection system in Serbia, the authorities responsible for its implementation, current challenges, and the present state of consumer rights protection. The analysis of the legal framework starts from the process of constitutionalisation, given that the Constitution of the Republic of Serbia of 2006 contains a specific provision according to which the Republic of Serbia protects consumers. The development of consumer protection law in Serbia is critically analysed through different periods and phases, beginning with the first Consumer Protection Act adopted at the federal level in the Federal Republic of Yugoslavia in 2002. The paper then examines the innovations introduced by the Consumer Protection Act of 2010, followed by the system established by the Consumer Protection Act of 2014. Particular attention is devoted to the solutions introduced by the Consumer Protection Act of 2021, as well as to the new Consumer Protection Act of 2026. Special consideration is given to the harmonisation of Serbian law with Directives (EU) 2019/770, 2019/771 and 2019/2161. The paper also highlights the decision of the Constitutional Court that annulled the provisions of the Civil Procedure Act governing proceedings for the protection of collective rights and interests, thereby effectively preventing collective consumer actions before Serbian courts.

1. Introduction

Consumer protection is an increasingly important field in all countries and one that is developing very dynamically. Its development is directly linked to the functioning of the market, and consumer protection itself is based on market principles. At the same time, however, it is also a reflection of social responsibility and fairness.

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Today, consumer protection is regarded as one of the key areas of contemporary democratic societies. In the European Union, consumer protection has reached such a high level that practically all other sectoral policies must be aligned with consumer protection requirements. This paper presents the main characteristics of Serbian consumer law and analyses the development of the consumer protection system in the Republic of Serbia.

2. Characteristics of the Consumer Protection System in the Republic of Serbia:

1. Consumer protection is a constitutional category in the Republic of Serbia. Article 90(1) of the Constitution of the Republic of Serbia expressly provides: "The Republic of Serbia shall protect consumers." Paragraph 2 of the same Article further stipulates that activities directed against the health, safety and privacy of consumers, as well as all unfair market practices, shall be prohibited.[301] In addition, significance should also be attributed to the constitutional provision according to which the Republic of Serbia regulates and ensures the exercise and protection of the rights and freedoms of citizens.[302] This situation is consistent with contemporary trends towards the constitutionalisation of consumer protection. The fact that consumer protection has become an integral part of constitutional matters in modern constitutions indicates that its significance extends beyond individual interests and concerns society as a whole, that is, the public interest. Constitutionalisation and the elevation of consumer protection to the level of constitutional values and guarantees are achieved in modern constitutions through two principal approaches. The first is an indirect form of consumer protection, whereby consumer interests are protected through constitutional provisions prohibiting impermissible conduct that may restrict or endanger consumer rights. The second is a direct form of protection, where the constitution expressly imposes a duty on the state to provide protection to consumers.[303] The need for a more active role of the state in ensuring consumer protection has, in many countries, stimulated the establishment of specialised institutions dedicated to the protection of consumer rights.

2. The consumer protection system in the Republic of Serbia has developed substantively under the influence of European consumer law and the substantive legal solutions contained in EU legislation. This state of affairs is a consequence of the legal and political commitment of the Republic of Serbia to harmonise its legislation with that of the European Union. However, the process of aligning Serbian legislation with EU law is not merely the result of a legal and political choice; it is also based on binding legal provisions governing these obligations. Namely, under the Stabilisation and Association

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[301] See Article 90 of the Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.

[302] See Art. 97(2) of the Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006 and 115/2021.

[303] Slobodan Vukadinović, Constitutionalization and the ombusman in the function of consumer protection, in: *Scientific work of academician Miodrag Jovičić: proceedinges of the scientific conference held on 3 and 4 June 2025* (eds, Kosta Čavoški, Marijana Pajvančić, Jovica Trkulja), Serbian Academy od Sciences and Arts, Belgrade, 2026, str. 686.

Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, concluded in 2008 and ratified by the Law on the Ratification of the Stabilisation and Association Agreement,[304] the Republic of Serbia assumed a number of obligations, including the commitment to ensure an active consumer protection policy in accordance with Community law and to harmonise its consumer protection legislation with the level of protection in force within the European Community.[305]

On 13 October 2004, the National Assembly of the Republic of Serbia adopted the Resolution on Accession to the European Union. The Resolution sets out guidelines for the activities of the legislative and executive authorities of the Republic of Serbia aimed at meeting the Copenhagen criteria. Among other things, the National Assembly committed itself to giving priority to the harmonisation of Serbian legislation with the acquis communautaire in its legislative work, including the introduction of special procedures designed to improve the efficiency of that process.[306]

With regard to the harmonisation of national legislation with EU law, the Uniform Methodological Rules for Drafting Legislation provide that, when submitting a draft law, the proposer shall attach a statement indicating whether the draft law is aligned with EU legislation, whether no obligation of alignment exists, or whether alignment with EU law is not possible.[307] Within the Government's legislative procedure, the Rules of Procedure of the Government require the proposer of a draft law or regulation to submit, as accompanying documents, a statement on the alignment of the proposed legislation with EU law and a table of concordance demonstrating its alignment with EU legislation, in accordance with the forms prescribed by a separate governmental act.[308] With respect to draft laws, draft regulations and draft decisions aimed at aligning the legislation of the Republic of Serbia with EU law, the proposer is required to obtain the opinion of the Office for European Integration, particularly regarding whether the statement on the alignment of the proposed legislation with EU law and the table of concordance with EU legislation have been completed correctly. The opinion of the Office for European Integration must also be obtained in relation to proposed development strategies.[309]

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[304] Official Gazette of the Republic of Serbia – International Agreements, No. 83/2008.
[305] See Art. 78 of the Stabilisation and Association Agreement (SAA).
[306] See the Resolution on Accession to the European Union, Official Gazette of the Republic of Serbia, No. 112/2004.
[307] See Art. 60 of the Uniform Methodological Rules for Drafting Legislation, Official Gazette of the Republic of Serbia, No. 21/2010.
[308] The statement on the alignment of legislation with EU law and the table of concordance with EU legislation must also be submitted together with a draft decision aimed at aligning the legislation of the Republic of Serbia with EU law. See Art. 39a(1)–(2) of the Rules of Procedure of the Government, Official Gazette of the Republic of Serbia, No. 61/2006 – consolidated text, 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011, 30/2013, 76/2014 and 8/2019 – other regulation.
[309] See Art. 46(4) of the Rules of Procedure of the Government, Official Gazette of the Republic of Serbia, No. 61/2006 (consolidated text), 69/2008, 88/2009, 33/2010, 69/2010, 20/2011, 37/2011, 30/2013, 76/2014 and 8/2019 – other regulation.

At the end of 2013 (16 December), the National Assembly of the Republic of Serbia adopted the Resolution on the Role of the National Assembly and the Principles in the Negotiations on the Accession of the Republic of Serbia to the European Union. The Resolution reaffirmed that the objective of the Republic of Serbia in the accession negotiations was to achieve full membership in the European Union at the earliest possible date and called upon the Government, as the body responsible for conducting and coordinating the accession negotiations, to do so in a responsible and efficient manner while safeguarding national interests. Among other things, the Resolution emphasised the importance of coordinated action by state authorities throughout the accession process, particularly with regard to the alignment of national legislation with the acquis communautaire. The Resolution also calls upon the Government to continue implementing the National Programme for the Adoption of the Acquis, while the National Assembly, in accordance with the established timetable, undertakes to adopt the legislation envisaged by the National Programme for the Adoption of the Acquis and to monitor its implementation. Furthermore, in the course of the analytical examination and assessment of the alignment of Serbian legislation with the acquis communautaire and its implementation (screening) under individual negotiating chapters, the Government is required to submit to the Committee on European Integration a report on the results of the bilateral screening for each negotiating chapter.[310]

Serbia opened accession negotiations with the European Union in 2014. Specifically, the first Intergovernmental Conference between Serbia and the European Union was held in Brussels on 21 January 2014, thereby formally launching the accession negotiation process at the political level.[311]

3. Serbian consumer law has developed through the adoption of special legislation governing this field. Its development has proceeded in several stages, marked by the enactment of successive Consumer Protection Acts, as well as their subsequent amendments. Through these special consumer protection statutes, a distinct, that is, parallel legal regime for consumers was established alongside the general legal regime set forth in the Law on Obligations, which was adopted in 1978. The legal framework for consumer protection in Serbia has been shaped through the adoption of **special legislation governing this field**, reflecting the legal and policy choices of the legislator. This approach has enabled consumer protection to be regulated in a comprehensive and systematic manner, taking into account the level of development of consumer law at the time of the

[310] Resolution on the Role of the National Assembly and the Principles in the Negotiations on the Accession of the Republic of Serbia to the European Union, Official Gazette of the Republic of Serbia, No. 112/2013. For a more detailed analysis of the alignment of Serbian legislation with the acquis communautaire in the field of consumer protection, see Slobodan Vukadinović, "European Consumer Law and Its Influence on the Development of Serbian Consumer Law", in: 65 Years since the Treaties of Rome: The European Union and the Prospects of Serbia's European Integration (eds. Jelena Ćeranić Perišić, Vladimir Đurić, Aleksandra Višekruna), Institute of Comparative Law, Belgrade, 2023, pp. 190–191.

[311] For a detailed overview of the historical development of relations between Serbia and the European Union, see the Ministry for European Integration of the Republic of Serbia, available at: https://www.mei.gov.rs/srl/srbija-i-eu/istorijat-odnosa-srbije-i-eu/, and the Mission of the Republic of Serbia to the European Union in Brussels, available at: https://eu-brussels.mfa.gov.rs/lat/evropska-unija/pregovaracki-proces.

preparation of each legislative proposal. Furthermore, the adoption of dedicated **Consumer Protection Acts** implies that these statutes **contain both public law and private law provisions**. Such an approach, combined with the fact that consumer protection is a field undergoing continuous development and frequent regulatory change, has resulted in numerous amendments to existing legislation, as well as the enactment of new Consumer Protection Acts that regulate the same subject matter while repealing the previously applicable legislation.

When it comes to consumer contract law, the legislator could have regulated the special rights of consumers and the specific features of the legal regime governing contracts concluded between consumers and traders through amendments to the Law on Obligations. This is because the Law on Obligations, in addition to establishing the general legal framework for contractual relations, already contains special rules applicable to commercial contracts, that is, contracts concluded between traders, where such differentiation is considered necessary and justified. However, consumer contract law has instead been regulated through special legislation, namely the Consumer Protection Act, which also governs a wide range of other issues relevant to consumer protection and not merely contractual relations. In addition, Serbia has enacted a separate Law on the Protection of Users of Financial Services.

Consumer law has had a significant influence on the development of modern contract law. Today, consumer contract law is widely regarded as being inseparably connected with, and in some cases forming an integral part of, general contract law. This is particularly true in European Union law, as well as in Serbian law, which has developed under the influence of European legal standards. In this respect, the introduction of a special legal regime for consumer contracts may be achieved through two legislative approaches, reflecting a legal and policy choice between two alternatives: either by incorporating specific consumer protection provisions into an existing law or code governing contractual relations, or by adopting a separate statute specifically designed to regulate consumer rights and consumer protection. In Serbia, the legislator opted for the latter approach, resulting in the enactment of dedicated Consumer Protection Acts, which must be taken into account whenever contractual relations involve a consumer on one side and a trader on the other. European consumer law, and more broadly European contract law, is of particular importance not only because Serbian law belongs to the continental European legal tradition, but also because the Republic of Serbia has formally adopted legal and policy instruments expressing its commitment to European integration, accession to the European Union, and the harmonisation of national legislation with the acquis communautaire.[312]

Starting from the fact that the Constitution of the Republic of Serbia of 2006 contains a specific provision on consumer protection, it may be regarded as an adequate legal, indeed constitutional, basis for the separate regulation of consumer protection, as well as for the establishment of a special legal regime applicable to consumers in relation

[312] Vukadinović, Slobodan, *Građansko pravo: opšti deo, priručnik za polagane pravosudnog ispita*, Pravni fakultet Univerziteta Union u Beogradu, Beograd, 2026, p. 30.

to the general law of obligations. More specifically, this concerns Article 90 of the Constitution, which is itself entitled “Consumer Protection”. Pursuant to this constitutional provision, the Republic of Serbia shall protect consumers. The accelerated development of consumer contract law in Serbia since 2010 is considered the most significant fragmentation of the general contractual regime. This means that contracts qualifying as consumer contracts are primarily governed by the rules of consumer law, while the provisions of the Law on Obligations apply only insofar as a particular issue is not regulated by the special legislation governing consumer contractual relationships. Even in such cases, the Law on Obligations may be applied only provided that its application does not reduce the level of protection guaranteed to consumers under the special consumer protection legislation.[313]

4. With regard to the **key institutions** responsible for consumer protection in the Republic of Serbia, it should first be noted that, since 2007, a specialised organisational unit dealing with consumer protection issues has existed within the ministry responsible for trade, which forms part of the executive branch, that is, the Government. Today, this function is performed by the Consumer Protection Sector. Although the name of the ministry has changed several times over the years, the **Consumer Protection Sector** currently operates **within the Ministry of Internal and External Trade**, whose responsibilities include, inter alia, consumer protection matters.[314]

The establishment of a specialised unit within the ministry responsible for consumer protection began in 2007 with the creation of the Consumer Protection Division as a subordinate internal unit within the then Ministry of Trade and Services. The subsequent development of the consumer protection system in Serbia was reflected in the evolution of this unit. In 2009, it was upgraded into a larger organisational structure, the Consumer Protection Department, whose responsibilities included the formulation and implementation of consumer protection policy. Five years later, in 2014, the Consumer Protection Sector was established.[315] With regard to its competences, the Consumer Protection Sector performs tasks relating to the formulation and implementation of consumer protection policy; the preparation of national and annual consumer protection programmes and the monitoring of their implementation; the proposal of systemic solutions and measures aimed at developing and implementing consumer protection policy; the preparation of expert bases for drafting consumer protection legislation; monitoring the application of consumer protection legislation and providing expert opinions on its implementation; monitoring market developments, particularly the identification of unfair commercial practices and unfair contract terms in

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[313] Marija Karanikić Mirić, *Obligaciono pravo*, JP Službeni glasnik, Beograd, 2024, p. 69, who points out that the term ‘consumer context’ refers not only to the Consumer Protection Act, but also to legislation governing the protection of users of financial services, legislation protecting policyholders as consumers, and other sector-specific consumer protection regulations.

[314] See Art. 9 of the Law on Ministries, Official Gazette of the Republic of Serbia, No. 128/2020, 116/2022 and 92/2023 – other law.

[315] For a more detailed analysis of the development of the Consumer Protection Sector, see: https://www.zastitapotrosaca.gov.rs/o-nama#.

consumer contracts; proposing measures to remedy systemic deficiencies in the domestic market from a consumer protection perspective; initiating and conducting proceedings for the protection of collective consumer interests; carrying out activities related to the harmonisation of national legislation with European Union consumer protection law; providing expert and administrative support to the National Consumer Protection Council as an advisory and consultative body; integrating consumer protection policy into other public policies; initiating and proposing the adoption and amendment of legislation aimed at ensuring effective consumer protection; participating in interministerial working groups and other bodies dealing with consumer protection issues; cooperating with national and international institutions and organisations active in the field of consumer protection; cooperating with provincial and local authorities in the development of consumer protection; participating in the preparation of programmes and projects financed through European Union pre-accession assistance and other forms of international support; as well as performing other tasks within this field.

Within the Consumer Protection Sector, two subordinate organisational units have been established: the Consumer Protection Department and the Consumer Protection Policy Implementation Group. **The Consumer Protection Department** performs tasks relating to the formulation and implementation of consumer protection policy; monitoring the application of consumer protection legislation and providing expert opinions on its implementation; preparing national and annual consumer protection programmes and monitoring their implementation; proposing systemic solutions and measures for the development and implementation of consumer protection policy; monitoring and analysing market participants' conduct, particularly with regard to the identification of unfair commercial practices and unfair contract terms in consumer contracts; initiating and conducting proceedings for the protection of collective consumer interests; preparing expert bases for drafting consumer protection legislation; carrying out activities related to the harmonisation of national legislation with European Union consumer protection law; providing expert support for the work of the National Consumer Protection Council as an advisory and consultative body; enhancing cooperation with consumer protection associations; participating in interministerial working groups and other bodies dealing with consumer protection issues; cooperating with national and international consumer protection institutions and organisations; participating in the preparation of programmes and projects financed through European Union pre-accession assistance and other forms of international support; promoting and implementing educational and awareness-raising activities aimed at increasing the knowledge and awareness of consumers, traders and other stakeholders regarding the importance of consumer protection policy; as well as performing other tasks within this field.

Within the Consumer Protection Department, the following subordinate organisational units have been established: (1) the Group for Consumer Protection Policy Development and the Protection of Collective Consumer Interests, and (2) the Group for Education and the Promotion of Cooperation in the Field of Consumer Protection. **The**

Group for Consumer Protection Policy Development and the Protection of Collective Consumer Interests performs tasks relating to the proposal of systemic solutions and measures aimed at developing and improving consumer protection policy; the preparation of expert bases for drafting consumer protection legislation; monitoring the application of consumer protection legislation and providing expert opinions on its implementation; monitoring and analysing the conduct of market participants, particularly with regard to the identification of unfair commercial practices and unfair contract terms in consumer contracts; initiating and conducting proceedings for the protection of collective consumer interests; carrying out activities related to the harmonisation of national legislation with European Union consumer protection law; preparing and implementing consumer protection programmes and projects; providing expert support for the work of the National Consumer Protection Council; as well as performing other tasks within this field.[316] The website of the Consumer Protection Sector contains a section entitled "Archive of Decisions in Proceedings for the Protection of Collective Consumer Interests", which provides public access to **30 decisions** adopted in collective consumer interest protection proceedings between 2015 and 2024.

The Group for Education and the Promotion of Cooperation in the Field of Consumer Protection performs tasks relating to the proposal and implementation of measures aimed at raising the general level of knowledge concerning consumer rights and consumer education; carrying out activities intended to educate consumers, traders and other stakeholders involved in the implementation of consumer protection policy; preparing studies, analyses, reports and other materials in the field of consumer protection; supporting the work and development of consumer protection associations and proposing measures to enhance cooperation between the governmental and non-governmental sectors in the field of consumer protection; cooperating with relevant institutions at the local, regional and international levels in matters relating to consumer protection; as well as performing other tasks within this field. **The Consumer Protection Policy Implementation Group** performs tasks relating to the more effective implementation of consumer protection policy; analysing the conduct of market participants in the application of consumer protection legislation; managing the consumer complaints database; analysing consumer complaints and proposing measures to remedy systemic deficiencies in the domestic market from a consumer protection perspective; monitoring the handling of consumer complaints by consumer advisory centres and competent inspection authorities; monitoring the implementation of projects carried out by consumer protection associations; analysing reports on the activities of consumer protection associations; as well as performing other tasks within this field.[317]

5. The role of other institutions. The Role of the National Bank of Serbia in the Protection of the Rights of Users of Financial Services. The Law on the Protection of Users of Financial Services regulates the rights of users of financial services provided by banks, financial leasing providers, payment institutions, electronic money institutions,

[316] See: https://must.gov.rs/tekst/sr/406/sektor-za-zastitu-potrosaca.php.
[317] See: https://www.zastitapotrosaca.gov.rs/o-nama#S1.

the public postal operator and traders, as well as the conditions and procedures governing the exercise and protection of those rights. The current Law was enacted in 2025.[318] The Law expressly authorises the National Bank of Serbia to determine whether a service provider has engaged in unfair commercial practices or has incorporated or applied unfair terms in contracts concluded with users of financial services.[319]

The Law grants users of financial services the right **to submit a complaint** with the National Bank of Serbia. As a first step, a user of financial services has the right to submit a written complaint to the service provider if the user believes that the provider has failed to comply with the provisions of this Law, other regulations governing financial services, its general terms and conditions, and/or obligations arising from the contract concluded with the user. If the user is dissatisfied with the response to the complaint, or if no response is provided within the prescribed time limit, the complainant may, prior to initiating court proceedings, submit a written complaint to the National Bank of Serbia.

If the complainant is dissatisfied with the response to the complaint, or if no response is provided within the prescribed time limit, the dispute between the complainant and the service provider may alternatively be resolved through **mediation conducted by the National Bank of Serbia**. For the sake of clarity, it should be noted that the initiation and conduct of complaint proceedings, proceedings upon a complaint submitted to the National Bank of Serbia, or mediation proceedings under this Law are not a condition for the exercise of the user's right to judicial protection in accordance with the law, nor do they exclude or otherwise affect the exercise of that right.[320]

The Court of Honour of the Serbian Chamber of Commerce does not adjudicate consumer disputes. However, it is competent to determine liability and impose measures in proceedings against members of the Serbian Chamber of Commerce and other business entities operating in the territory of the Republic of Serbia for violations of good business practices and business ethics in commercial relations, as well as for conduct that undermines the unity of the market.[321] Acts of members of the Serbian Chamber of Commerce may also, depending on the circumstances of the particular case, be regarded as violations of good business practices where they cause harm to society, other business

[318] , Law on the Protection of Users of Financial Services, Official Gazette of the Republic of Serbia, No. 19/2025. Upon the commencement of its application on 1 July 2025, the previously applicable Law on the Protection of Users of Financial Services, Official Gazette of the Republic of Serbia, No. 36/2011 and 139/2014, ceased to be in force.

[319] A contractual term in a financial services contract that has not been individually negotiated shall be regarded as unfair if, contrary to the principle of good faith and fair dealing, it causes a significant imbalance in the rights and obligations of the contracting parties to the detriment of the user. A contractual term shall be deemed not to have been individually negotiated where it has been drafted in advance and the user was unable to influence its substance, particularly in the case of pre-formulated standard form contracts or contracts of adhesion.

[320] See Art. 66 of the Law on the Protection of Users of Financial Services, Official Gazette of the Republic of Serbia, No. 19/2025.

[321] See: https://pks.rs/strana/sud-casti. For a more detailed discussion of the Code of Business Ethics and the role of the Court of Honour, see Slobodan Vukadinović, "Mechanisms of Collective Protection of Consumers against Unfair Contract Terms", in: Protection of Collective Consumer Interests (ed. Katarina Ivančević), Union University Faculty of Law, Belgrade, 2021 (Вукадиновић Слободан, Механизми колективне заштите потрошача од неправичних уговорних одредаба, у: *Заштита колективних интереса потрошача* (ур. Катарина Иванчевић), Правни факултет Универзитета Унион у Београду,), 2021, pp. 250-253.

entities or consumers, circumvent the spirit and purpose of laws and other regulations, or damage the reputation of the country abroad.

The Commission for the Protection of Competition does not have direct competences in the field of consumer protection and does not deal with individual consumer complaints or disputes. However, Article 1 of the Serbian Competition Protection Act provides that the purpose of the Act is to ensure the protection of competition in the market of the Republic of Serbia with a view to promoting economic progress and social welfare, particularly the welfare of consumers.[322] Consequently, although the Commission does not directly protect consumer rights, consumer welfare constitutes one of the ultimate objectives of competition protection policy.

No specialised Consumer Ombudsman has been established in the Republic of Serbia, although the need for such an institution has been widely discussed in both academic literature and public discourse. This is particularly significant given that many countries have established specialised bodies and institutions whose role extends beyond protecting consumer rights once they have been violated and includes preventive action aimed at avoiding violations of consumer rights. Effective consumer protection requires not only reactive but also preventive mechanisms, particularly with regard to safeguarding collective consumer interests through various instruments, including market monitoring and oversight. It is important to recognise that consumers' awareness of the effective protection of their rights not only strengthens confidence in the legal system but also enhances trust in the market, thereby encouraging greater consumer participation and activity in the marketplace, which ultimately contributes to economic development.

6. The Role and Importance of Consumer Protection Associations.

In the current consumer protection system of the Republic of Serbia, an important role is played by consumer protection associations and their federations, which are established in accordance with the Law on Associations and pursue consumer protection objectives. These associations and federations operate independently in the pursuit of consumer protection goals and are required to act exclusively in the interests of consumers. Their activities include providing information and education; offering advice and legal assistance to consumers in resolving consumer-related issues; receiving, recording and handling consumer complaints; conducting independent testing and comparative analyses of the quality of goods and services and publicly disseminating the results; carrying out research and studies in the field of consumer protection and publishing their findings; and cooperating with relevant authorities and organisations at both the national and international levels. Consumer protection associations and their federations are required to publish an annual report on their activities, including a detailed overview of all revenues, sources of funding and expenditures, and to submit that report to the Ministry of Internal and External Trade no later than 31 March of the current year for the preceding year. It should also be noted that the Consumer Protection

[322] See Art. 1 of the Competition Protection Act, Official Gazette of the Republic of Serbia, No. 51/2009, 95/2013 and 35/2026 – other law.

Act provides for the establishment of the Consumer Council, composed of representatives of all consumer associations and federations registered with the Ministry. Conceived as a body for discussing matters of common interest and formulating joint positions of consumer associations, the Council is entrusted with the following activities: coordinating the positions of consumer associations; proposing representatives of consumer associations for membership in the National Consumer Protection Council and other bodies; adopting the Code of Ethics for consumer associations and monitoring its implementation; providing opinions to the Ministry in proceedings concerning registration in and deletion from the Register; and issuing recommendations regarding the removal of associations and federations from the Ministry's Register. It should also be noted that the Ministry maintains a **Register of consumer protection associations and federations**. Entry in the Register is available to associations and federations that: (1) have been established and registered in accordance with the Law on Associations, that is, are registered with the Serbian Business Registers Agency; (2) pursue consumer protection objectives as their principal activity; (3) have been active in the field of consumer protection for at least three years; (4) possess adequate human, material and technical resources necessary for carrying out consumer protection activities; and (5) have the requisite experience, expertise and skills in the field of consumer protection. In order for a federation to be entered in the Register, it must consist of at least three associations. Associations and federations seeking registration must submit an application to the Ministry, while the conditions for registration are prescribed by the Rulebook on the Content of the Application, the Method of Maintaining the Register of Consumer Protection Associations and Federations, and the Conditions for Registration.[323] If an association or federation satisfies the prescribed requirements, the Ministry issues a decision and enters it into the Register. Registered associations and federations are entitled to: (1) apply for Ministry funding through programmes serving the public interest; (2) initiate proceedings for the protection of collective consumer interests; (3) represent consumer interests in judicial and alternative dispute resolution proceedings; (4) represent consumer interests in consultative bodies dealing with consumer protection at the national, regional and local levels; (5) participate in working groups established for the preparation of legislation and strategic documents relating to consumer rights; (6) access and use the National Consumer Complaints Register; and (7) participate in the work of the Consumer Council. As of 14 May 2026, the list of registered consumer protection associations published on the Ministry's website contains 12 associations.[324]

Regional consumer advisory centres also operate within the Serbian consumer protection system. Under the Consumer Protection Act, a registered consumer protection

[323] Rulebook on the Content of the Application, the Method of Maintaining the Register of Consumer Protection Associations and Federations, and the Conditions for Registration, available at: https://must.gov.rs/extfile/sr/634/Prilog%2012%20-%20Pravilnik%20o%20sadrzini%20prijave,na%C4%8Dinu%20vo%C4%91enja%20Evidencije%20udru%C5%BEenja%20i%20saveza%20udru%C5%BEenja%20za%C5%A1titu%20potro%C5%A1a%C4%8Da%20i%20uslovima%20za%20upis1.pdf.

[324] See: https://zastitapotrosaca.gov.rs/udruzenja#S1.

association or federation is authorised to represent consumer interests before consultative bodies in the field of consumer protection, in judicial and alternative dispute resolution proceedings, and in proceedings before other public authorities. As a result, associations and federations registered with the Ministry may apply for funding allocated from the budget of the Republic of Serbia to support the operation of consumer advisory centres that provide information, advice and legal assistance to consumers. In this regard, consumers in the Belgrade region may seek assistance from the National Consumer Organisation of Serbia, the Consumer Protection Association, the Republic Consumer Union, the Consumer Organisation Hram and the Consumer Centre of Serbia. In the Vojvodina region, consumer advisory services are provided by the Consumer Protection Association of Vojvodina, the Prosperitet Consumer Rights Protection Association (Novi Sad) and the Consumer Association of Kikinda. For the region of Šumadija and Western Serbia, consumers may contact the Consumer Organisation of Kragujevac, while in Southern and Eastern Serbia advisory services are provided by the FORUM Centre for Consumer Protection and Improvement of Citizens' Quality of Life.

7. National Consumer Complaints Register

The Republic of Serbia has established a National Consumer Complaints Register, an online platform that enables consumers to obtain information about their rights and to submit complaints where they believe that their consumer rights have been violated. The Register, which provides for the electronic submission of consumer complaints and is intended to offer consumers efficient support in the protection of their rights, is maintained by the Ministry of Internal and External Trade pursuant to the Consumer Protection Act.

A consumer completes an electronic form available at: https://zapotrosace.gov.rs, which requires the submission of four categories of information through a four-step process. These include: (1) information relating to the consumer, enabling further communication and feedback; (2) a description of the consumer's request or complaint; (3) information concerning the trader where the complaint relates to purchased goods or services; and (4) the selection of a consumer protection association that will handle the submitted complaint.

An analysis of the data on the number of complaints recorded in the National Consumer Complaints Register[325], classified according to the place of purchase and by year, reveals the following trends:

Year	**2021.**		**2022.**		**2023.**		**2024.**	
Place of Purchase	Complaint Numbe	Percentage	Complaint Numbe	Percentage	Complaint Numbe	Percentage	Complaint Numbe	Percentage

[325] Source of the tabular presentation of the above data: Final Report on the Implementation of the Consumer Protection Strategy for the Period 2019–2024, p. 26, available at: https://must.gov.rs/extfile/sr/18058/Izvestaj%20o%20sprovodjenju%20Akcionog%20plana%20Strategije%20zastite%20potrosaca%20-%20ZAVRSNI.%20Final.pdf.

	r		r		r		r	
In a Retail Store	21.205	90,34%	20.716	90,59%	16.768	87,92%	10.888	83,95%
Online	1.673	7,12%	1.604	7,01%	1.806	9,47%	1.684	12,98%
Door-to-door Sale	291	1,23%	269	1,18%	239	1,25%	205	1,58%
Telephone Sales	165	0,70%	161	0,70%	136	0,71%	87	0,67%
Off-premises Sales (promotional events)	118	0,51%	102	0,45%	105	0,55%	94	0,73%
Catalogue Sales	12	0,06%	13	0,06%	9	0,05%	10	0,08
Television Sales	8	0,04%	4	0,01%	9	0,05%	1	0,01%
Total	**23.472**	100,00 %	**22.869**	100,00 %	**19.072**	100,00 %	**12.969**	100,00 %

When examining the number of consumer complaints between 2021 and 2024, a decline can be observed in the number of complaints submitted to consumer protection associations. This development should be viewed in light of the growing number of alternative dispute resolution proceedings in consumer matters. It should be borne in mind that the initiation of such proceedings is contingent upon the prior submission of a complaint to the trader and does not require the filing of a complaint with a consumer protection association.[326]

8. The "Do Not Call" Register

Since January 2024, the Republic of Serbia has maintained a register of telephone numbers known as the "Do Not Call" Register, in which individuals may register their telephone numbers if they do not wish to be contacted by companies for commercial purposes. The Register is intended to protect consumers from unsolicited marketing calls, as well as from SMS and MMS messages sent for the purpose of promoting or selling goods and services. The "Do Not Call" Register is maintained by the Regulatory Authority for Electronic Communications and Postal Services (RATEL), and the website: www.nezovi.rs provides a facility for verifying whether a particular telephone number has been registered.

[326] See Final Report on the Implementation of the Consumer Protection Strategy for the Period 2019–2024, p. 24.

Registration in, and removal from, the "Do Not Call" Register may be requested only by the holder of the telephone number. Requests may be submitted through the application, electronically, or at the business premises of the telecommunications operator with whom the consumer has concluded a service contract. The application form for registration in, and removal from, the "Do Not Call" Register is publicly available on the website[327] of the Ministry of Internal and External Trade, the authority responsible, among other matters, for consumer protection policy and legislation. The introduction of the "Do Not Call" Register obliges traders to verify, prior to making marketing calls, whether the telephone number concerned has been entered into the Register by a person who has opted not to receive calls promoting goods or services. The legislation further provides for monetary penalties to be imposed on traders who contact individuals whose telephone numbers are included in the Register.

According to data provided by the Regulatory Authority for Electronic Communications and Postal Services (RATEL), by the beginning of October 2025 a total of 45,150 citizens had registered their telephone numbers in the "Do Not Call" Register. After an initial surge in registrations during the first two months following the Register's establishment (January and February 2024), when approximately 8,500 citizens enrolled, the number of new registrations stabilised at around 2,500 per month throughout the remainder of 2024. In 2025, registrations continued at a more moderate rate, averaging approximately 1,700 new registrations per month.[328]

9. Alternative Dispute Resolution in Consumer Disputes

The previously applicable Consumer Protection Act of 2021 introduced an obligation for traders to participate in alternative dispute resolution proceedings where the dispute could not be resolved by other means. In this context, it is particularly important to note that the 2021 Act required traders to inform consumers, in a clear and comprehensible manner and in the Serbian language or the language of a national minority, about the possibility of resolving disputes through alternative dispute resolution mechanisms.

Alternative dispute resolution proceedings for consumer disputes in the Republic of Serbia are **free of charge for both consumers and traders**. In order to facilitate access to alternative dispute resolution mechanisms, the Republic of Serbia has established a dedicated **online platform** for the resolution of consumer disputes, available at: https://vansudsko.must.gov.rs. The alternative dispute resolution procedure may be initiated regardless of the nature or value of the dispute. However, a **prerequisite** for submitting a request is that the consumer has previously contacted the trader and submited a complaint. Consequently, a consumer may initiate alternative dispute resolution proceedings where he or she considers that the trader has unjustifiably and unlawfully rejected the complaint. The procedure is initiated by completing an online

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[327] See: https://must.gov.rs/extfile/sr/4124/Obrazac%20zahteva%20za%20REGISTAR%20NE%20ZOVI.pdf.

[328] See Final Report on the Implementation of the Consumer Protection Strategy for the Period 2019–2024, pp. 3–4, available at: https://must.gov.rs/extfile/sr/18058/Izvestaj%20o%20sprovodjenju%20Akcionog%20plana%20Strategije%20zastite%20potrosaca%20-%20ZAVRSNI.%20Final.pdf.

application form available on the platform. In doing so, the consumer provides three categories of information: (1) information relating to the consumer; (2) information concerning the trader; and (3) a description of the dispute together with details of the rejected complaint. The alternative dispute resolution procedure for a consumer dispute between a consumer and a trader is conducted before an **independent third party**, namely a body for the alternative resolution of consumer disputes entered on the List of ADR Bodies. Such bodies must satisfy the requirements prescribed by the Consumer Protection Act, while the List is maintained by the Ministry of Internal and External Trade. As of 10 May 2026, the List of ADR Bodies for Consumer Disputes contains 70 natural persons (mediators), together with their contact details, including their names, addresses, e-mail addresses, telephone numbers and the languages in which they conduct proceedings. The List is publicly available at: https://vansudsko.must.gov.rs/adrbodies. If the parties do not reach a settlement, the ADR body may, where it considers it appropriate, issue a recommendation on the resolution of the dispute. The recommendation shall be issued in writing, accompanied by reasons, and delivered to the parties to the proceedings.[329]

The practical functioning of the alternative dispute resolution system for consumer disputes may be assessed through the data presented in the table below, which provides an overview of the total number of registered disputes and resolved disputes during the period 2022–2024. It should be borne in mind that the ADR platform was launched and became operational on 27 July 2022.

Year	Number of Registered Disputes	Number of Resolved Disputes	Percentage of Resolved Disputes
2022.	565	556	98,4%
2023.	2.270	1.813	79,9%
2024.	4.026	3.802	94,4%[330]

For a comprehensive assessment of the system, it is also necessary to examine the different ways in which disputes are resolved. Once a request for the alternative resolution of a consumer dispute has been submitted, the proceedings may be concluded in one of four ways: (1) by reaching a settlement agreement; (2) by termination of the proceedings where their continuation is deemed inappropriate or no longer justified; (3) by the issuance of a recommendation on the resolution of the consumer dispute by the ADR body; or (4) by the rejection of the request.

[329] As examples of good practice, two recommendations are publicly available on the website of the Consumer Protection Sector of the Ministry of Internal and External Trade of the Republic of Serbia: https://zastitapotrosaca.gov.rs/Portals/0/Resources/%D0%9F%D1%80%D0%B5%D0%BF%D0%BE%D1%80%D1%83%D0%BA%D0%B0%201.pdf?ver=2023-04-18-110435-870×tamp=1681808762024 and: https://zastitapotrosaca.gov.rs/Portals/0/primer%20preporuke_000151.pdf?ver=2025-05-20-123659-727.

[330] Source of the above data: Ministry of Internal and External Trade of the Republic of Serbia. For further details, see the Explanatory Memorandum to the Draft Consumer Protection Act of 2026, p. 158

Resolution Outcome	2022.		2023.[331]		2024.	
	Number of Cases	Share (%)	Number of Cases	Share (%)	Number of Cases	Share (%)
Settlement Agreement Reached	194	34,9	709	39,1	1.375	36,1
Decision to Terminate the Proceedings	226	40,6	719	39,7	1.836	48,3
Recommendation Issued	96	17,3	197	10,9	158	4,2
Request Rejected	40	7,2	188	10,3	433	11,4
Total	556[332]	100,0	1.813	100,0	3.802	100,0[333]

The above data demonstrate a steady increase in the number of settlements concluded in consumer disputes, rising from 194 in 2022 to 709 in 2023 and 1,375 in 2024. However, their proportion within the total number of resolved ADR consumer disputes has remained relatively stable, representing slightly more than one third of all resolved cases throughout the observed period (34.9%, 39.1% and 36.2%, respectively).[334] In 2024, the average duration of ADR proceedings was 39 days, while the number of mediators included on the List of ADR Bodies increased to 68.[335]

10. Market Inspection

Consumers may contact the Market Inspection, whose powers are prescribed by the Consumer Protection Act. The Market Inspection is competent to act in situations where a trader: (1) fails to respond to a consumer complaint within the statutory period[336] of

[331] More detailed data for 2023 are available in: Ministry of Internal and External Trade, Consumer Protection Sector, Report – Statistical Indicators of the ADR Platform's Performance in the Period 1 January 2023 – 31 December 2023, available at: https://zastitapotrosaca.gov.rs/Portals/0/Resources/%D0%90%D0%94%D0%A0-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%202023%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D1%83.pdf?ver=2024-01-23-155542-650.

[332] See Ministry of Internal and External Trade, Consumer Protection Sector, Report – Statistical Indicators of the ADR Platform's Performance in the Period 27 July 2022 – 31 December 2022, available at: https://zastitapotrosaca.gov.rs/Portals/0/Resources/%D0%90%D0%94%D0%A0-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%202022%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D1%83.pdf?ver=2024-01-23-155257-633.

[333] See also the Explanatory Statement to the Draft Consumer Protection Act of 2026, p. 159.

[334] The data presented above are based on the annual reports, namely the statistical indicators of the operation of the ADR platform, published on the website of the Ministry of Internal and External Trade and publicly available to interested users.

[335] See Ministry of Internal and External Trade, Consumer Protection Sector, Report – Statistical Indicators of the ADR Platform's Performance in the Period 27 July 2022 – 31 December 2022, available at: https://zastitapotrosaca.gov.rs/Portals/0/Resources/%D0%90%D0%94%D0%A0-%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%202022%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D1%83.pdf?ver=2024-01-23-155257-633.

[336] Such conduct by a trader is subject to a monetary fine under the Consumer Protection Act. It should be emphasised that the Market Inspection is not empowered to assess the merits of a consumer complaint. While it may order a trader to provide a response, it cannot dictate the content of that response or require the trader to uphold the complaint. The assessment of the complaint remains the responsibility of the trader.

eight days[337], 2) misuses the term "guarantee"; (3) engages in unfair commercial practices; (4) sends unsolicited goods to consumers; or (5) sells, serves or gives tobacco products, alcoholic beverages, beer or pyrotechnic products to minors. On the website of the Ministry responsible for trade and consumer protection, within which the Market Inspection operates, an explanatory note addressed to citizens states that the relationship between a trader and a consumer arising from a contract for the sale of goods or the provision of services constitutes a contractual relationship governed by civil law and, therefore, falls outside the competence of the Market Inspection as a public administrative authority. The explanation further notes that this approach is common throughout Europe and neighbouring countries, as it is based on the principle of non-interference by the state in contractual relationships and thus does not disrupt market relations between participants. More specifically, this means that where a consumer is unable to resolve a dispute or enforce his or her rights, first through direct communication with the trader and subsequently with the assistance of consumer protection associations, judicial protection remains available as the final means of redress. In disputes with a value not exceeding RSD 500,000, court fees are not payable in respect of either the claim or the judgment..[338] It is also important to note that the Consumer Protection Act of 2021 introduced **fixed-penalty notices**, i.e. the power of market inspectors to impose fixed monetary fines. A trader who pays 50% of the imposed fine within 8 days from the delivery of the notice is released from the obligation to pay the remaining 50% of the fineSince the adoption of the Consumer Protection Act of 2021, the number of misdemeanour orders issued has developed as follows:[339]

Inspection Supervision Concerning the Application of the Consumer Protection Act / Year	2022	2023	2024
Regular Inspection Supervision			
Total Number of Inspections		2.690	3.141

[337] The eight-day period referred to above is prescribed by the Consumer Protection Act of 2026. A trader is required to respond to a consumer complaint in writing or by electronic means without undue delay and no later than eight days from the date of receipt of the complaint. The trader's response must indicate whether the complaint is accepted, provide reasons if the complaint is rejected, address the consumer's proposed method of resolution, and, where the complaint is accepted, include a specific proposal indicating how and within what period the complaint will be resolved. The time limit for resolving a complaint may not exceed 15 days from the date of its submission, or 30 days in the case of technical goods and furniture. See Art. 63(9) of the Consumer Protection Act, Official Gazette of the Republic of Serbia, No. 35/2026.

[338] See: https://zastitapotrosaca.gov.rs/za-potrosace, (accessed on 15 April 2026). At the same time, it is pointed out that the majority of consumer complaints relate to the lack of conformity of goods or services.

[339] The data on the number of misdemeanour orders issued were provided by the Market Inspection Sector. See Final Report on the Implementation of the Consumer Protection Strategy for the Period 2019–2024, p. 3, available at: https://must.gov.rs/extfile/sr/18058/Izvestaj%20o%20sprovodjenju%20Akcionog%20plana%20Strategije%20zastite%20potrosaca%20-%20ZAVRSNI.%20Final.pdf.

Total Number of Inspections Conducted	1.715	4.089	4.706
Misdemeanour Orders Issued	**122**	**786**	**1.053**
Extraordinary Inspection Supervision			
Total Number of Inspections	3.112	1.832	1.789
Total Number of Inspections Conducted	3.871	2.767	3.303
Misdemeanour Orders Issued	**736**	**898**	**1.093**

11. The Non-Existence of Judicial Collective Consumer Redress

The protection of collective consumer interests in the Republic of Serbia is ensured through administrative proceedings conducted before the competent public authority, namely the ministry responsible for consumer protection matters. Traditionally, this has been the ministry primarily responsible for trade. Judicial collective consumer redress was provided for under Serbian law, but only for a relatively short period of time. More specifically, the Consumer Protection Act of 2010 introduced collective consumer redress into the Serbian legal system for the first time, to be pursued through civil court proceedings. With regard to the initiation of such proceedings, that is, standing, the legislator assigned a significant role to consumer protection associations. The Consumer Protection Act of 2010 provided that the procedural rules governing collective consumer redress would be those applicable to civil litigation, namely the Civil Procedure Act, which contained an entire chapter regulating proceedings for the protection of the collective rights and interests of citizens. However, neither the Consumer Protection Act nor the Civil Procedure Act provided a precise definition of the concept of collective interest within the framework of these special proceedings, a legislative omission that attracted criticism in legal scholarship. From a positive law perspective, judicial collective consumer redress in Serbia proved to be short-lived. The provisions of the Civil Procedure Act governing proceedings for the protection of the collective rights and interests of citizens were declared unconstitutional by the Constitutional Court and ceased to be in force in 2013.[340] As a consequence, bringing a collective action and conducting such judicial proceedings are currently not possible in Serbia.

12. Judicial Protection in Individual Consumer Disputes. If none of the previously described mechanisms for resolving consumer disputes produces a satisfactory outcome, consumers always retain the possibility of seeking judicial protection. At the time of writing (May 2026), such protection in the Republic of Serbia is available only through individual legal proceedings.

[340] See Decision of the Constitutional Court of the Republic of Serbia, Case No. IUz-51/2012, 23 May 2013, Official Gazette of the Republic of Serbia, No. 49/2013. See: https://www.ustavni.sud.rs/sudska-praksa/baza-sudske-prakse/pregled-dokumenta?PredmetId=8915.

Consumer disputes are adjudicated by a single judge.[341] In consumer disputes, jurisdiction is vested not only in the court of general territorial jurisdiction (determined by the domicile or registered office of the defendant), but also in the court within whose territorial jurisdiction the consumer has his or her domicile or residence.[342] Chapter XXXV of the Civil Procedure Act lays down special procedural rules for consumer disputes. Under these provisions, the general rules of civil procedure apply mutatis mutandis to disputes arising from contractual relationships between consumers and traders, unless otherwise provided by this Chapter or by a special law.[343] In consumer disputes, the statement of claim is not served on the defendant for the submission of a statement of defence. Rather, it is served together with the summons to the main hearing. No preparatory hearing is scheduled or conducted in consumer disputes. The main hearing must be scheduled and held within 30 days from the date of receipt of the statement of claim by the court. The summons to the main hearing must, inter alia, inform the parties that the claimant will be deemed to have withdrawn the claim if he or she fails to appear at the main hearing, and that, should the defendant fail to appear, the court will proceed with the hearing and render its judgment on the basis of the facts established in the proceedings. The court must also inform the parties that all facts and evidence must be presented no later than the conclusion of the first main hearing, that no new facts or evidence may be introduced on appeal, and that the judgment may be challenged only on the grounds of substantial violations of the rules of civil procedure or incorrect application of substantive law. If the claimant fails to appear at the main hearing and has been duly summoned, he or she shall be deemed to have withdrawn the claim. If the defendant fails to appear at the main hearing and has been duly summoned, the court shall hold the hearing and render its decision on the basis of the established facts.

Judgments in consumer disputes are pronounced immediately after the close of the main hearing. Upon pronouncing the judgment, the court shall briefly state the reasons for its decision and inform the parties of the requirements for filing an appeal. The written judgment shall set out the facts established by the court, identify the evidence on which those findings are based, and specify the legal provisions forming the basis of the judgment. In consumer disputes, an interlocutory appeal is permitted only against a decision terminating the proceedings. Other decisions[344] that may be subject to a separate appeal under the Civil Procedure Act may be challenged solely in an appeal against the decision by which the proceedings are concluded. The parties may lodge an appeal against

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[341] See Art. 35 of the Civil Procedure Act, Official Gazette of the Republic of Serbia, No. 72/2011, 49/2013 (CC), 74/2013 (CC), 55/2014, 87/2018, 18/2020 and 10/2023 (other law).

[342] See Art. 45 of the Civil Procedure Act, Official Gazette of the Republic of Serbia, No. 72/2011, 49/2013 (CC), 74/2013 (CC), 55/2014, 87/2018, 18/2020 and 10/2023 (other law).

[343] By way of exception to paragraph 1 of this Article, the provisions of this Chapter shall not apply to disputes arising from death, personal injury or impairment of health, the provision of healthcare or legal services, or the transfer of rights in immovable property. Where, due to the complexity of the subject matter of the dispute or the evidence proposed, a consumer dispute cannot be adjudicated in accordance with the provisions of this Chapter, the court shall issue a decision ordering that the proceedings continue under the rules of ordinary civil procedure. No appeal shall be permitted against such a decision.

[344] Such decisions are not served on the parties but are pronounced at the hearing and included in the written text of the final decision.

a first-instance judgment or decision within eight days. The period for filing an appeal shall run from the date of pronouncement of the judgment or decision. Where the judgment or decision is served on a party, however, the period shall run from the date of service.[345]

3. Development of the Consumer Protection Legislative Framework in the Republic of Serbia

3.1. The First Consumer Protection Acts Applied in Serbia

The first statute dealing specifically with consumer protection was adopted at the federal level, rather than at the level of the Republic of Serbia, in 2002. This was the Consumer Protection Act enacted in the Federal Republic of Yugoslavia.[346] The first consumer protection statute adopted at the republican level, that is, in the Republic of Serbia, was the Consumer Protection Act (hereinafter: CPA), enacted in 2005.[347]

3.2. The Consumer Protection Act of 2010

The CPA 2010[348], which entered into force on 1 January 2011, marked a significant step in the harmonisation of Serbian consumer protection law with European Union standards and the EU acquis, taking into account the obligations arising from the 2008 Stabilisation and Association Agreement. The Act substantially transposed into Serbian law the key provisions and regulatory solutions contained in approximately ten EU consumer protection directives.

In addition to individual consumer protection, the CPA 2010 introduced, for the first time, a mechanism for collective consumer redress into the Serbian legal system, to be exercised through civil litigation.[349] With regard to the initiation of proceedings, that is, standing, the legislator assigned a significant role to consumer protection associations. As regards procedural matters, the CPA 2010 provided for the mutatis mutandis application of the rules governing civil litigation, namely those contained in the Civil Procedure Act, which included an entire chapter regulating proceedings for the protection of the collective rights and interests of citizens. However, neither the CPA 2010 nor the Civil Procedure Act provided a precise definition of the concept of collective interest within the framework of these special proceedings for the protection of

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[345] See Arts. 488–493 of the Civil Procedure Act, Official Gazette of the Republic of Serbia, No. 72/2011, 49/2013 (CC), 74/2013 (CC), 55/2014, 87/2018, 18/2020 and 10/2023 (other law).
[346] Official Gazette of the Federal Republic of Yugoslavia.
[347] For a more detailed discussion of the stages in the development of Serbian consumer law, see Slobodan Vukadinović, "European Consumer Law and Its Influence on the Development of Serbian Consumer Law", in: 65 Years since the Treaties of Rome: The European Union and the Prospects of Serbia's European Integration (eds. Jelena Ćeranić Perišić, Vladimir Đurić and Aleksandra Višekruna), Institute of Comparative Law, Belgrade, 2023, pp. 202–207. This chapter provides the foundation for the part of the present article dealing with the normative framework of consumer protection in the Republic of Serbia, which has been updated to reflect legislative developments and the enactment of new consumer protection legislation in the intervening period.
[348] Official Gazette of the Republic of Serbia, No. 73/2010.
[349] For a detailed analysis of the collective consumer protection mechanism under the CPA 2010 and its comparison with the newly adopted CPA 2014, see B. Babović, "Protection of Collective Consumer Interests", Annals of the Faculty of Law in Belgrade, No. 2/2014, pp. 215–228.

collective rights and interests, a legislative omission that attracted criticism in legal scholarship.[350] Collective consumer redress through judicial proceedings in Serbia proved to be short-lived from a positive law perspective. The provisions of the Civil Procedure Act regulating proceedings for the protection of the collective rights and interests of citizens ceased to be in force in 2013 pursuant to a decision of the Constitutional Court, which found them to be unconstitutional.[351] The CPA 2010 also brought significant changes to Serbian consumer contract law, notably with regard to consumer protection in distance and off-premises contracts (including e-commerce transactions), the nullity of unfair contract terms, specific consumer rights in contracts for the sale of goods and the provision of services, particularly the trader's liability for lack of conformity, as well as special consumer rights in the field of tourism services.[352]

3.3. The Consumer Protection Act of 2014

One of the most significant innovations introduced by the CPA 2014 (subsequently amended several times)[353] was the introduction of administrative proceedings for the protection of collective consumer interests. Such proceedings could be initiated against the use of unfair contract terms and unfair commercial practices. Registered consumer protection associations were assigned an important role in this framework. The operation of the collective consumer protection mechanism under the CPA 2014 yielded concrete results in addressing both unfair contract terms and unfair commercial practices.[354]

The CPA 2014 further introduced a specific mechanism applicable to public utility companies, requiring the establishment of advisory bodies within those entities and providing for the inclusion of representatives of registered consumer protection associations in the membership of such bodies. A particularly important and practical innovation introduced by the CPA 2014, and one that was highly beneficial to consumers, was the possibility for consumers to submit a complaint even when they no longer possessed the original packaging of the goods. This was formally achieved by providing that a consumer's inability to present the packaging in which the goods had been sold could neither constitute a condition for handling a complaint nor serve as grounds for refusing to remedy a lack of conformity. Furthermore, consumers were given the right to choose between repair and replacement of defective goods. Under the CPA 2014, during the first six months following the purchase, repair of the goods was

[350] M. Jovanović Zattila, "The Concept of Collective Consumer Protection – The Road Less Travelled", Annals of the Faculty of Law of the University of Zenica, No. 14/2014, p. 50.
[351] Decision of the Constitutional Court of the Republic of Serbia, Case No. IUz-51/2012, 23 May 2013, Official Gazette of the Republic of Serbia, No. 49/2013.
[352] See M. Karanikić Mirić, "What Is New in Serbian Contract (Consumer) Law?", in: Serbia's Legal Capacity for European Integration (ed. Stevan Lilić), Belgrade, 2010, p. 131 et seq. The author also points out that the Serbian legislator at that time missed the opportunity to provide consumers with specific protection in the exercise of rights arising from consumer credit agreements.
[353] Official Gazette of the Republic of Serbia, No. 62/2014, 6/2016 (other law) and 44/2018 (other law).
[354] See S. Vukadinović, "Mechanisms of Collective Protection of Consumers against Unfair Contract Terms", in: Protection of Collective Consumer Interests (ed. Katarina Ivančević), Union University Faculty of Law, Belgrade, 2021, p. 234.

permissible only with the consumer's express consent. In addition, the Act granted consumers the right to withdraw from distance and off-premises contracts within 14 days without stating any reason. The CPA 2014 introduced a different legal regime governing consumer complaints, most notably by significantly reducing the period within which traders are required to respond to a complaint. Under the CPA 2014, traders were required to respond within eight days, whereas the corresponding period under the CPA 2010 had been fifteen days. The CPA 2014 also provided a more precise framework regarding the time limit for resolving complaints. While the CPA 2010 referred only to a "reasonable period", the CPA 2014 specified exact deadlines, namely 15 days for resolving complaints and 30 days in the case of furniture and technical goods. In addition, the Act introduced an obligation for traders to maintain a dedicated register of consumer complaints containing all information necessary to provide a complete record of the handling and resolution of each complaint.

The CPA 2014 also introduced the National Consumer Complaints Register, administered by the ministry responsible for consumer protection. Under the Act, the term consumer complaint encompasses any submission or grievance through which an alleged violation of consumer rights under the Consumer Protection Act or other legislation is reported.[355]

3.4. The Consumer Protection Act of 2021

The Government of the Republic of Serbia, acting as the authorised proposer[356] of the Consumer Protection Act of 2021[357], stated in the Explanatory Statement accompanying the Draft Act submitted to the National Assembly that the reasons for adopting a new consumer protection statute lay in the shortcomings identified during the implementation of the CPA 2014. According to the Government, these shortcomings hindered the full application of the existing legislation in practice and prevented the provision and guarantee of a satisfactory level of consumer protection in Serbia, primarily due to: (1) the absence of a functional institutional framework for alternative dispute resolution in consumer disputes; (2) the lack of reliable data on the number of consumer disputes pending before the courts; (3) insufficient protection of passengers (consumers) in the tourism sector; (4) the absence of effective penalties with a deterrent effect; (5) the need to ensure a higher level of accountability and transparency in the work of consumer protection associations and federations; and (6) the lack of harmonisation of Serbian consumer law with the new EU rules on package travel and linked travel arrangements, which provide a higher level of consumer protection.[358] The new Act was therefore

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[355] See Art. 139 of the Consumer Protection Act, Official Gazette of the Republic of Serbia, No. 62/2014, 6/2016 (other law) and 44/2018 (other law).

[356] The Ministry of Trade, Tourism and Telecommunications was responsible for preparing the Draft Consumer Protection Act..

[357] *Official Gazette of the Republic of Serbia, No. 88/2021.*

[358] See Draft Consumer Protection Act, Explanatory Statement, Part II – Reasons for the Adoption of the Act, pp. 83–84, available at: http://www.parlament.gov.rs/upload/archive/files/lat/pdf/predlozi_zakona/2021/1290-21%20-%20lat..pdf.

prepared with the aim of addressing these shortcomings and achieving harmonisation with the relevant EU directive.[359]

In the same year in which the Act was adopted, legal scholarship pointed out that the legislator had failed, in the CPA 2021, to transpose into Serbian law the EU approach concerning certain categories of travellers who, under EU law, are not formally regarded as consumers. These include natural persons travelling for business purposes, such as representatives and employees of small and start-up enterprises, self-employed persons, members of the liberal professions and other individuals travelling for professional reasons. The argument advanced in legal scholarship was that such persons occupy a bargaining position in the travel market comparable to that of consumers, as they purchase tickets and book accommodation through the same channels and under similar conditions. Consequently, they should be afforded the same level of protection as consumers.[360]

A significant innovation introduced by the CPA 2021 was the establishment of a comprehensive framework for alternative dispute resolution (ADR) in consumer matters. Under the Act, a consumer may initiate ADR proceedings only if he or she has previously submitted a complaint or claim to the trader. The Act expressly provides that traders are obliged to participate in ADR proceedings before the competent ADR body and must clearly and visibly display at their business premises a notice informing consumers of this statutory obligation. ADR proceedings[361] may last no longer than 90 days from the date on which the request is submitted,[362] while the consumer remains free to withdraw from the procedure at any time before its conclusion.[363] In substance, the mechanism operates as a form of mediation,[364] and the services provided by the ADR body are free of charge for

[359] According to the Statement of Compliance with European Union Law, which forms an integral part of the Draft Consumer Protection Act, the reasons given for partial harmonisation, or non-harmonisation, were that the market conditions required for full alignment with the Package Travel and Linked Travel Arrangements Directive had not yet been established. See Draft Consumer Protection Act, Statement of Compliance with European Union Law, p. 157.

[360] M. Karanikić Mirić, „Zakonodavna hiperaktivnost i delotvorna zaštita potrošača", in: *Perspektive implementacije evropskih standarda u pravni sistem Srbije* (ed. Stevan Lilić), Belgrade, 2021, pp. 118–119 (and footnote 44). The author points out that, for precisely these reasons, Recital 7 of the Directive provides that the Directive should also apply to such persons and that all persons enjoying protection under the Directive should be referred to as travellers rather than consumers, in order to ensure that natural persons travelling for business purposes are also covered by that protection. Under current Serbian law, a traveller is defined as a consumer who purchases, or on whose behalf a tourism service is purchased, while a consumer is defined as a natural person who acquires goods or services on the market for purposes not related to his or her business or other commercial activity. The same author further notes that the Directive is not intended to protect natural persons who organise their business travel on the basis of an ongoing commercial relationship with a service provider, and that partial harmonisation also exists with regard to Recitals 14, 17 and 43 of the Directive.

[361] For a more detailed analysis of the justification for excluding the insurance sector from mandatory consumer-initiated mediation, see: N. Petrović Tomić, „Vansudsko rešavanje sporova iz osiguranja u režimu Zakona o zaštiti potrošača – privilegija izuzeća ili diskriminacije osiguranja?!", *Pravo i privreda* 2/2022, pp. 275–296.

[362] Exceptionally, in justified cases where the subject matter of the dispute is complex, the 90-day period may be extended by no more than a further 90 days. The ADR body shall notify the consumer and the trader of such extension without undue delay.

[363] See Art. 151 CPA 2021, Official Gazette of the Republic of Serbia, No. 88/2021.

[364] Furthermore, pursuant to Art. 150(2)–(3) of the CPA 2021, ADR bodies for consumer disputes are mediators, within the meaning of the legislation governing mediation, who hold a law degree, have acquired at least two

the parties involved in the dispute.[365] More broadly, ADR mechanisms in the field of consumer law began to emerge in EU Member States in the late 1960s, while the key EU instruments on alternative dispute resolution and online dispute resolution were adopted in 2013.

When it comes to consumer redress mechanisms, it is important to highlight another feature characteristic of both the European Union and Serbia, namely the protection of collective consumer interests, although the manner in which such protection is implemented differs significantly. Legal scholarship and national legal systems have adopted different approaches regarding whether collective consumer interests are more effectively protected through judicial proceedings or through administrative mechanisms. Under the current Serbian legal framework, collective consumer interests are protected exclusively through administrative proceedings, as no mechanism of judicial collective consumer redress is presently available.

Although the National Consumer Complaints Register had already existed and was retained under the CPA 2021[366], one of the important innovations introduced by the Act was the establishment of the register popularly known as the "Do Not Call" Register. More specifically, the CPA 2021 introduced a prohibition on making telephone calls and/or sending messages for promotional or telemarketing purposes to consumers whose telephone numbers are entered in the register of consumers who do not wish to receive such communications. This mechanism was introduced with the aim of strengthening consumer privacy and protecting consumers from unsolicited commercial communications.[367]

3.5. Consumer Protection Secondary Legislation

In addition to the Act itself, several items of secondary legislation were adopted pursuant to the CPA 2021, including:

- Rulebook on the Content and Maintenance of the Register of Consumer Protection Associations and Federations and the Conditions for Registration (Official Gazette of the Republic of Serbia, No. 9/2022);

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years of post-graduation experience in civil law matters, and are entered on the List of ADR Bodies established and publicly maintained by the Ministry.

[365] See Art. 167(2) of the Consumer Protection Act, Official Gazette of the Republic of Serbia, No. 88/2021. Pursuant to paragraph 1 of the same Article, each party to ADR proceedings bears its own costs, including representation costs, travel expenses and other related expenses.

[366] For the purposes of the CPA 2021, a consumer complaint is defined as any submission or grievance through which a consumer reports an infringement of rights provided for under the Consumer Protection Act or other legislation. See Art. 147 of the Consumer Protection Act, Official Gazette of the Republic of Serbia, No. 88/2021. The National Consumer Complaints Register is established and maintained by the ministry responsible for consumer protection matters, currently the Ministry of Internal and External Trade (until 22 October 2022, the Ministry of Trade, Tourism and Telecommunications). Within the Ministry, a dedicated Consumer Protection Sector has been established (see: https://www.zastitapotrosaca.gov.rs) which operates an online platform enabling consumers to obtain information about their rights and to submit complaints where they consider that their consumer rights have been infringed. The National Consumer Complaints Register is available at: https://zapotrosace.gov.rs.

[367] The Register is maintained by the Regulatory Authority for Electronic Communications and Postal Services (RATEL). See Art. 37 of the Consumer Protection Act, Official Gazette of the Republic of Serbia, No. 88/2021..

- Rulebook on the Form and Content of the Withdrawal Form for Distance Contracts and Off-Premises Contracts (Official Gazette of the Republic of Serbia, No. 21/2022);
- Decision Establishing the National Consumer Protection Council;
- Rulebook on the Register of Consumers Who Do Not Wish to Receive Calls and/or Messages for the Purposes of Direct Marketing and/or Telephone Sales (Official Gazette of the Republic of Serbia, No. 118/2023);
- Rulebook Amending the Rulebook on the Operation of ADR Bodies for Consumer Disputes (Official Gazette of the Republic of Serbia, No. 68/2025).[368]

For the period 2019–2024, the Republic of Serbia adopted the Consumer Protection Strategy 2019–2024, together with two implementing action plans: the Action Plan for the Implementation of the Consumer Protection Strategy for the Period 2019–2022 and the Action Plan for the Implementation of the Consumer Protection Strategy for the Period 2023–2024. The Strategy, the action plans, and the annual reports on the implementation of the Action Plans are publicly available on the website of the Ministry of Internal and External Trade.[369] The above-mentioned reports demonstrate that the proportion of complaints relating to online purchases has been steadily increasing relative to the total number of consumer complaints. This development is hardly surprising, given the growing prevalence of e-commerce and the continuous expansion of online shopping in recent years.

3.6. New Legislation of 2026

he new Consumer Protection Act of 2026 forms part of a broader legislative package in the field of trade, recently adopted with the objective of enhancing the protection of consumers and purchasers, as well as primary agricultural producers, whose bargaining position is frequently weaker than that of other market participants. Furthermore, all three Acts contribute to increasing transparency in market relations, strengthening legal certainty and fostering fair and balanced commercial practices.[370] The package consists of three statutes: the amended Trade Act, the new Consumer Protection Act and the Act on Trading Practices for Certain Products, the latter representing a novel legislative instrument in Serbian law, having been enacted for the first time in 2026.

The Act on Trading Practices for Certain Products[371] introduced a novel enforcement mechanism into Serbian law in the form of a cooperating individual in trade

[368] The secondary legislation adopted on the basis of the Consumer Protection Act and referred to above is available at: https://must.gov.rs/tekst/sr/410/podzakonski-akti.php.
[369] See: https://must.gov.rs/tekst/411/strategije.php#.
[370] On the growing importance of transparency in consumer law, and particularly in consumer contract law, see: Vukadinović, S., Jovičić, K., "The Development of Transparency in Public and Private (Contractual) Law: From Requirement to Principle", *Collected Papers of the Faculty of Law of the University of Rijeka*, vol. 45, No. 3, 2024, pp. 595-607.
[371] Official Gazette of the Republic of Serbia, No. 35/2026 of 23 April 2026.

proceedings. This refers to a natural person who submits relevant evidence concerning an unfair trading practice and who, in return, is entitled to a monetary reward[372] amounting to 5% of the value of the protective measure imposed, as well as protection of his or her identity during the administrative proceedings.[373] The overall objective of this Act is to establish transparent and balanced relationships within the supply chain from the very outset of commercial dealings, while also eliminating distortions and irregularities that exist in the market. In particular, the Act seeks to prevent unfair trading practices arising from unequal bargaining power among market participants. The new legislative framework classifies trading practices into two categories. The first category consists of practices that are prohibited in all circumstances and therefore constitute a so-called "black list". The second category comprises the so-called "grey list", which includes trading practices whose permissibility depends on the fulfilment of certain conditions, that is, practices that are presumed to be prohibited unless proven otherwise.[374]

The legislator identifies commercial retaliation as a particularly serious form of unfair trading practice. In this regard, any form of commercial retaliation, or threat of retaliation, by a buyer against a supplier is prohibited where the supplier exercises its contractual or statutory rights and obligations or refuses to accept formal or informal offers or conditions imposed by the buyer. In particular, prohibited retaliation includes: (1) the delisting of the supplier's products from the buyer's assortment or promotional campaigns; (2) the reduction of ordered quantities or the frequency of orders, as well as delays in the acceptance, receipt or processing of orders or products; (3) the suspension, restriction or termination of services that the buyer normally provides to the supplier within the framework of their commercial relationship, such as marketing, promotional or additional product display services; and (4) other forms of retaliation capable of directly affecting the supplier's business operations.[375]

One of the principal innovations of the Act, designed to eliminate the previously widespread and unsustainable practice of payment periods extending to as much as 120 days, was the introduction of mandatory payment deadlines. Pursuant to the Act, payment for perishable agricultural products must be made within 30 days, while payment for other agricultural and food products must be made within 60 days. The relevant period is calculated from the later of the following two dates: the expiry of the delivery period or the issuance of the relevant accounting document.[376] The Act also introduced a stringent system of sanctions aimed at combating unfair trading practices. Furthermore, the Commission for Protection of Competition is obliged to publish annual

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[372] A person who has submitted a false report, intentionally altered or unlawfully obtained evidence, or incited the commission of an unfair trading practice shall not be entitled to identity protection or a monetary reward.
[373] See Article 23 of the Act on Trading Practices for Certain Types of Products (Official Gazette of the Republic of Serbia, No. 35/2026 of 23 April 2026).
[374] See Articles 6–7 of the Act on Trading Practices for Certain Types of Products (Official Gazette of the Republic of Serbia, No. 35/2026 of 23 April 2026).
[375] See Article 8 of the Act on Trading Practices for Certain Types of Products (Official Gazette of the Republic of Serbia, No. 35/2026 of 23 April 2026).
[376] See Article 6 of the Act on Trading Practices for Certain Types of Products (Official Gazette of the Republic of Serbia, No. 35/2026 of 23 April 2026).

reports containing not only a summary of detected infringements but also a form of "black list" identifying traders and other market participants whose involvement in unfair trading practices has been established. The publication of such information is expected to have significant reputational implications for the undertakings concerned and thereby enhance the preventive and deterrent effects of the legislation.[377] The Market Inspection is responsible for supervising compliance with certain provisions of the Act, whereas proceedings concerning the determination of unfair trading practices fall within the jurisdiction of the Commission for Protection of Competition..[378]

When it comes to the **Consumer Protection Act of 2026**, the principal innovation in comparison with the CPA 2021 lies in the transposition of three important EU directives: Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services; Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods; and Directive (EU) 2019/2161 on better enforcement and modernisation of Union consumer protection rules. Harmonisation with these EU instruments and standards was undertaken in response to technological developments and the challenges associated with them, as well as the exponential growth of online markets and digital commerce. These trends became particularly pronounced during the COVID-19 pandemic, when public health measures accelerated the shift of many economic and social activities, especially consumer purchasing, towards the digital marketplace. Statistical data demonstrate the growing importance of e-commerce in the Republic of Serbia. According to information provided by the Ministry of Internal and External Trade, approximately 110 million online transactions were carried out in 2025, representing an average of around 303,000 online purchases on a daily basis.[379] In this respect, the online marketplace in Serbia is undergoing continuous development, while simultaneously generating a range of new challenges that require an appropriate regulatory framework. Addressing these challenges is essential in order to ensure effective consumer protection and to secure a higher level of consumer protection in the changing digital marketplace.

The Consumer Protection Act of 2026 introduced several important innovations into Serbian consumer law. Most notably, it regulates, for the first time, the provision of digital services and the rights and obligations arising from contracts for the supply of digital content. It also addresses related issues, including the trader's liability for failure to supply digital content or digital services, as well as liability for lack of conformity both at the time of supply and during a period of two years following the conclusion of the contract. Another innovation is the introduction of the category of goods with digital elements. The Act further modernises the concept of conformity by distinguishing

[377] See the Ministry of Internal and External Trade of the Republic of Serbia, News/Announcements, 20 April 2026, available at: https://must.gov.rs/vest/19142/lazarevic-zakon-ce-prvi-put-prepoznati-nepostene-trgovacke-prakse.php.
[378] On the Commission for Protection of Competition of the Republic of Serbia, see:https://kzk.gov.rs/en.
[379] See the Ministry of Internal and External Trade of the Republic of Serbia, News/Announcements, 29 April 2026, available at: https://must.gov.rs/vest/19387/ministarka-lazarevic-set-trgovinskih-zakona-donece-vecu-zastitu-i-boljitak-za-potrosace.php.

between subjective and objective conformity requirements. It also expressly requires that goods be supplied together with all necessary updates, accessories and instructions, including installation instructions, as well as appropriate customer support. Furthermore, the Act explicitly prohibits fake consumer reviews and the manipulation of reviews, a practice that has become increasingly widespread worldwide and that undermines transparency in online commerce. The Act also prohibits misleading practices involving the marketing of the same product with different levels of quality depending on the Member State or country in which it is sold (the so-called "dual quality" practice). In addition, the Act strengthens the system of sanctions for non-compliance by increasing the applicable monetary penalties. Alongside the improvement of existing consumer protection mechanisms, it also introduces enhanced protection for minors in relation to the sale of tobacco products.

Given that the Act was adopted on 23 April 2026, entered into force on 1 May 2026, and will start to apply on 1 August 2026, it is expected that the secondary legislation required for its implementation will be adopted in the coming period.

4. Conclusion

Consumer protection law has undergone intensive development in contemporary legal systems and is characterised by several distinctive features. Serbian consumer law is, first and foremost, distinguished by the fact that consumer protection enjoys constitutional status. Article 90 of the Constitution of the Republic of Serbia expressly provides that the Republic of Serbia shall protect consumers. The substantive development of the Serbian consumer protection system has been strongly influenced by European consumer law and the substantive legal solutions contained in EU legislation. This state of affairs is a consequence of Serbia's legal and political commitment to harmonising its legislation with that of the European Union. Serbia signed the Stabilisation and Association Agreement with the EU in 2008 and formally opened accession negotiations in 2014. From an institutional perspective, the establishment of a specialised governmental structure dealing with consumer protection began in 2007, when the Consumer Protection Department was created as a specialised internal unit within the then Ministry of Trade and Services. Since then, the institutional framework has gradually evolved and expanded, reflecting the growing importance of consumer protection as a distinct area of public policy and regulation.

In 2009, it evolved into a larger organisational unit: the Department for Consumer Protection. Five years later, in 2014, the Consumer Protection Sector was established. Today, it forms part of the Ministry of Internal and External Trade, which performs, inter alia, activities relating to consumer protection. When discussing the role of other institutions, it is important to consider the National Bank of Serbia and its role in the protection of financial service consumers. The Law on the Protection of Users of Financial Services (latest version of 2025) provides that the National Bank of Serbia may determine whether a financial service provider has engaged in unfair commercial practices or negotiated and applied unfair contractual terms. The Law guarantees the

right to lodge a complaint with the National Bank of Serbia. A user of financial services must first submit a written objection to the service provider. If the user is dissatisfied with the response, or if no response is provided within the prescribed time limit, the complainant may, prior to initiating court proceedings, lodge a written complaint with the National Bank of Serbia. In addition, disputes between the complainant and the service provider may also be resolved through mediation conducted by the National Bank of Serbia. It is important to note that initiating and conducting objection, complaint or mediation proceedings under this Law is not a precondition for judicial protection, does not exclude the right to judicial protection, nor does it affect that right in any way. It should also be noted that Serbia has the Court of Honour of the Serbian Chamber of Commerce, which does not decide consumer disputes. However, it is competent to determine responsibility and impose measures in proceedings against members of the Serbian Chamber of Commerce and other business entities operating in the Republic of Serbia for violations of good business practices, business ethics, and conduct undermining the unity of the market. The Court of Honour of the Serbian Chamber of Commerce does not decide consumer disputes. However, it is competent to determine responsibility and impose measures in proceedings against members of the Serbian Chamber of Commerce and other business entities operating in the Republic of Serbia for violations of good business practices, business ethics and conduct undermining the unity of the market. The Commission for Protection of Competition does not have direct competences relating to consumer protection and does not resolve individual consumer complaints or claims. However, Article 1 of the Serbian Competition Protection Act provides that the purpose of the Act is to protect competition in the market of the Republic of Serbia with the aim of promoting economic progress and the welfare of society, particularly the benefits enjoyed by consumers. This means that the ultimate indirect objective of competition protection is also directed towards consumer welfare. No Specialised Consumer Ombudsman in Serbia. At present, the Republic of Serbia does not have a specialised Consumer Ombudsman institution, although the need for such a body has increasingly been discussed both in professional circles and among the wider public. Consumer protection associations and their federations play an important role in the current consumer protection system of the Republic of Serbia. They are established in accordance with the Law on Associations, and their primary field of activity is the pursuit of consumer protection objectives. Their activities include informing and educating consumers, providing counselling and legal assistance in resolving consumer disputes, receiving and processing consumer complaints, conducting independent testing and comparative analyses of the quality of goods and services and publishing the results, carrying out research and studies in the field of consumer protection, and cooperating with relevant domestic and international authorities and organisations. The Republic of Serbia has established a National Consumer Complaints Register, which serves as an electronic platform enabling consumers to obtain information about their rights and to submit complaints where they believe that their consumer rights have been violated. The Register, which allows the online submission of complaints with the aim of providing

consumers with efficient support in the protection of their rights, is maintained by the Ministry of Internal and External Trade in accordance with the Consumer Protection Act. Consumers may submit complaints electronically through the website: https://zapotrosace.gov.rs by completing an electronic form consisting of four categories of information entered in four steps: (1) consumer information, intended to enable feedback communication; (2) an explanation of the consumer's request or complaint; (3) information concerning the trader in relation to the purchased goods or services; and (4) the selection of a consumer protection association responsible for handling the complaint.

Since January 2024, the Republic of Serbia has introduced a telephone number register known as the "Do Not Call" Register, allowing citizens to register their telephone numbers if they do not wish to be contacted by companies for commercial and marketing purposes, including unsolicited telephone calls and SMS/MMS messages promoting goods or services. The "Do Not Call" Register is maintained by the Regulatory Authority for Electronic Communications and Postal Services (RATEL). Through the website www.nezovi.rs, traders may verify whether a telephone number has been registered. Only the owner of a telephone number may request registration or removal from the Register. Requests may be submitted through an application, electronically, or directly at the premises of the telecommunications operator with whom the consumer has concluded a contract. The establishment of the "Do Not Call" Register obliges traders to verify, before making commercial calls, whether a particular number is included in the Register. Financial penalties are prescribed for traders who contact consumers whose numbers have been registered. By the beginning of October 2025, a total of 45,150 citizens had registered their numbers in the "Do Not Call" Register. Following the highest number of registrations during the first two months after its introduction (January and February 2024), when approximately 8,500 citizens registered, the trend during the remainder of 2024 stabilised at around 2,500 registrations per month, while in 2025 registrations continued at a more moderate pace, averaging approximately 1,700 citizens per month.

The Consumer Protection Act of 2021 introduced an obligation for traders to participate in alternative dispute resolution (ADR) proceedings where the dispute could not otherwise be resolved. The Act also requires traders to inform consumers, in a clear and understandable manner and in the Serbian language or the language of a national minority, about the possibility of out-of-court dispute resolution. ADR proceedings in consumer disputes in the Republic of Serbia are free of charge for both consumers and traders. Serbia has established an online ADR platform available at: https://vansudsko.must.gov.rs ADR proceedings may be initiated regardless of the type or value of the dispute, provided that the consumer has first submitted a complaint to the trader. Proceedings are initiated by completing an online request through the platform, where the consumer provides: (1) personal information, (2) information concerning the trader, and (3) a description of the dispute together with information regarding the rejected complaint. Consumer ADR proceedings are conducted before a neutral third party — an ADR body registered on the official List of ADR Bodies maintained by the

Ministry of Internal and External Trade. ADR bodies must satisfy the conditions prescribed by the Consumer Protection Act. As of 10 May 2026, the List contained 70 registered mediators, together with their contact details and languages spoken. The List is publicly available at: https://vansudsko.must.gov.rs/adrbodies. If the parties fail to reach an agreement, the ADR body may issue a non-binding recommendation on the resolution of the dispute where it considers such a recommendation appropriate. The recommendation must be issued in writing and contain reasons. With regard to the practical functioning of consumer ADR in Serbia, the following table presents the total number of registered and resolved disputes during the period 2022–2024, bearing in mind that the ADR platform became operational on 27 July 2022. Consumers may contact the Market Inspectorate, whose powers are regulated by the Consumer Protection Act. The Market Inspectorate acts in situations where a trader: (1) fails to respond to a consumer complaint within the statutory period of 8 days (the time limit for resolving a consumer complaint may not exceed 15 days, or 30 days for technical goods and furniture); (2) misuses the term “guarantee”; (3) engages in unfair commercial practices; (4) sends unsolicited goods to consumers; or (5) sells, serves, or provides tobacco products, alcohol, beer, or pyrotechnic products to minors.

Protection of collective consumer interests in the Republic of Serbia is currently exercised through administrative proceedings conducted by the Consumer Protection Sector within the Ministry of Internal and External Trade. Since 2015, the Consumer Protection Sector has issued a total of 30 decisions in collective consumer interest protection proceedings. Judicial collective consumer protection was provided for by law, but only for a relatively short period. The Consumer Protection Act of 2010 introduced collective consumer redress into the Serbian legal system for the first time through civil court proceedings. Consumer associations were granted a particularly important role in initiating such proceedings. The Act referred to the corresponding application of the Civil Procedure Act, which at that time contained a separate chapter governing proceedings for the protection of collective rights and interests. However, neither the Consumer Protection Act nor the Civil Procedure Act provided a precise definition of the collective interest. In 2013, the provisions of the Civil Procedure Act regulating collective actions were annulled by the Constitutional Court, which found them unconstitutional. As a result, collective consumer actions before Serbian courts are currently unavailable. Individual consumer disputes are adjudicated by a single judge. In addition to the court of general territorial jurisdiction (determined by the defendant’s domicile or registered seat), jurisdiction also lies with the court in whose territory the consumer has his or her domicile or residence. Chapter XXXV of the Civil Procedure Act contains special procedural rules governing consumer disputes. No preliminary hearing is held, and the main hearing must be scheduled within 30 days of the receipt of the claim. Judgments in consumer disputes are pronounced immediately after the conclusion of the main hearing. The court briefly explains its decision and informs the parties of their right to appeal. Appeals against first-instance judgments or decisions may be lodged within 8 days.

When discussing the development of the legislative framework of consumer protection in the Republic of Serbia, it should be noted that the first law dealing with consumer protection was adopted at the federal level, rather than at the level of the Republic of Serbia, in 2002. It was the Consumer Protection Act enacted in the Federal Republic of Yugoslavia. The first consumer protection law adopted at the republican level, that is, in the Republic of Serbia, was the Consumer Protection Act of 2005. It was followed by the Consumer Protection Act of 2010, the Consumer Protection Act of 2014, and the Consumer Protection Act of 2021. The new Consumer Protection Act of 2026 forms part of a broader package of trade-related legislation recently adopted with the aim of improving the position of consumers and primary agricultural producers, who are often in a weaker position vis-à-vis other market actors. The legislative package consists of three acts: the Trade Act (Amendments), the Act on Trading Practices for Certain Types of Products, adopted for the first time in Serbia, and the Consumer Protection Act. With regard to the Consumer Protection Act of 2026, the most significant changes compared with the 2021 Act concern the transposition of three EU directives: Directive (EU) 2019/770 on certain aspects concerning contracts for the supply of digital content and digital services; Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC; and Directive (EU) 2019/2161 on better enforcement and modernisation of Union consumer protection rules.

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DUE PROCESS IN COMPETITION LAW – DOES IT MATTER FOR CANDIDATE COUNTRIES? A CASE OF SERBIA

While Serbia opened negotiations for the EU accession in January 2014, negotiations in the Internal Market Cluster, to which the chapter on competition policy belongs, have not been opened yet. In its annual reports on the progress of Serbia in the accession process, the European Commission assesses the competition legislative framework, the institutional framework and the enforcement capacity. The Commission finds the legislative framework broadly aligned with the EU competition acquis. The assessment of the procedural aspects of national competition law has not been a focus of the Commission so far. At the same time, the Commission has been continuously emphasising the importance of strengthening the rule of law in candidate countries.

Serbia established the current institutional and procedural framework for implementing competition law in 2010, with the adoption of the Competition Protection Act (CPA). Serbian procedural competition law is based on the General Administrative Procedure Act of 2016, supplemented by specific rules that reflect the exceptional nature of competition proceedings and the need to harmonise with EU law. CPA is only partially aligned with Council Regulation 1/2003/EC, Commission Regulation 773/2004, Council Regulation 139/2004 and Commission Implementing Regulation 2023/914.

In the paper, we discuss three important departures of the CPA rules from the EU competition procedure. The first one relates to the status of the complainant in antitrust investigations. The second one concerns the third party standing in merger control proceedings. The third one pertains to the transparency of investigations, decision-making, and decreased public awareness of competition law enforcement. Shortcomings in the regulation of these issues in the CPA contributed to the low credibility of the Commission for the Protection of Competition's decision-making and decreased public awareness of the CPC's enforcement efforts.

Focusing on harmonisation of national substantive competition rules with EU law is not sufficient for the success in accession negotiations. The procedural aspects of competition law must receive adequate attention when assessing a candidate country's preparedness to assume obligations arising from EU membership. Procedural competition rules should be seen as one of the elements for assessing the respect for the rule of law in a candidate country, the rule of law being the fundamental EU value.

Keywords: EU accession, competition law enforcement, procedural rules, competition authorities, third-party standing

The decades-long development of EU competition law has addressed not only substantive rules but also the incorporation of procedural guarantees of fairness and impartiality of the European Commission's and national competition authorities' investigations and decision-making, as well as the warranting of effective judicial protection for defendants and other parties in competition proceedings. Over the years, EU legislators have gradually improved procedural rules, thereby rectifying an EU enforcement model that was far from perfect with respect to the principles of the separation of powers and the right to a fair trial.

Candidate countries have assumed the obligation to harmonise their national law with the EU acquis. In the field of competition, they must also demonstrate that harmonised law is effectively implemented. The EC continuously monitors candidate countries' progress in legal harmonisation and the implementation of competition law. Our hypothesis is that the EC has been paying more attention to the harmonisation of substantive competition rules and formal indicators of competition enforcement. EC progress reports lack the institutional analysis of candidate countries' competition authorities, information on the level of their independence and autonomy, and on the extent to which procedural fairness and impartiality are ensured. Such an attitude is at odds with the proclamation of the rule of law as the fundamental EU principle, which is also relevant to candidate countries' accession to the EU.

In this paper, we first outline the nexus between the concepts of democracy and the rule of law, on the one hand, and competition law and policy, on the other. We follow by outlining the EU requirements regarding the institutional independence of national competition authorities and guarantees of fair procedure and effective judicial protection. The second part of the paper focuses on Serbia's path to EU membership and the features of its competition enforcement model, highlighting the fusion of investigative and decision-making powers, the absence of third-party rights in administrative and judicial competition proceedings, and the insufficient transparency in the operation of the Commission for the Protection of Competition. We consider these features the major deficiencies that diverge the Serbian competition enforcement model from the rule-of-law incarnation.

1. **Democracy, rule of law and competition law**

EU competition rules are normally seen as a tool ensuring economic efficiency, consumer welfare and the proper functioning of the internal market.[380] Companies and other market participants should compete freely across the entire territory of the EU member states. Competition restrictions, such as anticompetitive agreements and abuses of dominant positions, must be sanctioned and eliminated. Concentrations that result in a

[1] For an overview of the goals of EU competition law, see: Konstantinos Stylianou, Marios Iacovides, *The goals of EU competition law: a comprehensive empirical investigation*, Legal Studies, Vol. 42, 2022, pp. 620-648

dominant position in the market or otherwise impede effective competition must be prevented.
Those acquainted with the historical development of EU competition law are well aware that its roots lie in the Ordoliberal school of thought, which regarded competition as a weapon to fight monopolies and to ensure democratic economic governance, preventing economic power from transforming into political power.[381] The role of competition law in ensuring democracy in a society is indispensable. Competition law defends a market economy in a way that is equivalent to the separation-of-powers principle.[382] In economic terms, the dispersion of power among market players epitomises the essential precondition for the existence of a democratic society that respects the rule-of-law requirements.
A discussion on the nexus between the rule of law principle and EU competition law has gained new momentum in recent years, following the EU's facing democratic backsliding in some member states.[383] The rule of law is one of the basic values on which the EU is founded.[384] Its exact definition is missing in the EU treaties. According to the Council, the rule of law means that all public authorities act within constraints set out by law. It includes a transparent, accountable, democratic, and pluralistic law-making process, effective judicial protection provided by independent and impartial courts, and the separation of powers. It requires that everyone enjoys equal protection under the law and prevents the arbitrary use of power by governments.[385] Besides being a fundamental EU principle and a value, it is an enforceable legal norm, even though the European Court of Justice (hereinafter: ECJ) has never based its decision solely on Art. 2 TEU. Instead, it relies on other treaty rules that give substance to the rule-of-law principle.[386]
Inasmuch as competition law embodies rules that target the behaviour of economic operators in the market, aiming to protect market competition and, consequently, the

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[381] See Elias Deutscher, Stavros Makris, Exploring the Ordoliberal Paradigm: The Competition-Democracy Nexus, *The Competition Law Review*, Vol. 11, 2016, pp. 181-214, at pp. 186-7; David J. Gerber, *Constitutionalizing the Economy: German Neoliberalism, Competition Law and the'New' Europe*, The American Journal of Comparative Law, Vol 42, 1994, 25-84; Ryan R. Stones, *EU Competition Law and the Rule of Law: Justification and Realisation*, doctoral thesis, 2018, The London School of Economics and Political Science;
[382] Miguel P. Maduro, *Ensuring Market and State Accountability: The Private? Public Distinction in the EU Internal Market*, in Oleg Andriychuk (ed.) *Antitrust and the Bounds of Power – 25 Years On*, 2023, Bloomsbury Publishing, pp. 33-50, at p. 34
[383] Andrea Piletta Massaro, Market Integration and Competition as a Way to Strengthen the Rule of Law and Democracy in the Enlarged European Union, *EU and Comparative Law Issues and Challenges*, 2024, Issue 8, pp. 333-359; Dimitry Vladimirovich Kochenov, Upgrading rule of law in Europe in populist times, *Pravni zapisi*, 2021, No. 1, pp. 16-28; Guillermo Íñiguez, Competition in Times of Democratic Crisis: Domestic Judicial Reforms and the Effectiveness of EU Competition Law, *Cambridge Yearbook of European Legal Studies*, 2025, 1-18, doi:10.1017/cel.2024.4; Katalin Cseres, *European competition law, an overlooked element of the EU's rule of law toolbox*, 2024, Swedish Institute for European Policy Studies
[384] Art. 2 of the Treaty on European Union
[385] European Council, Rule of law, https://www.consilium.europa.eu/en/policies/rule-of-law-why-it-matters. Accessed 3.05.2026
[386] See, for example, Associação Sindical dos Juízes Portugueses v. Tribunal de Contas, Case C-64/16, EU:C:2018:117; Commission v. Hungary (Judicial Retirement Age), Case C-286/12, EU:C:2012:687; Commission v. Poland (The Independence of Supreme Court), Case 204/21, ECLI:EU:C:2023:442

interests of other economic operators, consumers, and society as a whole, the rule of law must be respected in the enforcement of EU competition law. The respect for the rule of law in competition law enforcement is predominantly expressed by two elements: 1) the setup of institutions responsible for enforcement, including the status of members of decision-making bodies and investigating officers, and 2) the procedural rules governing competition law investigations, decision-making, and judicial control.

2. Competition authorities set up

The first element is addressed in EU law by Regulation 1/2003[387] and Directive 2019/1.[388] Art. 5(1) of Regulation 1/2003 briefly requires member states to designate national competition authorities (hereinafter: NCA) and provide them with investigative and decision-making powers to apply EU antitrust rules. Directive 2019/1 sets out more detailed rules to ensure that NCAs have the necessary guarantees of independence, resources, and enforcement and fining powers as essential prerequisites for effectively applying Articles 101 and 102 TFEU. Member states of the EU must ensure that NCAs perform their duties and exercise their powers impartially and in the interests of the effective and uniform application of those provisions, subject to proportionate accountability requirements and without prejudice to close cooperation between competition authorities in the European Competition Network.[389]

Directive 2019/1 does not interfere with member states' choice of competition authority model.[390] In the EU, an administrative and bifurcated judicial model of competition law enforcement exists, with the former type prevailing.[391] The Directive lays down rules for independent investigation and decision-making of national administrative competition authorities. Administrative competition authorities must be able to perform their duties and to exercise their powers independently from political and other external influence. These authorities should neither seek nor accept instructions from the government or any other public or private entity, and should avoid taking any action that constitutes a conflict of interest.

The prevalence of administrative competition authorities in the EU competition landscape is not the only reason why Directive 2019/1 focused on them. In the bifurcated judicial model, the courts decide antitrust cases, while administrative authorities conduct investigations. The courts' independence is secured by other sources of EU law – Art.

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[387] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003

[388] Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, OJ L 11, 14.1.2019

[389] Art. 2 (1) of Directive 2019/1

[390] In the past, both the Commission and the European Court of Justice took opportunities to influence the shaping of the national competition authorities. See on this subject: Giorgio Monti, *Independence, Interdependence and Legitimacy: The EU Commission, National Competition Authorities, and the European Competition Network*, European University Institute Working Papers, Law 2014/1, pp. 12-13

[391] See on this subject: Jurgita Malinauskaite, Public EU competition law enforcement in small 'newer' Member States: addressing the challenges, *The Competition Law Review*, 2016, Issue 1, pp. 19-52

19(1) of the Treaty on European Union and Art. 47(1) of the Charter of Fundamental Rights of the European Union.[392] Administrative national competition authorities are a common feature of EU competition law, yet they lack certain elements that would qualify them as courts or tribunals.[393] For this reason, their status cannot be assessed under Art. 47(1) CFREU and Art. 19(1) TEU.

Directive 2019/1 did not go much further to rule on how the NCAs' independence is secured. Guaranteeing independence through explicit declaration of independence in national competition law is common practice. In reality, the NCA's status often differs substantially from the legal proclamations, rendering them ineffective. The status of a competition authority is closely related to the overall competence of administrative institutions in a country and to the authority's longevity. As Giorgio Monti remarked, the longer a Member State has been a party to the EU, the more independent the authority is.[394]

Occasionally, the ECJ has ruled on certain features of the administrative model of competition enforcement. In the VEBIC case,[395] the ECJ decided on the compatibility of the Belgian competition enforcement model, in which the administrative authority was established against the judicial model, with separate decision-making and investigative functions. The issue was that the decision-making body lacked the authority to respond to defendants' appeals in antitrust cases to the appellate court. Instead, it was the minister in charge of the economy who responded. The ECJ found this procedural element incompatible with EU law, as it feared that if the NCA did not have an opportunity to defend its decision, the appellate court might be wholly 'captive' to the appellants' pleas in law and arguments.[396]

Regarding the status of members of the decision-making bodies, Directive 2019/1 requires that they be selected, recruited, or appointed in accordance with clear and transparent procedures laid down in advance in national law.[397] Officials deciding on infringements of Articles 101 and 102 TFEU and imposing fines and periodic penalty payments must not be dismissed for reasons related to the proper performance of their duties or the proper exercise of their powers.

NCAs must have the power to set their priorities when applying Articles 101 and 102. Member states need to provide them with a sufficient number of qualified staff and

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[392] One can say that the wording of Art. 19(2) TEU and Art. 47(1) CFREU do not provide the guarantee of courts' independence. Art. 19(1) TEU requires member states to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law, while Art. 47(1) only mentions 'courts or tribunals of Member States'. However, the ECJ interpreted these articles as also requiring courts' independence in their establishment, structure and decision-making. See: Court of Justice of the European Union, *Independence of the Judiciary*, 2024, https://curia.europa.eu/site/upload/docs/application/pdf/2025-10/independance_de_la_justice_-_en.pdf

[393] Dijana Marković Bajalović, The EU Institutional Model of Competition Law Enforcement Revisited: How Much Rule of Law Suffices?, *Pravni zapisi*, 2022, No. 2, pp. 500-535

[394] G. Monti, op. cit., p. 11

[395] Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers (VEBIC), 2010, Case C-439/08, ECR I-12471, ECLI:EU:C:2010:739

[396] VEBIC, para 58

[397] Art. 4(4)

sufficient financial, technical, and technological resources necessary for the effective performance of their duties. NCAs report periodically on their activities to the national parliament or the government. These reports are published to ensure transparency in NCA operations. An NCA report must include information about the appointments and dismissals of members of the decision-making body, the amount of resources that were allocated in the relevant year, and any changes in that amount compared to previous years.

The major deficiency of Directive 2019/1 is that it applies only to authorities responsible for applying antitrust rules. It does not apply to authorities responsible for controlling concentrations. This attitude of the EU legislator can be defended by the argument that Articles 101 and 102 TFEU concern competition law infringements. NCAs must be fit and able to decide on competition infringements and impose fines and periodic penalty payments. In exercising these powers, NCAs play a quasi-judicial role, which justifies requirements for independence, transparency, and legality in the recruitment and appointment of members of decision-making bodies, as well as their protection from unlawful dismissal.

It should not be overlooked that NCAs also need guarantees of independence, transparency in their operations, and sufficient resources when assessing the compatibility of a concentration with EU or national competition law. EU and national rules on the control of concentrations also provide for the imposition of fines and periodic penalty payments on concentration participants and third parties that breach obligations to notify, to stop implementing concentrations before a competition authority decides on their compatibility, and to submit required information.[398] Besides, rules on the control of concentration help maintain competitive markets, thus disincentivising anticompetitive behaviour. In implementing these rules, NCAa must act autonomously and professionally, without being vulnerable to political or other pressures.

3. Rules on participation of third parties in competition proceedings

On the procedural side, EU legislators have gradually developed procedural rules intended to protect the parties' rights in competition proceedings and to ensure the transparency and impartiality of competition investigations and decision-making. Regulation 1/2003 entrusted the EC and NCAs with investigative and decision-making powers to enforce the Treaty's antitrust provisions (Art. 101 and 102 TFEU). Inexplicably, Regulation 1/2003 is unpretentious in its outline of due process guarantees compared with the investigative and decision-making powers it grants to the Commission and NCAs. Article 2 declares that the burden of proving infringements of the Treaty antitrust rules rests on a competition authority or a party alleging the infringement. Article 27 deals with the defence rights of a party against whom competition proceedings are initiated. Persons who are subjects of the proceedings are guaranteed the right to be heard on the

[398] Art. 14 and 15 of the Merger Control Regulation - Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, OJ L 24, 29.1.2004, hereinafter: MCR

matters to which the Commission has taken objections. The Commission can base its decisions only on objections that the parties concerned have had an opportunity to comment on. Parties are guaranteed access to the files, subject to two restrictions. The first relates to third parties' legitimate interests in protecting their business secrets. The second one concerns confidential information and internal documents of the Commission or the competition authorities of the member states.

The ECJ first discussed the privilege against self-incrimination in *Orkem*.[399] The ECJ stated that an individual could not be compelled to give incriminating answers to the Commission, since doing so would infringe the general principles of EU law, which include fundamental rights as an integral part. While companies are obliged to cooperate with the Commission during anti-competition investigations, they cannot be compelled to provide answers that would amount to an admission of guilt for breaching antitrust rules.

3.1. Third parties in antitrust proceedings

In parallel with the defendant's rights, Regulation 1/2003 outlines the rights of interested persons. Under the enforcement model established by Regulation 1/2003, the Commission may initiate an investigation on its own and issue a decision finding an infringement. Third parties may inform the Commission of alleged infringements of competition rules, and interested persons may lodge a complaint, but the Commission decides whether it shall initiate investigations and issue a decision prohibiting certain behaviour.[400] Regulation 1/2003 sets out a similar rule regarding NCAs' power to initiate cases and to decide on competition infringements. Where, on the basis of the information in NCA's possession, the conditions for prohibition are not met, they may likewise decide that there are no grounds for action on their part.[401]

The position of interested parties and third persons in proceedings concerning allegations of infringements of antitrust rules, as outlined in Regulation 1/2003, reflects an attempt in striking a balance between the legitimate interests of interested parties and third persons in participating in competition proceedings and in contributing to proving the alleged infringement, on one side, and empowering the Commission and NCAs to prioritise cases and ensure secrecy of proceedings for the sake of investigation effectiveness, on the other. Regulation 1/2003 differentiates between complainants and third persons. Only persons with a legitimate interest may lodge a complaint, including member states.[402] The Commission Regulation 773/2004 specifies that the right to complain is granted to natural and legal persons who can demonstrate a legitimate interest in doing so.[403] Complainants will have a legitimate interest if they show that their economic interests are harmed or likely to be harmed by an alleged violation of Art. 101 and 102 TFEU. Final consumers of

[399] Orkem v. Commission, Case 374/87, ECLI:EU:C:1989:387
[400] Art. 7 of Regulation 1/2003
[401] Art. 5(3) of Regulation 1/2003
[402] Art. 7(2) of Regulation 1/2003
[403] Art. 5(1) of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004

goods and services have a legitimate interest if they show they have suffered economic damage resulting from an agreement or conduct liable to restrict or distort competition.[404] Even if a complainant demonstrates a legitimate interest, a competition authority still has discretion to decide whether it will initiate a case. The European Commission is responsible for implementing EU competition policy under Article 105 TFEU and, therefore, is not bound to commence proceedings to establish the existence of any infringement of competition law.[405] The Commission is entitled to prioritise cases and can reject a complaint for lack of an EU interest in initiating an investigation.

Similarly, Directive 2019/1 provides NCAs with the power to prioritise cases:

> "To the extent that national administrative competition authorities are obliged to consider formal complaints, those authorities shall have the power to reject such complaints on the grounds that they do not consider such complaints to be an enforcement priority. "[406]

An NCA may reject a complaint on the grounds that another NCA is dealing with a case. Likewise, the Commission and an NCA may reject a complaint on the grounds that another NCA has already dealt with it.[407] Member states may establish additional grounds for rejecting complaints under their national law.[408]

The Commission can reject a complaint if it does not provide sufficient grounds to act on the complaint based on the information provided by the complainant. In such a case, the Commission must invite the complainant to state its views in writing within a specified time limit. The Commission is not obliged to consider the late complainant's submissions. If the complainant fails to submit his views, the complaint will be considered withdrawn. If the complainant submits his statement in writing, the Commission may reject the complaint by a reasoned decision.[409]

The Commission decision rejecting a complaint is subject to an appeal before the General Court of the EU under Article 263 of the TFEU.[410] Rarely did a complainant succeed in annulling a decision of the Commission to reject a complaint before the EU courts. Even if he did, the Commission was not obliged to initiate an investigation following the court's decision. This happened in *CEAHR*,[411] where the Court annulled the first Commission's decision rejecting the complaint, but the Commission again rejected the complaint, reasoning that it could not prove an infringement without employing sufficient resources to investigate the case, which would be disproportionate to the effects of a decision.

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[404] Österreichische Postsparkasse and Bank für Arbeit und Wirtschaft v. the Commission, joined cases T-213/01 and T-214/01, EU:T:2006:151, para. 115

[405] Automec Srl v Commission, Case T-24/90, ECR 1992 II-02223, para. 74

[406] Art. 4(5) of Directive 2019/1

[407] Art. 13 of Regulation 1/2003

[408] Ibid.

[409] Art. 7 of Commission Regulation 773/2004

[410] Malgorzata Kozak, Jacek Mainardi, Rights of Complainants before the European Commission, *Journal of European Competition Law&Practice*, Vol. 13, 2023, pp. 152–164, https://doi.org/10.1093/jeclap/lpad015

[411] CEAHR v. Commission, Case T-472/08, ECLI:EU:T:2010:517

There are several justifications for limiting the power of interested persons to bring a case before a competition authority, the competition authority's responsibility for conducting competition policy being the principal one. Second, the competition authorities' limited resources compel them to focus on cases of greater public interest. The third justification is that parties suffering harm from competition violations have the power to initiate a case before a civil court, seeking an annulment of an anticompetitive agreement, bringing the competition infringement to an end, or asking for damages.

Courts of EU member states obtained the power to apply EU antitrust rules under Regulation 1/2003.[412] National courts also apply national competition laws, which provide an additional legal basis for initiating a civil law case.

The civil-law protection of private interests in competition law has not been the most effective method of competition law enforcement so far. Private persons face immense hurdles in obtaining evidence to prove violations of antitrust rules. They lack the powers and resources that competition authorities have to investigate the case, making it almost impossible for them to collect the necessary evidence to win. Natural persons and small companies often lack the financial resources to cover substantial litigation expenses.[413] In such circumstances, the risk of losing the case prevents them from bringing it before the court.

Thirdly, the option of civil enforcement is generally available to those who have a legal interest in bringing civil charges to the court, i.e., injured persons. The case may be that competition infringement causes minor damage to an individual, whereas it is not opportune for that person to sue in court. A class action is not generally available in the national legal systems of the EU member states, making it almost impossible for certain social groups, such as consumers or small businesses, to defend their interests effectively in civil litigation. Only recently has the European Union adopted the Representative Actions Directive (RAD), a specific type of class action that allows qualified entities to represent consumers' interests in court.[414] RAD aims at ensuring that a representative action mechanism to protect the collective interests of consumers is available in all

[412] Art. 6 of Regulation 1/2003

[413] In the White Paper on damages actions for breaches of the EC antitrust rules (COM(2008) 165 final), the Commission proposed that the costs of antitrust infringements would be borne by the infringers, and not by the victims and law-abiding businesses. Effective remedies for private parties also increase the likelihood that more illegal restrictions of competition will be detected and that infringers will be held liable. Antitrust Damages Directive (Directive 2014/104/EU, OJ L 349, 5.12.2014) set out in Art. 4 the principle of effectiveness, obliging member states to design and apply national rules and procedures relating to the exercise of claims for damages in such a way that they do not render practically impossible or excessively difficult the exercise of the Union right to full compensation for harm caused by an infringement of competition law. The effectiveness principle also extends to litigation costs.

[414] See: Slobodan Vukadinović, Jelena Popović, Class Action Versus Representative Action: Are We Facing the Gradual Harmonisation Between American and European Model of Collective Consumer Actions, *Balkan Yearbook of European and International Law 2025*, D. V. Popović et al. (eds.), Springer, pp. 225-243 https://doi.org/10.1007/978-3-032-16296-0_9

member states. When transposing RAD, some EU member states offered collective redress also for competition law cases, but not all of them.[415]

Complainants have a right to receive a non-confidential version of a statement of objections that the Commission notifies to the parties concerned. The complainant may express his views vis-à-vis the statement of objections within a time limit set by the Commission.[416] The right to respond to the statement of objections is the principal complainant's procedural right, since his participation in an oral hearing is conditional upon the Commission inviting him.

In case the Commission has rejected the complaint, the complainant has the right to access the file. The enjoyment of this procedural right is limited in that the claimant can access only a non-confidential version of the documents. The Commission may deprive him of accessing the documents containing business secrets and other confidential information belonging to other parties involved in the proceedings.[417] Access to the documents in the Commission's possession enables the complainant to initiate a case in court.

By limiting the complainant's right of access to the documents, the Commission intended to strike a balance between the parties' legitimate interests in protecting confidential commercial information and the complainant's right to legally protect his interests. Commission Regulation 773/2004 entrusts parties concerned and other persons who submit information to the Commission with the right to designate information which represents a business secret or other types of confidential information. In practice, exercising this right can substantially limit the complainant's access to relevant information, rendering it ineffective. To solve this issue, it is necessary to define the concepts of business secrets and other confidential information, and to determine the criteria for identifying which business secrets and confidential information warrant protection. Business secrets are confidential information about a company's business activity, of which mere transmission to a person other than the one who provided the information may seriously harm the latter's interests.[418] Other confidential information is information other than business secrets, insofar as its disclosure would significantly harm a person or a company.[419] Regardless of the EU institutions' attempts to define the concepts of business secrets and confidential information, these concepts remain obscure and confer substantial discretion on a competition authority in deciding whether to grant protection to specific information. Access to the file is provided on condition that the information thereby obtained may be used only for the purposes of judicial or administrative proceedings for the application of Article 101 or 102 TFEU.[420]

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[415] Thorsten Matthies, Lewin Klusmann, European competition (class) actions: Is the EU Representative Actions Directive leading to more fragmentation?, *Competition Law&Policy Debate*, Vol. 9, 2026, pp. 93-103 DOI: 10.4337/clpd.2025.03-04.03

[416] Art. 6(1) of Commission Regulation 773/2004

[417] Art. 8(1) of Commission Regulation 773/2004

[418] Postbank NV/Commission, Case T-353/94, EU:T:1996:119, para. 87

[419] European Commission, *Guidance on confidentiality claims during Commission antitrust procedures*, p. 2

[420] Art. 15(4) of Commission Regulation 773/2004

A complainant can request the Commission to allow him to express his views at an oral hearing with the parties to the case.[421] The Commission is not bound by the complainant's request. It will afford the complainant the opportunity to participate in an oral hearing only if it deems it appropriate.[422]

Complainants have a right to appeal against a Commission's decision in competition cases, provided that he shows that the decision is of a direct and individual concern to them.[423] The request of direct concern refers to the ability of the EU measure to affect an individual without member states having to implement it, while individual concern relates to the ability of the act to affect an individual even if it does not mention him.[424] Notification of a statement of objections by the Commission to a complainant and the Commission's decision mentioning him are not sufficient elements for obtaining *locus standi* before the EU courts.[425] Normally, a complainant will be recognised as having a right to appeal against the Commission's decision in the following circumstances: the Commission closes a case by accepting commitments from a defendant and the Commission issues a final decision finding infringement of competition rules but the complainant is not satisfied with a remedy imposed.

The status of third persons who did not complain to the Commission but have an interest in the outcome of a case is inferior to that of the complainants. The Commission has a substantial range of discretion in determining third persons' legal position in competition proceedings. Legal and natural persons may apply to the Commission to be heard, demonstrating sufficient interest in the case. The Commission will inform them in writing of the nature and subject matter of the procedure and will set a time-limit within which they may make known their views in writing. The Commission may invite them to develop their arguments at the oral hearing of the parties[426]

In addition, the Commission may invite any other person to express its views in writing and to attend the oral hearing of the parties to the case. It may also invite these persons to express their views at the oral hearing.[427]

3.2. Party status in control of concentration proceedings

The status of parties in proceedings conducted under the Merger Control Regulation (MCR) is comparable to that in antitrust proceedings, the main difference beeing that the MCR did not address the complainant's status. The reason for doing so is obvious – proceedings under MCR are initiated by the parties' notification of concentration, which eliminates the possibility of the Commission acting on a complaint.[428] Nevertheless, third

[421] Art. 6(2) of Commission Regulation 773/2004
[422] Ibid.
[423] Art. 264(4) TFEU
[424] Ivo Van Bael, *Due Process in Competition Proceedings*, Kluwer, 2011, p. 335
[425] Wegenbouwmaatschappij J. Heijmans v Commission, Case T-338/06, ECR II 110, paras. 22-33
[426] Art. 13(1-2) of Commission Regulation 773/2004
[427] Art. 13(3) of Commission Regulation 773/2004
[428] However, it is possible that the Commission learn about a concentration that has been implemented without prior notification of the parties, in which case it starts the proceedings *ex officio* in line with Art. 8(4) MCR. The Commission can obtain this information from third parties that could enjoy complainant status if only MCR had provided a rule on this.

parties might have an interest in the outcome of proceedings for control of a concentration. Competitors of concentration parties, suppliers, buyers, and consumer representatives will most likely be interested in participating in the proceedings, since their economic interests can be harmed by concentrations that strengthen the market power of participating undertakings.

MCR provides a right to be heard to persons concerned and persons demonstrating sufficient interest.[429] The term 'persons concerned' in MCR has a wider meaning than the term 'parties to concentration'. It refers to persons who are affected by a Commission decision declaring a concentration compatible with the internal market. The Commission Implementing Regulation 2023/914 uses terminology inconsistent with MCR, by differentiating between the following persons who shall have a right to be heard in concentration control proceedings:

- notifying parties,
- other involved parties, that is, parties to the proposed concentration other than the notifying parties, such as the seller and the undertaking which is the target of the concentration,
- third persons, that is, natural or legal persons, including customers, suppliers and competitors, provided they demonstrate a sufficient interest.[430]

The notifying and other involved parties are concerned parties within the meaning of Art. 18(1) and (3) of MCR.

Parties concerned have an unconditional right to be heard. The extent of the right, however, varies. The Commission must provide the notifying and other involved parties with a statement of objections in writing before it adopts a final decision, and must set a time limit within which the concerned parties may respond. Following the issuance of a statement of objections, the Commission may address a letter of facts to the notifying parties, informing them of additional or new facts or evidence that it wishes to use to corroborate objections already raised. The Commission does not have the same duty towards the other parties involved. While the Commission must afford notifying parties an opportunity to develop their arguments at an oral hearing, it may do so for other parties involved.[431]

The Commission (and the competent authorities of member states) may hear other natural and legal persons, in so far it deems it necessary.[432] If third persons apply to be heard, the Commission must inform them in writing of the nature and subject matter of the proceedings and set a time limit within which they may make known their views. The Commission may send to third persons a non-confidential version of a statement of

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[429] Art. 18(4) MCR

[430] Art. 11 of Commission Implementing Regulation (EU) 2023/914 of 20 April 2023 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings and repealing Commission Regulation (EC) No 802/2004, OJ L 119, 5.5.2023

[431] Art. 14 of Commission Regulation 2023/914

[432] Art. 18(4) of Regulation 139/2004

objections or inform them of the nature and subject matter of the proceedings by other appropriate means. Third persons may make known their views in writing within the set time limit. The Commission may, where appropriate, afford such third persons who have so requested in their written comments the opportunity to participate in a hearing.[433] The Commission may invite any other natural or legal person to express its views, in writing as well as orally, including at an oral hearing.

With regard to access to the files, again, the status of notifying parties differs from that of involved parties. The Commission will grant the parties to whom it addresses the statement of objections access to the files for the purpose of exercising their right to defence. Other involved parties who have been informed of the objections will be accorded access to the file, to the extent necessary to prepare their comments.[434]

Not all of the above-mentioned persons will be entitled to appeal against the Commission decision to the General Court. A person wishing to appeal to the Court must show that it is directly and individually affected by the Commission decision. In line with ECJ case law, a decision on whether a third party is individually concerned by a decision finding a concentration to be compatible with the internal market depends on a body of consistent evidence or on facts which may relate both to that undertaking's participation in the administrative procedure and to the effect on its market position. Active participation in the administrative procedure before the Commission is a factor regularly taken into account in the case-law on competition. The current and future position of an undertaking not party to a concentration on a market which may be influenced by that concentration must be substantially affected if that undertaking is to be individually concerned by the decision finding that the concentration is compatible with the internal market.[435]

4. Serbia's accession to the EU and the rule of law

The Republic of Serbia gained EU candidate country status in March 2012, and the Stabilisation and Association Agreement between the EU and Serbia entered into force on September 1, 2013.[436] The accession negotiations between the EU and Serbia started in January 2014 when the 1st Intergovernmental Conference was held.

The accession process of Serbia and five other Western Balkan countries over the last 10 years has been marked by the EU's 2018 Enlargement Strategy[437] and the steps taken after its publication. In its Communication to the European Parliament, the Council and other EU bodies, the Commission emphasised the importance of implementing fundamental reforms in the rule of law, fighting corruption, strengthening the economy, ensuring the

[433] Art. of Commission Regulation 2023/914
[434] Art. 17(1-2) of Commission Regulation 2023/914
[435] Mainova AG v. Commission, Case C-484/23 P, ECLI:EU:C:2025:482
[436] Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, OJ L 278, 18.10.2013
[437] *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions, 6.2.2018, COM(2018) 65 final

proper functioning of democratic institutions and public administration, and aligning foreign policy. Negotiations on the fundamentals are to be opened first and closed last, and progress on them will determine the overall pace of negotiations. The rule of law stands out as the most remarkable fundamental.[438] It was declared as the ultimate test for EU accession.[439]

In February 2020, the European Commission adopted a revised methodology for the accession process of the six Western Balkan countries. In the document outlining the revised methodology,[440] the Commission stressed that WB countries must deliver more credibly on their commitments to implement fundamental reforms, including the rule of law and the proper functioning of democratic institutions and public administration.[441] The new methodology entails grouping negotiation chapters into six clusters,[442] and the Commission monitors the accession country's progress by cluster. Meeting the benchmarks for each negotiation chapter within the cluster is a necessary precondition for opening the cluster negotiations. Between 2014 and 2026, Serbia opened 22 negotiation chapters, including all chapters in cluster 1 on the fundamentals of the process and in cluster 4 on the Green agenda and sustainable connectivity. Since 2021, no cluster has been opened. The Commission has repeatedly recommended opening cluster 3 on competitiveness and inclusive growth for negotiations, and the Council has been confirming the Commission's assessment that technical conditions have been met. However, it refrained from giving the green light to open cluster 3, noting that Serbia's negotiating pace is contingent on progress on the rule of law and the normalisation of relations with Kosovo. [443] The Commission monitors progress in the rule of law by focusing on Chapter 23 – Judiciary and fundamental rights, and Chapter 24 – Justice, freedom and security. It fails to assess the fulfilment of the rule of law requirements in specific sectors, including competition policy.

When it comes to the Internal market cluster, more than half of the chapters belonging to it have not been opened yet for negotiations, including Chapter 8 on competition. All opening benchmarks in Chapter 8 for Serbia were related to the state aid field.[444] The focus on state aid can be explained by Serbia taking major steps to align its competition law with the EU acquis a few years before accession negotiations started. Serbian Parliament adopted the Competition Protection Act (hereinafter: CPA) in 2009,[445] and the

[438] It is illustrated, among other things, by the Commission's mention of the rule of law 24 times in the Enlargement strategy for the Western Balkans.

[439] Vladimir Međak, Duško Lopandić, Maja Bobić, Ivan Knežević, *Twelve Proposals for EU Enlargement from Western Balkans*, Belgrade 2018, p. 23

[440] *Enhancing the accession process – A credible EU perspective for the Western Balkans*, Communication for the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 5.2.2020, COM(2020) 57 final

[441] *Enhancing the accession process*, p. 2

[442] The clusters are: 1. Fundamentals, 2. Internal market, 3. Competitiveness and inclusive growth, 4. Green agenda and sustainable connectivity, 5. Resources, agriculture and cohesion, 5. External relations.

[443] See, for example, Council conclusions on enlargement, 17.12.2024, 16983/24, par. 29

[444] European Commission, *Screening report Serbia*, *Chapter 8 – Competition policy*, MD 205/15

[445] Official Herald of RS, Nos. 51/2009 and 95/2013

government regulations needed for the CPA implementation in 2010.[446] In the Screening report for Serbia, the Commission stated that Serbia has broadly aligned its national legislation with the EU acquis on antitrust and merger control, but only partially aligned its State aid legislation. The Commission assessed that the key challenge for Serbia would be to strengthen its administrative capacity and to build up a solid enforcement record, in particular in the area of State aid.[447]

The Commission publishes a progress report for each candidate country annually, assessing steps made towards EU membership. As regards Chapter 8 on competition, the Commission focuses on the level of harmonisation of national legislation with EU acquis on competition and the enforcement record in competition cases. The Commission has never expressed views on the compatibility of Serbian procedural rules applicable in the competition field with the EU acquis. In the 2025 Report, the Commission noted that the Commission for Protection of Competition of the Republic of Serbia (hereinafter: CPC) has a reputation as an operationally independent institution. The Commission remarked that decisions should be systematically published and that the transparency of the CPC's work should increase. The capacity and specialisation of the judiciary in complex competition cases need to be significantly improved.[448]

5. Features of Serbia's competition enforcement model

Serbia opted for an administrative model of competition enforcement, as many new member and candidate states did. CPA established the CPC as an autonomous and independent organisation that exercises public authority under the law. It is accountable to the National Assembly of the Republic of Serbia, to which it reports annually.[449]

The CPC Council is the principal decision-making body in competition cases. It issues decisions on competition infringements, individual exemptions from the prohibition of restrictive agreements, and in second-phase merger investigations.[450]

The Council consists of five members, one of whom is the CPC President. CPA sets out the conditions and procedure for the election of CPC Council members. The Council members are elected by the National Assembly through an open competition procedure. Their term of office is determined by law, as well as the exact reasons for the premature end of the term.[451] The CPA provides sufficient guarantees of institutional independence and professionalism. Research on the level of formal independence of regulatory bodies in

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[446] In 2026, the Government adopted four new block exemption regulations to align with EU law on vertical agreements, technology transfer agreements, agreements in the railway and road sectors and agreements in the motor vehicle sector. For more information on the competition legislation in force in Serbia, see the webpage of the Commission for Protection of Competition https://kzk.gov.rs, available in Serbian and English.

[447] European Commission, *Screening report Serbia, Chapter 8 – Competition policy*, p. 10

[448] European Commission, *Serbia 2025 Report*, SWD(2025) 755 final, 4.11.2025, p. 78

[449] Art. 20 CPA

[450] Art. 22(2) CPA

[451] The reasons for the discharge of duties of a Council member are specified in Art. 24(4) CPA: 1) providing false or incomplete information in the application for the election as a Council member; 2) conflict of interest; 3) wrongful infringement of the CPA or the Ethical Codex.

Serbia found that the CPC has 0.8 points on a scale from 0 to 1.[452] The same research confirmed that *de facto* independence is rather lower. The process of electing Council members is neither transparent nor free from the ruling party's political influence.[453] Another study indicated that establishing the President as a separate CPC organ elected by the National Assembly made it more vulnerable to political pressure.[454]

A prominent role of the CPC President is the most remarkable feature of the Serbian competition enforcement model. As already mentioned, the President is one of the Council members who chairs the Council and participates in decision-making. At the same time, the President plays the principal role in conducting investigations. In antitrust investigations, the President appoints one of the Council members as a rapporteur and nominates an official from the CPC Technical Service to conduct an investigation.[455] The President issues an administrative act (conclusion) to start an investigation[456] and an authorisation for a CPC official to inspect business premises and documents, and to take statements from company officials and personnel.[457] The President issues a decision on interim measures and on the compatibility of a concentration with competition rules in first-phase investigations (so-called expedited procedure), or on whether to start an in-depth investigation of a concentration.[458]

It follows from the above that the President exerts a dominant influence over whether to initiate an investigation and over its course. At the same time, the President participates in the Council's decision-making and makes the final decision in the first phase of concentration cases. The lack of a separation between investigative and decision-making powers depicts the principal shortcoming of the Serbian enforcement model. This feature, combined with insufficient transparency in CPC operations and the political influence exerted over the election of the President and Council members, creates fertile ground for impetuous investigations and submissive decision-making.

5.1. *The status of third parties in antitrust proceedings*

The second deficiency of the Serbian competition enforcement model is the very limited role of third parties in proceedings before the Commission, which contravenes general rules on administrative proceedings. The General Administrative Proceedings Act

[452] Slobodan Tomić, Aleksandar Jovančić, Nastanak i razvoj regulatornih tela u Srbiji: domaće ili eksterne determinante?, *Političke perspektive*, Vol. 2, 2012, pp. 23-52, at 34

[453] See, for example, an NGO Centar za evropske politike's public statement of 9.10.2024, which noted that the contest for electing the President and the Council members was not published on the CPC website. https://cep.org.rs/praksa-komisije-za-zastitu-konkurencije-u-senci-hitno-potrebno-poboljsanje-transparentnosti-i-primene-pravila/

[454] Miodrag Radojević, Nezavisna (regulatorna) tela i institucije u Srbiji, *Srpska politička misao*, Vol. 30, 2010, pp. 53-76, at p. 62

[455] Art. 25(3) and Art. 41(2) CPA

[456] Art. 35(2) CPA

[457] Art. 41(3) CPA

[458] Art. 37(2) and Art. 41(2) CPA

(hereinafter: GAPA)[459] differentiates between direct and indirect parties. Direct parties are those persons whose administrative matter is the subject of the proceedings. Indirect parties (or interested parties, intervenients) are any other natural or legal person whose rights, duties and legally protected interests the outcome of administrative proceedings can affect.[460] An indirect party is allowed to participate in the proceedings because it is affected by the outcome of its subject matter and therefore has a personal interest in being heard, or in other ways participating in the proceedings. Its legal interest is affected by or even intertwined with the subject matter of the administrative proceedings. The interest of an indirect party must be based on law or other regulations. For this reason, it is named in legal theory a "legally interested party." Legally interested parties are distinguished from factually interested parties, who are interested in the outcome of the proceedings for other reasons. If an administrative body recognises the status of a third (interested) party in relation to a person, that person acquires procedural rights comparable to those of a direct party. It may propose the presentation of evidence, examine witnesses, has the right to be served with the decision of the body that decides on a specific matter, may file a legal remedy against that decision, etc. Third parties cannot exercise procedural rights if the institution conducting the procedure has not granted them party status. Serbian administrative law does not provide for a gradation of procedural rights for third parties comparable to those set out in Commission Regulations 773/2004 and 2023/914, which seems to be the main obstacle to granting specific procedural rights to third parties.

The CPA makes an exception to the GAPA rules regarding the third-party status, enumerating parties in proceedings before the CPC. The party status is *ex lege* granted to undertakings that notify a concentration, to undertakings that submit a request for an individual exemption from a prohibition on restrictive agreements, and to undertakings against which the CPC has started an antitrust investigation.[461] The CPA explicitly denies party status to persons who submit an initiative for investigations into competition infringements, persons who provide information and data to the CPC, expert witnesses, and state organs and organisations that cooperate with the CPC during investigations.[462]
Persons who submit an initiative to the CPC to start an investigation into alleged competition infringement (hereinafter: initiators) have a bare right to receive a notification from the CPC regarding the outcome of their initiative.[463] The CPC initiates investigations *ex officio* when, based on the submitted initiatives, information and other

[459] Official Herald of RS, Nos. 18/2016, 95/2018 – authentic interpretation, 2/2023 – decision of the Constitutional Court
[460] Art. 44(1) GAPA
[461] Art. 33(1) CPA
[462] Art. 33(2) CPA
[463] Art. 43(3) CPA

available data, it reasonably assumes the existence of a competition violation.[464] The CPC informs the initiator about the outcome of his initiative within 15 days of its receipt.[465]

The above-cited legal provisions evidently depart from the generally accepted principle in administrative proceedings that parties with a legally recognised interest in the outcome of a case have standing. At the same time, CPA procedural rules depart substantially from EU competition proceedings rules. The Serbian legislator failed to lay down rules regarding the status of a complainant in antitrust proceedings and parties concerned in proceedings on the control of concentrations.

The CPC has so far strictly construed the CPA rules on party standing, thereby obstructing every attempt by interested parties to gain standing in proceedings before the Commission.[466] As if that was not enough, the Administrative Court (hereinafter: AC), which is responsible for determining the legality of CPC administrative acts, upheld the CPC's interpretation of CPA Article 33, thereby denying interested parties the right to challenge CPC decisions. The AC logic is that if a person was not granted party standing in proceedings before the CPC, that same person cannot bring charges against the CPC administrative act because they lacked party standing in the proceedings from which the act arose.[467]

The concept of an interested party is more specifically outlined in Article 13 of the Administrative Disputes Act (hereinafter: ADA):[468]

> „An interested party is a person to whom the nullity of an administrative act would directly cause damage.“

In competition cases, interested parties bring lawsuits against the competition authority's decisions when dissatisfied and seek their nullification in court. Under Serbian law, an interested party may participate in an administrative dispute either when it has been granted party standing in proceedings preceding the dispute or when it opposes the nullification of the administrative act at issue. Since CPC has never recognised the party standing of interested parties in administrative proceedings, it follows that the same parties cannot obtain the party standing in court proceedings.

In a case involving a party that submitted an initiative to the CPC alleging abuse of dominant position by the incumbent telecom operator, the CPC informed the initiator of the initiative's outcome. The CPC decided not to initiate proceedings against Telekom Serbia in connection with this initiative. The initiator filed a dispute before the AC, challenging the legality of the CPC notification regarding the outcome of the initiative. The AC rejected the suit, explaining that the CPC notification to the initiator on the

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[464] Art. 35(1) CPA

[465] Council of the CPC, *Instruction on the content of an initiative for investigating a competition violation based on Art. 10 CPA*, 25.07.2019

[466] For the criticism of Art. 33 CPA see Zoran Tomić, *Komentar Zakona o opštem upravnom postupku*, Belgrade, 2021, pp. 289-291

[467] Decision of the Administrative Court no. 6 U. 21041/18, 7.02.2019; Decision of the Administrative Court no. II-4 Uv. 131/2019, 27.08.2019

[468] Official Herald of RS, No. 111/2009

outcome of the initiative is not an administrative act within the meaning of Art. 3 and 4 of ADA:

> „The notification of the Commission for the Protection of Competition of the Republic of Serbia ….from Article 35, paragraph 4 of CPA, by its content and legal nature does not constitute an act from the cited provisions of Articles 3 and 4 of ADA, the legality of which is decided in an administrative dispute, since this notification does not decide on the individual right or duty of the initiator, nor does it constitute a decision of the CPC from Article 38 of the aforementioned law, which is subject to judicial review."[469]

The AC's reasoning reflects a conventional approach regarding the definition of the administrative act. Based on Article 16(1) GAPA, an administrative act is an individual legal act by which an administrative authority decides on the right, obligation, or legal interest of a party, or on procedural issues, by directly applying regulations in an administrative field. Administrative acts are called orders and conclusions, but they may be named differently under the relevant law. In the AC's view, only acts that decide on the rights and obligations of the direct parties and which are named decisions in line with Art. 38 of the CPA are regarded as administrative acts. The AC overlooked that third parties' interests may also be affected by the CPC notification that it will not initiate an investigation against the alleged infringer, reasoning that the notification is not capable of determining a party's legal rights and duties.

5.2. *The status of third parties in control of concentration proceedings*

Third parties are denied the right to participate in proceedings concerning the control of concentrations. The CPC refuses to grant third parties standing in proceedings initiated by a concentration party's notification, based on the party definition in Article 33 CPA, and the Serbian courts have failed to provide protection to third parties who claim a legal interest in participating in proceedings before the CPC.
In 2017 and 2018, an incumbent telecommunications company, Telekom Serbia, began acquiring local cable TV and internet companies operating across various municipalities in Serbia. The CPC President approved these acquisitions, following a first-phase concentration investigation (expedited procedure). When one of the major competitors – a cable operator ranked as the No. 2 competitor in Serbia - learned of the incumbent's acquisitions in the cable TV and internet markets, it requested that the CPC recognise its standing in the concentration proceedings. The CPC rejected the request, and the cable operator filed the case with the AC. The AC rejected the suit on the ground that the cable operator lacked party status in the proceedings before the CPC and was not a concentration party under Article 33 of the CPA. The cable operator then appealed to the Supreme Cassation Court (hereinafter: SCC). The SCC confirmed the AC's decision by

[469] Order of the Administrative Court II-1 Uv. 121/2017, 29.08.2017

providing a more nuanced explanation. It principally confirmed the appellant's argument that a third party having a legal interest in the subject matter of a competition case may be granted standing in the court's proceedings. However, it held that the major competitor of the incumbent operator does not possess sufficient interest to qualify it for obtaining standing before the court:

> "The fundamental interest of market participants established by the CPA is precisely the protection of competition, under the violation of which, in the sense of Article 9 of this law, are considered acts or actions of market participants whose aim or effect may be to significantly limit, distort or prevent competition. As a result of the above, only the market participant whose competitive position on the market was directly harmed by the disputed act, by significantly limiting, distorting, or preventing competition, can be legitimised to file a lawsuit in an administrative dispute against a decision on concentration. In this particular case, the outcome of the procedure conducted following the application by the BB company, whether positive or negative, could not directly affect the appellant's business, nor did the appellant prove that the contested act had as its goal or consequence a significant limitation, distortion, or prevention of competition. Indirectly 'reflecting the effects of the concentration' on the applicant's business does not constitute a basis for active legitimation in an administrative dispute, because, otherwise, all other participants in the market to which the effects of the concentration extend - competitors, suppliers, consumers, etc. will be legitimised."[470]

The SCC accepted the CPC's argument that granting third parties standing would lead to "legal uncertainty and uncertainty for the implementation of all concentrations that are subject to the notification obligation". If every person to whom the effects of the decision on the approval of the concentration are extended would be recognized as a party in the administrative dispute, this could have the consequence that, contrary to the express provisions of Article 33 of the CPA, they would also be recognized as a party in the proceedings before the CPC in the event that the lawsuit is accepted in the administrative dispute and the decision on the approval of the concentration is annulled, and the case is returned to the CPC to reopen it.

The SCC's reasoning reflects an insufficient expertise in competition law when it concluded that the acquisition by one company of another company cannot affect the appellant's business. The Court was not aware that the acquisition of control over a company may strengthen the market position of the acquirer and the target company and, consequently, weaken the market power of their competitors. Secondly, the Court put a heavy burden on the appellant's back, requiring him to prove that the contested act

[470] Decision of the Supreme Cassation Court Uzp 387/2019, 24.01.2020

had as its goal or consequence limitation, distortion or obstruction of competition, only to be granted the party standing. This goal cannot be proved prima facie; it can only be established after an investigation. The SCC conditions for granting the party standing effectively make it impossible for the third party to obtain it. Thirdly, the SCC gives the legal certainty of concentration parties greater weight than the legitimate interests of competitors, suppliers and consumers in protecting their economic interests. The Court did not explain why the private interests of concentration parties prevail over the private interests of their competitors, suppliers, or consumers.

5.3. *Transparency of CPC investigations and decision-making*

The transparency of CPC's investigations and decision-making is not adequately regulated under the CPA. Under Article 40 of the CPA, the CPC must publish decisions that establish a competition infringement. It also publishes conclusions to initiate a case investigation, but the CPC President may decide not to publish a conclusion if the publication might jeopardise the case investigation. The CPC is not obliged to publish information on notified concentrations and decisions concerning concentrations. In practice, the CPC regularly publishes decisions in antitrust and concentration cases, although exceptions have been noted.

The exclusive power of the CPC President to decide on the approval of concentrations in an expedited procedure, combined with the lack of an obligation to publish information on notified concentrations, confers the President a substantial margin of discretion in approving concentrations that might raise competition concerns, given that he can avoid opening an investigation, while his decisions issued in expedited procedure remain under the radar. This is clearly shown by the latest information on concentrations approved in expedited proceedings published on the CPC website. In 2025, the incumbent telecom operator, Telekom Srbija, acquired 15 cable TV and internet operators active in the territory of the Republic of Serbia.[471] All acquisitions were approved in an expedited procedure. For the majority of these concentrations, full decisions remained unpublished on the CPC website, citing that proceedings to protect data on concentration under Article 45 of the CPA are still ongoing.

6. Conclusion

The EU legislator has made an effort to set out the legal framework for establishing independent, impartial and professional competition authorities and to lay down procedural rules that will ensure the effectiveness of competition investigations while adequately protecting the parties' legitimate interests. In the matter of institutional set-up, the European Parliament and the Council didn't go beyond proclaiming the general principles for the establishment and functioning of national competition authorities. On the procedural side, the EU legislator set out detailed rules to warrant the right to defence and interested parties' participation in competition proceedings, while granting the

[471] Data obtained from the CPC webpage publishing decisions on concentrations https://kzk.gov.rs/odluke/tipovi/koncentracije

European Commission authority to determine the actual scope of their participation in each case. The Commission's discretion is effectively restricted by transparency obligations and the substantial powers of the EU courts in controlling the Commission's procedural decisions relating to third-party rights. The deficiencies of the current model can be neutralised, if not eliminated, by strengthening the EU legal framework for private enforcement of competition law.

Serbia began harmonising its national competition law more than two decades ago. Regarding substantive rules, the level of harmonisation is rather high. Concerning the institutional setup, Serbia adopted an administrative enforcement model, with the Commission for the Protection of Competition enjoying proclaimed independence and operational autonomy. On the procedural side, the principal shortcomings of the Competition Protection Act are the fusion of investigative and decision-making powers in the person of the CPC President and the failure to regulate third parties' rights in competition proceedings. The CPA genuinely denies third parties' participation in antitrust and concentration control proceedings, prioritising the efficiency of proceedings and the interests of direct parties over the protection of third parties' interests. The general administrative law of Serbia recognises third parties as participants in administrative proceedings. However, the well-established rules on third parties are suspended in competition proceedings due to the CPA's unfortunate conceptualisation of the party. Consequently, third parties are also denied access to the court responsible for judicial review of CPC decisions.

In the candidate countries' setting, guarantees of third parties' rights in competition proceedings serve not only to protect the private economic interests of competitors, suppliers and consumers, but, more importantly, to make competition authorities' operations more transparent and accountable and thus contribute to strengthening the rule of law in the competition field. The latter is the very reason why the European Commission should monitor whether institutional independence, autonomy, and operational transparency, as well as procedural guarantees, are not only set out in law but also respected in practice.

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THE EURO IN BULGARIA: COMPETITION CHALLENGES

Keywords: *Bulgaria, Eurozone Accession, Competition Law, Price Transparency, Digital Euro*

Introduction

The Republic of Bulgaria officially became part of the eurozone on 1st January 2026, marking a lasting pro-European choice and the end of the possibility of returning to its previous national currency (the Bulgarian lev). The Law on the Introduction of the Euro in the Republic of Bulgaria was adopted on August 7, 2024, by the 50th National Assembly[472]. The euro became the official currency from January 1, 2026, at a fixed exchange rate of 1 euro = 1.95583 leva. This exchange rate cannot be altered. All bank accounts were converted automatically and free of charge.

The country successfully joined the Eurozone after the European Parliament voted positively on its readiness in 2025. This is a historic step for the state and a major opportunity for citizens and businesses across the euro area. The expectations of the majority of the Bulgarian population, especially young people[473], are linked to the hope that the changeover to the euro will bring greater economic stability, smoother international transactions and stronger integration across Europe. For Bulgaria, it means building a stronger foundation for long-term growth and sustainability. The changes have

[472] For more information see https://bica-bg.org/en/160/law-on-the-introduction-of-the-euro-in-the-republic-of-bulgaria.htm (accessed April 5, 2026). (In Bulgarian).
[473] See Kitanova, M. (2020). Youth political participation in the EU: evidence from a cross-national analysis. Journal of Youth Studies, 23(7), pp. 819-836. DOI: https://doi.org/10.1080/13676261.2019.1636951 and Gerunov, A., Atanasov, I., Yanchev, M., Shalvardjiev, D., Mengov, G., Egbert, H., Dineva, L., Pantcheva, R., Korcheva, A. (2024). Drivers of perceptions towards euro adoption among the young: evidence from Bulgaria. Access to science, innovation in https://doi.org/10.46656/access.2024.5.2(1).

raised numerous questions and concerns. However, the European Central Bank (ECB) and the Bulgarian national authorities have been working closely to ensure a smooth transition for all, with careful planning and a strong focus on price stability and transparency[474].

Following its full accession to the Schengen Area, Bulgaria's adoption of the euro marked the final step in its European integration.

The year before joining the Eurozone

More than six months before Bulgaria started using the euro as an official currency, the Commission for Protection of Competition[475] and the Consumer Protection Commission[476] announced joint actions to prevent speculative price increases during the transition to the euro. The goal was clear, which included preventing a wave of unjustified price increases under the pretext of "currency change". Rapid sectoral analyses have begun in key areas of the economy – food, fuel, medicines, electronic and telecommunications services, financial system, etc. The aim was to identify risky participants throughout the chain – horizontally and vertically. If prohibited agreements, cartels or abuse of a dominant position were established, inspections and sanctions would follow. They reach 10% of turnover – solid enough. The question was the effectiveness and intensity of the sanction regime. Immediately after the publication of the convergence report by the EC, information campaigns on the ground and online were planned to be carried out. Fines for unfair commercial practices could reach 50,000 BGN for each violation. And displaying prices in different currencies, besides the leva and euro, would be considered a misleading practice. Although the decision to join the eurozone was not yet final, traders already had the right to display dual prices – in leva and euro. After a positive decision by the European Council, this was about to become mandatory for everyone.

[474] For more information see https://www.ecb.europa.eu/euro/changeover/bulgaria/html/index.bg.html. (accessed April 7, 2026). (In Bulgarian).
[475] Available online: https://www.cpc.bg/en/homepage (accessed April 8, 2026).
[476] For more details see https://kzp.bg/en (accessed April 10, 2026).

Fears and estimates

The introduction of the euro in Bulgaria on January 1, 2026, is causing one of the biggest concerns among citizens – the fear[477] that prices will skyrocket and inflation will "eat up" incomes. This fear is not new – every country that has joined the eurozone has gone through similar public debates.

Institutions such as the Commission for Protection of Competition emphasize that this effect will be temporary and limited, as Bulgaria's economy already operates under a currency board with a fixed exchange rate to the euro[478]. Real purchasing power will not change due to the currency change itself. In addition, the mandatory dual display of prices and strict control by the Commission for Protection of Competition and the National Revenue Agency (NRA) will limit the possibilities for abuse.

The European Central Bank[479] and the European Commission[480], in their latest Convergence Program (June 2025), emphasize that the introduction of the euro in Bulgaria will not lead to significant inflationary pressure. The report states that historical experience from the accession of other countries shows a limited and short-term effect on prices – in the range of 0.2% – 0.4% one-off. According to the ECB, this is "psychological inflation" that quickly subsides when citizens get used to handling the new currency.

Eurostat also tracks data from all countries that have adopted the euro, and in its analyses shows that there is no connection between joining the eurozone and long-term high inflation. The main factors that determine price dynamics are related to global markets – energy, food, logistics – and not to the currency change itself.

Credit agencies, including Fitch Ratings, have already reported the introduction of the euro as a positive factor for Bulgaria. In July 2025, Fitch upgraded the country's credit

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[477] Yotzov, V. (2023). The Euro and Bulgaria–Fears and Hopes. Economic Studies, 32 (3), 3-18.
[478] Simeonov, K. (2022). Myths and realities about the euro and Bulgaria. DIPLOMACY, 29, pp. 118-132.
[479] European Central Bank. (2025). Convergence report June 2025, https://www.ecb.europa.eu/press/other-publications/convergence/html/index.en.html (accessed April 11, 2026).
[480] European Commission. (2025). Convergence report on Bulgaria. https://economy-finance.ec.europa.eu/publications/convergence-report-2025-bulgaria_en (accessed April 11, 2026).

rating, arguing that joining the eurozone reduces the risk premium and increases investor confidence. The analysis emphasizes that the macroeconomic benefits of the euro are far more significant than the short-term inflationary effect.

Inflation in Bulgaria in 2026

Dual labelling, the official fixed exchange rate and active control limit the "rounding-off" price increase in small purchases. The stronger the competition online and offline (comparable prices, easy switching of suppliers), the weaker the temptation for traders to raise prices for non-market reasons.

The experience of countries that have already switched to the euro shows a consistent pattern: a short and limited one-off effect on prices – most often around 0.2–0.4 percentage points – concentrated mainly in small services and everyday purchases. After the first months, the dynamics return to the usual macroeconomic factors such as energy prices, food, transport and the general external situation. There is no evidence that the currency change itself leads to persistently high inflation.

For Bulgaria, the context is even more moderate due to the currency board: the lev has been pegged to the euro since 1999, making the transition mainly technical. Institutional expectations are for a small one-off effect in early 2026, with no change in the long-term price trajectory. It is crucial to distinguish "psychological inflation" – the perceived price appreciation caused by a new denomination – from real inflation, which depends on the energy market, food, incomes policy and the fiscal framework.

The control is multi-level. The Consumer Protection Commission monitors final prices and labels/visualizations, the National Revenue Agency checks documents, receipts and invoicing systems, and the Bulgarian National Bank supervises financial institutions and payment operators. The coordinated inspections in the first months of 2026 are aimed specifically at vulnerable areas: small services, establishments, daily purchases, where historically "rounding up" has been most often observed.

Digital Euro

The digital euro, also known as the E-Euro or D€, commenced as a project by the European Central Bank in July 2021. It envisages the digital money introduction that could be utilized for online as well as offline payments. It will not replace cash, but rather supplement it via a novice digital payment alternative[481].

The digital currency is meant to be available to users in an electronic wallet. Furthermore, it will be secured by a separate account at the central bank, which will be managed by the user's particular commercial bank. The final decision is about to be made in the first half of 2026, while the release into circulation is expected in 2027 or 2028 at the earliest.

What is being discussed is an individual holding limit of up to 3,000 euros in electronic form. When there are bank transfers and card payments, euro sums are transferred digitally too. Since there already exist cryptocurrencies like Bitcoin or Ethereum, one wonders why a digital euro is needed after all. The striking difference, though, is the fact that it is a product of the European Central Bank, i.e., it remains under the control of the central bank's monetary policy. Through monitoring the money supply, the ECB also tries to ensure the stability of the currency. Moreover, the digital euro promises greater security than established forms of payment, since in the event of a crisis, for instance, bankruptcy of a commercial bank, it will not be affected. The ECB guarantees the virtual euro's security, as no personal data will be transmitted during transactions, or its anonymity will be comparable to that of cash.

Lower costs are foreseen when transferring amounts from one account to another because for the time being, a third party (the service provider) is involved, and this system would be a counterweight to the dominant American payment service providers such as Visa, Mastercard, PayPal, etc.

Retailers will have to accept the digital euro at the checkout or online, whereas there is no such obligation to accept cryptocurrencies. It attempts to make the

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[481] See https://www.dw.com/bg/evropa-iska-da-vvede-cifrovo-evro-kakvo-predstavlava-to/a-71380945 (accessed April 17, 2026). (In Bulgarian).

sovereignty of European payment transactions more secure, because not only cryptocurrencies, but also planned virtual currencies of countries such as the UK, China and the US threaten the role of the euro as the dominant means of payment in the long term[482]. For the Republic of Bulgaria, this digital euro introduction would pose another challenge due to the various changes it still has to meet. It may also create significant financial, operational, and competitive pressures for commercial banks.

Generally, private banking institutions welcome the European digital currency, but they also have several issues with it. Some of the money that customers would hold in digital currency would likely be lost to banks as deposits, and therefore to their traditional lending business. This is one of the major reasons, along with a number of concerns about the risk of money laundering, that upper limits on the size of digital wallets are being discussed.

Survey results

There are seven surveys within the framework of monitoring public attitudes regarding Bulgaria's accession to the eurozone[483]. The last one was conducted by the sociological agency "Alpha Research" in the period February 14 – March 4, 2026, among a sample of 1,200 citizens over the age of 16 and 500 representatives of the management team of companies through a direct standardized interview with tablets. For the general public, a stratified two-stage sample was used with the selection of respondents based on gender, age and education, according to NSI data from the 2021 Census. For business, a stratified typological sample was applied. The commissioner is the Ministry of Finance.

The second consecutive survey after the introduction of the euro in Bulgaria on January 1, 2026, shows that support among the general public and business for membership in the eurozone and the way in which this process is taking place is steadily strengthening. The main ongoing concern is related to the rise in prices.

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[482] *Ibidem.*
[483] See https://alpharesearch.bg/post/1037-obshtestveni-naglasi-za-vuvejdaneto-na-evroto-v-bulgaria.html (accessed April 20, 2026). (In Bulgarian).

Positive attitudes regarding Bulgaria's accession to the eurozone categorically dominate over negative ones – they are clearly expressed not only among businesses, but now also among citizens. As a result, the expected positive long-term effects of the introduction of the euro not only dominate, but also grow. There is a calming of the short-term effects, which also catalyzes positive expectations, especially among businesses. After a period of some increase in concerns in December, immediately before the introduction of the euro, in February 60% of business managers assessed even the short-term effects as positive, against 31% - as negative.

The first two months of the introduction of the euro in Bulgaria provide grounds for a positive assessment of the overall process. Among citizens, the opinion of a completely calm and smooth process increased from 23% to 35% in just one month. 52% admit that they had concerns, but things are happening more calmly than expected. 46% of the surveyed business representatives also give assessments of a smooth transition to the euro.

The practice of using the euro also testifies to good organization and good planning of the process, in accordance with the financial behavior of citizens and businesses. Regarding the specifics of business, the survey recorded that two-thirds of companies have not experienced any difficulties from the introduction of the euro, and 8% – mainly from micro- and family businesses, as well as agricultural producers – claim to be encountering greater difficulties. There is a certain increase in companies that encounter "some difficulties" – from 16% to 25%, and this is most likely related to the clarification of all aspects of this transition.

The main concern of both citizens and businesses is the rise in prices. Regardless of whether it is related to the introduction of the euro or not, a background is created that increases concerns about the financial stability of households. 59% of citizens are of the opinion that there is a significant increase in prices for the goods they buy most often. 37% see a moderate increase in prices - some goods are increasing their prices, but for others they do not notice an increase. Only 4% believe that there is no increase in prices

at all. The average increase is 25%, i.e. the general feeling is about a quarter higher prices compared to the period a few months ago. Expectations for further price movements are also pro-inflationary - 45% of the surveyed citizens expect further growth, and another 37% are of the opinion that the increase will already slow down. These attitudes will also determine people's behavior in the coming months.

It is important to note that even among businesses, which are generally more optimistic than the general public, these attitudes are practically the same, with the only difference being in expectations for the rate of increase – 33% of managers expect further significant increases, and 48% – slower growth, but not a complete halt.

These predictions also have a direct impact on the planned pricing policy of companies. The number of companies that will increase the prices of their products in the next few months has increased from 18% to 33%. The number of those who will not raise prices has decreased from 35% to 26%. The market is being closely monitored, but if in January 40% of companies were in a wait-and-see position, now this share has dropped by almost 10 points, at the expense of companies that are directly planning higher prices "for objective reasons". It can be summarized that both up to now and in the coming months, prices will be the main risk factor not only in the attitude towards the euro, but also towards the financial policies of governments.

The high level of awareness achieved about the way the euro was introduced since the autumn of last year is among the key factors for the smooth running of the process. From October, when a sharp jump in the level of awareness was first reported, by February it continued to grow and already covers three quarters of the population and nearly 90% of businesses. In parallel, within the same values, knowledge about specific aspects of the introduction of the euro has also increased – the period of dual circulation of prices, the period in which levs can be exchanged free of charge in banks, etc.

Familiarity with these practical processes has significantly contributed to the good planning of financial behavior by the citizens themselves[484].

The Bulgarian case raises important questions regarding the boundaries between competition law enforcement and temporary price regulation. The active role of the CPC in monitoring "speculative" price increases represents a departure from traditional EU antitrust principles, which focus primarily on market structure and conduct rather than price levels per se.

While such interventions may be justified as exceptional measures to protect consumers and maintain public trust, they risk creating a "regulatory chill," whereby firms become hesitant to adjust prices even when justified by cost increases. This may distort market signals and hinder efficient resource allocation.

Therefore, the challenge lies in balancing short-term consumer protection with long-term market efficiency and competition integrity.

Conclusion

Bulgaria's accession to the eurozone represents a major institutional and economic milestone, with significant implications not only for monetary policy, but also for market regulation and competition law enforcement. Although the transition to the euro was technically smooth and supported by a long-standing currency board arrangement, it generated strong public concerns regarding inflation, price transparency, and potential speculative practices by market participants.

The introduction of mandatory dual pricing, the strict application of the fixed exchange rate, and the enhanced monitoring activities of the Commission for Protection of Competition, the Consumer Protection Commission, the National Revenue Agency, and the Bulgarian National Bank created an exceptional regulatory environment aimed at preserving consumer confidence and preventing unjustified price increases. These

[484] For more information see https://www.evroto.bg/bg/news/435-monitoring-na-naglasite-na-grazhdani-i-biznes-otnosno-prisaedinyavaneto-na-balga# (accessed April 22, 2026). (In Bulgarian).

temporary measures played an important stabilizing role during the transition period and helped limit the risk of artificial inflationary pressure.

At the same time, the Bulgarian experience raises important legal questions concerning the boundaries between competition law enforcement and temporary forms of price regulation. The active involvement of the CPC in monitoring "speculative" inflation goes beyond the traditional scope of EU antitrust law, which is generally focused on anti-competitive agreements, abuse of dominant position, and market structure rather than direct control over price levels. This creates a delicate balance between legitimate consumer protection and the risk of excessive administrative intervention that may discourage lawful market behavior and distort competition.

The upcoming advent of the digital euro presents yet another dimension to competitive concerns. Questions surrounding deposit withdrawals, infrastructure expenses, competitive neutrality, and market power redistribution from public to private stakeholders will need to be addressed through coordinated regulatory activity at national and European levels.

The example of Bulgaria clearly highlights that entering into the Eurozone involves much more than a mere switch of currency; it encompasses a much wider range of changes from a legal, economic, and institutional perspective. The case proves that entering the euro area requires not only achieving certain macroeconomic convergence criteria but also maintaining market stability and competitiveness through the implementation of relevant legal frameworks.

For other future members of the eurozone, the case of Bulgaria shows the necessity of temporary and justifiable intervention by national authorities during a period of exceptional circumstances, but at the same time proves that such intervention should be appropriate and should be terminated once conditions return to normal.

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THE LEGAL FRAMEWORK FOR DATA IN CONTRACTUAL RELATIONS: LESSONS FROM EU LAW AND PROSPECTS FOR UKRAINE

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Keywords: legal regime of data; data in contractual relations; legal regulation of data; European Union law; personal data protection; digital economy; harmonization of Ukrainian legislation with EU law.

Formulation of the problem. The unprecedented velocity of digital transformation has effectively repositioned data as a cornerstone asset within contemporary contractual frameworks. As artificial intelligence continues to evolve, it fundamentally challenges established paradigms of contract law, necessitating a profound reassessment of traditional legal instruments. For Ukraine, pursuing a European vector of development, the systematic integration of cutting-edge EU legislative experience specifically the mandates of the Data Act and the Data Governance Act is no longer elective but a strategic imperative for establishing a coherent legal regime for data.

Within international scholarship, the legal status of data in the digital ecosystem has garnered significant academic scrutiny. Notably, Lee A. Bygrave dissects the regulatory nuances of personal data protection, positing that the cornerstone of this field lies in the robust architecture of legal guarantees [11].

However, the primary scholarly and practical challenge remains the persistent legal ambiguity surrounding data as a subject of contractual obligations. The existing regulatory void specifically the lack of a definitive classification of data as either a tangible property right or an intellectual property asset exposes business entities to substantial risks. Furthermore, this uncertainty complicates the alignment of Ukrainian domestic law with the acquis communautaire. Addressing these complexities, Josef Drexl observes that data has evolved into a vital economic resource; consequently, its cross-sectoral utility by modern enterprises demands a sophisticated and nuanced approach to legal oversight [13].

The purpose of the article is to conduct a multi-dimensional analysis of the legal regime governing data within contractual relations under European Union law. Furthermore, this study aims to delineate the prospects for transposing such frameworks into the legislative landscape of Ukraine a process vital for fostering legal certainty and achieving robust harmonization with EU benchmarks.

Analysis of resent research and publications. A review of contemporary scholarship and recent publications concerning the legal oversight of data underscores the dynamic nature and relentless evolution of this legal domain. The theoretical scaffolding of this inquiry is significantly informed by the scholarly contributions of A. Hachkevych, L. M. Savanets, H. M. Poperechna, and the collaborative research of O. S. Diakovskyi, K. V. Prokopchuk, and V. I. Skrypets.

Presentation of the main research material. Against the backdrop of accelerating digitalization, data has emerged as a paramount asset in the architecture of modern contractual engagements. Within the Ukrainian legal sphere, a pivotal milestone was reached with the formal integration of the "digital things" concept into the Civil Code. However, while acknowledging data as a legitimate object of civil rights provided a necessary conceptual bedrock, the introduction of a singular legislative term remains insufficient to catalyze a truly resilient and efficient digital economy.

The main complexity lies in the uncertainty of data as a specific object of contractual regulation. A unique characteristic of data is that it can be used by different subjects simultaneously without losing its value. Because data is difficult to classify as property or an object of copyright, business risks arise, and the process of harmonizing Ukrainian legislation with the acquis communautaire becomes significantly more complicated. Researcher Andrii Hachkevych notes that the European legal heritage (acquis communautaire) serves as the benchmark that allows the Ukrainian legal system to harmoniously integrate into the EU digital market [1, p. 4].

In the studies of foreign experts, particularly Lee A. Bygrave, it is emphasized that in the digital environment, it is critically important to establish a system of legal guarantees that ensures the reliable protection of personal data [9]. At the same time, Josef Drexl focuses on the fact that data is becoming a key economic resource; therefore, it requires proper legal regulation not only from the perspective of protection but also from the perspectives of access and control [13].

It is currently vital for Ukraine to find the right balance between the right of businesses to use data for profit and the necessity to protect the rights of individuals to whom this data belongs. In both legislation and contracts, we must align with established EU standards, specifically Regulation 2023/2854 (Data Act), which complements Regulation 2016/679 (GDPR) and focuses more on fair access to and use of data [14; 15]. The effectiveness of contractual regulation in Ukraine will depend on whether users can obtain and transfer their data to other entities as easily as is currently practiced in the European Union.

Furthermore, the issue of inequality between parties in "digital" contracts must be addressed. A significant problem is that large businesses partially restrict access to information for small and medium-sized enterprises (SMEs). Therefore, in the future development of Ukrainian law, it is necessary to specify detailed mechanisms for working with "digital things" within specific contractual obligations. This will ensure transparency and legal certainty for all participants in legal relations.

In the modern era of digitalization, the use of the Internet and smartphones has become an inseparable part of daily life. Every time we access an application or a social network, we trigger a complex mechanism for collecting and processing information about ourselves as subjects of private relations. This leads to the disclosure of our personal data such as preferences, location, and purchases which is then utilized by companies. Without legislation to regulate this process, there is a risk of violating individual interests and the potential for both material and moral damages.

Current legal research, particularly the works of L. M. Savanets and L. M. Poperechna, pays significant attention to how this data becomes commercialized. We are accustomed to many services being "free," but in reality, we pay. Instead of money, we provide our personal data as a form of counter-performance in contracts for the supply of digital content [5, p. 45]. Therefore, it can be argued that data loses its purely private nature and becomes a real digital payment method, with its own price and rules of use. For the market to function fairly, Ukrainian legislation must adopt the experience of new EU Directives, as noted by L. M. Savanets. The central idea is that contractual terms must be transparent and the means of protecting user rights must be effective [7].

In researching the legal nature of personal data within contractual relations, it is essential to consider that its protection in modern legislation is transforming from a purely private matter into a systemic element of the legal framework of the digital market. As noted by researchers O. S. Diakovskyi, K. V. Prokopchuk, and V. I. Skrypets, the specifics of providing legal support for personal data protection today require not only the formal consent of the user but also the creation of tangible legal guarantees of security at every stage of information processing [2, p. 102].

A significant predicament frequently identified within these contractual arrangements pertains to the effective safeguarding of the purchaser’s rights. In practice, users often grant consent mechanically or unwittingly, without a comprehensive evaluation of the contractual terms. This habitual behavior drastically erodes informed

control over personal information and exacerbates the vulnerability of individuals to potential data breaches.

Drawing upon the legislative experience of the European Union, there is a clear imperative to embed data protection principles directly into the architecture of digital products and services during their nascent design and development phases. Consequently, contractual frameworks must transcend mere formalities; they are required to articulate with absolute clarity the specific categories of data harvested, the precise objectives of processing, and the explicit protocols for exercising the "right to be forgotten" or data erasure [4].

The phenomenon of data monetization represents a critical juncture in modern legal discourse. When a business entity leverages personal information as a primary driver of profitability, the individual maintains an inherent right to transparency regarding the mechanics of this process. Furthermore, it is essential that users retain the autonomy to terminate the exploitation of their data without being summarily deprived of service access.

Currently, the European Union is proactively addressing the persistent asymmetry of power between dominant digital platforms and individual end-users. For Ukraine's legislative trajectory, this implies that the formulation of contracts for digital content must transcend a purely profit-centric approach. Instead, the strategic objective must pivot toward a balanced framework that harmonizes commercial interests with the fundamental security and substantive rights of the user.

The adoption of EU Regulation 2024/1689 (AI Act) fundamentally changes the approach to the content of contractual obligations where data serves as the object. AI utilizes vast amounts of information for training; therefore, contracts regarding the use of such information must include specific terms. Specifically, parties must clearly stipulate conditions for ensuring the confidentiality of data used for training AI systems. This is extremely important to prevent the leakage of personal information through AI. For Ukraine, the implementation of the AI Act standards implies a revision of traditional

contracts. It is necessary to introduce appropriate mechanisms that provide a guarantee that the use of data for innovation will not violate the fundamental rights of users.

With the rapid development of the digital economy, it is necessary to implement fundamentally new mechanisms for the circulation of information assets, among which smart contracts occupy an important place. In legal science, smart contracts are viewed as a software algorithm that ensures the fulfillment of contractual terms upon the occurrence of predefined legal facts. Their main feature is considered to be self-executability, which completely changes traditional views on the performance of obligations. While in civil law the implementation of contracts depends solely on the will of the parties, in smart contracts, the code itself guarantees their execution. In agreements for the supply of digital content, this means that access is granted to the service recipient automatically as soon as the system records the transfer of personal data, which serves as the counter-performance in such a transaction.

An analysis of the legal perspectives of blockchain technology and smart contracts within the Ukrainian legal system, conducted by A. I. Tsymbaliuk, indicates that these digital tools require profound theoretical justification specifically within the framework of civil law [9, p. 427].

The use of smart contracts will help optimize the overall management of digital things, minimize costs, and eliminate the need for direct intermediaries. Once launched, the program code becomes immutable, which fosters a high level of trust between the parties and ensures the transparency of data processing algorithms. The user has the opportunity to familiarize themselves with the contract's operation in advance, understanding the scope of work to be performed and when the counter-performance of obligations will occur. It is worth noting that such automation will help overcome the inequality of parties in contracts. Access conditions to data will be programmed in accordance with European standards laid down in the Data Act, thereby limiting the possibility of subjectively restricting access to information for other market participants.

However, despite these significant advantages, the implementation of smart contracts is often accompanied by risks, primarily the risk of coding errors. In cases of poor performance, unfair terms, or bugs in the code, it becomes more difficult for an individual to appeal an automated decision than it would be with a paper-based contract. Therefore, it is crucial to develop the necessary legal actions that would allow courts to intervene in such agreements if they violate human rights or confidentiality. To legally recognize smart contracts in Ukraine, it is necessary to officially acknowledge software code as a specific form of transaction and supplement the existing Civil Code with provisions regarding the electronic expression of will. Taking into account the EU experience, Ukrainian legislators should establish appropriate security standards for such systems and define the allocation of liability between product developers and the parties to the agreement in the event of technical failures. Only under such clear and well-considered conditions can smart contracts transform from an innovation into a reliable legal instrument of the modern digital economy.

The implementation of Artificial Intelligence systems (hereinafter - AI) into the field of contract law creates new challenges and risks related to cybersecurity and liability for the outcomes of algorithmic operations. According to Regulation 2024/1689 (AI Act), data used for training AI systems must be subject to strict quality and security controls. This implies that general confidentiality clauses between parties are no longer sufficient; instead, all security measures must be detailed explicitly within the text of the contract. It is critically important to stipulate the obligation of the developer and provider to preserve data and prevent leaks during the system training phase, as an error at this stage could lead to unpredictable consequences for the subject in the future.

A vital aspect of such contracts is also the issue of liability for damages caused by the system's actions. Determining fault becomes difficult because it is often impossible to trace the logic behind the decision-making process. Therefore, in contracts concerning the use of objects created or processed by AI, it is necessary to introduce clear mechanisms for the liability of the developer or provider in the event of system failures.

For Ukraine, this is particularly relevant, as the implementation of EU standards must be accompanied by the development of clear criteria for the allocation of liability between data owners, AI system operators, and developers. Only through such detailed regulation of all risk insurance conditions and the provision of compliance guarantees can we achieve the fair balance of interests envisioned by the strategy for legislative harmonization.

Furthermore, contractual regulation must take into account the legal status of AI-generated outputs, which directly affects the value of data. If, within the scope of a contract, AI creates a new intellectual product based on the provided data, the parties must, above all, determine the ownership of this object. The absence of such an agreement poses risks to business and complicates the monetization process.

It is important to note that AI can also serve as a means of strengthening information security. As emphasized by O. Cherep, S. Markova, and L. Mykhailichenko, the use of intelligent algorithms for privacy monitoring allows for the enhancement of personal information protection [10, p. 10].

Consequently, security in the AI era encompasses not only protection against hacker attacks but also the legal certainty of liability for algorithmic actions and the right to dispose of the generated value.

Conclusion. The conducted research allows for the formulation of several theoretical and practical conclusions regarding the legal regime of data in contractual relations within the context of harmonizing Ukrainian legislation with European Union law.

First of all, the introduction of the concept of "digital things" into the Civil Code of Ukraine was a critically important step that laid the foundation for integrating virtual data into the system of objects of civil rights. However, for the effective functioning of the digital economy, the mere recognition of the term is insufficient; it is also necessary to detail the legal mechanisms for managing such data as a specific object of contractual regulation.

Furthermore, an analysis of modern contractual practice indicates a shift in the paradigms of consideration (counter-performance), where personal data becomes a method of payment for digital content. This necessitates the strengthening of consumer rights protection, specifically through appropriate mechanisms for restoring rights in the event of failures and the right to data portability, as provided by Regulation 2023/2854 (Data Act).

The rapid development of AI and smart contracts compels the Ukrainian legislator to adapt norms concerning liability and intellectual property. The implementation of Regulation 2024/1689 (AI Act) must be accompanied by a clear allocation of risks between developers and users, as well as the legal recognition of software code as a specific form of electronic transaction.

In summary, it is worth adding that only a transition to a regulatory model where individual interests and data security are prioritized will allow for the harmonization of Ukrainian legislation with European standards. This will ensure Ukraine's full membership in the EU digital market based on the principles of fairness and mutual trust.

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PROBLEMS AND PROSPECTS FOR ENSURING DIGITAL HUMAN RIGHTS IN TERMS OF UKRAINE'S EUROPEAN INTEGRATION

Ukraine demonstrated its intent to accede to the European Union as early as the 1990s. The process of rapprochement has been ongoing since 1993, when Ukraine and the EU concluded a written agreement establishing the composition, as well as the mutual immunities and privileges, of their delegations to facilitate further cooperation. Naturally, the state's foreign policy trajectory between 2004 and 2013, which was oriented toward deepening Russian-Ukrainian relations, resulted in a prolonged, latent pause in the European integration processes. Today, however, the aspirations of Ukrainian society to become a part of a civilized European community, founded on democratic values, the rule of law, and human rights have become more evident than ever. In 2022, Ukraine was granted EU candidate status, which necessitates intensified efforts to harmonize Ukrainian legislation with Community law (EU law), particularly in the field of guaranteeing and protecting human rights.

A distinctive feature of Ukraine's European integration is that it is accompanied by rapid digitalization. This necessitates accounting for the latest developments, which we are witnessing firsthand, within the processes of rapprochement with the EU. Specifically, the expanding use of information and communication technologies in both private life and public governance generates the emergence of new human rights designed to mitigate the adverse effects of digitalization. Their recognition and legislative enshrinement constitute one of Ukraine's obligations on its path to EU membership, which stems from the provisions of Title III and Chapter 14 of Title V of the Association Agreement of March 21, 2014, even if not explicitly stated therein (Association Agreement…, 2014). To elucidate the specific features of the process of harmonizing Ukrainian legislation with the regulatory framework of the European Union in the field

of guaranteeing and protecting digital human rights, let us outline the content and characteristic features of this concept.

First and foremost, it is important that the international community has not formulated a definition of digital rights. Furthermore, this concerns not only normative regulation - even within the doctrine of international human rights law, there is no consensus regarding the characteristic features, structural elements, and, in some instances, the legal nature of this category. It is worth noting that scholarly perspectives on the essence of digital rights can be divided into two distinct schools of thought. The former conceptualizes them as a separate, independent group of fourth-generation human rights that emerged with the development of information and communication technologies and can be exercised exclusively within the digital space (Zakharchuk, 2025; Byelov, Peresh & Pokorba, 2024; Tarasenko, 2024). Proponents of the latter approach see no need to single out digital rights as a distinct category, since they merely reflect already recognized, normatively enshrined entitlements with one distinguishing feature: a specific environment for their exercise (Pangrazio & Sefton-Green, 2021; Kartashov, 2024). Drawing on these theories, L. Tarasenko classifies digital rights into two categories: absolute (reflecting the first approach) and relative (which can be exercised both online and offline) (Tarasenko, 2024, p. 127). Evidently, both approaches are sufficiently well-founded, which gives rise to certain challenges in interpreting the legal nature of digital rights.

The authors of this article are largely proponents of the first theory, given that the integration of information technologies into numerous spheres of public life has precipitated irreversible social changes. In light of these transformations, human needs and capabilities, as well as values and worldviews, are undergoing fundamental shifts. As a result, new, previously unknown rights are emerging, designed to protect those interests that have found themselves in a sort of legal vacuum due to the inadequacy or ineffectiveness of existing legal mechanisms. After all, the world is not strictly bound by legal norms; it continuously evolves and transforms irrespective of whether normative regulation is sufficient. Thus, the global community has come to recognize the right to be forgotten, the right to online anonymity, the right to a digital identity, and a range of other rights known today as "digital". At the same time, it would be unjustified to deny the expansion of the scope of existing fundamental human rights and their adaptation to the digital environment. In this context, it is worth mentioning freedom of expression, the right to privacy and secrecy of correspondence, the right to the protection of personal data, and so forth. Although the aforementioned rights crystallized decades ago, today we can clearly identify their digital dimension, driven by the "new" environment or method of their exercise.

In analyzing the concept of digital human rights, it is worth highlighting the significant role of the Council of Europe and the European Union in the process of their regulation. In our previous works, we have already emphasized the special contribution of jurisprudence, which propelled fourth-generation rights to widespread prominence and laid the foundation for their international recognition and normative enshrinement.

It is difficult to dispute the assertion that it is judicial practice that responds most promptly and effectively to the challenges of the modern era. Through the judicial interpretation of the Court of Justice of the European Union and the European Court of Human Rights, the initial security guarantees in the digital space emerged. Furthermore, this interpretation established the scope of specific digital rights, the requirements for the lawfulness of state interference in their exercise, the criteria for proportionality, and the balancing of interests in cases of conflict with fundamental rights, among other aspects (Karvatska, Labyk & Stroich, 2024, p. 430-431). In this article, we aim to outline in greater detail specifically the status and scope of the legislative regulation of digital rights within the European Union.

First and foremost, it should be noted that the foundations of the contemporary normative regulation of rights related to human activity in the digital environment within the EU legal system were laid more than thirty years ago. A significant catalyst for the subsequent development of legal norms in this sphere was the adoption of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of January 28, 1981 (Convention 108). This was the first international instrument to establish clear obligations for State Parties to define, within their domestic legislation, safeguards for the security of every individual's personal data in connection with its automatic processing by both public and private entities. The Convention enshrined the principles of personal data processing, the prohibition of the automatic processing of special categories of data (specifically, concerning an individual's health, racial origin, sex life, or religious or political beliefs) in the absence of adequate safeguards, the rights of the data subject, and the criteria for restricting the established guarantees (Convention 108, 1981). In fact, it was this specific international treaty that provided the impetus for the adoption of supranational acts on analogous issues.

Thus, on October 24, 1995, Directive 95/46/EC of the European Parliament and of the Council "on the protection of individuals with regard to the processing of personal data and on the free movement of such data" was adopted. The text of the Directive contains direct references to Convention 108, as well as the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, which served as the basis for its adoption. One of the prerequisites was also the rapid growth in the scale of cross-border data flows within the European Union, which necessitated additional guarantees and control mechanisms regarding the movement of personal data to ensure the rights of individuals to non-interference in their private lives, as guaranteed by both European and universal international instruments. Notably, certain provisions of Directive 95/46/EC literally repeat the norms of Convention 108 while simultaneously elaborating upon them. Specifically, the rights of the data subject were expanded in the context of access to information about oneself, the right to object to its processing, as well as the right to opt-out of a decision made by an authorized entity based solely on automated data processing. Furthermore, significant attention was paid to the obligations and liability of the data controller (Directive 95/46/EC, 1995).

Directive 97/66/EC of the European Parliament and of the Council "concerning the processing of personal data and the protection of privacy in the telecommunications sector" of December 15, 1997, effectively supplemented the provisions of Directive 95/46/EC within the field of telecommunications and communications. It should be noted that a notable innovation was the extension of its provisions not only to natural persons but also to legal persons. In general, Directive 97/66/EC was designed to regulate relations in the sphere of telephone communications within the Community, which had become widespread at the time of its adoption. It established general boundaries regarding the scope of data processing by telecommunications service providers, safeguards for the protection of subscriber and user information, possibilities for accessing it in specifically defined cases, and so forth (Directive 97/66/EC, 1997). Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), which repealed Directive 97/66/EC, extended its scope not only to the sphere of telephone communications but also to the Internet, thereby adding a new dimension to an individual's right to privacy (Directive 2002/58/EC, 2002).

The examined acts marked the initial phase of the recognition and legal regulation of digital rights. Evidently, they were predominantly dedicated to the pressing issues of the time regarding the protection of individual privacy, particularly in the context of safeguarding personal data, as well as the confidentiality of telephone calls, electronic correspondence, and other available forms of communication. Subsequently, following the adoption of the General Data Protection Regulation (GDPR) in 2016, a significant portion of these acts was repealed.

The entry into force of Regulation (EU) 2016/679 served as a starting point on the path to recognizing the digital human rights known to us today. It demonstrated the undeniable need to regulate new social relations resulting from the continuous processes of digitalization and digital transformation. Because the existing normative acts were unable to fully encompass the digital sphere, users actively engaged in the digital environment faced numerous risks associated with the lack of adequate safeguards for ensuring and protecting their rights specifically in cyberspace. It should be noted that a direct enshrinement of the concept of "digital rights" cannot be found in the GDPR; however, unlike the aforementioned documents, it already clearly outlines or even explicitly names some of them. An example is the "right to erasure ('right to be forgotten')", the content of which is elaborated in Article 17 of the Regulation under the same title. Furthermore, this act enshrines the classic right to the protection of personal data, the right to rectification in the event of inaccuracies, the right to restriction of processing of relevant information, the right to data portability, and also lays the groundwork for recognizing the right to explanation of algorithmic decisions (Regulation (EU) 2016/679, 2016; Labyk, 2025, p. 212).

Turning to the analysis of the most recent acts, it is first and foremost worth mentioning the European Declaration on Digital Rights and Principles for the Digital

Decade (2023/C 23/01) of January 23, 2023. This document demonstrated the recognition by the supranational entity of the fact that digitalization has become an integral part of societal life; therefore, the entire community must make joint efforts to properly guarantee and protect human rights in the digital environment. The Declaration proclaimed the human-centric principle as fundamental in the digital sphere, requiring that the process of digital transformation in the European Union be based on the recognition of universal rights and European values, benefiting both society as a whole and each of its members. Importantly, the Declaration defines the right to access affordable and high-quality internet connectivity on the basis of equality and non-discrimination, the right to education, vocational training, and the continuous improvement of digital skills, the right to access public services online, the right to freedom of expression online, the right to access information, the protection of personal data, and a range of other rights, the exercise of which is tied to the digital environment. Special attention is given to universal access to artificial intelligence technologies and safeguards for individuals' rights in connection with algorithmic decision-making (European Declaration on Digital Rights…, 2023). Thus, the Declaration emerged as a crucial sectoral instrument directly dedicated to digital rights, laying the foundations for the further refinement of their normative regulation.

It should be noted that over the past few years, the European Union has developed a rather extensive system of legal acts in this sphere. Among these, it is worth mentioning the Digital Services Act and the Digital Markets Act, the European Electronic Communications Code, the European Cybersecurity Strategy, the Audiovisual Media Services Directive, and the Open Internet Regulation (Regulation (EU) 2015/2120, 2015; Regulation (EU) 2022/1925, 2022; Regulation (EU) 2022/2065, 2022). The aforementioned acts are designed to regulate the operation of digital platforms, electronic communications, and access to digital services and the Internet as a whole, as well as to ensure protection against cyber fraud and other threats within the digital environment.

Lastly, it is worth noting Regulation (EU) 2024/1689 on artificial intelligence (the AI Act). To date, it most comprehensively regulates the sphere of utilizing machine learning systems and algorithmic decision-making. Regulation 2024/1689 contains provisions concerning prohibited AI practices, criteria for classifying high-risk systems and the requirements applicable to them, as well as obligations regarding the assurance of safety, transparency, provision of information, and the quality of algorithmic systems, along with the monitoring of their operation. Furthermore, it provides for the establishment of an EU database for high-risk AI systems, among other things. However, in the context of the issues examined, the section entitled "Remedies" holds the greatest value for us. This section provides for a range of rights guaranteed by EU Member States to every individual in connection with the use of artificial intelligence systems. Specifically, its provisions enshrine the right to lodge a complaint and the right to an explanation of individual decision-making by high-risk algorithmic systems (Regulation (EU) 2024/1689, 2024). The latter, among others, can be considered a digital right in its

purest form, as its emergence is directly linked to the deployment and active use of AI not only by private entities but also by state authorities or local self-government bodies.

Turning to the analysis of Ukraine's experience, it should be noted that the category of digital rights as such remains unknown to Ukrainian legislation: in none of the current regulatory acts can we find either a definition or, indeed, the term itself. Nevertheless, certain documents contain such concepts as "digital things," "digital content," or "digital environment" (Tarasenko, 2024, p. 126). Undoubtedly, it would be unfair to deny Ukraine's substantial progress in the context of implementing information and communication technologies within the sphere of public administration. A striking example is the functioning of the "Diia" web portal (and mobile application), through which every citizen can access a wide range of public services without leaving their home. Ukraine became the first country in the world to grant digital documents the same legal standing as paper ones. As of 2026, the country ranks first in the world for fixed broadband stability, and 97% of its territory is covered by 4G (Interfax-Ukraine, 2026). These and many other examples attest to the continuous processes of digital transformation designed to make the state more accessible to its citizens, reduce protracted bureaucratic procedures, and ensure a qualitatively new level of interaction between society and governing institutions.

At the same time, the insufficiency of regulatory framework can significantly diminish the successes of implementing such initiatives, as the absence of guarantees and adequate mechanisms for the protection of digital rights may lead to abuses by public officials or the private sector, service inefficiency, or a refusal to use them. Overall, the legal regulation of this sphere currently remains fragmented and inadequate in light of new challenges. Thus, the existing normative acts regulate only specific narrow fields. For instance, the Law of Ukraine "On Personal Data Protection" № 2297-VI of June 1, 2010, is dedicated to the processing and protection of individuals' personal data. Despite the fact that its provisions were quite progressive at the time of its adoption, in today's reality, gaps in the regulation of certain relations in this sphere are evident. This is evidenced by the vast number of changes and amendments made to its provisions since 2010. For example, Law No. 2297-VI bypasses the issue of data protection for legal persons, unlike the aforementioned acts of the European Union. Furthermore, despite enshrining the right to protection against automated decision-making that carries legal consequences for the data subject, the Law does not establish adequate mechanisms for the exercise of this right. The terminology used in this regulatory act also requires harmonization with EU law (Law № 2297-VI, 2010). Other legislative acts, such as the Civil Code of Ukraine of January 16, 2003, or the Law of Ukraine "On Information" No. 2657-XII of October 2, 1992, also limit themselves to guaranteeing traditional rights that effectively extend their scope to the digital space (for example, the right to freedom of expression, the right to information, the right to protection of privacy, and the confidentiality of correspondence, etc.). More progressive in this field is the Law of Ukraine "On Electronic Identification and Electronic Trust Services" № 2155-VIII of October 5, 2017, which enshrines a number of individual rights related to electronic identification, specifically the right to

receive relevant services and freely use their results, the sole control over the use of the digital identity wallet, the right to appeal the decisions of the service provider, and the right to compensation for damages (Law № 2155-VIII, 2017). Despite the obvious progress in the digital sphere, domestic legislation lacks the normative regulation of a significant number of digital human rights that are already being actively implemented by European Union member states. These include the right to digital identity, the right to anonymity in the digital space, the right to be forgotten, the right to access high-quality Internet, the right to an explanation of algorithmic decisions, the right to a secure digital environment, and others.

It is worth noting that the practice of Ukrainian courts also indicates the need for corresponding amendments. Thus, in the ruling of the Lviv Court of Appeal of December 10, 2020, in case No. 464/2809/19, which overturned the decision of the court of first instance, the court left without consideration a statement of claim by an individual against Google LLC regarding the removal of inaccurate information about themselves. Notably, the claimant cited the right to be forgotten guaranteed by the GDPR to substantiate their claims. While the court recognized a subject's possibility to demand the erasure of certain information about themselves, it refused to consider the plaintiff's application due to the lack of an adequate procedure for identifying the responsible parties (Resolution of the Lviv Court of Appeal, 2020). In this case, the gap in regulatory framework is evident, as a result of which the individual was unable to effectively exercise their right while entering into relations that are not regulated by domestic legislation.

In addition to the inability to protect one's rights, the insufficiency of regulatory framework also results in a lack of understanding of important legal concepts. In particular, in the ruling of the Zhovtnevyi District Court of Dnipropetrovsk of May 25, 2023, in case No. 2-10231/11, we can observe a substitution of terms. Thus, the applicant refers to the "right to be forgotten," yet from the context of the claims, an error in the understanding of this right becomes evident, as the applicant interprets it as the right to be released from liability due to the expiration of the limitation period for initiating legal proceedings (Decision of the Zhovtnevy District Court of Dnipropetrovsk, 2023).

Summarizing all the above, it should be noted that the rapid development of information and communication technologies has brought about irreversible social changes that require the enshrinement of new, specific human rights (the right to be forgotten, anonymity, digital identity, explanation of algorithmic decisions, etc.). Their recognition at both the doctrinal and legislative levels is the first essential step toward their effective protection. Despite our state's leading positions in the sphere of providing e-government services and the high level of internet coverage, the domestic regulatory framework remains fragmented. It predominantly relies on outdated norms that regulate traditional rights in the digital environment, rather than creating a comprehensive mechanism for the protection of emerging digital rights. The European Union has already established a robust legal framework based on the principle of human-centricity. Ukraine's attainment of EU candidate status requires not merely sporadic changes but the

systemic implementation of European directives and regulations into national legislation. Guaranteeing digital human rights must become one of the priority vectors of Ukraine's state policy.

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THE „EUROPEAN FIREARMS PASS" AS AN EXAMPLE OF A LEGAL INSTRUMENT FOR SAFETY CONTROL AND HARMONIZATION AMONG COUNTRIES

Keywords: harmonization of safety, European Union law, systemic solutions, philosophy of legal regulation

Introduction

The contemporary security architecture of the European Union is focused to an unprecedented degree on control over the illegal and legal trade in firearms, which is perceived as the lifeblood of organized crime. It is estimated that as many as 60% of criminal networks operating in Europe use violence as an immanent element of their operational activity, employing firearms for intimidation, extortion, and destabilization of public order. Despite the common legislative direction, the attitude of European Union citizens towards firearm possession remains strongly differentiated depending on historical and cultural context. Eurobarometer research from 2024 shows that in Nordic countries and Germany, over 80% of respondents support further tightening of firearms regulations, while in the Czech Republic, Poland, and Hungary, this percentage fluctuates around 55%. These differences stem from distinct traditions – for example, the Czech and Polish experiences related to resistance against totalitarianism in the 20th century fostered the development of an ethos of civilian access to weapons as a guarantee of personal sovereignty. In contrast, societies that did not experience direct occupation tend to perceive firearms primarily as a risk factor. The EFP, as a harmonization tool, must therefore reconcile these different perspectives: on the one hand, facilitating cross-border

mobility for firearm holders, on the other – respecting the right of each member state to maintain higher standards of public order protection. In this context, the restriction of access to firearms constitutes a key pillar of internal security policy, based on a fundamentally different paradigm than the American model. While in the United States the right to bear arms derives from the Second Amendment to the Constitution and is treated as a natural or fundamental individual right, in the EU legal order weapon possession is a privilege granted by the state only to persons meeting restrictive substantive and moral criteria. An appropriate theoretical key to explaining this dichotomy is the juxtaposition of the Hobbesian concept of security as the primary task of the Leviathan with the Lockean concept, where the right to self-defense is pre-state. In continental Europe, especially in post-totalitarian legal orders, the conviction prevailed that the sovereign – today the democratic state – has not only a monopoly on physical violence but also the exclusive right to decide who and under what conditions may dispose of deadly tools. Therefore, the EFP is not a subjective right of the individual, but an administrative act of a regulatory nature. Its existence is an expression of a social contract in which citizens relinquish some freedoms in exchange for security guarantees provided by public institutions. In this sense, the European philosophy of firearm regulation is an emanation of the precautionary principle, which requires minimizing the risk of harm even in the absence of full scientific certainty as to its probability.

The evolution of the EU legal framework – from Directive 91/477/EEC to the codifying Directive (EU) 2021/555 – illustrates the process of transformation from instruments supporting only the internal market to advanced mechanisms for protection against terrorism and cross-border crime. The tragic attacks in Paris and Copenhagen (2015) acted as an impulse for tightening regulations, revealing gaps in deactivation systems and firearm traceability. A key element of this structure is the European Firearms Pass (EFP), which, as Ireneusz Teodor Dziubek demonstrates in his research, constitutes a unique example of a legal instrument serving the harmonization of safety standards among member states. The EFP not only facilitates mobility for hunters, sport shooters,

and collectors but, above all, ensures that state authorities can exercise continuous supervision over the movement of dangerous objects within the Schengen area.

This article attempts an exhaustive analysis of the EFP from a systemic perspective, taking into account the latest legislative initiatives, including the ProtectEU program announced in 2026, and challenges generated by technological developments, such as the illicit manufacture of components using 3D printing (so-called ghost guns). The aim of the work is to demonstrate that a coherent control system, based on transparent records and close cooperation between services, constitutes a necessary condition for the stability of the area of freedom, security, and justice in the face of growing hybrid and asymmetric threats.

Legislative evolution of firearm control in the EU: From market to security

The process of shaping the European firearm control system can be divided into three key stages, each reflecting the changing political and operational priorities of the Community.

The original Council Directive 91/477/EEC of 18 June 1991 was formulated as a measure accompanying the construction of the internal market. The main goal of the legislator was to abolish controls at internal EU borders, which required the unification of minimum standards for the acquisition and possession of weapons to avoid a security deficit in the borderless area. At this stage, four categories of weapons (A, B, C, D) were introduced, as well as the very concept of the European Firearms Pass as a passport for legal users. This document aimed to balance the free movement of goods and persons with the necessity of police supervision.

The amendment made by Directive 2008/51/EC was a direct response to a series of tragic school shootings in Germany and Finland. The legislator then recognized that the 1991 model had structural gaps, particularly concerning the traceability of firearms. Stringent regulations regarding the marking of essential firearm components were introduced, and member states were obliged to establish computerized registries by 2014.

This amendment also constituted a partial implementation of the United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms (UNFP).

The turning point for the EU firearms control philosophy was the terrorist attacks in Paris and Copenhagen in 2015. It was then demonstrated that the perpetrators exploited loopholes in regulations concerning blank-firing and deactivated weapons. In response to these events, the European Commission presented the Firearms Package, which resulted in the adoption of Directive (EU) 2017/853. The new regulations drastically restricted access to the most dangerous types of semi-automatic weapons, classified in the new category A (A6 and A7), prohibiting their possession by civilians, with the exception of narrow groups such as sport shooters under strict supervision.

The currently binding Directive (EU) 2021/555 codifies these changes, emphasizing:

- Traceability: Obligation to register each modification of a weapon and track its life cycle for at least 30 years after destruction.
- Deactivation standards: Introduction of rigorous technical standards preventing the reactivation of weapons' combat characteristics (Regulation 2018/337).
- Digitalization: Transition to fully electronic information exchange systems, including automatic data exchange on refusals of authorization through the IMI system.

As part of the latest internal security strategy ProtectEU (2025-2026), the Union is moving towards the harmonization of criminal provisions. The proposal for a new directive in 2026 assumes the unification of definitions of crimes and sanctions, including the direct criminalization of illicit trafficking in 3D printing schemes.

The essence and mechanism of functioning of the European Firearms Pass

A systemic analysis of the EFP allows it to be defined not as a source of entitlement, but as an instrument confirming and facilitating the exercise of rights acquired at the national level. It is a personal, non-transferable document strictly linked to specific firearm units.

From the perspective of legal theory, the EFP is a declaratory document, not a constitutive one. This means it does not grant the right to possess a weapon, but merely confirms the existence of such a right granted by the competent authority of a member state. This document is required from EU citizens who wish to participate in sports competitions, hunting, or historical re-enactments on the territory of other member states. In the Polish legal order, the EFP is issued by the Provincial Police Commander competent for the applicant's place of residence, which involves a stamp duty of PLN 105.

According to Annex II to Directive 2021/555 and the Polish Act on Arms and Ammunition, the EFP must contain a precise set of data enabling immediate verification by border and police services:

- Identity data: Surname, first name, date and place of birth, and permanent address of the holder.
- Weapon identification data: Type, brand, model, caliber, serial number, and – crucially – weapon category (A, B, or C) according to EU classification.
- Operational information: Validity period of the document (usually 5 years with possibility of extension), stamp of the issuing authority, and annotations regarding any permit restrictions or conditions.

The practical application of the EFP is based on the principle of substantial justification for travel. A person moving with a weapon entered in the pass must be able to prove the purpose of their visit, e.g., by presenting an invitation to a shooting competition or a membership certificate of a hunting organization. An important safety mechanism is the obligation to inform other member states about the category of weapon being transported; some states may impose a ban on entry with specific types of B or C category weapons, despite possessing an EFP.

The latest regulations implemented in 2024-2026 introduce significant simplifications in the functioning of the EFP. EU residents holding a valid pass are exempt from the obligation to obtain additional permits for the import or export of weapons for civilian purposes (hunting, sport). Simultaneously, the European Commission has launched a new

paperless e-licensing system, which is ultimately intended to replace national procedures and enable dealers and weapon owners to submit applications electronically. This system is integrated with Europol databases and the IMI system, allowing for immediate detection of so-called "authorisation shopping", i.e., attempts to obtain a permit in another state after a previous refusal. The practical dimension of the EFP is most fully revealed in the communities of hunters and sport shooters, for whom cross-border mobility is a sine qua non condition for participation in international competitions and hunting management. According to data from the Polish Hunting Association for 2024, the number of European Firearms Passes issued is systematically growing – in the Kalisz district alone, an increase of 22% was recorded compared to 2020. For IPSC or IDPA shooters, the pass eliminates the need to apply each time for a temporary permit to import weapons into the country organizing the competition, thereby reducing administrative barriers and transaction costs. Importantly, the EFP also fosters the development of hunting tourism, which in Poland – particularly in regions such as Greater Poland – generates tangible revenue for local hunting clubs and the service sector. Nevertheless, users signal the need for further digitalization and standardization of customs forms to avoid interpretive discrepancies at border crossings, indicating the necessity for constant monitoring of the system's functionality.

The effectiveness of the European regulatory model, of which the EFP is an emanation, is confirmed by empirical data. According to Eurostat, in 2022 the European Union recorded 0.9 firearm homicides per 100,000 inhabitants, while in the United States the rate was 5.9 (CDC data). Moreover, in the EU-15 group, the trend has been systematically decreasing since the implementation of Directive 91/477/EEC – from 1.6 in 1995 to the aforementioned level below 1.0. In Poland, in 2023, only 0.2 firearm homicides per 100,000 inhabitants were recorded, placing it among the safest countries in Europe. Although this decline cannot be attributed solely to the EFP, the synergy between strict access regulation, registration systems, and cross-border service cooperation creates an environment in which legal firearms in civilian hands remain a

marginal source of threat. The comparison with jurisdictions having a looser control regime thus provides a strong argument for the 'Brussels model' as more effective in protecting the life and health of citizens.

Harmonization of security vs. sovereignty of member states

The process of harmonizing regulations in the EU constitutes a field of constant tension between the imperative of common security and the sovereign powers of member states to maintain public order (Art. 4(2) TEU).

In Poland, the implementation of Directive 2017/853 led to the tightening of the definition of weapons in the Act on Arms and Ammunition and the strengthening of records. Poland, alongside the Czech Republic and Hungary, initially opposed the restrictions, raising arguments about the violation of the principle of proportionality. This dispute coincided with the broader conflict over the rule of law and the primacy of EU law, as reflected in the jurisprudence of the Polish Constitutional Tribunal from 2021. Nevertheless, Poland has fully transposed the provisions regarding marking and registration.

The German system (Waffengesetz) goes beyond the minimum EU norms, introducing, inter alia, mandatory psychiatric examinations for persons under 25 years of age applying for a firearm. Germany promotes a model of 'super-compliance', where national sovereignty serves to tighten, not loosen, controls. The new national security strategy for 2026 assumes further digitalization of records (Waffe digital) and closer linkage with the IMI system, which is intended to strengthen Germany's role as a 'European security power'. A key binder connecting national firearm registries with the EFP system is operational cross-border cooperation coordinated by Europol. As part of cyclical operations codenamed Operation BOSPHORUS (last edition in 2025), officers from border and police services of several member states conduct simultaneous checks on major communication routes, verifying the compliance of transported weapons with the data contained in the European Firearms Pass. The effect of these actions is not only the

confiscation of illegally moved weapons but also the identification of gaps in the implementation of directives at the national level. The early warning system, fed by data from the EFP and national registries, allows for the detection of attempts to smuggle firearms from third countries through EU territory – which has gained particular significance in the context of the war in Ukraine. It can therefore be stated that the EFP has become one of the pillars of the internal security architecture, whose effectiveness depends on close coordination between Europol, Frontex, and national contact points. However, the progressive integration of databases raises questions about compliance with the EU data protection regime (GDPR). The e-licensing system, by design collecting detailed information about weapon holders – including biometric data, residential addresses, and movement history – becomes a potential target for cyberattacks and abuse by unauthorized entities. The European Data Protection Supervisor (EDPS) in a 2025 opinion indicated the need to clearly limit the scope of processed data and ensure the right to be forgotten after the expiry of the weapon permit. It is therefore crucial to develop mechanisms guaranteeing that data collected under the firearm directives will not be used for purposes other than those originally intended – for example, for social profiling or mass surveillance. Otherwise, there is a risk that an instrument created to enhance public security will itself become a tool for eroding civil liberties, undermining the foundations upon which the Schengen area was built.

Hungary has some of the strictest firearm regulations in the EU. At the same time, the government in Budapest actively contests attempts at excessive EU interference in the sphere of internal security, as evidenced by the establishment of the Sovereignty Protection Office. Despite political resistance to the 'dictate of Brussels', Hungary has implemented the technical aspects of the directives to avoid financial penalties under infringement procedures.

For aspiring states, harmonization is a tool for integration with the European industrial-defense base. In 2025, Georgia amended its law on weapons, prohibiting, inter alia, electric shock devices and harmonizing regulations on acoustic weapons with EU

norms, which is part of the process of approximating the acquis. Turkey, despite the low degree of coherence of its foreign policy with the EU (only 10% in 2023), seeks to participate in the SAFE program and joint procurement. The Turkish defense industry (e.g., the company Sarsilmaz) is adapting its systems to European standards, treating harmonization as an opportunity for access to the EU internal market.

The EU and Polish model vs. transformation in Georgia

A comparison of firearm control systems in Poland and Georgia shows the process of diffusion of European security standards to neighboring states, while maintaining specificities resulting from political conditions.

Poland has implemented a rigorous model based on the Act on Arms and Ammunition, which is fully synchronized with Directive 2021/555. Access to firearms requires demonstrating a "valid reason", no threat to public order, and passing medical and psychological examinations. The EFP is issued by the Provincial Police Commander and constitutes the foundation of mobility for Polish sport shooters and hunters within the Schengen area. Poland places great emphasis on registration, introducing, inter alia, a 5-day deadline for registering purchased weapons.

Georgia is in a phase of intensive reconstruction of its legal system. Despite the de facto suspension of the accession process in 2024 for political reasons, Georgia continues the technical harmonization of firearm regulations. A key moment is the amendment to the Law on Weapons of December 2025, which enters into force on February 1, 2026.

- Technical restrictions: Georgia introduced a total ban on the possession and trade of electroshock devices for civilians, reserving them exclusively for services and licensed security agencies.
- Licensing of 'soft' weapons: In line with EU norms, Georgia subjected gas, aerosol, and acoustic weapons to licensing requirements, aiming to prevent their illegal conversion into live firearms.

- Security of assemblies: In 2025, Georgia tightened sanctions for possessing weapons or pyrotechnics during public assemblies, introducing penalties of up to 60 days of administrative detention, reflecting the priority of protecting public order in an era of internal tensions.

Divergences and challenges

While in Poland the system is an element of the free movement of persons within the EU, in Georgia the reforms have a 'harm reduction' character after the period of instability in the 1990s. Georgia seeks to implement traceability standards but faces challenges related to the lack of full control over the territories of Abkhazia and South Ossetia, which complicates the regional picture of weapons proliferation.

The years 2024-2026 constitute a watershed in the construction of an integrated system for protection against illicit arms trafficking, driven by the new EU internal security strategy – ProtectEU.

The foundation of the new architecture is the transition from paper records to full digitalization of licensing processes. On February 26, 2026, the European Commission presented a proposal for directive COM(2026) 102, which introduces EU-wide definitions of crimes and harmonized penalties.

- Electronic Licensing (ELS): The new paperless system is intended to replace national procedures for the import and export of civilian weapons, allowing EFP holders to move without additional permits.
- Information exchange (IMI): Full integration with the Internal Market Information System (IMI) allows for automatic tracking of permit refusals, effectively eliminating the phenomenon of authorisation shopping.
- Digitalization in member states: An example of advanced adaptation is the Czech Republic, where from January 2026, classic firearm holder ID cards have been replaced by an electronic entry in the Central Register of Weapons, accessible to authorities in real time.

Asymmetric threats and new technologies

Technological development challenges the existing regulatory mechanisms. A key threat in 2025-2026 has become the illegal 3D printing of essential firearm components (so-called ghost guns), lacking serial numbers and impossible to detect using traditional registration methods. The scale of the phenomenon is difficult to estimate precisely due to the inherent difficulty in detecting items without a registration history. Nevertheless, Europol data for 2025 indicates that the number of confiscations of weapons produced using additive technology increased by over 300% compared to 2022, and digital files containing 3D weapon printing instructions are freely distributed on the darknet and encrypted messengers. The new challenge for the EFP system is that this document is based on the fundamental assumption of the traceability of each weapon unit – yet ghost guns completely bypass this paradigm. Consequently, even the most advanced electronic licensing systems become helpless against items that have never been introduced into legal circulation. Hence, legislative initiatives aimed at criminalizing the very possession and dissemination of 3D printing schemes (as in COM(2026) 102) should be seen as a necessary complement to the logic of the EFP – the fight is transferred from the physical artifact to its digital blueprint.

- Criminalization of digital schemes: The new 2026 directive for the first time recognizes the creation, acquisition, and dissemination of 3D firearm printing plans as a crime, providing for a penalty of at least 2 years' imprisonment.
- Terrorist threat: Europol and UN reports from 2024-2025 indicate growing interest in 3D technology from jihadist groups (Al-Qaeda, ISIS) and right-wing extremists, multiplying the risk of 'lone wolf' attacks.

The war in Ukraine and the destabilization of neighboring regions generate the risk of a future influx of demilitarized or abandoned weapons into EU territory. In response, states such as Poland are implementing strict border protection regulations, such as the

Safe Baltic Act of February 2026, authorizing services to use live ammunition in defense of critical infrastructure against hybrid attacks.

From the perspective of 2026, AI is beginning to play a dual role. On the one hand, systems based on neural networks (e.g., YOLO, Faster R-CNN) are being deployed for automatic weapon detection in visual monitoring, achieving precision on the order of 99%. On the other hand, debates are ongoing regarding the introduction of intelligent mechanisms blocking the possibility of firing at unauthorized targets (so-called Limited-Target Firearms), which may become standard in newly produced civilian weapons.

Conclusions

The European Firearms Pass has evolved from a tool facilitating the functioning of the internal market into a key operational instrument of the Security Union. Systemic analysis allows for the formulation of four fundamental conclusions regarding the future of this mechanism in the years 2026-2030:

Firstly, the EFP constitutes evidence of the success of 'soft' harmonization, which respects national shooting traditions (e.g., in Poland), while simultaneously imposing hard standards of registration and traceability. This instrument effectively closes gaps in the Schengen system, where the lack of physical borders had to be compensated by saturating the area with digital information. The full implementation of the IMI system and EU-wide e-licensing in 2026 will definitively end the era of 'authorisation shopping', creating a hermetic security ecosystem.

Secondly, the case of Georgia demonstrates the global attractiveness of the European regulatory model. Even in the face of political turbulence, technical approximation to the acquis in the field of firearm control is treated as a necessary condition for regional security and combating cross-border organized crime. The 'Brussels model' in the area of firearms is becoming the de facto Eurasian standard, based on prevention and rigorous control of the 'life cycle' of each weapon unit.

Thirdly, the future of the EFP is inextricably linked to new technologies. Directive COM(2026) 102 and the ProtectEU program set a new battlefield – not against the physical weapon itself, but against its digital footprint (3D blueprints). The challenge for legislators in the coming decade will be to balance the development of AI in public surveillance with the right to privacy, while simultaneously using algorithms to detect illicit trade on the Darknet.

Finally, it should be recognized that despite controversies surrounding the tightening of categories A and B, the European firearm control system offers higher resilience to asymmetric threats than systems based on the right to self-defense. The EFP, as a document certifying entitlements rather than granting them, remains a symbol of the compromise between freedom of movement and the necessity to protect the life and health of citizens in the area of freedom, security, and justice. The effectiveness of this compromise in 2026-2030 will depend on the pace of digitalization and the ability of member states to maintain unity in the face of hybrid pressure. In the longer term, the development of smart gun technology – weapons equipped with biometric or radio user authorization systems – may fundamentally change the function of the EFP. If each weapon unit can be programmed to fire only after verifying the identity of the authorized holder, the pass could evolve from a passport document into a digital authentication token, directly communicating with the weapon's smart lock. However, such a vision raises serious ethical and legal dilemmas: the risk of remote weapon blocking by state authorities, the possibility of cyberattacks on authorization systems, and concerns about privacy in the case of collecting data on weapon use. Therefore, future amendments to the directives should not only keep pace with technical progress but also proactively define the boundaries of state interference in the sphere of individual autonomy. The EFP system, based so far on the principle of minimally necessary intervention, will have to answer the question of whether technology might turn the pass into a tool of control far more far-reaching than originally intended.

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NON-VERBAL COMMUNICATION IN THE EUROPEAN UNION'S DEFENCE

Keywords: non-verbal communication, defence, European Union, security, strategic communication, hybrid threats.

Communication in the European Union

The European Union is characterised by cultural and linguistic diversity, and the languages spoken in its member states form an important part of its cultural heritage. Consequently, the EU promotes multilingualism in its programmes and in the work of its institutions. There are currently 24 official languages[485]. In this context, the aspect of non-verbal communication becomes particularly important, as it should be consistent and, moreover, uniform across all Member States of the organisation. Preserving one's mother tongue within the framework of EU membership is certainly justified and necessary. However, the task of developing uniform signs, gestures and signals within this community, in the context of defence, becomes an immensely important and urgently needed undertaking.

Non-verbal communication

In the context of security and defence, non-verbal communication refers to all forms of communication that do not involve the use of words, such as the gestures of leaders, institutional symbols, displays of force, and, finally, the signals given by ordinary citizens caught up in life-threatening situations. This paper undertakes a theoretical analysis of existing EU documents and academic approaches in order to answer the question: how does non-verbal communication strengthen the European Union's deterrence capabilities and defence cohesion? The article is based on official EU documents (Global Strategy 2016, Strategic Compass 2022) and academic analyses in the fields of security and communication. The literature on the subject notes that the EU explicitly recognises **strategic communication** as an important component of security policy[486]. In June 2024, the European Council presented its priorities in the EU's strategic agenda for 2024–2029. This serves as inspiration for the European Commission's political priorities, which are drawn up prior to the start of its five-year term. EU leaders have identified three priority areas to guide the work of EU institutions during this period. One of these is 'A Strong

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[485] https://european-union.europa.eu/principles-countries-history/languages_pl [access: 01.06.2026].

[486] https://european-union.europa.eu/priorities-and-actions/eu-priorities/european-union-priorities-2024-2029_pl [access: 01.06.2026].

and Secure Europe', with a specific focus on strengthening the EU's security and defence capabilities and protecting EU citizens. The Polish National Security Strategy 2020 even recommends the creation of a 'unified strategic communication system' for the state[487]. As today's hybrid and information threats necessitate a multifaceted message, both verbal and non-verbal, increasing emphasis is being placed on the significance of the signals the EU sends to its allies and potential adversaries.

The Importance of Communication

Communication is one of the fundamental phenomena that determine the functioning of individuals and entire social groups. It is impossible to imagine carrying out any activities without a thorough understanding of its nature. Zbigniew Modrzejewski, an expert on the subject, emphasised that *the very existence of society depends on the transmission of information and communication (…) and is an element of all social processes*[488]. It is therefore worth noting the etymology of the word 'communication', which derives from the Latin communicare, meaning 'to make common' or 'to connect'[489]. This meaning defines the purpose of the term as a phenomenon of human communication. In dictionary terms, according to the British online encyclopaedia Britannica, communication means the exchange of meaning between people through a shared system of symbols[490]. It can therefore be assumed that this forms the basis of a specific dialogue, a relationship founded on understanding the signals received and interpreting them appropriately.

From a scientific perspective, there are numerous definitions of communication. These will be cited later in this article as evidence of the multidimensional nature of communication. The literature on the subject emphasises that communication is not limited merely to the exchange of messages, but also encompasses interpretation, the negotiation of meanings, and the building of interpersonal relationships.[491]

As a social being, a person functions within a constant network of interactions that determine their development, security and ability to cooperate. The inability to communicate would effectively mean exclusion from social life, and thus a restriction of basic existential and cognitive needs. For this reason, communication appears not only as a tool for the exchange of information, but as a key mechanism organising social life.

Today, the importance of communication takes on particular significance in the context of defence. Renowned experts in the field approach this concept from multiple angles, highlighting its complexity and the need to view it in conceptual, functional and

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[487] https://sip.lex.pl/akty-prawne/mp-monitor-polski/zatwierdzenie-strategii-bezpieczenstwa-narodowego-rzeczypospolitej-18988801 [access: 01.06.2026].

[488] Z. Modrzejewski, *Militarne obszary komunikacji strategicznej,* Wyd. Akademia Sztuki Wojennej, Warszawa 2019, p.12.

[489] Communication [in:] Słownik języka polskiego, https://sjp.pwn.pl/slownik-etymologiczny/komunikacja.html [access: 01.06.2026].

[490] Communication [in:] Britannica, https://www.britannica.com/topic/communication [access: 01.06.2026].

[491] J. Fiske, *Wprowadzenie do badań nad komunikowaniem*, Wyd. Astrum, Wrocław 1999, p. 13.

structural terms[492]. Defence encompasses both military and non-military dimensions, including the informational, social and technological spheres. Against a backdrop of dynamic geopolitical changes, the development of new technologies and the growing role of information as a strategic resource, communication is becoming one of the key elements of the security system.

Selected definitions of communication

The concept of communication has been thoroughly explored by many experts, who have defined the subject whilst highlighting what they consider to be its most important aspects. It would be difficult to list all of them in this short article, as, according to Frank E. X. Dance, a researcher at the University of Denver, there were already over 120 definitions of communication in 1970, which were catalogued in his comprehensive book on communication theory[493]. The author has selected a few for analysis and to illustrate the often differing perceptions of the concept. As the eminent expert E. Griffin emphasises, if a theory is a collection of hunches, this means that we are not yet certain whether we know the actual answer[494]. Thus, the multitude of definitions may indicate a continuing need to study this phenomenon. E. Griffin views communication as a relational process involving the creation and interpretation of messages that elicit a response[495]. In this approach, particular emphasis is placed on the message as a fundamental element of the communication process.

Communication models – the model by C. E. Shannon and W. Weaver

One of the most recognisable and frequently cited approaches to communication is the model developed by C. E. Shannon and W. Weaver. It was created in the late 1940s in the context of research carried out at Bell Laboratories into the possibilities of telegraphic transmission. This model is characterised by a linear structure and is presented in graphical form[496]. Another key element of this model is the concept of noise (interference), which can occur at any stage of the transmission and affect its quality and effectiveness. Noise can be technical, semantic or psychological in nature, leading to the distortion of the information being transmitted. In Shannon and Weaver's view, communication focuses primarily on the efficiency of information transmission, which means that the key issue is to minimise interference and ensure that the message is reproduced as faithfully as possible by the recipient[497].

Despite its simplicity and linear nature, this model forms the basis for many subsequent concepts of communication. Its limitation, however, lies in its omission of the social and

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[492] A. Tomaszewski, *Obronność w teorii i praktyce,* [w:] *Obronność jako dyscyplina naukowa,* A.Polak, K. Krakowski, Warszawa 2015, p. 41.

[493] F. E. X. Dance, *The Concept of Communication*,"Journal of Communication", 1970, Vol. 20, p. 201–210.

[494] E. Griffin, *A first look at communication theory,* Wyd. 8, McGrow Hill edition, Nowy Jork, 2012, p.4.

[495] ibid. p. 6.

[496] model C. E. Shannona i W. Weavera [w:] https://en.wikipedia.org/wiki/Shannon%E2%80%93Weaver_model [access: 01.06.2026].

[497] B. Dobek-Ostrowska, *Podstawy komunikowania społecznego*, Wyd. ASTRUM, Wrocław 1999, p. 78.

relational aspects of communication, such as cultural context, the intentions of the participants, and feedback. For this reason, it is now regarded as a starting point for more complex, interactive and transactional approaches to communication.

H. Lasswell's Model

This model relates primarily to mass communication. It is linear and descriptive in nature. According to Harold Lasswell, an analysis of the communication process requires consideration of five key questions: who communicates, what is communicated, through which channel, to whom the message is directed, and what effect it produces[498]. Particular importance is attached to the last element, namely the effect on the audience, around which the entire model is centred. Modifications to the earlier components lead to a change in the final result, which allows for an assessment of the effectiveness of communication depending on how its individual elements are shaped. Identifying these very components constitutes one of Lasswell's most important achievements[499].

In the context of defence, Lasswell's model allows communication to be viewed as a strategic tool whose effectiveness has a direct impact on national security. An analysis of the elements of the communication process – the sender, content, channel, receiver and effect – enables the design of messages supporting defence activities, such as building social resilience, countering disinformation or boosting morale. The aspect of effect takes on particular significance here, as it is precisely the achieved effect that determines the effectiveness of communication in crisis and conflict situations. Consequently, Lasswell's model serves as a useful analytical tool for planning and evaluating defence communication, enabling its various elements to be deliberately shaped in order to achieve the desired strategic outcomes.

G. Gerbner's communication model

George Gerbner[500] defines communication as an interaction that takes place through symbols, and also as an organised process in which participants influence one another by using these symbols to convey and interpret meanings[501]. This model highlights two dimensions: one relating to perception, the other to control. For a message to be transmitted, it must first be formulated. The content of the message refers to reality, which, however, according to G. Gerbner, it never perfectly reflects. The reason for this lies in the perceptual conditions of each sender, shaped by both psychological and cultural factors[502]. This model led the author to conclude that communication in defence operations is never fully objective; therefore, the risk of distortions arising from the perceptions of the sender and the receiver must be taken into account. Furthermore,

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[498] ibid. p. 77.

[499] Model Lasswella [w:] https://pl.wikipedia.org/wiki/Harold_Lasswell [access: 01.06.2026].

[500] https://www.toolshero.com/communication-methods/george-gerbner-model-of-communication/#:~:text=George%20Gerbner%20Model%20of%20Communication%20theory%20%2D%20Toolshero. [access: 01.06.2026].

[501] J. Fiske, *Wprowadzenie do badań nad komunikowaniem*, Wyd. Astrum, Wrocław 1999, p. 42.

[502] H. Mruk, *Komunikowanie się w biznesie,* Wyd. Akademii Ekonomicznej, Poznań 2002, p. 23.

cultural and psychological differences can influence the understanding of orders and information, which requires constant standardisation and the cultivation of common communication procedures.

Communication according to Charles Horton Cooley

In this context, it is worth referring to Charles Horton Cooley[503], one of the pioneers of communication studies, who viewed communication as the mechanism through which human relationships can exist and develop—that is, all the symbols of the mind, including the means of conveying them in space and preserving them over time[504]. The distinguished expert Tomasz Goban-Klas draws attention to the idealistic dimension of this approach. In his view, Charles H. Cooley's concept is overly imbued with ideas of brotherhood and justice, which limits its universal nature and may even be a source of controversy. The author concludes that, in defence, classical models of communication require adaptation to the realities of crisis situations, taking into account time pressure, the need for rapid decisions, and limited cooperation among those involved in the events. Furthermore, the idea of 'brotherhood and justice' may be a source of conflict in defence situations, where decisions must be swift and pragmatic.

Key aspects of communication

Researcher Anna Kozłowska emphasises that it is not only the characteristics of the sender, the message and the recipient, but also the conditions under which information is processed, that determine the ultimate impact of the message[505]. Factors such as distance, noise or background conversations can significantly distort the perception of the message. In the context of defence, this means that the quality and precision of communication — particularly in operational, crisis or combat situations — are heavily dependent on the information environment. Interference can lead to misinterpretation of orders, delays in response or incorrect decisions, which directly affect the safety and effectiveness of operations. Therefore, ensuring appropriate communication conditions, minimising noise and employing communication redundancy are key elements of defence systems.

Another expert on the subject, Dorota Domalewska, emphasises that communication takes place constantly, whether intentionally or unconsciously, through words, gestures and symbols[506]. She highlights the key elements of the communication process, such as: the process itself, its participants, the message, feedback, the channel of communication and the context. In her view, communication is not a one-off event, but a dynamic and continuous process that begins at a specific moment and continues, enabling both the transmission of content and the building of relationships[507]. It seems essential to take each of these factors into account when creating messages.

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[503] Charles Horton Cooley [w:] https://pl.wikipedia.org/wiki/Charles_Cooley [access: 01.06.2026].
[504] T. Goban-Klas, Media i komunikowanie masowe, PWN, Warszawa 2004, p. 45.
[505] A. Kozłowska, *Oddziaływanie Mass Mediów,* SGH Oficyna Wydawnicza, Warszawa 2006, p. 10.
[506] D. Domalewska, *Wielowymiarowość komunikacji w kontekście bezpieczeństw,* Akademia Sztuki Wojennej, Warszawa 2020, p. 21.
[507] ibid. p. 20.

Beata Kozyra also shares the view that communication is a process that should culminate in both parties arriving at a shared understanding of the message[508]. The expert views this issue as the sharing of information with another person, whilst maintaining consistency between the sender's intention and the receiver's interpretation. The congruence achieved constitutes an understanding between the parties involved in the interaction. At the same time, B. Kozyra emphasises that only part of the message reaches the recipient from the sender's utterance, which is caused by the phenomenon of filtering, i.e. the selection of received content[509]. Such a filter may be our state of mind, our attitude towards the subject or the sender, or, finally, the problems that are preoccupying us.
The key conclusion is that the process of filtering information poses a significant risk in defence-related communication systems. Factors such as stress, fatigue, bias or situational pressure can limit the ability to correctly receive messages, which in a threat situation can have serious consequences and lead to operational errors. Ultimately, effective interaction in the defence sector is not merely about conveying information, but about ensuring it is properly understood despite existing disruptions, which is one of the cornerstones of the efficient functioning of security systems.

The role of communication according to Jürgen Habermas

Particular attention should be paid to the concept of social communication developed by the German philosopher Jürgen Habermas, as described in his seminal work *Theory of Communicative Action*[510]. Habermas conceives of communication as a process of reaching agreement, in which the participants in an interaction strive for mutual understanding through a rational exchange of arguments. In this view, communicative action is contrasted with instrumental action, which is focused solely on achieving goals.
From the perspective of defence analysis, Habermas's concept is of particular significance, as it highlights that the effectiveness of state actions depends not only on material resources, but also on the quality of social communication. Building trust, improving operations and social resilience requires communication based on transparency, credibility and dialogue, rather than solely on strategic or propaganda messaging.
With regard to contemporary geopolitical conditions, the author emphasises the relevance of J. Habermas's views, particularly in light of the factors exacerbating the phenomenon under analysis and its consequences. The spiral of violence begins with a breakdown in communication, which leads, through a spiral of unchecked mutual mistrust, to the complete collapse of communication[511]. Thus, disruptions in communication are a key factor in the escalation of conflicts, as they generate mistrust, which prevents rational dialogue and fosters violence.

[508] B. Kozyra, *Komunikacja bez barier,* Wyd. MT Biznes Sp. Z o.o., Warszawa 2008, p. 26.
[509] ibid. p. 31.
[510] https://pl.wikipedia.org/wiki/J%C3%BCrgen_Habermas [access: 01.06.2026].
[511] G. Borradori, *Filozofia w czasach terroru. Rozmowy z Jürgenem Habermasem i Jacques'em Derridą,* Wyd. Akademickie i Profesjonalne Spółka z o.o., Warszawa 2008, p. 93.

Communication as the coordination of actions

Zbigniew Nęcki, a respected authority in the field of communication, emphasises in his work *Interpersonal Communication*, in the chapter on pragmatic-contextual typology, that the aim of communication is to coordinate the instrumental and interpersonal behaviours of those engaged in communicative activity[512]. He also points out that the fundamental intention is mutual interaction through the exchange of verbal and non-verbal signs[513]. It can therefore be concluded that interpersonal communication does not serve merely to convey information, but above all enables the coordination of actions and the building of relationships between participants in the interaction. Its essence lies in the mutual interaction of people, which takes place through both verbal and non-verbal means, highlighting its complex and multidimensional nature.

According to Z. Nęcki, the essence of communication lies in improving cooperation, not in improving understanding[514]. The latter term, according to the expert, is characterised by subjectivity, which means that the level of mutual understanding is objectively unverifiable. In light of the above, it can therefore be concluded that the key criterion for effective communication, from a pragmatic perspective, is its ability to improve cooperation. Understanding, on the other hand, viewed as complete mutual comprehension, remains a subjective category and one that is methodologically difficult to assess objectively.

Communication processes as a subject of research

The topic of this article has been analysed by the renowned experts Juliusz Piwowarski and Wojciech Czajkowski in their book entitled *National Culture of Security and Defence*[515]. Experts in the field emphasise that both the effectiveness and fluidity of communication are determined by a number of factors, including, above all, the individual characteristics of those involved in the interaction, such as experience, perception of threat and interpersonal skills.

The effectiveness of communication in defence depends not only on its structure or tools, but above all on the characteristics and preparedness of those involved in the communication process, which means that individual competencies must be developed as a key element of the security system.

Forms of non-verbal communication in EU defence

Within the CSDP (Common Security and Defence Policy)[516], various channels of non-verbal communication can be observed, which can be grouped as follows:

Institutional symbolism: the flag and anthem of the European Union (Ode to Joy) play a role in emphasising the EU's common security. During meetings of the EU Foreign

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[512] Z. Nęcki, *Komunikacja międzyludzka*, Wyd. Profesjonalnej Szkoły Biznesu, Kraków 1996, p. 108.
[513] ibid. p. 108.
[514] ibid. p. 109.
[515] J. Piwowarski, W. Czajkowski, *Narodowa kultura bezpieczeństwa i obronności. Psychologiczne i aksjologiczne komponenty bezpieczeństwa formacji mundurowych*, Difin, Warszawa 2023, p. 101.
[516] https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/pl/FTU_5.1.2.pdf [access: 01.06.2026].

Affairs Council or defence force summits, the EU emblem is often displayed, symbolising a shared identity. Examples include the logo of the Operational Headquarters or the insignia of new commands (e.g. the Military Planning and Conduct Capability), which are intended to raise awareness of the existence of EU defence structures. Furthermore, new institutions have emerged within the security architecture - for example, the establishment of the MPCC military command in 2017, which has since been developed into a full operational command - which in itself is a sign of the EU's growing defence autonomy.

Ceremonial gestures and practices: State and military rituals serve as symbolic messages. For example, the EU's admission of troops or equipment into Europe, joint parades or exercises featuring the EU flag alongside national flags, and the handover of a commander's insignia at an EU forum - these constitute a non-verbal 'pledge' of solidarity. Attention is also drawn to the manner in which intra-alliance support is demonstrated: for example, the meeting of defence ministers for the first time since the outbreak of the war in Ukraine or the strengthening of the joint staff take place with the symbolic participation of all partners, which in itself sends a message of unity.

Military presence and operations: EU troop deployments and exercises serve as demonstrations of capability. A prime example is the regular publication of reports on the status of the EU Battle Group or PESCO[517] exercises, which test the readiness of interoperable structures. The emphasis on the fact that the EU now has a Rapid Deployment Capacity (a force of up to 5,000 troops ready for deployment from 2025) is also reflected in the media and in official protocols - the declaration itself and subsequent exercises (e.g. LIVEX26 in Spain) serve to demonstrate that the EU has a genuine capacity for rapid response. The EU also organises numerous joint military exercises (operational exercises, naval manoeuvres) focused on new threats, which not only trains the forces but also sends a signal of building interoperability.

Force mobility and response capabilities: the European Military Mobility initiative (PESCO projects to improve infrastructure capacity) and the establishment of ECAP and EDF are forms of a non-verbal signal - the EU is investing in logistical capabilities, which sends a message just as powerful as dispatching a convoy. In 2023, the EU officially launched the European Peace Facility, enabling the financing of military aid for partners (e.g. Ukraine) - this gesture can be interpreted not so much as rhetoric, but as tangible support that also serves as a deterrent to aggressors.

Demonstration of support and partnership: Actions such as seconding personnel to joint headquarters (e.g. Polish officers at the EUNAVFOR Atalanta or EUAM Ukraine headquarters) or publishing joint estimates of commitment (EU+US) also constitute non-

[517] https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/pl/FTU_5.1.2.pdf [access: 01.06.2026].

verbal communication: rather than mere declarations, they lead directly to action. For example, as early as 2022, Poland called for closer strategic communication between the EU and the US, pointing to the need for 'enhanced strategic communication' to demonstrate solidarity in the defence of Ukraine. Although this is a verbal message, the EU's decision to fund military equipment and train over 90,000 Ukrainian soldiers is no less significant - it is a non-verbal signal of complete unity in a joint effort (the EU has mobilised all available tools of its four pillars of the Strategic Compass).

However, the effectiveness of non-verbal communication depends on its clarity and coordination. If signals are contradictory or inconsistent, they can raise doubts. That is why the EU is now focusing on a coordinated message: the Strategic Compass sets out common tasks (exercises, investments, partnerships) and monitors their implementation, which gives a concrete dimension to the declarations. Poland, for its part, is consistently fulfilling its commitments - such as preparing a contingent for the V4 EUBG 2024/25 [518] demonstrating that the message regarding the readiness of its forces is backed up by action.

Challenges: hybrid threats and information warfare

In the context of modern hybrid warfare, it is essential to combine verbal and non-verbal communication. The EU must counter disinformation and manipulation (i.e. conduct Stratcom[519]), but also 'speak' through actions. As the Polish Ministry of Foreign Affairs notes, strategic communication must be strengthened to counter 'false narratives' and demonstrate transatlantic unity. In this situation, any deployment of troops or equipment - e.g. visible transports from Europe to countries on the eastern flank or joint NATO-EU manoeuvres - takes on the significance of a deterrent message. At the same time, however, the risk of information warfare is growing: if, for example, the presence of troops on manoeuvres is manipulated by an adversary, the gesture itself may be interpreted differently. Clarity is therefore essential - the EU and its member states are endeavouring to back up all actions with clear political messages, which enhances the authenticity of the signal.

The Paradox of Silence

The academic literature contains various experiments and observations concerning communication in crisis situations. Although specific Polish studies on verbal and non-verbal communication during major disasters are few and far between, one can draw on the universal findings of stress psychology. Under the influence of severe stress, attention narrows to relevant stimuli ('cognitive tunnel')[520], and working memory becomes overloaded. As a result, short and frequently repeated messages are more likely to reach

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[518] https://www.gov.pl/web/dyplomacja/polska-przejmuje-przewodnictwo-w-grupie-wyszehradzkiej-v4 [access: 01.06.2026].

[519] NATO Strategic Communications Centre of Excellence https://stratcomcoe.org/ [access: 01.06.2026].

[520] https://bankoweabc.pl/psychologia-paniki-i-tunelowanie-poznawcze/#google_vignette [access: 01.06.2026].

the audience. Furthermore, a reaction of silence or paralysis is often observed[521]. Victims or witnesses of a disaster do not ask questions, expecting the rescuers to act. Therefore, messages must be initiated by the responding party, usually taking into account the silence of the victims.

Some studies indicate that emotions are conveyed mainly through non-verbal means (facial expressions or tone of voice)[522]. The advantage of non-verbal signals is their resistance to distortion – they are often processed automatically by the brain. Research into crisis communication during police negotiations (e.g. analysis of the facial expressions of terrorists and hostages) shows that, under stress, facial expressions revert to simplified patterns: a simple, striking gesture can elicit understanding more effectively than a complex statement. It is worth interpreting in this way, for example, the signals used by pilots, divers or firefighters, who have developed manual codes to facilitate cooperation in the absence of voice communication.

Conclusions

The ability to effectively convey information, coordinate actions and build public trust has a direct impact on the effectiveness of defence structures. Consequently, communication in the EU defence sector is not merely a support for operational activities, but constitutes an integral component thereof, determining both the course and the outcomes of the actions undertaken. In the context of defence situations, this means that the efficient transmission of information requires taking into account differences in how information is processed by individual communication partners and adapting the form of the message to the realities of the threat. In practice, this points to the need to design communication procedures that minimise the risk of misunderstandings and enable a rapid, precise response in situations requiring the coordination of actions. Regardless of the sources, the common priority for all institutions should be the security of communication. This applies both to the efficient transmission of messages (issuing warnings and alarm signals via technical devices) and to the conveyance of content by people. The reality of crises is changing (new technologies, fake news, hybrid threats). Therefore, the exchange of experiences between services within the EU community and civilian participants in crisis situations is crucial. Research into communication should continue, with an emphasis on non-verbal communication.

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THE SIGNIFICANCE OF EUROPEAN INTEGRATION IN THE CONTEXT OF HYBRID THREATS

Keywords: European integration, European Union, hybrid threats, security, disinformation, state resilience

Introduction

The contemporary security environment is undergoing dynamic changes[523] that are redefining the traditional approach to threats and the methods used to neutralise them. In place of armed conflicts in the classical sense, threats of an asymmetric and ambiguous nature are emerging, referred to as hybrid threats. Their distinctive feature lies in the combination of various means of influence: ranging from military actions of limited intensity, through cyberattacks, to disinformation or economic pressure. This makes them difficult to identify and counteract[524]. As a result, states and international organisations are faced with the need to develop new response mechanisms, based on cooperation and the integration of actions.

The rationale for addressing this topic stems from the growing significance of hybrid threats in the context of European security, particularly in the face of events such as: the Russian Federation's aggression against Ukraine, disinformation campaigns, and the instrumentalisation of migration at the borders of the European Union (EU). These phenomena highlight that contemporary conflicts take the form of both open military operations and actions conducted below the threshold of war, the effects of which are felt in the political, economic and social spheres[525]. In this context, European integration takes on significance, understood not only as an economic and political process, but also as a tool for strengthening Member States' resilience to hybrid threats.

The characteristics of the contemporary security environment point to its growing complexity, unpredictability and the interconnections between different areas of state functioning. The literature on the subject emphasises that 21st-century security is multi-layered[526], meaning that threats can permeate between the local, regional and global

[523] J. Keegan, *Historia wojen*, Książka i Wiedza, Warszawa 1998, s. 11.
[524] M. Banasik, Parafianowicz, R. (2015). *Teoria i praktyka działań hybrydowych*. Zeszyty Naukowe AON, 2(99), s. 5–25.
[525] D. Niedzielski, *Zagrożenia hybrydowe. Podstawowe informacje i zdolności i zdolności Sił Zbrojnych RP*, Bellona, 2(2016), s. 36-37.
[526] *Strategia Bezpieczeństwa Narodowego Rzeczypospolitej Polskiej 2020,* Warszawa 2020, s. 5.

spheres[527]. The development of information and communication technologies plays a particular role here, contributing to the increased efficiency of state operations, but also generating vulnerabilities exploited by state and non-state actors. As a result, the boundaries between internal and external security are becoming blurred. This necessitates a comprehensive approach to security management.

The aim of this article is to analyse the significance of European integration in countering hybrid threats and to assess the extent to which cooperation within the EU contributes to building common security capabilities. In this context, the following research question has been formulated: does European integration constitute an effective mechanism for strengthening Member States' resilience to hybrid threats, and to what extent? A hypothesis has also been adopted, according to which the deepening of integration processes within the EU increases the effectiveness of countering hybrid threats through the development of common political, legal and institutional instruments. The article employs a literature review methodology, encompassing academic studies in the fields of security studies and international relations, as well as EU strategic documents. This is supplemented by a case study analysis of selected contemporary security crises, which allows for the practical verification of the theoretical assumptions. The research approach adopted enables a multifaceted examination of the problem and the identification of mechanisms influencing the effectiveness of actions undertaken within the framework of European integration. The structure of the article is designed to achieve the stated research objective. The first part presents the nature of hybrid threats, taking into account their contemporary forms. It then discusses the process of European integration as an instrument for strengthening security, highlighting its main principles and institutional significance. The next section is devoted to an analysis of EU mechanisms for countering hybrid threats, including common policies and strategies. The following section presents selected case studies. The article concludes with findings that summarise the discussions and indicate directions for further research.

The nature and characteristics of hybrid threats

Hybrid threats represent one of the most significant challenges facing the modern security system. There is no single, universally accepted definition of this phenomenon in the literature, but for the purposes of this study, it is assumed that it encompasses the coordinated use of various instruments of influence, both military and non-military, to achieve specific political objectives whilst avoiding a formal declaration of war[528]. The essence of hybrid operations lies in their ambiguity[529], the difficulty in identifying the perpetrator, and the exploitation of systemic vulnerabilities in states and international organisations. According to the approach presented in EU documents, hybrid threats

[527] E. Cziomer, *Bezpieczeństwo międzynarodowe w XXI wieku Wybrane problemy,* AFM, Kraków 2010r. s. 7.
[528] W. Sokała, B. Zapała, *Asymetria i Hybrydowość – stare armie wobec nowych konfliktów,* [W] A. Gruszczak, *Hybrydowość współczesnych wojen – analiza krytyczna*, Biuro Bezpieczeństwa Narodowego, Warszawa 2020, s. 9-17.
[529] W. Goleński, D. Zimny, *Przygotowanie państwa na zagrożonia hybrydowe,* Kontrola i Audyt, nr 5, 2024, s. 570.

consist of a combination of overt and covert actions carried out by state or non-state actors[530], which may include: cyberattacks, disinformation campaigns, interference in democratic processes, or economic pressure[531]. Their aim is to destabilise a state or organisation by undermining public trust, disrupting the functioning of public institutions, and provoking political and social tensions. In this regard, hybrid threats fall within the category of asymmetric actions, which exploit advantages in areas other than traditional military power.

The characteristics of hybrid threats include their multidimensional nature, flexibility, and ability to adapt to changing security conditions. These actions are long-term in nature and are conducted in a coordinated manner, utilising various channels of influence: from the information sphere and the economy to the social sphere[532]. Another key element is the so-called 'grey zone', i.e. the area between peace and open armed conflict, where hybrid operations are most frequently carried out. Operating in this space hinders the response of states affected by such threats, as there is no clear legal basis for retaliation[533]. The typology of hybrid activities encompasses a spectrum of tools used to destabilise the adversary. One of the most important areas is cyberspace, where attacks are carried out on critical infrastructure and the IT systems of public institutions and the private sector. Cyberattacks can lead to the disruption of state functions, as well as to the leakage of sensitive data. Another significant element is disinformation campaigns, which aim to manipulate public opinion, undermine trust in state institutions and exacerbate social divisions. Disinformation often utilises social media and other digital communication channels, thereby increasing its reach[534]. Economic pressure also plays a significant role among hybrid tools, including, for example, the exploitation of energy dependencies, economic sanctions, or the manipulation of financial markets. Such actions can lead to a weakening of a state's economic stability and a reduction in its ability to pursue an independent policy. Increasingly, the instrumentalisation of migration is also highlighted as an element of hybrid activities, involving the exploitation of population flows to exert political pressure on host states. This phenomenon has been evident at the EU's borders in recent years[535]. Examples of hybrid threats confirm their growing significance in the practice of international relations. The Russian Federation's aggression against Ukraine is an example of a conflict in which military action was preceded by large-scale information and cyber operations. Interference in electoral processes in Western countries and disinformation campaigns linked to the COVID-19 pandemic also demonstrate the scale of hybrid threats. In each of these cases, the aim was to undermine

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[530] Krajowy Plan Zarządzania Kryzysowego. Aktualizacja 2021/2022, RCB, Warszawa <https://www.gov.pl/web/rcb/krajowy-plan-zarzadzania-kryzysowego [Accessed: 26.04.2026].

[531] https://www.consilium.europa.eu/pl/policies/hybrid-threats/#what [Accessed: 26.04.2026r.].

[532] J. Meissner, *Rosyjska koncepcja wojny nowej generacji w świetle pierwszych doświadczeń wojny w Ukrainie*, „Roczniki Nauk Społecznych" nr 14/2022, s. 134-135.

[533] O. Wasiuta, *Wojny i konflikty w szarej strefie*, Studia de Securitate 13(2) 2023, s. 8-15.

[534] J. Meissner, *Rosyjska koncepcja wojny nowej generacji w świetle pierwszych doświadczeń wojny w Ukrainie*, „Roczniki Nauk Społecznych" nr 14/2022, s. 134-139.

[535] M. Rust, *Studium Europy Wschodniej UW, Raport IV, Granica dyktatora. Polska i Białoruś wobec kryzysu granicznego,* Warszawa, grudzień 2021, s. 5-10

social cohesion and the credibility of public institutions. In summary, hybrid threats pose a complex and dynamic challenge to national security, requiring the use of: verifiable, comprehensive and coordinated countermeasures[536]. Their nature means that an effective response requires the integration of actions at both national and international levels, which justifies the EU's role as a platform for cooperation in this area.

European integration as an instrument of security

European integration, initially viewed as an economic and political project, has over time come to play a significant role in shaping the security of member states. Its origins date back to the post-war period, when the overriding aim was to prevent further armed conflicts on the European continent by strengthening economic and political cooperation[537]. This process, initiated by the establishment of the European Coal and Steel Community and subsequently developed through successive communities and treaties, led to the creation of the EU as an integration structure with a wide range of competences[538]. European integration encompasses cooperation in the economic, political, social and, increasingly, security spheres[539]. Of particular significance in this context was the gradual development of instruments under the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), which enabled Member States to take action in response to external and internal threats[540]. Today, European integration serves as a mechanism for strengthening collective security in the face of hybrid threats.

Events of the 21st century, such as terrorism, migration crises and hybrid operations, have necessitated an expansion of the scope of European integration in the security sphere. As a result, security has come to be viewed in a comprehensive manner, encompassing both military and non-military aspects, including cybersecurity, the protection of critical infrastructure and countering disinformation. EU institutions play a significant role in achieving integration objectives in the field of security, coordinating Member States' actions and initiating strategies and policies. The most important bodies include the European Commission, responsible, among other things, for initiating legislation and implementing sectoral policies, as well as the Council of the European Union and the European Council, which set the strategic direction for action. The European External Action Service (EEAS), responsible for implementing the European Union's foreign and security policy, also plays a special role. In the context of hybrid threats, agencies such as ENISA (the European Union Agency for Cybersecurity) are also of great importance, supporting Member States in building resilience to threats in

[536] F.G. Hoffman, *Conflict in the 21st Century: The Rise of Hybrid Wars, Potomac Institute for Policy Studies Arlington, Virginia*, December 2007, s. 2.
[537] D. Byrska, K. Gawkowski, D. Liszkowska, *Unia Europejska Geneza Funkcjonowanie Wyzwania,* Exante, Wrocław 2017, s. 9-12.
[538] Traktat o utworzeniu Europejskiej Wspólnoty Węgla i Stali (tzw. Traktat Paryski)
– podpisany 18 kwietnia 1951 r. (wszedł w życie 23 lipca 1952 r.; wygasł 23 lipca 2002 r.)
[539] D. Byrska, K. Gawkowski, D. Liszkowska, *Unia Europejska Geneza*… op. cit. s. 15-35.
[540] https://www.gov.pl/web/obrona-narodowa/ue-unia-europejska, [Accessed: 26.04.2026r.].

cyberspace[541]. European integration enables the creation of a common legal and institutional framework conducive to effective action in the field of security. An example of such an approach is the development of the EU's security strategy, including documents such as the 'Strategic Compass for Security and Defence', which sets out priorities for action in strengthening defence capabilities and resilience to hybrid threats[542]. A common approach allows for: better coordination of actions, the exchange of information, and the exploitation of synergies resulting from cooperation between Member States. European integration plays a significant role in responding to threats, but also in preventing them. Through the development of common standards, regulations and cooperation mechanisms, it is possible to strengthen the institutional and societal resilience of Member States. In this context, integration serves as a tool for building so-called 'resilience', i.e. the ability of state systems to adapt and function in crisis conditions[543]. Of particular importance here is cooperation in the exchange of information, threat monitoring and joint response to hybrid incidents.

European integration is an instrument for strengthening security at the regional level. Its multifaceted nature and institutional mechanisms enable the countering of hybrid threats. In the face of an increasingly complex security environment, the importance of European integration as a platform for cooperation will continue to grow.

EU mechanisms for countering hybrid threats

In response to the growing complexity of hybrid threats, the EU is developing a response system comprising legal, institutional and operational instruments. This system is based on the principle of coordinated action across various areas of state functioning and takes into account the nature of threats such as cyberattacks, disinformation and economic pressure. The functioning of EU mechanisms is underpinned by the provisions of the Treaties: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). Of key importance are Article 42(7) TEU, introducing the principle of mutual defence[544], and Article 222 TFEU, establishing the solidarity clause, which enables a joint response to threats[545], including those of a hybrid nature. These provisions form the legal framework for Member States' actions in crisis situations. At the operational level, the structures responsible for threat analysis and decision-making play a significant role. In this regard, the Single Intelligence Analysis Capacity (SIAC) operates, providing joint intelligence analysis, and the Hybrid Threat Analysis (HTA), focused on identifying hybrid threats. The decision-making process is supported by the Political and Security Committee (PSC), which monitors the international situation, and the Committee of Permanent Representatives of the Governments of the Member States to

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[541] https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-union-agency-cybersecurity-enisa_pl , [Accessed: 26.04.2026r.].

[542] F. Bryjka, *Rozwój unijnych zdolności do zwalczania zagrożeń hybrydowych*, Polski Instytut Spraw Międzynarodowych 2022, nr 9 (117), s. 1-3.

[543] https://www.consilium.europa.eu/pl/search/?query=resilience&tab=press, [Accessed: 24.04.2026r.].

[544] *Traktat o funkcjonowaniu Unii Europejskiej. Rzym.1957.03.25* (Dz.U.2004.90.864/2).

[545] *Traktat o Unii Europejskiej. Maastricht.1992.02.07.*(Dz.U.2004.90.864/30).

the European Union (COREPER), responsible for preparing decisions at the level of the Council of the European Union. These structures enable the detection and assessment of threats[546]. A fundamental part of the response system is the Integrated Political Crisis Response (IPCR) mechanism, which ensures the coordination of actions in crisis situations at EU level. This mechanism facilitates the exchange of information, the synchronisation of Member States' actions, and the taking of strategic and operational decisions. The EU Hybrid Toolbox plays a central role in the EU's operational response to hybrid threats, constituting a set of instruments enabling a response to various forms of threat. The Toolbox encompasses measures in the fields of: foreign policy, the economy, cybersecurity, infrastructure protection and strategic communication. It utilises: sanctions, diplomatic measures, mechanisms to counter economic coercion (ACI), cybersecurity regulations (NIS2), provisions on the protection of critical infrastructure (CER), and instruments regulating the digital space, such as the Digital Services Act (DSA). Measures to counter disinformation, referred to as FIMI (Foreign Information Manipulation and Interference), also remain a key component. These mechanisms form an operational framework based on four stages: threat detection (SIAC, HTA), threat assessment (PSC, COREPER), coordination of actions (IPCR) and response using available tools (EU Hybrid Toolbox). This approach allows the response to be tailored to the threat and its scale, which is important in the case of actions conducted below the threshold of open conflict[547]. The EU's actions are complemented by cooperation with the North Atlantic Treaty Organisation (NATO), the importance of which has grown particularly since 2014. Direct references to hybrid threats appeared for the first time in the official documents of the NATO summit in Newport, held against the backdrop of the Russian-Ukrainian conflict. In the final declaration of 5 September 2014, adopted at the summit in Wales, the heads of state and government of the Alliance highlighted the specific nature of the challenges associated with hybrid warfare and emphasised the need to develop deterrence and response mechanisms, as well as to strengthen member states' resilience to such threats[548]. In this context, EU–NATO cooperation covers areas such as: countering hybrid threats, operational cooperation, cybersecurity and defence, defence capability development, support for the defence industry, coordination of exercises, capability building and political dialogue. The synergy between the two organisations' activities allows for the effective use of available resources. Cooperation between the EU and NATO strengthens the capacity to respond comprehensively to hybrid threats, combining civilian and military instruments and enabling the coordination of actions in key areas such as cybersecurity and the protection of critical infrastructure[549].

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[546] https://www.consilium.europa.eu/pl/council-eu/search-the-list-of-council-preparatory-bodies/coreper-i/, [Accessed: 24.04.2026r.].
[547] https://www.consilium.europa.eu/pl/policies/hybrid-threats/#what, [Accessed: 24.04.2026r.].
[548] A. Ignaciuk, *NATO i UE wobec zagrożeń hybrydowych – nowe otwarcie we wzajemnej współpracy,* Bezpieczeństwo Narodowe., 2016, nr 1-4, s. 94.
[549] https://www.consilium.europa.eu/en/press/press-releases/2018/07/10/eu-nato-joint-declaration/, [Accessed: 27.04.2026r.].

Case studies

Assessing European integration in the field of countering hybrid threats requires an analysis of situations in which the EU has deployed its response instruments. What matters here is the ability to combine political, economic, information and regulatory tools as part of a coordinated response.

The first example of the EU's integrated approach to countering hybrid threats is its response to the Russian Federation's aggression against Ukraine after 2022. In the economic sphere, the EU launched a package of sanctions comprising: financial measures, trade restrictions, restrictions in the transport and energy sectors, as well as measures targeting the Russian media[550]. These sanctions were aimed at weakening the Russian Federation's ability to conduct military operations and at increasing political and economic pressure. At the same time, the EU deployed military and financial instruments. The European Peace Facility[551], enabling the financing of military equipment supplies to Ukraine, and macro-financial assistance[552], aimed at stabilising the Ukrainian economy and maintaining the functioning of the state under wartime conditions. An important element of the EU's response was also the information dimension, involving restrictions on the dissemination of content by Russian state media within the Union; this was a response to the disinformation and propaganda accompanying the conflict. All of the measures mentioned are an example of the implementation of an integrated approach. This type of response also fits within the logic of the EU Hybrid Toolbox, which envisages a comprehensive and multi-level response to hybrid threats[553].

A second example is the migration crisis on the border between Belarus and Poland and Lithuania in 2021–2022, recognised as a case of the instrumentalisation of migration[554]. The EU applied specific measures: sanctions against entities involved in organising the smuggling of migrants, diplomatic actions towards third countries (including restrictions on flights to Minsk), as well as operational and financial support for the protection of external borders. The role of Frontex and border monitoring mechanisms was strengthened[555]. This case demonstrates the use of external policy and internal security tools in response to hybrid pressure.

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[550] https://finance.ec.europa.eu/eu-and-world/sanctions-restrictive-measures/sanctions-adopted-following-russias-military-aggression-against-ukraine_en?prefLang=pl#timeline-measures-adopted-in-2022-2023 , [Accessed: 24.04.2026r.].

[551] https://www.consilium.europa.eu/pl/policies/european-peace-facility/#:~:text=Europejski%20Instrument%20na%20rzecz%20Pokoju%20(EPF)%20to%20instrument%2C%20kt%C3%B3ry,pok%C3%B3j%20oraz%20zwi%C4%99ksza%C4%87%20bezpiecze%C5%84stwo%20mi%C4%99dzynarodowe, [Accessed: 27.04.2026r.].

[552] https://www.consilium.europa.eu/pl/policies/ukraine-solidarity-financial-support/#total [Accessed: 27.04.2026r.].

[553] F. Bryjka, *Rozwój unijnych zdolności…,* op. cit. s. 11.

[554] M. Oskierko, S. Żurawski, *Unia Europejska wobec kryzysu migracyjnego jako narzędzia wojny hybrydowej*, De Securitate et Defensione. O Bezpieczeństwie i Obronności, Tom 11 Nr 1 (2025), s. 54.

[555] https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/frontex_pl , [Accessed: 27.04.2026r.].

The cases presented confirm that European integration enables the use of coordinated and multi-sectoral instruments to respond to hybrid threats. An added value is the ability to combine tools of different kinds within a single strategy, which strengthens the systemic resilience of Member States.

Conclusions

In conclusion, the analysis conducted provides an answer to the research question posed: European integration constitutes an effective mechanism for strengthening Member States' resilience to hybrid threats; however, its effectiveness varies and depends on the level of political coordination and the extent to which available instruments are utilised. The EU's ability to respond to hybrid threats stems mainly from its capacity to combine tools ranging from regulatory and economic measures, through information-related measures, to operational measures within a single framework. The analysis of empirical cases has confirmed that the EU has developed a functional model for responding to hybrid threats. In the case of the Russian Federation's aggression against Ukraine, the parallel use of economic sanctions, financial support and military instruments was of particular significance, confirming the EU's ability to operate within the logic of an integrated approach. Similarly, in the case of Belarus's instrumentalisation of migration, the effectiveness of using diplomatic, regulatory and operational tools to limit migratory pressure was evident. The cases analysed indicate that European integration enables a coordinated and multidimensional response to hybrid threats, although its effectiveness remains dependent on cooperation and political consensus among Member States. The results obtained allow for a positive verification of the research hypothesis. Deepening integration processes within the EU enhances the effectiveness of countering hybrid threats through the development of common political, legal and institutional instruments. Integration enables: the coordination of Member States' actions, the development of common response procedures, and an increased capacity to identify threats at an early stage. The analysis also reveals limitations in the functioning of the EU's response system. A persistent problem is the dependence of the effectiveness of actions on political consensus among Member States, which in crisis situations can lead to delays in decision-making. The varying levels of institutional and technological capabilities among Member States also result in uneven levels of resilience to hybrid threats. Furthermore, the dynamic nature of these threats necessitates the continuous adaptation of existing mechanisms and their adjustment to new forms of influence, particularly in the information and cyber domains. In light of the above findings, it must be concluded that European integration plays a fundamental role in building the resilience of Member States; however, its continued effectiveness requires deepening cooperation and strengthening institutional capacities at the EU level. Of particular importance is the development of rapid response mechanisms, increasing the interoperability of security systems, and further integration in the areas of cybersecurity and the protection of the information space. Future research should focus on analysing the effectiveness of specific EU instruments in the context of protracted hybrid crises, as

well as on assessing the role of non-state actors, particularly the technology sector, within the European security system. It is also important to deepen research into the relationship between the level of political integration and the ability to make rapid and effective decisions in crisis situations.

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POLAND IN INTERNATIONAL POLICE COOPERATION IN COMBATING MIGRATION-RELATED CRIME

Keywords: migration-related crime, international police cooperation, Police, Border Guard, Europol, Frontex, migration crisis, internal security

Introduction

Contemporary migration processes are to a large extent a consequence of political destabilisation, armed conflicts, economic crises and the weakening of state structures in the migrants' regions of origin. These phenomena became particularly evident after the events in the Middle East and North Africa, where civil wars, the activity of terrorist organisations and the erosion of state institutions led to mass movements of people seeking safety and more stable living conditions. Europe, in particular the states of the European Union (EU), became one of the main destinations for these migrations.

A turning point for the migration and security policy of the European Union was the year 2015, when 1,255,600 first-time applications for international protection were recorded in EU Member States – more than twice the number of the previous year.[556]

Such a significant influx of people seeking protection exposed the limitations of the border control system, asylum procedures and the mechanisms for cooperation between Member States. At the same time, the migration crisis was exploited by organised criminal groups that profited from organising illegal border crossings, smuggling migrants

[556] Eurostat *Record number of over 1.2 million first time asylum seekers registered in 2015, Eurostat*, 4 March 2016, https://ec.europa.eu/eurostat/web/products-euro-indicators/-/3-04032016-ap [accessed 24 April 2026].

and forging documents. As a result, migration began to be perceived not only as a humanitarian and social challenge, but also as an area requiring a coordinated police and border response.[557]

Poland's experience is of particular significance in this context. Its geographical location, membership in the European Union and responsibility for protecting one of its external borders mean that Poland participates in the European system for counteracting migration-related threats. An additional factor affecting the security situation was the outbreak of the full-scale Russo-Ukrainian war on 24 February 2022 and the accompanying hybrid actions of the Russian Federation and Belarus directed against European Union states, in particular Poland. One of their manifestations is the instrumental use of migration, exerting pressure on Poland's eastern border – which is at the same time the EU's external border – and creating conditions conducive to the development of cross-border crime.

In 2020, 129 attempts to illegally cross the Polish border from Belarus were recorded, whereas in 2021 that number increased to 39,697[558] In 2024, close to 30,000 such incidents were registered, with the highest intensity in May, when over 7,000 were recorded[559] These data indicate that the migratory pressure on Poland's eastern border is long-term, variable and organised, and its scale requires not only border measures but also a broader police and international response.

In view of these circumstances, the importance of cooperation between the Polish Police, the Border Guard and the European institutions responsible for security, in particular Europol and Frontex, has increased. The experience of the 2015 migration crisis and the current migratory pressure on the Polish-Belarusian border indicate that effective

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[557] Europol and INTERPOL, *Migrant Smuggling Networks: Joint Europol-INTERPOL Report, Executive Summary*, May 2016, https://euagenda.eu/publications/migrant-smuggling-networks-joint-europol-interpol-report-may-2016 [accessed 24 April 2026].
[558] E. Szczepańska, *Nielegalne przekroczenia granicy z Białorusią w 2021 r.,* Komenda Główna Straży Granicznej, 12 January 2022, https://www.strazgraniczna.pl/pl/aktualnosci/9689%2CNielegalne-przekroczenia-granicy-z-Bialorusia-w-2021-r.html [accessed 24 April 2026].
[559] K. Zdanowicz*, Nielegalna migracja w Podlaskim Oddziale Straży Granicznej – podsumowanie*, Podlaski Oddział Straży Granicznej, 21 January 2025, https://www.podlaski.strazgraniczna.pl/pod/aktualnosci/64039%2CNielegalna-migracja-w-Podlaskim-Oddziale-Strazy-Granicznej-podsumowanie.html [accessed 20 April 2026].

counteraction of migration-related crime requires not only standard border control, but also efficient information exchange, criminal analysis, identification of criminal structures and coordination of operational activities. For this reason, Polish experience can serve as a valuable reference point for assessing the effectiveness of international police cooperation and for further improving the security mechanisms of the European Union.

The aim of the article is to present Poland's role in international police cooperation in combating migration-related crime, with particular emphasis on the experience of the Polish Police resulting from the 2015 migration crisis and the current situation on the Polish-Belarusian border.

Achieving the aim defined in this way required solving the research problem formulated as the question: What role does Poland play in international police cooperation in combating migration-related crime, and to what extent can the experience of the Polish Police connected with the 2015 migration crisis and the current migratory pressure on the Polish-Belarusian border serve as a reference point for improving the security mechanisms of the European Union?

The article assumes that Poland plays a significant role in international police cooperation in combating migration-related crime, and the effectiveness of its actions depends on an integrated model of cooperation between the Police, the Border Guard, Europol, Interpol and Frontex. This model is based above all on efficient information exchange, criminal analysis, operational coordination and protection of the European Union's external border. It is also assumed that the experience of Polish services connected with the 2015 migration crisis and the migratory pressure on the Polish-Belarusian border can serve as an important reference point for improving the security mechanisms of the European Union.

The article employs the institutional-functional method, supplemented by an analysis of statistical data from European institutions competent in the field of identifying and combating cross-border crime, as well as empirical data from Polish police services. The

research also covered an analysis of legal acts and strategic documents, as well as organisational solutions functioning within the security system of the European Union.

Legal and institutional framework of international cooperation of the Polish Police in combating migration-related crime

Within the Schengen acquis, state borders of Member States have been placed under a special legal regime. The Schengen Borders Code provides for the absence of checks on persons crossing internal borders, while establishing common rules for checks at external borders. This means that internal borders have not lost their legal and administrative significance, but their control function has been substantially limited. The burden of ensuring border security has instead been concentrated on the external borders that separate the area of free movement from third countries. In this approach, the effectiveness of protecting the external border matters not only for the state that directly protects it, but also for the entire Schengen area.[560]

Both the 2015 migration crisis and the current migratory pressure on the Polish-Belarusian border indicate that insufficient control of migratory flows at external borders may facilitate the irregular movement of persons within the Schengen area, thereby affecting the internal security of the states participating in that system.

This state of affairs requires undertaking comprehensive measures aimed at both the physical protection of the European Union's external border and the development of international police cooperation. Effective counteraction of migration-related crime depends on the coordination of police, border and European institutions, in particular as regards information exchange and joint operational activities.

In the Polish security system, international police cooperation has a clear normative basis in the Act of 6 April 1990 on the Police, which is the basic legal act defining the

[560] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), OJ L 77, 23 March 2016, pp. 1–52, Arts 1–2 and 22.

status, organisation and scope of activity of that formation. The importance of this regulation stems from the fact that already in the introductory part of the act the legislator provided that the Police also performs tasks resulting from other acts, provisions of European Union law, as well as international agreements and arrangements, within the limits and on the principles specified therein. Thus, the Act on the Police creates the basis for the performance by this formation of tasks not only on the domestic level but also in the area of cross-border, European and international cooperation.[561] A key role in this respect is played by the National Police Headquarters, within which there function structures responsible for information exchange and coordination of cooperation with foreign partners and European institutions. The National Police Headquarters performs the tasks of the National Interpol Bureau,[562] the Europol National Unit,[563] the SIRENE Bureau[564] and the National Criminal Information Centre. Such an organisational solution makes it possible to concentrate in a single structure the basic channels of international police cooperation, used, inter alia, in identifying and combating cross-border crime, including migration-related crime.

The fundamental instrument used in the protection of the Schengen area and in police cooperation is the Schengen Information System (SIS). Its key importance stems from the fact that after the abolition of checks at internal borders, the states participating in the system must have a common tool allowing the exchange of data on persons and objects relevant from the point of view of security, border control, migration and justice. SIS enables the competent authorities, in particular the Police, to access information concerning, inter alia, persons sought, missing, subject to a refusal of entry or stay, as well as stolen, misappropriated or sought travel documents, vehicles and other objects. The

[561] Act of 6 April 1990 on the Police, Dz.U. 1990 No. 30, item 179, as amended, Art. 1(2)(7).
[562] Interpol, formally the International Criminal Police Organization, is an international police organization that assists law enforcement agencies in combating various forms of crime.
[563] The European Union Agency for Law Enforcement Cooperation (Europol) is an EU law enforcement agency responsible for enhancing security in Europe by supporting law enforcement authorities in the EU Member States.
[564] SIRENE, which stands for Supplementary Information Request at the National Entries, is a network of national bureaux responsible for exchanging supplementary information related to alerts in the Schengen Information System (SIS). Each Schengen country has a SIRENE Bureau; in Poland, SIRENE Bureau tasks are carried out by the Police.

European Commission describes SIS as the largest and most frequently used European information exchange system in the field of security and border management.[565]

The technical structure of SIS is based on linking the central system with the national systems of the participating states. At the European level, a central SIS component functions, operationally managed by eu-LISA, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. The national SIS components functioning in the individual states are connected to the central system. It is through those components that national authorities enter, update and consult alerts. Thanks to this, information entered by one state can be made available to the authorised authorities of the other states participating in the system. The mechanism of its operation is based on so-called "alerts", i.e. warnings concerning specific persons or objects. Each alert contains identification data and an instruction for the authority that discovers the person or object, specifying the action to be taken. In practice, this means that an officer carrying out a border check, police check or another official activity can check a person or document in the system and, in the event of a hit, obtain information on what action should be taken – for example arrest the person, refuse entry, secure the object or transmit information to the competent state.[566] Combined with the operation of the SIRENE Bureaux, this enables rapid exchange of information between states and coordination of actions in matters of a cross-border nature. For this reason, access to the SIS system constitutes one of the key tools of practical police and border cooperation in the European Union. In combating migration-related crime, this instrument is of significant operational importance, as it makes it possible to quickly link personal data, information on documents, migration routes and criminal connections. As a result, the activities of services are not limited solely to reacting to individual cases of

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[565] See: European Commission, Schengen Information System, *Migration and Home Affairs*, https://home-affairs.ec.europa.eu/policies/schengen/schengen-information-system_en [accessed 24 April 2026].
[566] See: European *Commission, What is SIS and how does it work?* Migration and Home Affairs, https://home-affairs.ec.europa.eu/policies/schengen/schengen-information-system/what-sis-and-how-does-it-work_en [accessed 24 April 2026].

illegal border crossing, but can lead to the identification and reconnaissance of entire smuggling networks.

From the institutional perspective, an important instrument strengthening the ability of the Polish Police to counter and combat cross-border crime, including threats associated with illegal migration, is its participation in international police cooperation mechanisms, in particular within the structures of Interpol and Europol.

The *International Criminal Police Organization*, commonly known as Interpol, is a key institution of international police cooperation. This organisation was established in 1923 in Vienna under the name of the International Criminal Police Commission, and its fundamental objective was to create permanent mechanisms for cooperation between the police services of Member States in combating crime extending beyond the borders of a single state. Currently, Interpol, which brings together 196 Member States, constitutes a global platform for the exchange of police information, enabling cooperation between national law enforcement authorities both among themselves and with the General Secretariat of the organisation. In this sense, Interpol serves as an institutional and information intermediary, supporting the identification of perpetrators of crimes, locating persons sought and coordinating actions taken in matters of a cross-border nature.[567]

Poland's experience connected with migration crises has confirmed the particular importance of Interpol's databases and registers in combating crime linked to migration. These tools, which include the *Nominal* database (personal data), the *SLTD* database (stolen and lost travel documents), the *DNA Gateway* (data on DNA samples of individuals), and the *FTF* database, which contains information on terrorist organisations, their membership and methods of operation, substantially strengthen the operational and information potential of the Police in the area of migration-related security.

Interpol's information exchange system is based on a global communications network that enables Member States to quickly transmit police information and gain access to the organisation's databases. A significant part of operational cooperation – including the

[567] INTERPOL, *Member countries*, https://www.interpol.int/en/Who-we-are/Member-countries [accessed 24 April 2026].

exchange of data on persons sought, documents, terrorist threats and the modi operandi of criminal groups – is carried out via this network. Of particular importance in this system are Interpol notices, i.e. international communications, warnings or requests for specific actions to be taken by the law enforcement authorities of Member States. In the context of cross-border crime and threats related to migration, the most important are primarily: the Red Notice, concerning persons sought for arrest and extradition; the Blue Notice, used to establish the whereabouts or identity of a person; the Green Notice, warning about persons who may pose a threat due to previous criminal activity; the Orange Notice, referring to serious and imminent threats, including terrorist threats; the Purple Notice, containing information on the modi operandi of perpetrators or criminal groups; and the special Interpol–United Nations Notice, concerning persons linked to terrorism. This mechanism allows the Police and other services to rapidly obtain and transmit information relevant to the identification of individuals, counteracting threats and conducting international searches.[568]

Another important institution of international police cooperation is the European Police Office – Europol. This is an EU law enforcement agency whose basic task is to support the law enforcement authorities of European Union Member States in counteracting and combating the most serious forms of crime, including organised crime, cross-border crime and terrorist crime. Due to its central place in the European security system, Europol serves as a platform for the exchange of criminal information, a centre for criminal analysis and a hub of specialist knowledge in the field of prosecution. Its activity covers both operational support provided to law enforcement authorities in Member States and the development of analyses, reports and tools enabling more effective identification and combating of criminal threats. Of particular importance is the work of Europol's criminal analysts, who, using advanced IT and analytical tools, support national services in identifying links between perpetrators, criminal groups, locations of incidents and methods of operation. In this perspective, Europol constitutes one of the

[568] B. Kołdys, *BMWP KGP — Krajowe Biuro Interpolu*, „Kwartalnik Policyjny" 2014, No. 4, p. 18.

key elements of institutional police support in the area of European security and combating cross-border crime.[569] Poland became a full member of Europol in November 2004.

Poland's participation in Europol's structures is significant in both the operational and institutional dimensions, as it strengthens the ability of national law enforcement authorities to counter and combat organised and cross-border crime, as well as threats related to illegal migration. In accordance with the organisational regulations of the National Police Headquarters, the tasks connected with organising and coordinating undertakings resulting from Poland's membership in Europol are performed by the International Police Cooperation Bureau of the National Police Headquarters (KGP). Through this Bureau, the KGP, acting as the Europol National Unit, coordinates cooperation among national law enforcement authorities, including the Police, the Border Guard, the Internal Security Agency, the Central Anti-Corruption Bureau and the Customs and Fiscal Service. An important element of this system are the liaison officers seconded to Europol, who serve as national points of contact, facilitating day-to-day information exchange, coordination of activities and the transmission of data between Europol and the competent national services. The benefits arising from Poland's participation in Europol manifest themselves primarily in the ability to use a wide range of operational tools and services provided by the agency. Of particular importance are operational analyses, including analytical work files covering key areas of international organised crime in the European Union. Access to Europol's information systems also remains an important instrument; these systems enable efficient information exchange, identification of links between cases, persons and criminal groups, and support for activities conducted by national law enforcement authorities. Consequently, Poland's participation in Europol's structures increases the effectiveness of the Police and other services in identifying, preventing and combating cross-border crime. In this context, particular importance is taken on by the initiative called the *European Multidisciplinary*

[569] European Union, Europol – law enforcement cooperation, https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/europol_en [accessed 24 April 2026].

Platform Against Criminal Threats (EMPACT), which constitutes a practical complement to the cooperation carried out through Europol. This is an EU multidisciplinary platform for cooperation among Member States' law enforcement authorities, Europol and other institutional partners, aimed at combating the most serious forms of organised and cross-border crime. EMPACT is not a separate agency but a mechanism for coordinating strategic, analytical and operational actions, within the framework of which Member States jointly identify the most important threats, set priorities and carry out coordinated actions against criminal groups operating within the European Union.

Extremely important from the point of view of combating cross-border crime connected with illegal migration is the cooperation of Polish services with the European Border and Coast Guard Agency (Frontex). Initially established as the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, with responsibility for the control and protection of external borders remaining with the Member States, Frontex now supports EU Member States and Schengen-associated countries in managing external borders and counteracting cross-border crime. Cooperation with this agency includes, inter alia, coordination of operational activities, technical and expert support, training of officers, risk analyses, threat monitoring and assistance in organising the return of irregular migrants.[570] From Poland's perspective, participation in Frontex mechanisms strengthens the capacity of national services to respond to migratory pressure, identify threats at the European Union's external borders and counteract criminal phenomena accompanying illegal migration, such as migrant smuggling, trafficking in human beings or document forgery.

The international activity of the Polish Police is not limited solely to participation in multilateral structures. Bilateral relations, developed on the basis of agreements and arrangements concluded with the police formations of other states, are also of significant importance. In practice, this cooperation includes above all information exchange and

[570] Council Regulation (EC) No. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25 November 2004, p. 1.

joint undertakings taken up particularly in border areas. An important role in maintaining day-to-day contacts with foreign partners is played by liaison officers, who facilitate the flow of information and support the coordination of actions between the competent services. The institution of the liaison officer serves primarily to streamline the direct exchange of information between the Polish Police and foreign services responsible for ensuring public order and security. The importance of this form of cooperation is particularly visible in the area of combating migration-related crime, because liaison officers facilitate the ongoing flow of information between the services competent for the countries of origin, transit and destination of migrants, and also support the coordination of operational actions in matters of a cross-border nature. Liaison offices of the Polish Police operate in 14 countries: Ukraine, Germany, France, the United Kingdom, Turkey, Norway (with extended accreditation to Sweden), Hungary, Italy, Spain, Georgia, the United States, Croatia, Lithuania and the Netherlands.[571] The basic tasks of liaison officers include transmitting information on:

- events of a terrorist nature and possible links between those events and Poland;
- experiences in combating organised crime, in particular that connected with illegal migration, including new trends, new modi operandi of perpetrators and new phenomena in this area;
- international criminal groups active in the host state and the impact of that activity on crime threats in Poland;
- Polish citizens who are both victims and perpetrators of crimes.[572]

Migration-related crime as a significant threat and challenge to Poland's security

The migration crisis that began in 2015 became one of the key factors influencing a change in the perception of state security in the contemporary international

[571] Based on data from: Polish Police, *Oficerowie łącznikowi Policji*, https://info.policja.pl/inf/wspolpraca-miedzynarod/oficerowie-lacznikowi/52161%2COficerowie-lacznikowi-Policji.html [accessed 24 April 2026].
[572] Ibid.

environment. In the case of Poland, whose eastern border is at the same time the external border of the European Union and the Schengen area, not only traditional challenges connected with controlling migration flows, protecting borders and counteracting cross-border crime have gained importance, but also threats of a hybrid nature. The most visible manifestation of these remains the migratory pressure on the Polish-Belarusian border, used as a tool of political pressure, internal destabilisation and testing of the resilience of state institutions.

Based on the author's professional experience resulting from serving in the structures of the Polish Police and carrying out tasks related to combating crime consisting in organising illegal crossing of the EU's external border via the Polish-Belarusian border, it can be concluded that the current migratory pressure remains to a large extent linked to the consequences of the migration crisis that began in 2015. This fact is confirmed by the analysis of statements made by detained migrants, whose intention was to reach relatives or family members who had entered the territory of European Union states in earlier migration waves.

Thus, the actions of the Russian Federation and Belarus, consisting in the instrumental use of migration as a tool of hybrid pressure on EU states, constitute a mechanism that deepens and renews the effects of the crisis started in 2015. This concerns primarily citizens of states affected by armed conflicts, ethnic persecution, political destabilisation or humanitarian crises, in particular Syria, Iraq, Somalia, Afghanistan and Iran.[573] The whole phenomenon is accompanied by the development of organised smuggling crime, encompassing the recruitment of migrants, organising their flights to Belarus – sometimes using connections through the territory of the Russian Federation – and then coordinating the illegal crossing of the Polish-Belarusian border. Having entered Polish territory, migrants are taken over by drivers recruited from among persons legally residing in EU states, whose task is to transport them further to Western

[573] S. Przybył, *SG: W ciągu miesiąca obywatele 40 państw próbowali przekroczyć granicę polsko-białoruską*, Interia, 9 August 2022, https://wydarzenia.interia.pl/kraj/news-sg-w-ciagu-miesiaca-obywatele-40-panstw-probowali-przekroczy,nId,6211628 [accessed 20 April 2026].

Europe. Poland serves primarily as a transit country, while the main destination countries remain Germany, the Scandinavian states and the United Kingdom. The essence of the practice is crossing the external border of the European Union, which enables further movement within the Schengen area or continuation of the journey to the destination countries with the support of smuggling networks. According to migrants' accounts, the cost of organising such a route ranged from EUR 10,000 to 15,000.[574] This practice is carried out by organised smuggling groups operating both in the migrants' countries of origin and along the migration routes, using electronic means of communication and social media for recruitment, communication and coordination of activities.[575]

Organising migrant smuggling is not limited solely to enabling the illegal crossing of the border. This activity is often accompanied by other forms of crime. According to data from the aforementioned report on the organisation of migrant smuggling, over 20% of crimes related to this kind of criminal activity constitute trafficking in human beings. Migrants become victims of sexual and labour exploitation crimes.[576]

Practical effects of international police cooperation in counteracting migration-related crime

An example of the tangible effects of the Polish Police's cooperation with Europol and Interpol was the dismantling in 2022 of an organised criminal group engaged in smuggling migrants across the Polish-Belarusian border. The rapid and extensive exchange of operational information and the analysis of the network of connections between members of the smuggling group were of key importance in this case. As a result of the actions taken, a mechanism was uncovered that involved the transfer of at least 660 foreigners who illegally crossed the border and were transported onto Polish territory.[577]

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[574] A. Ziemska, M. Stańczyk and B. Figaj, *Największa, międzynarodowa akcja Europolu, polskiej policji i SG. Rozbito szajkę przemycającą migrantów do UE*, Polish Press Agency, 15 July 2022, https://www.pap.pl/aktualnosci/news%2C1373594%2Cnajwieksza-miedzynarodowa-akcja-europolu-polskiej-policji-i-sg-rozbito [accessed 24 April 2026].

[575] Ibid.

[576] Europol and INTERPOL, *Migrant Smuggling Networks: Joint Europol-INTERPOL Report, Executive Summary*, May 2016, pp. 9–10.

[577] *Największa, międzynarodowa akcja Europolu, polskiej policji i SG. Rozbito szajkę przemycającą migrantów do UE*, Polish Press Agency, 15 July 2022, https://www.pap.pl/aktualnosci/news%2C1373594%2Cnajwieksza-miedzynarodowa-akcja-europolu-polskiej-policji-i-sg-rozbito [accessed 24 April 2026].

Poland makes extensive use of the experience, resources and instruments of Frontex, particularly in the area of organising the return of foreigners who do not have the right to stay within the territory of European Union states. The importance of this cooperation stems from the fact that the agency possesses a developed return support system, covering operational and technical assistance at various stages of the return procedure for irregular migrants – from preparatory actions, through coordination and implementation of return operations, to post-arrival support in the country of origin.[578] However, it is necessary to point to a broader dimension of cooperation with the agency, which is carried out not only operationally but also in the training and institutional fields. This is confirmed by the agreement signed on 27 June 2025 between the Polish Minister of the Interior and Administration and the Frontex Agency regarding the implementation of the Training Centre of the Frontex European Border and Coast Guard Academy in Warsaw. The establishment of such a centre in a state that hosts the headquarters of Frontex strengthens Poland's position as an important link in the European border management system, while at the same time contributing to raising the qualifications of officers responsible for border protection, counteracting illegal migration and combating cross-border crime[579].

The above examples are selective and illustrate only a part of the effects of the joint actions undertaken by Polish police services within the framework of international cooperation aimed at combating crime linked to illegal migration. From a systemic perspective, this cooperation encompasses a range of instruments that can be captured in three key dimensions: informational, operational and training-related. Poland's experience since its accession to the European Union indicates that the benefits resulting from participation in such mechanisms manifest themselves primarily in access to global and European information exchange systems, the ability to participate in operations

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[578] Frontex, *Return operations*, https://www.frontex.europa.eu/return-and-reintegration/return-operations/returns/ [accessed 24 April 2026].

[579] Ministry of the Interior and Administration, *Minister Tomasz Siemoniak podpisał porozumienie z Agencją Frontex w sprawie wdrożenia Ośrodka Szkoleniowego Frontex w Warszawie*, *Gov.pl*, 27 June 2025, https://www.gov.pl/web/mswia/minister-tomasz-siemoniak-podpisal-porozumienie-z-agencja-frontex-w-sprawie-wdrozenia-osrodka-szkoleniowego-frontex-w-warszawie [accessed 24 April 2026].

coordinated by international organisations and agencies, and the use of their training, analytical and expert potential.

Conclusion

The current geopolitical situation and Poland's experience indicate that migration crises constitute one of the most serious challenges to state security, especially in the context of the ongoing Russo-Ukrainian war and the destabilising actions undertaken on the European Union's eastern border. Poland, due to its geopolitical location and the fact that its eastern border is at the same time the external border of the European Union and the Schengen area, finds itself in a particularly vulnerable position. The persistent migratory pressure on the Polish-Belarusian border, supported and instrumentalised by the Belarusian and Russian regimes, shows that migration can be used as a tool of hybrid actions aimed at destabilising the internal situation of the country, but also of the entire EU area.

Poland's accession to the EU undoubtedly contributed to dynamic economic development and a rise in living standards, and as a result, Poland is becoming an increasingly attractive destination and transit country for migrants, which may entail an increased risk of the occurrence of crime linked to illegal migration, including the organisation of illegal border crossings, trafficking in human beings, document forgery or the activity of organised criminal groups. For this reason, the relevant units of the Police and other services responsible for state security should be prepared both for an increase in the scale of such phenomena and for their increasingly complex, cross-border nature. Contemporary experience in security management indicates that effective counteraction of these threats requires above all efficient, multidimensional and as broad as possible international cooperation, based in particular on rapid information exchange, coordination of operational activities and the use of common analytical tools.

In view of the above, close cooperation between the Polish Police and international organisations and agencies dealing with the fight against cross-border crime, in particular

Interpol, Europol and Frontex, remains necessary. This cooperation should be, on the one hand, linked to the priorities of the Polish Police, its organisational capabilities and the current needs arising from the migration situation, and on the other hand, it should take into account the strategies and operational mechanisms of the indicated entities in the field of counteracting illegal border crossing and migration-related crime. The Polish Police has the legal and organisational foundations to undertake actions in this area, but further increasing effectiveness requires fuller use of international databases, information exchange systems, international search mechanisms and the analytical and training potential of foreign partners. In this sense, international police cooperation constitutes one of the key conditions for responding effectively to threats resulting from illegal migration and the cross-border crime associated with it.

In summary, the conducted analysis makes it possible to state that Poland's effectiveness in international police cooperation aimed at combating migration-related crime depends above all on the degree of integration of the actions of the Police, the Border Guard, Europol, Interpol and Frontex, as well as on the efficiency of information exchange, criminal analysis, operational coordination and the protection of the European Union's external border. Poland's experience related to migration crises, in particular the persistent pressure on the Polish-Belarusian border, which should be perceived in terms of a hybrid threat, can serve as a practical reference point for further improving European security mechanisms.

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HARMONISATION OF LAW IN THE EUROPEAN UNION ON THE EXAMPLE OF POLAND

Keywords: harmonisation of law, European Union law, European integration, constitutional law, criminal law, private law

1. Introduction

The harmonisation of law in the European Union is one of the fundamental tools for implementing European integration. Its essence lies in approximating the legal systems of the Member States through the establishment of common regulatory standards. This process does not mean full unification of the law, but rather the creation of a legal framework enabling the functioning of a single market and ensuring a minimum level of legal protection.

In the case of Poland, the harmonisation of law gained particular significance after accession to the European Union in 2004. The adaptation process encompassed both the implementation of the *acquis communautaire* and the gradual adjustment of law application practice to EU standards[580].

Harmonisation of law may take various forms, from minimum harmonisation to full harmonisation. Its basic instruments are:

[580] See more broadly: C. Mik, *Metodologia implementacji europejskiego prawa wspólnotowego w krajowych porządkach prawnych* [Methodology of implementation of European Community law in national legal orders] [in:] C. Mik (ed.) *Implementacja prawa integracji europejskiej w krajowych porządkach prawnych* [Implementation of European integration law in national legal orders], Toruń 1998, pp. 28-29.

- directives, which require implementation into national law;
- regulations, which are directly applicable;
- decisions and recommendations, which influence legislative and judicial practice.

A key role in the harmonisation process is played by the case law of the Court of Justice of the European Union (CJEU), which develops the principles of primacy and direct effect of EU law. These principles determine the relationship between national law and EU law, influencing the scope and effectiveness of harmonisation.

At the national level, the practice of law application by courts, including the Supreme Court and the Supreme Administrative Court, which act as intermediaries in the harmonisation process through interpretation consistent with EU law, is of significant importance.

2. Harmonisation of Law in Poland – A Sectoral Approach

The most advanced level of harmonisation occurs in the area of private law, especially in the field of consumer protection. Poland has implemented numerous directives concerning, inter alia:

- consumer right,
- distance contracts,
- liability for defective products[581].

The effect of these activities is a significant unification of consumer protection standards throughout the EU, which fosters the development of the internal market. In Poland, regulations in this area have been adapted to EU rules, in particular Articles 101 and 102 TFEU[582]. An essential role is played by the cooperation of national authorities

[581] An example is the implementation of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Text with EEA relevance) OJ L 304, 22.11.2011, p. 64, which significantly influenced the solutions adopted in the Polish Act of 30 May 2014 on consumer rights (Journal of Laws 2014, item 827) and the European Parliament resolution of 22 May 2012 on a strategy for strengthening the rights of vulnerable consumers (2011/2272(INI)) — OJ C 264 E, 13.9.2013, p. 1.
[582] See more broadly: Application of EU competition rules – best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU [at:] https://eur-lex.europa.eu/PL/legal-content/summary/implementing-

with the European Commission within the framework of the European Competition Network.

The harmonisation of criminal law within the European Union constitutes an example of so-called functional harmonisation, the aim of which is not the unification of the criminal systems of the Member States, but ensuring the effectiveness of prosecuting cross-border crime. The doctrine emphasises that criminal law remains one of the most sensitive areas of state sovereignty, which limits the scope of EU competences.

It should be emphasised that an important stage in the development of harmonisation was the replacement of framework decisions (characteristic of the EU's third pillar before the Lisbon Treaty) with directives, which now constitute the basic regulatory instrument in this area. Criminal directives define minimum standards of criminalisation, leaving Member States freedom as to the form and means of their implementation[583]. n practice, this leads to a partial convergence of legal systems while preserving their structural distinctiveness. The harmonisation of criminal law is of a limited and selective nature, and the European Union's competences in this respect derive from Article 83 TFEU. It enables the establishment of minimum rules concerning the definition of criminal offences and sanctions for certain crimes, such as:

- terrorism[584],
- traffickin in human beings[585],

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eu-competition-rules-best-practices-for-the-conduct-of-proceedings-concerning-articles-101-and-102-of-thetfeu.html [accessed: 20.04.2026].

[583] Harmonisation of criminal law in the EU P7_TA(2012)0208 - European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)) - OJ C 264 E, 13.9.2013, p. 5.

[584] Exemplary legal acts concerning the fight against terrorism in the European Union: Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism — OJ L 164, 22.6.2002; Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA — OJ L 88/6, 31.3.2017; Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime — OJ L 210, 6.8.2008; and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime — OJ L 210, 6.8.2008. See more broadly: M. Łuczkowska, *Działania Unii Europejskiej w zakresie zwalczania terroryzmu* [Actions of the European Union in countering terrorism] [in:] "Rocznik Bezpieczeństwa Międzynarodowego" Vol. 10 No. 2(216).

[585] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA — OJ L 101, 15.4.2011; see more broadly: M. Pawlus, *Zwalczanie handlu ludźmi w Unii

– cybercrime[586].

In the doctrine of criminal law, it is argued that harmonisation must remain in accordance with the fundamental principles of this branch of law, such as: the principle of *nullum crimen sine lege*, the principle of proportionality of penalties, and the principle of guilt. The European Union "recognises the importance of other general principles of criminal law, such as:

- the principle of guilt (*nulla poena sine culpa*), according to which penalties are provided only for intentional acts or, in exceptional cases, for acts committed through serious negligence;
- the principle of legal certainty (*lex certa*): the elements of a criminal offence must be formulated precisely so that an individual is able to foresee for which behaviours they may face criminal liability;
- the principle of non-retroactivity and the principle of *lex mitior*: the application of exceptions to the prohibition of retroactivity is permitted only when it is to the benefit of the offender;
- he prohibition of double jeopardy (*ne bis in idem*), according to which Member States are prohibited from punishing or conducting criminal proceedings again for an offence for which the person has already been lawfully convicted or acquitted by a final judgment in another Member State;
- the principle of the presumption of innocence, according to which every person charged with a criminal offence is considered innocent until proven guilty by a court of law"[587].

Europejskiej – aktualne tendencje i wyzwania* [Combating trafficking in human beings in the European Union – current trends and challenges], "The Prison Systems Review", 2023, vol. 121, pp. 723–738.

[586] Key EU documents concerning countering cybercrime: Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) — OJ L 333, 27.12.2022; Regulation (EU) 2025/38 of the European Parliament and of the Council of 19 December 2024 establishing measures to strengthen solidarity and capacities in the Union to detect, prepare for and respond to cyber threats and incidents and amending Regulation (EU) 2021/694 (Cyber Solidarity Act) — OJ L, 2025/38, 15.1.2025; and Regulation (EU) 2024/2847 of the European Parliament and of the Council of 23 October 2024 on horizontal cybersecurity requirements for products with digital elements and amending Regulations (EU) No 168/2013 and (EU) 2019/1020 and Directive (EU) 2020/1828 (Cyber Resilience Act) — OJ L, 2024/2847, 20.11.2024.

In Poland, the implementation of these regulations leads to a gradual unification of definitions of offences and sanctions, while the autonomy of the national legislator is preserved.

The case law of the Court of Justice of the European Union indicates that Member States, when implementing EU law, are obliged to ensure its effectiveness, which sometimes leads to tensions between EU standards and national traditions of criminal law.

One of the most sensitive fields of harmonisation remains constitutional (systemic) law, because it concerns the fundamental principles of state organisation, its sovereignty, and the relationship between the organs of power. The European Union does not have direct competences to interfere in the constitutional structures of the Member States, but it influences them through:

- the rule of law principles of Article 2 TEU[588],
- the protection of fundamental rights,
- institutional control mechanisms[589].

The rule of law principle constitutes one of the main mechanisms of EU influence on the constitutional systems of the Member States. Mechanisms such as the procedure under Article 7 TEU or budget conditionality lead to the indirect harmonisation of constitutional standards[590].

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[587] European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)), p. 10.

[588] See more broadly: https://www.europarl.europa.eu/factsheets/pl/sheet/146/the-rule-of-law-in-the-eu [accessed: 20.04.2026].

[589] Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 — OJ L 347, 20.12.2013.

[590] In accordance with the rule of law principle, all public authorities must always act within the limits set by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts. The rule of law principle is enshrined in Article 2 of the Treaty on European Union and constitutes a cornerstone of the European Union. The rule of law guarantees the uniform application of EU law in all Member States and ensures predictability for citizens. See more broadly: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_pl [accessed: 20.04.2026].

The literature emphasises that this is a form of "soft" harmonisation, based more on political and institutional pressure than on classic legislative instruments.

In Poland, the relationship between national law and EU law in this area is the subject of intense doctrinal and judicial debate. Disputes concerning the scope of the primacy of EU law and the competences of national courts are of particular significance. Crucial are judgments of the Constitutional Tribunal, which indicate the supremacy of the Constitution of the Republic of Poland in the domestic legal order. Thus, a tension arises between: the principle of primacy of EU law and the principle of the supremacy of the constitution.

3. Challenges of Harmonisation of Law

The challenges of harmonisation of law in the European Union are multidimensional – encompassing the political, legal, institutional, and practical spheres. One of the fundamental problems of harmonisation is the conflict between preserving the sovereignty of Member States and the necessity of complying with common EU rules. According to the principle of conferral (Article 5 of the Treaty on European Union), the Union acts only within the limits of the competences conferred upon it by the Member States. At the same time, the development of EU law – especially through the principles of primacy and direct effect – leads to a real limitation of the legislative autonomy of states[591].

Harmonisation of law largely takes place through directives, which require implementation into national law. This process generates numerous problems:

- Member States often fail to meet transposition deadlines or implement provisions incompletely, resulting in infringement proceedings being initiated by the European Commission (Article 258 TFEU);
- differences in legal culture, administrative structure, and level of institutional development mean that the same norms are implemented in different ways. As a

[591] A key role was played here by the Court of Justice of the European Union, which, in its case law (e.g. *Costa v. ENEL*, *Internationale Handelsgesellschaft*), shaped the principle of the primacy of EU law over national law.

result, formal harmonisation (at the level of regulations) does not always mean actual harmonisation (at the level of law application practice).

Even with uniform regulations, there is a high risk of their differing interpretation in the Member States. An instrument limiting these divergences is the preliminary ruling procedure (Article 267 TFEU), within which national courts refer questions to the Court of Justice of the European Union concerning the interpretation of EU law[592].

One of the most complex challenges of harmonisation are tensions in the relationship between national courts (especially constitutional courts) and the CJEU.

4. Conclusion

The harmonisation of law in the European Union is a dynamic and multidimensional process. On the example of Poland, it can be observed that its scope varies depending on the area of law.

The greatest degree of harmonisation occurs in economic areas, while in criminal and constitutional law it is of a limited nature.

This process brings numerous benefits, including increased efficiency of the internal market and strengthened protection of citizens' rights, but it also poses significant challenges related to preserving the sovereignty of Member States.

While instrumental harmonisation (aimed at the effectiveness of prosecution) dominates in criminal law, in constitutional law we are dealing with the harmonisation of values and standards, implemented mainly through case law and institutional mechanisms.

This process remains one of the most complex and controversial elements of European integration, particularly from the perspective of states such as Poland.

[592] The Court of Justice of the European Union has jurisdiction to give preliminary rulings concerning: the interpretation of the Treaties; the validity and interpretation of acts of the institutions, bodies, offices, or agencies of the EU; the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Consequently, the harmonisation of law remains one of the key elements of the functioning of the contemporary legal system in Europe and will play an important role in the further development of European integration.

The harmonisation of law in the EU is a dynamic process, but burdened with significant limitations. The most important problems boil down to the tension between unity and diversity of legal systems.

From a scientific perspective, it can be assumed that these challenges are not merely an obstacle, but also a natural element of the integration process – reflecting constitutional pluralism and the multi-level character of the European Union legal system.

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NAVIGATING THE EUROPEAN HIGHER EDUCATION INTEGRATION PROCESS: THE CASE OF THE UNIVERSITY OF KALISZ

Abstract:

This article provides an in-depth analysis of the academic dimension of European integration, utilizing the University of Kalisz as a fundamental case study of a key regional teaching and research center. The author examines the role of the university as a platform for knowledge exchange and a specific microcosm of challenges, where tensions between local identity and EU standardization requirements converge.

Within the framework of systemic security and institutional stability analysis, the presentation explores the dialectic of opportunities and threats arising from participation in the European Higher Education Area (EHEA). On one hand, curriculum harmonization processes and increased student mobility are viewed as factors building the resilience and competitiveness of Polish academia; on the other, critical structural risks are identified.

These primary threats include the brain drain phenomenon, which may weaken the intellectual potential of the region, and increasing bureaucratic burdens that determine the adaptive efficiency of the institution.

The objective of this article is to outline strategic directions for navigating integration processes in a manner that maximizes the benefits of European synergy while minimizing risks to the stability of the national and regional education systems.

Keywords:

University of Kalisz, European Higher Education Area (EHEA), academic integration, educational mobility, curriculum harmonization

Introduction

The contemporary paradigm of European higher education has been fundamentally defined by the long-term Bologna process, whose overarching and strategic goal has become the completion of the European Higher Education Area (EHEA). Academic integration in this modern understanding has ceased to be perceived merely as an auxiliary tool for cultural exchange or symbolic continental unity, instead becoming a key, structural element of building an advanced knowledge-based economy and an essential factor in strengthening the socio-economic cohesion of the whole of Europe. Through the systematic harmonization of study structures, the widespread introduction of the ECTS credit system, and the implementation of coherent qualifications frameworks, the aim has been not only to facilitate the mobility of students and academic staff but, above all, to create a fully unified, transparent market for educational services. Such a market, operating on a continental scale, is intended to possess a high capacity for real competition with dominant educational systems, such as North American models or dynamically developing Asian centers. In this complex context, the university institution is undergoing an unprecedented evolution, shifting from the traditional role of a national, hermetic teaching institution towards a modern, supranational node that actively mediates the global flow of information, innovation, and skilled human capital.

The main research problem that focuses attention in this analysis is the identification and multi-faceted assessment of the tension arising at the interface between top-down EU standardization processes and the specific conditions and needs of regional academic centers. The University of Kalisz, functioning as a significant and fundamental didactic and research center of key regional importance, constitutes in this approach a highly representative case study. It allows for the analysis of institutions that, in their daily practice, must confront a deeply rooted local identity and social mission with the

rigorous, often technocratic requirements imposed by EU structures. The key research question, therefore, concerns the real possibility of developing a strategic management model that would allow for full, fruitful participation in the European scientific circuit without the simultaneous loss of valuable programmatic autonomy. It is crucial that these processes do not lead to a drastic weakening of institutional stability, a risk that is particularly high in the case of centers located peripherally relative to dominant metropolitan academic hubs. An in-depth analysis of this issue therefore requires consideration not only of the theoretical assumptions of integration but also of the hard specifics of the local labor market and the unique role of the university as the guardian and guarantor of the intellectual security of the entire region.

This paper posits the thesis that deep academic integration within the structures of ECTS and EHEA is a completely inevitable process and, from the perspective of maintaining the global competitiveness of Polish science, even necessary. Nevertheless, its actual implementation, if carried out without the simultaneous implementation of precise and effective risk management mechanisms, carries a number of objective and serious threats to the stability of regional centers. The most significant and destructive of these risks is the phenomenon of "brain drain," which, under conditions of complete, unrestricted mobility and the absence of administrative barriers, can lead to an extremely asymmetric outflow of the most talented individuals – both students and experienced researchers – to centers with higher international prestige or significantly better funding. Another burdensome factor is the constantly growing bureaucratic pressure that determines the actual adaptive efficiency of the institution. Without active and conscious counteraction to these negative tendencies, through the systematic building of local institutional resilience and the skillful exploitation of European synergy effects, integration processes can paradoxically lead to the erosion of the systemic security of regional education. Instead of becoming the expected impulse for permanent and sustainable development, poorly managed integration may deepen disparities and lead to the marginalization of centers of key importance to local communities.

The Evolution of the European Higher Education Area

The evolution process of Polish higher education from the fall of communism to the present day constitutes a multi-dimensional background for analyzing the current position of the University of Kalisz. This transformation was not merely an administrative change but a profound axiological and structural metamorphosis, which led to a transition from an elite and highly centralized model towards a mass, market-oriented system, and ultimately – one fully integrated into the European educational space.

The historical starting point, marked by the turn of 1989, was characterized by the pursuit of regaining full autonomy for universities and freeing science from the ideological straitjacket imposed by the previous system. The 1990 Law on Higher Education opened the way for educational pluralism, which resulted in an unprecedented explosion of the private sector on a European scale and a rapid increase in the gross enrollment ratio. In this pioneering period of transformation, universities in Poland became key actors in building a democratic society; however, this process took place under conditions of chronic underfunding and the need to rapidly adapt curricula to the requirements of the emerging free market. Regional universities, often originating from former vocational or pedagogical schools, began to play a crucial role in the democratization of access to knowledge, often becoming the only modernization centers in areas distant from metropolises.

A key turning point in this evolution was Poland's accession to the Bologna Process in 1999 and subsequent accession to the European Union in 2004. These events forced a departure from the traditional master's degree model of education in favor of a three-cycle system, aimed at increasing the transparency and comparability of diplomas across the continent. The introduction of the National Qualifications Framework and quality assurance mechanisms was a response to the challenges associated with mass education, which – although socially desirable – carried the risk of lowering academic standards. It was during this period, on the foundation of dynamically developing regional structures,

that the modern ambitions of centers such as Kalisz crystallized, which began to aspire to the role of full-fledged universities, combining teaching with advanced research and implementation activities.

The contemporary stage of development, determined by the reform of science and higher education (the so-called Constitution for Science of 2018) and progressive digitization, presents universities with challenges of a global nature. Today's universities must function in the reality of permanent evaluation, internationalization, and intense competition for research grants and prestige in rankings. For the University of Kalisz, this process means the necessity of finding its place within the "dialectic of integration" – on one hand, the university benefits from broad access to European research networks, structural funds, and Erasmus+ exchanges; on the other, it must confront the pressure of competition from global academic brands. This evolution shows that the contemporary mission of a regional university goes beyond simply training personnel; it is a mission to build the resilience of the local innovation system under conditions of high volatility and uncertainty, which makes the University of Kalisz an important micro-element in the complicated architecture of the European Higher Education Area. The analysis of this path – from regaining academic freedom, through mass education, to the current struggle for quality and research excellence – allows us to understand why maintaining a balance between locality and globalization is today the most important strategic challenge for Polish science.

The evolutionary process that led to the creation of today's University of Kalisz is inextricably linked with the history of the State Higher Vocational School (PWSZ) in Kalisz, established in 1999 as one of the first institutions of its kind in Poland. The establishment of the PWSZ was a direct response to the needs of a dynamically changing region which, in the era of political transformation, urgently needed modern medical, technical, and administrative personnel. For over two decades, this institution underwent a systematic metamorphosis – from a strictly vocational profile, through obtaining subsequent academic rights as the Kalisz Academy, to transformation into a full-fledged

University. This development path reflects the broader aspirations of Polish higher education towards the decentralization of science and the building of strong regional research centers capable of effectively competing in the quality of education with traditional academic centers.

The foundation of the modernity of such an institution has been its broad opening to the European space, realized primarily through the Erasmus (now Erasmus+) program. This program, initiated by the European Community back in the 1980s, has become the most recognizable symbol of academic integration, enabling millions of students and lecturers to complete part of their studies or internships at foreign partner universities. In the context of the University of Kalisz, active participation in international exchange programs has ceased to be merely an addition to the didactic offer and has become a strategic mechanism for knowledge and technology transfer. Erasmus+ acts as a catalyst for change, forcing not only the adaptation of curricula to ECTS standards but, above all, shaping attitudes of openness, multiculturalism, and innovation, which are crucial for functioning in the globalized world of science.

At this point, the analysis returns to the key research problem, which is the aforementioned dialectic of opportunities and threats arising from participation in the European Higher Education Area. On one hand, curriculum harmonization processes and intensified mobility within the Erasmus+ program are seen as factors building resilience and high competitiveness for Polish science internationally. On the other hand, a thorough analysis of systemic security forces the identification of critical structural risks accompanying these processes. As indicated in the assumptions, primary threats include the phenomenon of brain drain, which under conditions of asymmetric talent flow can lead to the weakening of the region's intellectual potential. Furthermore, increasing bureaucratic burdens resulting from the need for EU reporting and standardization determine the actual adaptive efficiency of the institution. Thus, the aim of this analysis is to outline strategic directions that will allow the University of Kalisz to navigate

integration processes in a way that maximizes the benefits of European synergy while minimizing threats to the stability of the national and regional education system.

An analysis of the integration dynamics of the University of Kalisz within the European Higher Education Area (EHEA) requires adopting a dialectical perspective, allowing for the simultaneous illumination of processes that build institutional potential and those that generate structural risks. Firstly, the multi-dimensional synergy resulting from academic mobility mechanisms and curriculum harmonization should be indicated. Participation in the European scientific circuit, realized through international exchange programs, is not merely an addition to didactic activities but a factor directly determining the resilience and competitiveness of Polish science at the regional level. This integration creates a unique forum for the exchange of ideas, transforming the university into a specific microcosm where local research traditions meet global innovation standards. Thanks to the implementation of European quality frameworks in education, centers such as the University of Kalisz gain access to modern knowledge transfer and international research networks, allowing them to reduce the distance separating them from metropolitan academic centers and strengthening their role as key links in the intellectual security system of the region. Complementing the physical mobility of students and staff is the concept of *Internationalisation at Home* (IaH), increasingly emphasized in European Commission documents. It involves the deliberate integration of intercultural and global dimensions into the formal and informal curriculum within the home university, without the need for travel abroad. For the University of Kalisz, an instrument for implementing IaH could be, for example, the use of virtual exchange (COIL – *Collaborative Online International Learning*) within European university alliances. Such actions not only democratize access to international competencies (including students with lower economic mobility) but also reduce migration pressure, as the attractiveness of international education is partially satisfied locally. As a result of network synergy, the strengthening of the local didactic offer follows, which directly translates into increased institutional resilience and limits one of the channels of brain drain.

Nevertheless, standardization processes generate significant tensions between the requirements of EU uniformization and the necessity to preserve local identity. One of the most critical threats identified during the systemic stability analysis is the phenomenon of brain drain, which under conditions of full, unrestricted human capital mobility takes the form of an asymmetric outflow of the most talented individuals to centers with higher prestige or better funding. This phenomenon is particularly dangerous for regional universities as it can lead to the systematic weakening of the region's intellectual potential, creating a barrier to sustainable socio-economic development. In the literature, the classic paradigm of brain drain has been supplemented in the last decade by the concepts of 'brain circulation' and 'brain gain'. From a regional perspective, the key importance lies in shifting from perceiving the emigration of scientists as an irreversible loss to modeling it as temporary, developmental mobility. The University of Kalisz could therefore implement 'managed mobility' mechanisms, which assume maintaining institutional ties with departing doctoral students and young researchers through return scholarships, remote participation in grants from the home institution, and the creation of formal networks of alumni-university ambassadors. Such a policy, successfully described in the case of Portuguese or Irish regional universities, transforms potential drain into a knowledge diffusion process, where the university – although temporarily losing human capital – gains access to international networks and know-how. In this perspective, mobility, initially perceived as an opportunity, becomes a source of structural risk that requires the implementation of precise protective mechanisms and strategic talent management at the institutional level.

Parallel to the challenges related to staff migration, a significant factor determining the adaptive efficiency of the university is the growing bureaucratic burden. Integration processes force the institution to undertake meticulous documentation, reporting, and adaptation of procedures to the constantly evolving EHEA standards, which often leads to an overgrowth of administrative functions over substantive scientific activity. This phenomenon has been empirically documented in the higher education sector under the

concept of 'administrative burden'. In the case of projects funded by the Horizon Europe program, the obligation for detailed technical and financial reporting in semi-annual cycles, combined with the need to demonstrate product and outcome indicators, means that according to estimates by European researchers, an average of 25-30% of a project manager's work time is consumed by purely reporting activities. In a university with limited administrative support, such as the University of Kalisz, this burden falls directly on the academic staff, reducing the time dedicated to reviewing, writing articles, and supervising doctoral students. Excessive standardization also carries the risk of institutional isomorphism (DiMaggio & Powell, 1983) – adapting structures solely to evaluation criteria at the expense of local innovation. Without systemic debureaucratization, through the professionalization of project offices and automation of reporting processes, the benefits of integration will be constantly eroded by transaction costs.

Such outlined bureaucratic pressure can become a barrier hindering innovation, limiting the university's flexibility in responding to the specific needs of the local socio-economic environment. Consequently, navigating integration processes becomes a task of high complexity, where the key strategic goal is to maximize the benefits of European synergy while minimizing risks threatening the stability of the national and regional education system. The ultimate effectiveness of this process depends on the ability of the University of Kalisz to develop a model that harmoniously combines the requirements of global standardization with the protection of its own intellectual capital and developmental autonomy.

In light of the identified dialectical tensions, the key challenge for the institution becomes the formulation and implementation of strategic directions for navigating integration processes, allowing for the optimization of benefits from European synergy while actively neutralizing structural risks. The foundation of such a defined strategy must be the building of local institutional resilience, understood as the ability to maintain developmental autonomy under conditions of advanced EHEA standardization. In this

context, minimizing the negative effects of the brain drain phenomenon requires moving away from a reactive staff management model towards the proactive creation of local innovation ecosystems. This implies the necessity of tightening partnerships with the regional industrial sector and local government administration, which will allow for the generation of attractive professional and academic career paths for outstanding graduates directly in the region of southern Greater Poland. The use of targeted funds and support mechanisms within the cohesion policy should serve not only the modernization of infrastructure but, above all, the creation of unique research niches that will become a specific counterweight to the attractive power of metropolitan academic centers. A tool worthy of pilot implementation is the "Local Development Scholarship" program, combining EU funds (European Funds for Greater Poland 2021-2027), contributions from the voivodeship self-government, and private economic partners. Under this program, a master's graduate taking up employment in a regional company and simultaneously opening a doctoral dissertation at the University of Kalisz would receive a monthly salary supplement of PLN 1,500-2,000 for three years, conditional on signing a loyalty agreement for the subsequent two years. The housing component of the program, implemented in cooperation with the Kalisz municipality, could take the form of preferential rental of apartments in a newly built, higher-standard dormitory. This type of comprehensive instrumentality, modeled on solutions successfully tested in Swedish peripheral regions (e.g., Västerbotten Region), simultaneously addresses the material and infrastructural barriers to retention, creating an ecosystem friendly to young researchers. Parallel to retention activities, the University of Kalisz should develop an active *brain gain* policy, consisting of selectively attracting researchers and doctoral students from outside the region, including from abroad. An instrument could be the establishment of a Returns and Knowledge Transfer Fund, financed from combined resources of the Horizon Europe program (ERA Talents action) and the voivodeship budget, offering two-year relocation grants for scientists deciding to move to Kalisz with their teams. A condition for receiving the grant would be undertaking cooperation with a local company within an

R&D project, which would simultaneously strengthen the region's innovation potential. The experiences of the *Grijalva* program in the Mexican state of Chiapas and the *Brain Return* initiative in the Czech Republic prove that even with limited budgets, the trend of talent outflow can be reversed, provided the offer combines employment stability, research autonomy, and the prospect of real social impact. In the conditions of southern Greater Poland, such a mechanism could not only compensate for losses caused by drain but also introduce new research paradigms and international contacts into the local academic circuit, breaking the isolation of peripheral centers.

The Kalisz-Ostrów subregion, constituting the immediate demographic hinterland of the University of Kalisz, is characterized by economic indicators clearly deviating from the national average. According to data from the Central Statistical Office for 2022, the unemployment rate in the Kalisz and Ostrów districts remained lower than in the Greater Poland voivodeship overall; however, the employment structure revealed a chronic deficit of highly specialized jobs. At the same time, the negative net internal migration in the 20-34 age group indicates a systematic outflow of secondary school graduates to Poznań and Wrocław. In such a shaped socio-economic landscape, the University of Kalisz functions not only as a supplier of personnel but also as a kind of 'anchor institution', whose presence slows down the peripheralization of the area and stabilizes the local market for educational and R&D services consumption. Without a strong academic center, the region would lose its ability to absorb investments requiring skilled human capital, which confirms the validity of analyzing the university in terms of systemic security. The situation of the University of Kalisz is not isolated within the landscape of Polish higher education. A comparison with the State University of Applied Sciences in Piła or the Lomza Academy reveals analogous mechanisms: all these centers share the status of institutions transformed from the former PWSZ model with the ambition to build local innovation ecosystems. Piła's data for 2023 indicates an even higher negative net migration in the 20-34 age group (-4.8‰ compared to -3.1‰ in the Kalisz subregion), proving that the mere presence of a vocational profile university is

insufficient to stop demographic outflow – a transition to the university model combined with the instruments described in this article is necessary. However, the Kalisz case is distinguished by a higher dynamics in obtaining funds from EU framework programs (40% increase between 2020-2024) and a stronger embedding in regional industrial networks, making it a natural laboratory for testing adaptive strategies with the potential to be scaled to other peripheral universities.

Simultaneously, the process of optimizing institutional efficiency must focus on mitigating bureaucratic barriers through the digitization of management processes and the intelligent implementation of EU quality standards. Instead of treating harmonization requirements as rigid administrative determinism, the university should use them as a tool to verify and improve its own internal procedures, striving towards a model of an "agile academy". Effective adaptation therefore requires the development of mechanisms that will relieve academic staff from excessive reporting, redirecting their potential towards substantive and implementation activities. Properly directed evolution of the organizational structures of the University of Kalisz should aim to maintain a balance between the uniformization required by the EHEA and the flexibility necessary to fulfill the university's specific social mission in the region.

In summary, the strategic directions for development should be based on the paradigm of sustainable integration, where openness to the European research space is closely correlated with care for the stability of the national education system. Maximizing the benefits flowing from academic mobility and programs such as Erasmus+ must therefore be supported by systemic solutions aimed at retaining intellectual capital. Only by harmoniously combining international ambitions with the protection of local resources will the University of Kalisz be able to effectively minimize the risks of destabilization, becoming a permanent and resilient element of the European higher education architecture, capable of generating lasting added value for both science and its immediate regional environment.

Conclusions and Final Remarks

The conducted analysis of the integration processes of the University of Kalisz within the European Higher Education Area allows for the formulation of several key conclusions regarding the stability and development directions of regional academic centers. First and foremost, it should be stated that participation in the EHEA is an irreversible process and constitutes the foundation of the modernity of Polish science, enabling real participation in the global circulation of ideas and innovation. Curriculum harmonization and mobility mechanisms, such as the Erasmus+ program, significantly raise didactic and research standards, making the university an important point of reference for the regional innovation system.

Nevertheless, the dialectical nature of this integration highlights significant systemic threats, among which the risk of brain drain and decision-making paralysis caused by excessive bureaucracy come to the fore. Research findings indicate that without an active talent retention policy at the regional level, academic openness can lead to the asymmetric weakening of peripheral scientific centers in favor of metropolises. It is therefore necessary to develop a strategic management model that prioritizes substantive quality over administrative reporting and builds strong ties with the local socio-economic environment.

In conclusion, the future of the University of Kalisz within European structures depends on skillfully balancing the requirements of global standardization with the protection of the region's unique intellectual capital. Success in navigating integration processes will be measured by the institution's ability to transform external EU requirements into internal developmental impulses, while maintaining the autonomy necessary to fulfill its public mission and ensure the educational security of southern Greater Poland. The presented conclusions allow for the formulation of three recommendations for educational policy at the regional and national levels. First, the Ministry of Science and Higher Education should consider introducing a 'retention' subsidy for regional universities, the amount of which would be correlated with the

percentage of top graduates remaining in the region for at least three years after obtaining their diploma. Second, the self-government of the Greater Poland voivodeship, within its smart specialization strategy, should enable the University of Kalisz to act as an operator of regional R&D implementation vouchers, which would strengthen the coupling between the university and industry and create attractive career paths *in situ*. Third, at the institutional level, it is necessary to establish an Intellectual Capital Management Office, responsible for monitoring graduate careers, coordinating mentoring and return programs, and simplifying internal project procedures. Only coherent actions at these three levels – national, regional, and institutional – will allow the full potential of the European Higher Education Area to be harnessed without endangering the stability of the educational system of southern Greater Poland. The perspective of 2030 requires us to look at the analyzed dialectic of integration through the lens of digital transformation. The European Commission's communication on a European approach to micro-credentials (2022) opens up an opportunity for regional universities to offer short, certified forms of education responding to the needs of the local labor market, while maintaining compliance with EHEA standards. For the University of Kalisz, this may mean the ability to quickly respond to the competency demands of companies in the region – for example, in logistics or medical technologies – without the need for lengthy accreditation procedures. On the other hand, the development of artificial intelligence in education (adaptive learning platforms, automated assessment systems) threatens to deepen the asymmetry between universities equipped with advanced IT infrastructure and centers with limited budgets. If the University of Kalisz does not invest in building its own digital resources and staff competencies in Learning Analytics in the coming years, it may be relegated to the role of a passive consumer of technology delivered by global edtech platforms, further weakening its programmatic autonomy. Strategic partnerships within European university alliances and the use of National Reconstruction Plan funds for university digitalization will therefore be key buffers protecting against a new wave of drain – this time in the dimension of data and algorithms.

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THE PRINCIPLE OF LEGITIMATE EXPECTATIONS IN EU ADMINISTRATIVE LAW AND ITS APPROXIMATION IN GEORGIA

1. Introduction

The process of European integration has significantly increased the importance of fundamental principles of European administrative law within national legal systems. Among these principles, the protection of legitimate expectations occupies a particularly important position because it is closely connected with the rule of law, legal certainty, and the stability of administrative relations. In modern administrative governance, individuals increasingly rely upon administrative decisions, representations, and regulatory frameworks when making legal and economic choices. Consequently, the protection of reasonable reliance has become an essential component of contemporary public administration and administrative justice.
Within the European Union legal order, the principle of legitimate expectations has gradually evolved into an important mechanism for ensuring predictability in administrative conduct and protecting individuals against arbitrary or unforeseeable state interference. The development of the principle through the jurisprudence of the Court of Justice of the European Union has also substantially influenced national administrative legal systems across Europe and has contributed to the broader Europeanisation of administrative law[593].
For Georgia, the significance of this principle has increased considerably in the context of the EU–Georgia Association Agreement and the country's broader process of legal approximation with the European Union. Approximation to EU law requires not only the transposition of sector-specific legislation but also the gradual incorporation of fundamental European administrative law standards into domestic legislation, administrative practice, and judicial reasoning.[594] In this regard, the protection of legitimate expectations represents an important aspect of strengthening good administration, public trust in state institutions, and legal stability within administrative relations.

[593] Jürgen Schwarze, European Administrative Law, Revised 1st ed., Sweet & Maxwell, London, 2006, pp. 940–948.
[594] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, OJ L 261, 30.8.2014, pp. 4–743. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22014A0830%2802%29

Although Georgian administrative law contains several legal mechanisms related to the protection of reliance interests — including administrative promise and limitations on the revocation of favorable administrative acts — the principle of legitimate expectations has not yet been fully recognised as an autonomous and systematically developed doctrine. Judicial practice remains fragmented, and the balance between legality and legal certainty is often resolved inconsistently.

The primary objective of this paper is to analyze the principle of legitimate expectations in EU administrative law and to assess its approximation within Georgian administrative law. The paper addresses the following research question: to what extent is the principle of legitimate expectations recognised and effectively applied in Georgian administrative law in light of EU administrative law standards?

The research is based on doctrinal and comparative legal methodology. The paper examines the jurisprudence of the Court of Justice of the European Union, relevant principles of European administrative law, Georgian administrative legislation, and domestic judicial practice. The study further evaluates the current level of approximation between Georgian and EU administrative law and identifies the principal challenges affecting the effective implementation of the principle in Georgia.

2. The Principle of Legitimate Expectations in EU Administrative Law

The principle of legitimate expectations constitutes one of the fundamental general principles of modern European administrative law. It is closely connected with legal certainty, proportionality, consistency of administrative action, and good administration, and aims to protect individuals' trust in public authorities. The principle becomes particularly important where administrative conduct creates reasonable reliance affecting an individual's legal or factual position. European administrative law doctrine generally considers legitimate expectations to be a core mechanism safeguarding the rule of law and administrative predictability within the EU legal order.

Within European Union law, the principle was primarily developed through the jurisprudence of the Court of Justice of the European Union and is now recognized as a general principle of EU law. The Court has repeatedly emphasized that the doctrine derives from the principle of legal certainty and forms an essential element of the rule of law within the European legal order. The principle is also closely linked to Article 41 of the Charter of Fundamental Rights of the European Union, which guarantees the right to good administration and protection against arbitrary or unpredictable administrative conduct.[595]

The theoretical origins of the principle are commonly traced to the German administrative law doctrine of Vertrauensschutz (protection of trust), which developed as

[595] Charter of Fundamental Rights of the European Union, Article 41, OJ C 326, 26.10.2012, pp. 391–407. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT&utm_source=chatgpt.com

a mechanism for protecting individuals against abrupt and unforeseeable changes in administrative or legal positions adopted by the state. German legal scholarship traditionally regards Vertrauensschutz as an important guarantee of continuity and stability in relations between the state and the individual.[596]

The essence of the principle lies in the obligation of public authorities to respect and protect reasonable reliance where the administration has provided clear, precise, and unconditional assurances.

Such assurances originate from a competent authority; the individual relied upon those assurances reasonably and in good faith; and the individual altered his or her legal or factual position based on such reliance.

The jurisprudence of the Court of Justice demonstrates that legitimate expectations arise only where administrative conduct creates objectively justified reliance deserving legal protection.[597]

The importance of the principle is particularly evident in ensuring administrative stability and predictability. If public authorities unexpectedly alter policies or revoke previously granted advantages, public confidence in the legal system may be undermined. Consequently, the doctrine serves as an important limitation on arbitrary administrative action and helps strengthen trust in public administration.

At the same time, the principle of legitimate expectations is not absolute. EU administrative authorities must retain the ability to modify policies or adopt new measures where required by overriding public interests, economic necessity, or the principle of legality. Accordingly, the protection of legitimate expectations requires balancing private reliance interests against public interests and administrative flexibility.

An important stage in the development of the doctrine emerged through the jurisprudence of the Court of Justice of the European Union. In CNTA v Commission (Case 74/74), the Court recognized that the protection of legitimate expectations forms part of the fundamental principles of the Community legal order and connected the doctrine directly with legal certainty.[598]

A particularly influential judgment was Mulder v Minister van Landbouw en Visserij (Case C-120/86), where the Court held that individuals who relied upon EU policies and administrative assurances could not subsequently be deprived of benefits in a manner contrary to their justified expectations. The judgment significantly strengthened the protection of reliance interests by recognizing that EU institutions themselves may create

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[596] Klaus Rennert, The Protection of Legitimate Expectations under German Administrative Law (ACA-Europe Seminar Paper, Vilnius 2016) 1–5

[597] Case C-120/86, Mulder v Minister van Landbouw en Visserij [1988] ECR 2321, paras. 21–24.Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61986CJ0120&utm_source=chatgpt.com

[598] *Case 74/74, CNTA SA v Commission of the European Communities [1975] ECR 533, para. 44. Available at:* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61974CJ0074

expectations deserving legal protection through regulatory measures and administrative conduct.[599]

The relationship between legitimate expectations, proportionality, and public interest was further clarified in Fedesa (Case C-331/88). The Court emphasized that economic operators cannot legitimately expect an existing legal situation to remain permanently unchanged where EU institutions retain discretionary powers to adapt policies to changing circumstances. Nevertheless, administrative authorities must ensure fairness and proportionality when implementing such changes.[600]

Recent CJEU jurisprudence demonstrates that the principle of legitimate expectations continues to play an important role in contemporary EU administrative and regulatory law. In Case C-148/23, concerning changes to renewable energy support schemes, the Court reaffirmed that the principles of legal certainty and legitimate expectations require individuals and economic operators to be protected against unforeseeable and retroactive regulatory interference affecting previously established legal situations[601].

The Court has also consistently maintained that legitimate expectations cannot arise contra legem. Individuals cannot rely on expectations based on unlawful administrative conduct where they knew, or reasonably should have known, that the act violated EU law. Consequently, the doctrine cannot justify the continuation of manifestly unlawful legal situations.[602]

Thus, through the jurisprudence of the Court of Justice of the European Union, the principle of legitimate expectations has evolved into a central doctrine of EU administrative law closely connected with legal certainty, proportionality, and good administration. The doctrine serves as an important mechanism for protecting individuals against arbitrary or unpredictable administrative action while preserving public authorities' ability to pursue legitimate public objectives.

3. Legitimate Expectations in Georgian Administrative Law

The principle of legitimate expectations is not formally defined as an autonomous legal principle within Georgian administrative law. Nevertheless, its substantive elements are clearly reflected in various legal norms and administrative law institutions. The principle

[599] Case C-120/86, Mulder v Minister van Landbouw en Visserij [1988] ECR 2321, paras. 21–24. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61986CJ0120

[600] Case C-331/88, Fedesa and Others [1990] ECR I-4023, paras. 45–47. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0331

[601] Case C-148/23, Judgment of the Court (Seventh Chamber), 27 June 2024, concerning the principles of legal certainty and protection of legitimate expectations in the context of renewable energy support schemes.
Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62023CJ0148&utm_source=chatgpt.com

[602] Joined Cases 212 to 217/80, Amministrazione delle finanze dello Stato v Salumi [1981] ECR 2735. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61980CJ0212&utm_source=chatgpt.com

is closely connected with the ideas of the rule of law, legal certainty, proportionality, administrative stability, and the protection of reliance interests, all of which constitute important foundations of the Georgian constitutional and administrative legal order. Comparative administrative law scholarship frequently identifies legal certainty and the protection of legitimate expectations as mutually interconnected guarantees necessary for maintaining public trust in administrative governance.

Although the Constitution of Georgia does not explicitly refer to the principle of legitimate expectations, the broader concept of the rule of law implies the protection of individuals' trust, legal security, and predictability in relations with public authorities. The jurisprudence of the Constitutional Court of Georgia has repeatedly emphasized that the rule of law requires legal stability, foreseeability, and the protection of reasonable reliance upon state action. In this respect, the principle of legitimate expectations may be regarded as one manifestation of the rule of law within the Georgian legal system. The Constitutional Court of Georgia has consistently interpreted the principle of the rule of law as requiring predictability, legal certainty, and the protection of individuals against arbitrary state interference.[603]

The most important normative foundations for the protection of legitimate expectations are contained in the General Administrative Code of Georgia. Particular importance is attached to the institution of administrative promise, which imposes an obligation on administrative authorities to respect official promises when the conditions established by law are met. Administrative promise serves as an important legal mechanism because it creates reasonable reliance upon future administrative conduct and contributes to the stability of administrative relations. The General Administrative Code of Georgia also incorporates broader guarantees related to legal certainty, consistency of administrative action, and protection against arbitrary revocation of administrative decisions.[604]

Another important manifestation of the principle concerns the limitations imposed upon the revocation of favorable administrative acts. The General Administrative Code of Georgia provides that administrative authorities are not always entitled to revoke previously issued favorable acts, particularly where an individual reasonably relied upon the legality of the act and altered his or her legal or factual position on the basis of that reliance. This approach represents one of the clearest normative expressions of the protection of legitimate expectations within Georgian administrative law. The protection of reliance interests in cases involving the revocation of favorable administrative acts demonstrates the growing influence of European administrative law standards upon Georgian administrative legislation.

A particularly important aspect of Georgian administrative law is the attempt to balance two fundamental principles: legality and legal stability. On the one hand, administrative

[603] Constitutional Court of Georgia, Judgment No. 3/2/577, 24 December 2014. Available at: https://www.constcourt.ge/en/judicial-acts?legal=1107&utm_source=chatgpt.com

[604] General Administrative Code of Georgia, Available at: https://matsne.gov.ge/en/document/view/16270?publication=38&utm_source=chatgpt.com

authorities are obliged to ensure the correct and uniform application of the law. On the other hand, it is necessary to protect the reliance interests of individuals who reasonably relied upon administrative decisions. The reconciliation of these competing principles constitutes one of the central functions of the doctrine of legitimate expectations.

The concept of reasonable reliance also plays an important role in Georgian administrative law. Legitimate expectations deserve protection only where the individual acted reasonably, and neither knew nor reasonably should have known about the unlawfulness of the administrative act. Consequently, Georgian law, similarly to EU administrative law, does not protect expectations that are clearly unlawful or contra legem. This limitation reflects the broader principle that the protection of legitimate expectations cannot prevail over manifest illegality or undermine the principle of legality itself.[605]

Nevertheless, the principle of legitimate expectations remains fragmented within Georgian administrative legislation. Existing legal provisions regulate specific administrative institutions rather than establishing a fully autonomous and comprehensive doctrine of legitimate expectations. As a result, the scope and criteria of the principle continue to develop primarily through judicial interpretation and administrative law scholarship.

In this respect, the importance of the principle has increased significantly as Georgia has advanced toward legal and institutional approximation to the European Union. Under the influence of European administrative law, greater emphasis is increasingly placed upon administrative predictability, public trust in administrative authorities, and the standards of good administration. Therefore, the further Europeanisation of Georgian administrative law requires clearer normative and doctrinal development of the principle of legitimate expectations. The EU–Georgia Association Agreement further reinforces the importance of strengthening the rule of law, legal certainty, and good governance as part of Georgia's broader European integration process.

Judicial practice plays a particularly important role in the development of the principle of legitimate expectations within Georgian administrative law. Although the principle is not expressly and systematically codified in Georgian legislation, the common courts — especially the Supreme Court of Georgia — have gradually developed approaches related to legal certainty, administrative stability, reasonable reliance, and the protection of individuals' trust in public authorities. Georgian judicial practice increasingly recognizes that the protection of legitimate expectations constitutes an important element of the rule of law and legal stability within administrative legal relations.[606]

The issue of legitimate expectations most frequently arises in Georgian judicial practice in disputes concerning the revocation of favorable administrative acts. In such cases, courts attempt to balance the interest in restoring legality against the protection of individuals

[605] Case C-183/95, Affish BV v Rijksdienst voor de keuring van Vee en Vlees [1997] ECR I-4315, para. 57. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0183&utm_source=chatgpt.com

[606] Supreme Court of Georgia, Case No. ბს-598(კ-20).

who reasonably relied upon administrative decisions. This balancing exercise represents one of the most significant and complex challenges of contemporary administrative law. The Supreme Court of Georgia has emphasized that the protection of legitimate expectations cannot be assessed separately from the principles of proportionality, legal certainty, and protection of reliance interests.

The Supreme Court of Georgia has repeatedly emphasized that the revocation of a favorable administrative act should not occur automatically solely because the act is unlawful. Courts generally examine whether the individual reasonably relied upon the legality of the administrative act, whether the person knew or reasonably should have known of its possible unlawfulness, and whether the individual altered his or her legal or factual position on the basis of the administrative decision. The Court has further noted that legitimate expectations cannot prevail where the administrative act substantially violates state, public, or third-party lawful interests.[607]

Reasonable reliance constitutes one of the central criteria within Georgian judicial practice. Where an individual acted reasonably and had no knowledge of the unlawfulness of the administrative act, his or her reliance deserves a higher degree of legal protection. Courts also consider the extent of harm that may result from the revocation of the act and assess whether such interference would be proportionate under the circumstances. Particular significance has also been attached to reliance upon administrative registration acts and the presumption of validity of public registry data.[608]

Georgian judicial practice increasingly reflects the understanding that legal stability and predictability constitute essential components of the rule of law. Inconsistent or unexpected administrative conduct may significantly undermine individuals' trust in public authorities and threaten the principle of legal security. The courts have gradually moved toward recognizing that administrative authorities must ensure consistency and predictability when exercising discretionary powers.

Nevertheless, Georgian judicial practice in this field remains inconsistent and fragmented. Judicial decisions do not always directly invoke the principle of legitimate expectations or recognize it as an autonomous legal doctrine. In many cases, courts address these issues solely within the traditional framework of legality and the revocation of administrative acts, which limits the systematic development of the doctrine.

Particularly problematic are situations involving tension between the principle of legality and the requirement of legal stability. Georgian judicial practice has not yet fully developed uniform criteria for determining when priority should be given to restoring legality and when greater weight should be accorded to protecting individuals' reasonable reliance interests. Consequently, decisions in such disputes often depend heavily upon the specific factual circumstances of each case rather than upon a stable and predictable doctrinal framework. Georgian legal scholarship similarly emphasizes that the absence of clear doctrinal criteria contributes to inconsistent judicial approaches regarding the protection of legitimate expectations.

[607] Supreme Court of Georgia, Case No. ბს-57(კ-20)

[608] Supreme Court of Georgia, Case No. ბს-247-247(4კ-18)

At the same time, the influence of European administrative law and EU legal standards is gradually increasing within Georgian judicial practice. Particular importance is attached to integrating the principles of legal certainty, proportionality, and good administration into administrative adjudication. Although the jurisprudence of the Court of Justice of the European Union is still applied relatively cautiously, there is a visible tendency toward greater reliance upon European administrative law approaches within Georgian courts.

Thus, Georgian judicial practice provides an important, although still incomplete, basis for the development of the principle of legitimate expectations. Despite the progress achieved so far, significant challenges remain concerning the clearer doctrinal recognition of the principle, the establishment of more consistent judicial practice, and the closer approximation of Georgian administrative law to European administrative law standards.

4. Approximation of Georgian Law to EU Standards

The Europeanisation of Georgian administrative law has intensified significantly following the conclusion of the EU–Georgia Association Agreement and the deepening of Georgia's European integration process. This process is not limited solely to the transposition of sectorial EU legislation into domestic law; it also involves the incorporation of fundamental principles, values, and standards of European administrative law into the Georgian legal system. In this context, the principle of legitimate expectations acquires particular importance as a central element of legal certainty, good administration, and administrative stability.

Several important principles of EU administrative law are already reflected within Georgian administrative law. In particular, the principles of legal certainty, proportionality, good faith, and administrative stability are gradually becoming integrated into both legislative regulation and judicial practice. The General Administrative Code of Georgia contains institutions such as administrative promise, limitations on the revocation of favourable administrative acts, and the protection of individuals acting in good faith, all of which substantially resemble the approaches developed within EU administrative law.

The influence of European administrative law is especially visible in the evolution of Georgian judicial practice. Although the jurisprudence of the Court of Justice of the European Union does not have formal binding force in Georgia, domestic courts increasingly rely on European legal standards when interpreting issues related to legal certainty, proportionality, and good administration. This tendency demonstrates the gradual approximation of Georgian administrative law to European administrative law doctrines and principles.

The approximation of the principle of legitimate expectations to EU standards is particularly important for ensuring predictability in administrative conduct and stability in administrative relations. Under the influence of EU administrative law, increasing

emphasis is placed upon the obligation of public authorities to act consistently, respect reasonable reliance, and avoid sudden or disproportionate administrative interference.

At the same time, the Europeanisation process influences not only the normative development of administrative law but also the transformation of administrative culture itself. Contemporary European administrative law is increasingly oriented toward protecting citizens' trust, ensuring good administration, and promoting fair administrative procedures rather than focusing exclusively on formal legality. Georgian administrative law is gradually developing in the same direction.

Therefore, although Georgian law does not yet fully reflect all doctrinal standards of EU administrative law, the process of approximation regarding the principle of legitimate expectations is already clearly observable. This tendency represents one of the most significant manifestations of the broader Europeanisation of Georgian administrative law.

Despite the progress achieved thus far, the effective implementation of the principle of legitimate expectations within Georgian administrative law remains associated with several important challenges. One of the principal difficulties is the lack of doctrinal clarity surrounding the principle. Georgian legislation does not explicitly and systematically define legitimate expectations as an autonomous legal principle, and therefore, its scope and application remain largely dependent upon judicial interpretation.

Another significant problem concerns the fragmented nature of judicial practice. Although Georgian courts occasionally refer to legal certainty and the protection of good faith reliance, there is still no fully coherent and consistent body of case law recognizing legitimate expectations as an independent administrative law doctrine. As a result, judicial decisions in similar categories of disputes often demonstrate differing approaches, thereby reducing legal predictability.

Broad administrative discretion also constitutes a problematic issue. Within Georgian administrative practice, public authorities frequently retain substantial freedom to alter policies or revise administrative decisions, while standards for protecting individuals' reliance interests remain insufficiently developed. Under such circumstances, unexpected or inconsistent administrative action may undermine legal stability and violate reasonable expectations created by previous administrative conduct.

Another important challenge relates to the weak recognition of legitimate expectations as an autonomous legal principle. In practice, the doctrine is often discussed only in connection with legality, revocation of administrative acts, or good faith, rather than as an independent principle possessing its own functions and protection criteria. This significantly limits the systematic development of the doctrine within Georgian administrative law.

Particularly difficult is balancing legality with legal stability. The revocation of unlawful administrative acts may often be necessary in order to restore legality and protect public interests. However, such decisions may significantly affect individuals who relied in good faith upon the legality of administrative acts. Georgian law has not yet developed clear, uniform criteria for resolving such conflicts.

It should also be noted that the use of EU administrative law and the jurisprudence of the Court of Justice of the European Union remains relatively limited at the national level. Although the influence of European legal standards is gradually increasing, the systematic integration of EU administrative law doctrines into Georgian legal practice remains incomplete.

Therefore, the comprehensive development of the principle of legitimate expectations in Georgia still requires further normative, doctrinal, and institutional strengthening.

The effective integration of the principle of legitimate expectations into Georgian administrative law requires further legislative, judicial, and institutional development. In the process of approximating EU administrative law standards, particular importance should be attached to establishing an administrative system capable of ensuring legal certainty, administrative predictability, and effective protection of individuals' reliance interests.

First, it would be advisable to formulate the principle of legitimate expectations more explicitly within Georgian administrative legislation. Although current legislation already includes several elements associated with the doctrine, the direct recognition of legitimate expectations as an independent administrative law principle would contribute to clearer legal standards for both administrative authorities and courts.

The more consistent development of judicial practice is equally important. Georgian courts should rely more actively on European standards of legal certainty, proportionality, and good administration when resolving administrative disputes. Particular importance should be attached to developing legitimate expectations as an autonomous legal doctrine and establishing clearer criteria governing its application.

The integration of the jurisprudence of the Court of Justice of the European Union could also play an important role in the Europeanisation of Georgian administrative law. Although CJEU judgments do not possess binding force in Georgia, they may serve as persuasive and interpretative sources for the development of administrative law principles. In particular, the approaches developed by the Court regarding administrative stability, good faith reliance, and proportionality could significantly strengthen Georgian administrative practice.

At the same time, it is necessary to improve the institutional practices of administrative authorities themselves. Public administration should become increasingly oriented toward consistency, transparency, and predictability in administrative conduct. Sudden and insufficiently reasoned administrative decisions significantly weaken public confidence in administrative institutions and contradict European standards of good administration.

Particular importance should also be attached to the transformation of administrative culture. Contemporary European administrative law is based upon the concept of citizen-oriented governance, according to which administrative authorities function not merely as holders of public power but also as guarantors of individuals' rights and legitimate trust. The further development of this approach represents one of the central directions of the Europeanisation of Georgian administrative law.

Therefore, the further development of the principle of legitimate expectations in Georgia would significantly contribute to strengthening the rule of law, ensuring administrative stability, and promoting closer approximation to EU administrative law standards.

5. Conclusion

The principle of legitimate expectations has evolved into a fundamental principle of EU administrative law, closely connected to legal certainty, proportionality, and good administration. Through the jurisprudence of the Court of Justice of the European Union, the doctrine has developed into an important mechanism for protecting individuals against arbitrary or unpredictable administrative action.

Georgian administrative law already contains several normative and doctrinal elements associated with the protection of legitimate expectations, particularly in relation to administrative promise, legal stability, and the revocation of favorable administrative acts. At the same time, Georgian judicial practice remains fragmented, and the principle has not yet been fully recognized as an autonomous doctrine of administrative law.

The process of approximation with EU administrative law standards has nevertheless intensified the importance of legal certainty, reasonable reliance, and good administration within Georgian administrative law. Further Europeanisation requires clearer legislative recognition of the principle, greater consistency in judicial practice, and stronger integration of EU administrative law standards and CJEU jurisprudence into domestic administrative adjudication.

Accordingly, the development of the principle of legitimate expectations represents not only an important aspect of administrative law reform in Georgia but also a significant component of the country's broader European integration process.

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ADMINISTRATIVE SILENCE AND EUROPEAN STANDARDS OF GOOD GOVERNANCE: INTEGRATION PERSPECTIVE

Keywords: Administrative silence; European integration; Effective judicial protection; Good governance; Rule of law.

Introduction

The contemporary process of integration with the European Union does not merely imply the formal harmonization of national legislation. It also requires the transformation of the fundamental principles of administrative law, the culture of public governance, and the legal forms of administrative activity. In this context, the institution of administrative silence acquires particular significance, as it constitutes a legal form of administrative inaction and is directly connected with the effective protection of individual rights.

Administrative silence is regarded as one of the most complex and controversial institutions of modern administrative law. Its legal nature is interpreted differently across various legal systems. In certain states, administrative silence is perceived as a legal fiction signifying the rejection of a request, while in others it is treated as the approval of a request. In both cases, administrative silence represents a legal mechanism associated with the failure of an administrative authority to adopt a decision within the period prescribed by law.[1]

The development of European administrative law has significantly influenced the establishment of the principle of good governance. Article 41 of the Charter of Fundamental Rights of the European Union establishes the individual's right to good administration, which includes impartial, fair, and timely administrative action within a reasonable period.[2] This principle encompasses such elements as: the obligation to provide reasons for decisions; action within a reasonable time; transparency; accountability; effective judicial protection.

For Georgia, the issue of administrative silence is particularly relevant in the context of European integration and the Europeanization of administrative law. In practice, the

inactivity of administrative authorities often becomes a mechanism for avoiding responsibility, which contradicts the principles of the rule of law and good governance.

The methodological basis of the present study includes doctrinal analysis, comparative legal analysis, and the examination of judicial practice.

I. The Concept and Legal Nature of Administrative Silence

Administrative silence is regarded in modern administrative law as one of the most specific manifestations of the passive form of administrative activity. Administrative silence constitutes a legal form of administrative inaction, occurring when an administrative authority fails, within the period prescribed by law, to make a decision regarding a citizen's application, request, or any issue subject to consideration within the framework of administrative proceedings.

Administrative silence and administrative inaction are closely related yet distinct concepts. Administrative silence represents a specific legal form of administrative inaction to which the legislator attaches a particular legal consequence. Administrative inaction, by contrast, is a broader category encompassing the failure of an administrative authority to perform any legally required action.

A proper understanding of this distinction is of substantial importance both for the theory of administrative law and for judicial practice and the effective protection of individual rights.

In the theory of administrative law, the legal nature of administrative silence has been interpreted in different ways. According to one approach, administrative silence constitutes a special form of an administrative act, since it produces legal consequences despite the fact that the will of the administrative authority is not expressly manifested. Another approach considers administrative silence as a legal fiction established for the purpose of legally assessing the inactivity of an administrative authority.[3]

Historically, the institution of administrative silence is associated with the problem of unjustified delays by administrative authorities in adopting decisions. The principle of the rule of law requires administrative authorities to act not only lawfully, but also promptly and effectively.[4]

Administrative silence performs two principal functions:

1. the function of protecting individual rights;
2. the function of disciplining administrative authorities.

The protective function of rights is reflected in the fact that citizens are no longer required to wait indefinitely for an administrative authority to act. Upon the expiration of the statutory period, silence produces legal consequences and grants the individual the possibility of applying to a court.

On the other hand, administrative silence obliges administrative authorities to act within a reasonable period of time. Otherwise, their inactivity transforms into a legal fact subject to judicial review.

Thus, the analysis of the legal nature of administrative silence demonstrates that it is not merely a legal assessment of the passive condition of an administrative authority. Administrative silence constitutes a legal mechanism simultaneously connected with the protection of individual rights, the effectiveness of public administration, and the accountability of administrative authorities. Therefore, a comprehensive evaluation of the practical significance of administrative silence is impossible without examining its various models. In this regard, contemporary systems of administrative law attach particular importance to the analysis of the negative and positive forms of administrative silence.

II. Models of Administrative Silence

Two principal models of administrative silence may generally be identified within systems of administrative law.

1. Negative Administrative Silence

Under the model of negative administrative silence, the failure of an administrative authority to adopt a decision is regarded as a rejection of the request submitted by the individual.

This model is based on the idea that the silence of an administrative authority should not automatically result in the granting of a right to an individual. Its principal advantages include: the protection of public interests; the preservation of administrative control; the strengthening of the accountability of administrative authorities.

However, in practice, negative administrative silence often creates difficulties, since individuals are compelled to continue judicial proceedings solely because the administrative authority failed to act within the prescribed time.[5]

2. Positive Administrative Silence

Under the model of positive administrative silence, the inactivity of an administrative authority is deemed to constitute approval of the request.

This model is particularly applied in the fields of: permits for economic activities; licensing procedures; the regulation of entrepreneurial activities.

Its objectives include: reducing bureaucratic barriers; increasing administrative efficiency; improving the business environment.

Nevertheless, positive administrative silence is associated with serious risks, including: the undermining of public interests; the emergence of unlawful situations; the weakening of administrative control.

The model of negative administrative silence has traditionally been characteristic of German administrative law, whereas contemporary French law has partially adopted the principle of positive administrative silence ("silence vaut acceptation").

The analysis of the positive and negative models of administrative silence demonstrates that both are aimed at determining the legal consequences of the inactivity of administrative authorities. However, their effectiveness cannot be assessed without considering the standards established by the principle of good governance in contemporary European administrative law. It is precisely these principles that determine the extent to which the existing models of administrative silence comply with the requirements of effective administration, transparency, and the protection of individual rights.

III. European Principles of Good Governance and Administrative Silence

The principle of good governance constitutes one of the central concepts of modern European administrative law. It implies that public administration must act toward individuals not only lawfully, but also fairly, promptly, transparently, reasonably, and accountably.

According to Article 41 of the Charter of Fundamental Rights of the European Union, every person has the right to have his or her affairs handled impartially, fairly, and within a reasonable time.[6]

The first important element of good governance is action within a reasonable time. Administrative procedures cannot continue indefinitely. Administrative silence, particularly when it acquires a systemic character, violates the principle of legal certainty.

The second element is the obligation to provide reasons for administrative decisions. In cases of administrative silence, individuals are unable to identify the legal and factual motives of the administrative authority, which complicates the effective exercise of judicial protection.

The third element is transparency and access to case materials. Individuals must have the possibility to become acquainted with the circumstances upon which their case is decided. Administrative silence frequently obstructs this process.

The fourth element is the right to be heard. If an administrative authority fails to respond altogether, the arguments and positions of the individual are effectively excluded from the sphere of administrative assessment.

The fifth element is accountability. Administrative authorities bear responsibility both for the decisions they adopt and for their failure to adopt decisions.[7]

The sixth element is effective legal protection. Administrative silence is compatible with European standards only if individuals are provided with a genuine and effective mechanism for challenging administrative inaction.

The analysis of the European principles of good governance demonstrates that the activities of administrative authorities must be based not merely on formal legality, but also on efficiency, timeliness, and accountability. These requirements acquire particular importance in cases of administrative silence, since it is precisely the inactivity of administrative authorities that creates risks for the protection of individual rights. Under such circumstances, judicial review assumes a decisive role, serving as one of the principal guarantees of the rule of law and effective administrative protection.

IV. Administrative Silence and Judicial Review

Judicial review of administrative silence constitutes an important guarantee of the rule of law.

Within the framework of Georgian administrative procedural law, administrative silence grants individuals the possibility to: challenge the inactivity of an administrative authority; request the issuance of an administrative act; protect violated rights through judicial proceedings.

However, in practice, several significant problems remain: excessively lengthy judicial procedures; a low degree of accountability of administrative authorities; a formalistic approach within judicial practice.

Judicial review of administrative silence is not merely a mechanism for the protection of individual rights; it also constitutes an institutional guarantee of administrative accountability.

The analysis of the European principles of good governance demonstrates that the activities of administrative authorities must be based not only on formal legality, but also on efficiency, timeliness, and accountability. These requirements acquire particular importance in cases of administrative silence, since it is precisely the inactivity of administrative authorities that creates risks for the protection of individual rights. Under such circumstances, judicial review assumes a decisive role, serving as one of the principal guarantees of the rule of law and effective administrative protection.

V. Georgian Judicial Practice

In case No. BS-1168(K-20), the Supreme Court of Georgia addressed the obligation of administrative authorities to adopt decisions within a reasonable period of time. The Court emphasized that the inactivity of an administrative authority cannot be justified solely by internal administrative difficulties.[8]

The Court stated that: administrative authorities are obliged to act within a reasonable time; the prolongation of administrative procedures contradicts the principle of good governance; the individual's right to effective administrative protection must be real rather than merely formal.

This judgment is significant because the Court no longer treated administrative silence merely as a technical or procedural problem. Instead, the Court directly linked the passivity of administrative authorities to: the principle of legal certainty; the requirement of effective administration; public confidence in public governance.

This approach closely corresponds to European standards of good governance.

Case No. BS-376(K-22) deserves particular attention in the context of excessive delays in administrative proceedings. The dispute commenced in 2007, while the examination before the final judicial instance continued even in 2022. The case concerned: the liability of an administrative authority; compensation for damages; lengthy administrative and judicial proceedings.

Although the case did not directly concern administrative silence, it clearly demonstrates the consequences that may result from: prolonged administrative proceedings; the absence of timely administrative response; impediments to effective judicial protection.

The case practically demonstrated that excessively lengthy administrative and judicial proceedings may ultimately transform the protection of rights into a merely formal mechanism.

This problem is directly connected with the "reasonable time" standard established under the European Convention on Human Rights.

In case No. BS-142(K-19), the dispute concerned the invalidation of administrative acts and the legality of actions undertaken by administrative authorities. The proceedings lasted for several years and were eventually remitted for reconsideration.

This case is particularly relevant for the study of administrative silence because it demonstrates: the systemic problem of delays in administrative proceedings; the difficulties associated with effective administrative control; the decisive role of courts in safeguarding the standards of good governance.

Judicial practice demonstrates that timely and reasoned action by administrative authorities constitutes not merely a technical element of administrative procedure, but also a fundamental requirement of the rule of law.

The analysis of Georgian judicial practice reveals that the problem of administrative silence in practice mainly manifests itself in three principal directions: the passivity of administrative authorities; delays in administrative and judicial proceedings; impediments to effective legal protection.

At the same time, the Supreme Court of Georgia has gradually developed approaches linking the assessment of administrative silence to: the principle of good governance; the requirement of a reasonable time; effective judicial protection.

This tendency is of considerable importance in the process of approximating Georgian administrative law to European legal standards.

In the context of Georgia's European integration process, the development of administrative law is impossible without the full implementation of the principles of good governance. The institution of administrative silence represents precisely the area in which the need to balance administrative efficiency and the protection of individual rights becomes most apparent. The analysis of these issues makes it possible to identify the principal challenges and directions for development that are essential for the improvement of the institution of administrative silence.

VI. Integration Perspectives and Recommendations

Georgia's European integration process requires the systematic development of administrative law. In this process, it is necessary to: reconsider the institution of administrative silence conceptually; strengthen the effectiveness of judicial review; increase the accountability of administrative authorities.

Recommendations for Improving the Legal Regulation of Administrative Silence

The current legal model operating in Georgia does not always ensure effective administration and adequate protection of individual rights in practice. Consequently, it is necessary to improve the legal regulation of administrative silence at the normative, institutional, and procedural levels.

Clearer Legislative Definition of Administrative Silence

Within Georgian legislation, the conceptual regulation of administrative silence remains insufficiently precise.

It is recommended to: formulate a separate legal definition of administrative silence; distinguish it from general administrative inaction; define the legal nature of administrative silence.

The objectives of these measures are: increasing legal certainty; ensuring uniformity of judicial practice; strengthening the accountability of administrative authorities.

Clearer Regulation of Administrative Time Limits

One of the principal practical problems is the excessive prolongation of administrative proceedings.

It is necessary to: clarify the maximum periods for decision-making; impose an obligation on administrative authorities to justify the extension of procedural deadlines; introduce mandatory mechanisms for informing citizens.

Strengthening the Accountability of Administrative Authorities

Administrative silence is frequently associated with a low degree of accountability of administrative authorities.

Possible measures include: clearer mechanisms of disciplinary responsibility; establishing standards for assessing violations of administrative deadlines; strengthening internal monitoring of administrative activities; periodic evaluation of the activities of administrative authorities; introducing mechanisms of public reporting and accountability.

Strengthening Effective Judicial Review

The legal regulation of administrative silence cannot be effective without prompt judicial review.

It is recommended to introduce: accelerated procedures for cases concerning administrative silence; broader powers for courts; judicial authority not only to order administrative authorities to adopt decisions, but also to determine deadlines for implementation.

Gradual Expansion of Positive Administrative Silence

In Georgian law, it is possible to expand the use of positive administrative silence in certain areas.

For example: registration of small businesses; certain licenses and permits; low-risk administrative procedures.

However, this should only be implemented in areas where: the risk of harm to public interests is low; subsequent administrative supervision remains possible.

Direct Integration of the Principle of Good Governance

The regulation of administrative silence should be based upon European standards of good governance.

It is recommended that Georgian administrative law more explicitly reflect: the principle of action within a reasonable time; the obligation to provide reasons for decisions; the individual's right to participation; transparency; accountability.

Establishment of an Electronic Monitoring System for Administrative Silence

Under conditions of modern public administration, the use of digital mechanisms is of particular importance.

It is recommended to introduce: an electronic monitoring system for administrative applications; automatic notifications concerning the expiration of procedural deadlines; online mechanisms enabling citizens to monitor the progress of their cases.

In the context of Georgia's European integration process, improving the institution of administrative silence should become one of the priority directions for the development of administrative law. Effective regulation of administrative silence will only be possible when: legal norms; judicial review; administrative accountability; and the principles of good governance are formed into a unified and coherent system.

Conclusion

Administrative silence constitutes one of the most significant and problematic institutions of modern administrative law. It is directly connected with the protection of individual rights, the principle of good governance, and the accountability of administrative authorities.

European legal standards require not merely formal legal regulation, but also effective governance, transparency, and accountability. The formalistic application of administrative silence cannot ensure the achievement of these objectives.

Within the Georgian legal system, the development of the institution of administrative silence in accordance with European standards represents an important prerequisite for strengthening effective public administration, legal certainty, and the rule of law.

Footnotes

[1] Turava P., *Administrative Law*, Tbilisi, 2022, p. 214.
[2] Charter of Fundamental Rights of the European Union, Article 41.
[3] Schwarze J., *European Administrative Law*, London, 2006, p. 1184.
[4] Khubua G., *Theory of Law*, Tbilisi, 2019, p. 301.

[5] Craig P., *EU Administrative Law*, Oxford University Press, 2018, p. 540.
[6] Charter of Fundamental Rights of the European Union, Article 41.
[7] Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on Good Administration.
[8] Supreme Court of Georgia, Case No. BS-1168(K-20), 25.03.2021.

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EU RECOMMENDATIONS AND DEMOCRATIC GOVERNANCE IN GEORGIA: ASSESSING THE IMPLEMENTATION GAP

Key Words: European Commission Recommendations; Democratic Governance in Georgia; European Integration; Enlargement Policy; Rule of Law; Implementation Gap; Public Administration Reform; Political Accountability

The European Union's enlargement policy relies on conditionality as a central mechanism for promoting democratic governance and institutional reform in candidate countries. Following the granting of candidate status, Georgia has entered a critical phase of its European integration process, where the implementation of European Commission recommendations serves as the primary benchmark for progress.

This article examines the extent to which EU conditionality has led to substantive democratic governance reforms in Georgia, moving beyond formal legislative compliance. It argues that despite measurable progress in legal and institutional alignment, a persistent implementation gap remains across key governance areas, including judicial independence, anti-corruption policy, media freedom, and political pluralism.

The study is grounded in the theoretical framework of Europeanisation and EU conditionality, conceptualising the implementation gap as the divergence between formal reform adoption and their practical realisation. Methodologically, it combines qualitative analysis of EU policy documents—particularly the 2025 Enlargement Package with original survey data capturing public perceptions of reform effectiveness.

The findings demonstrate that the implementation gap is primarily driven by limited political will, institutional weaknesses, and sustained political polarisation. In addition, recent legislative developments are widely perceived as constraining civic space and complicating the EU integration process. The analysis further reveals a

growing discrepancy between the high normative legitimacy of EU recommendations and their limited practical effectiveness.

The article concludes that while EU conditionality remains a significant external driver of reform, its transformative capacity is increasingly mediated by domestic political dynamics. Bridging the implementation gap therefore requires not only formal compliance, but also genuine political commitment, strengthened institutional capacity, and an enabling environment for democratic participation.

Introduction

The European Union's enlargement policy has traditionally relied on conditionality as a transformative mechanism for promoting democratic governance, the rule of law, and institutional reform in candidate countries. The granting of candidate status to Georgia in December 2023 marked a significant geopolitical and normative milestone, formally advancing the country's European integration trajectory.

However, the post-candidate phase has exposed a growing tension between formal alignment with EU requirements and the substantive implementation of democratic reforms. While legislative and policy frameworks increasingly reflect European standards, recent developments raise concerns regarding the depth and sustainability of these reforms. The European Commission's 2025 Enlargement Package highlights not only stagnation but also elements of democratic backsliding, including the erosion of the rule of law, restrictions on fundamental freedoms, and the shrinking of civic space.

This divergence is further underscored by the European Council's conclusion that Georgia's accession process has been de facto halted, signalling a widening gap between formal compliance and practical implementation. Institutional developments such as the weakening of accountability mechanisms and setbacks in civil service reform further challenge the foundations of EU conditionality.

In this context, the concept of the "implementation gap" becomes central. While legislative approximation remains a visible indicator of progress, it fails to capture the qualitative dimension of democratic transformation. This article therefore moves beyond a compliance-based assessment to examine the extent to which EU recommendations have been internalised within Georgia's political and institutional structures.

The main research question is:

To what extent has EU conditionality led to substantive democratic governance reforms in Georgia beyond formal legislative compliance?

To address this, the article explores two subsidiary questions:

1. What factors explain the persistence of the implementation gap in key governance areas?

2. How do domestic political and legal dynamics shape the effectiveness of EU-driven reforms?

By combining institutional analysis with survey-based public perceptions, the study provides a comprehensive assessment of Georgia's Europeanisation process.

Theoretical Framework

The EU's transformative influence on candidate countries is commonly analysed through the frameworks of Europeanisation and conditionality. Europeanisation refers to the diffusion of EU norms and practices into domestic political and institutional contexts, extending beyond formal alignment to include the internalisation of governance standards.

Conditionality serves as the core mechanism of enlargement policy, linking progress towards EU membership to the fulfilment of political, legal, and institutional criteria. Its effectiveness depends on both the credibility of EU incentives and the willingness of domestic actors to implement reforms.

Within this framework, the "implementation gap" describes the divergence between formal legislative alignment and the effective application of reforms in practice. It highlights the distinction between de jure compliance and de facto implementation, exposing the limits of formal indicators of progress.

In Georgia's case, this gap is particularly evident. Despite significant legislative approximation, persistent challenges in areas such as judicial independence, anti-corruption, and political pluralism suggest that formal compliance has not translated into substantive democratic transformation.

Importantly, the implementation gap is inherently political, shaped by factors such as political will, institutional capacity, elite incentives, and broader dynamics of polarisation. As such, the effectiveness of EU conditionality is mediated by domestic political and legal contexts.

This article conceptualises the implementation gap as a multi-dimensional phenomenon operating across legal, institutional, and societal levels, emphasising the need to move beyond compliance-based assessments.

EU Policy Context and Reform Trajectory

Following the granting of candidate status in December 2023, Georgia's European integration trajectory has entered a more complex phase. While this status signalled progress, subsequent EU assessments reveal a growing disconnect between formal commitments and actual reform outcomes.

The European Commission's 2025 Enlargement Package provides a critical evaluation, identifying shortcomings in the implementation of democratic reforms and signs of institutional regression. Key concerns include the weakening of the rule of law, deterioration of checks and balances, and increasing restrictions on media pluralism and civic space.

The European Council's conclusion that the accession process has been effectively halted further underscores these concerns, reflecting a broader erosion of trust between the EU and Georgian authorities. This suggests a declining effectiveness of EU conditionality, as legislative compliance no longer ensures credible democratic progress.

Controversial legislative initiatives, including the so-called "transparency law" and regulations on foreign funding, have intensified these challenges. While framed as accountability measures, they have been widely criticised for restricting civil society and independent media, thereby undermining democratic governance.

Institutional practices further illustrate the implementation gap. Reports highlight stagnation or reversal in civil service reforms, alongside persistent issues in judicial independence and anti-corruption mechanisms. These findings indicate that formal alignment has not translated into effective governance due to political interference and weak enforcement capacity.

Additionally, high levels of political polarisation have complicated the reform environment, contributing to strained EU–Georgia relations and reducing the transformative impact of conditionality.

Overall, Georgia's case demonstrates the limitations of an enlargement model that prioritises formal benchmarks over qualitative democratic outcomes. The persistence of the implementation gap suggests that EU-driven reforms are increasingly constrained by domestic political dynamics.

Methodology

This study employs a mixed-methods approach, combining qualitative document analysis with exploratory survey data. The qualitative component examines European Commission reports, national reform strategies, and independent analyses, while the survey captures public perceptions of EU-driven reforms.

Survey Design and Structure

The survey instrument is structured into eight thematic sections, each addressing a specific dimension of the research problem, with particular emphasis on the concept of the "implementation gap" between formal compliance and substantive reform outcomes.

Section I - Demographic Information

The first section collects basic respondent characteristics, including: Place of residence, Gender, Occupation. This information allows for a contextual understanding of the respondent pool and supports potential cross-group comparisons in the analysis.

Section II - Awareness of EU Recommendations

This section assesses the level of public awareness and perceived importance of EU-driven reforms through two key questions: To what extent are respondents familiar with EU recommendations regarding Georgia's reform process? How important do respondents consider these recommendations for Georgia's democratic development?

These questions help establish the baseline level of engagement with EU conditionality at the societal level.

Section III - Perception of the Implementation Gap

This section directly operationalises the core concept of the study the implementation gap through:

An evaluative question on how effectively the Georgian government implements EU recommendations; A Likert-scale agreement statement:

"Reforms are often formally adopted but do not lead to substantive changes in practice."

This section is central to measuring perceived discrepancies between formal reform adoption and practical outcomes.

Section IV - Governance Areas

Respondents are asked to evaluate progress across key domains of democratic governance using a 5-point Likert scale (1 = very poor progress; 5 = very strong progress). The areas include:

- Judicial independence;
- Anti-corruption policy;
- Media freedom;
- Political pluralism;
- Reduction of political polarization;
- Restrictions on (Western) funding for civil society organisations.

This section enables a comparative assessment of reform performance across critical governance sectors.

Section V - Barriers to Implementation

This section identifies perceived obstacles to effective reform implementation through a multiple-choice question: Respondents are asked to select up to two main

barriers to the implementation of EU recommendations. This allows for the identification of dominant explanatory factors behind the implementation gap.

Section VI - EU Influence

Respondents are asked to assess: The overall influence of the European Union on democratic reforms in Georgia. This question captures broader perceptions of EU conditionality as a transformative mechanism.

Section VII - Recent Legislative Developments

Given the contemporary political context, this section examines attitudes towards recent legal changes through: An agreement statement: "Recent legislative developments in Georgia complicate the country's EU integration process." An evaluative question on the impact of the "transparency law" and foreign funding regulations on civil society.

A multiple-choice question asking respondents to classify the primary effect of these laws as:

Strengthening state control and accountability; Restricting civic space and civil society organisations; Having a mixed impact; Insufficient information.

This section provides insight into how recent political developments shape perceptions of democratic governance and EU integration.

Section VIII - EU Integration Outlook

The final section addresses forward-looking perspectives through: An assessment of how the current political and legal environment supports EU integration. An open-ended or semi-structured question on the main priorities for improving the integration process. This section links perception-based data with policy-oriented implications.

Data Collection and Analytical Approach

The survey incorporates a combination of Likert-scale questions, agreement-based statements, and multiple-choice items, allowing for both quantitative aggregation and qualitative interpretation of responses. This design facilitates the identification of patterns across governance areas, as well as the evaluation of perceived reform effectiveness.

The concept of the implementation gap is operationalised through multiple survey components, particularly in Sections III and IV, where respondents assess both general reform effectiveness and sector-specific progress. Additionally, the inclusion of questions on recent legislative developments enables the analysis of how evolving political dynamics influence perceptions of EU-driven reforms.

While the survey provides valuable insights into public attitudes, it is important to acknowledge its limitations. As perception-based data, the findings do not directly measure institutional performance but rather reflect subjective evaluations shaped by individual experiences and political context. Nevertheless, when combined with qualitative policy analysis, the survey significantly strengthens the study's ability to assess the interaction between formal EU recommendations and their practical implementation

Survey Findings

Section I - Respondent Profile

The survey was conducted among a total of 95 respondents, providing an exploratory yet informative snapshot of public perceptions regarding EU-driven reforms in Georgia. The sample includes participants aged 16 and above, with a notable concentration in younger age groups.

In terms of age distribution, the largest segment of respondents (49.5%) falls within the 18–24 age group, indicating a strong representation of youth perspectives. This is followed by respondents aged 45 and above (20%), and those aged 25–34 (16.8%). Smaller proportions include individuals aged 16–18 (7%) and 35–44 (6%). This distribution suggests that while the dataset is youth-dominant, it still captures intergenerational variation, allowing for a broader interpretation of societal attitudes.

Geographically, the sample is heavily concentrated in Batumi (83%), with a smaller share from Tbilisi (7%), and the remaining respondents representing other municipalities of the Adjara region. While this concentration reflects the regional scope of the data collection, it also implies that the findings should be interpreted with caution in terms of nationwide generalisation.

Gender distribution shows a predominance of female respondents (68%), compared to 32% male participants. This imbalance may influence perception-based outcomes, particularly in areas related to governance and civic engagement, and should be taken into account when interpreting the results.

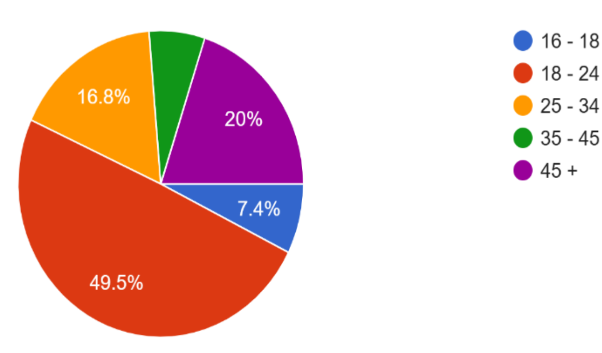
From a professional and educational perspective, the largest group of respondents are students (43%), followed by individuals employed in the private sector (24%) and the academic field (17%). Smaller segments include school pupils (5%), public sector employees (5%), civil servants (2%), and media representatives (2.1%). This composition indicates a sample that is relatively well-engaged with educational and professional environments, potentially contributing to higher awareness levels regarding EU-related reforms.

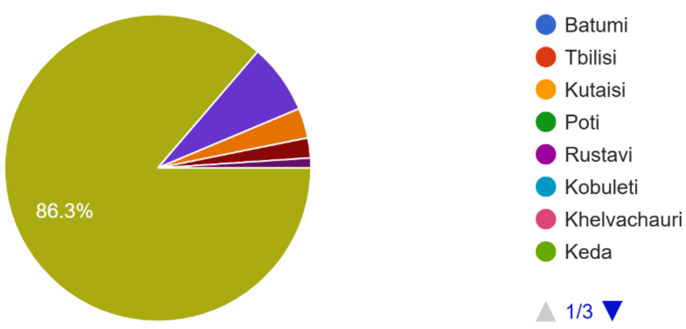
Analytical Implications

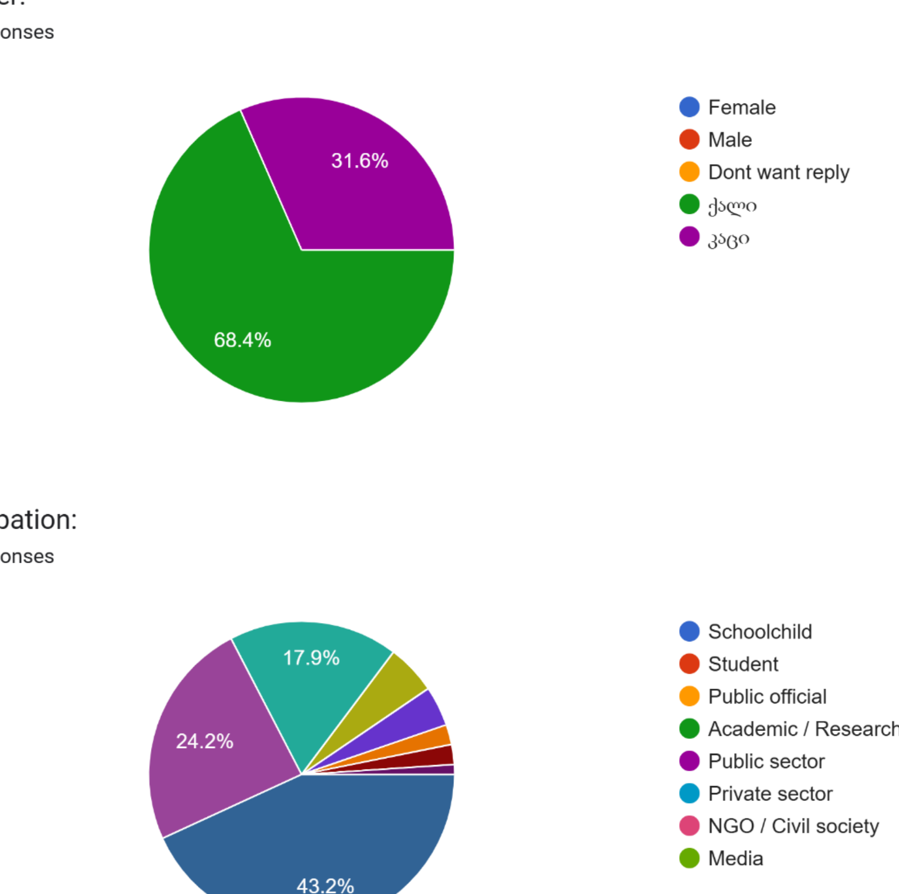
The composition of the respondent pool has several important implications for the interpretation of the findings. First, the strong representation of young and educated individuals suggests that the survey captures perceptions from a socially active and potentially more EU-oriented segment of the population. This may result in higher levels of awareness and more critical evaluations of reform processes.

Second, the regional concentration in Batumi provides valuable insights into perceptions within a key urban center in western Georgia, but also limits the extent to which the findings can be generalised to the entire country.

Finally, the diversity in occupational backgrounds particularly the inclusion of students, academics, and private sector representatives offers a multi-layered perspective on governance and reform processes, which is particularly relevant for analysing perceptions of the implementation gap.







Section II - Awareness and Perceived Importance of EU Recommendations

The second section of the survey examines respondents' level of awareness of EU recommendations and their perceived importance for Georgia's democratic development. These dimensions are particularly relevant for assessing the societal resonance of EU conditionality and its broader legitimacy.

In terms of awareness, the findings indicate a moderate level of familiarity with EU recommendations among respondents. The largest share (46.3%) reported being moderately familiar, followed by 30.5% who indicated partial familiarity. A smaller proportion (17.9%) stated that they are fully familiar with EU recommendations, while only 5.3% reported having no familiarity at all.

This distribution suggests that while EU-driven reform processes are not fully internalised at the societal level, they are nevertheless widely recognised and understood in general terms, particularly among the surveyed population. The relatively low percentage of respondents with no awareness indicates that EU recommendations have achieved a certain degree of visibility within public discourse.

In contrast to the moderate level of awareness, respondents demonstrate a remarkably strong consensus regarding the importance of EU recommendations. A clear majority (58.9%) consider them very important for Georgia's democratic development, while an additional 36.8% regard them as important. Only a marginal share (4.2%) perceive them as less important.

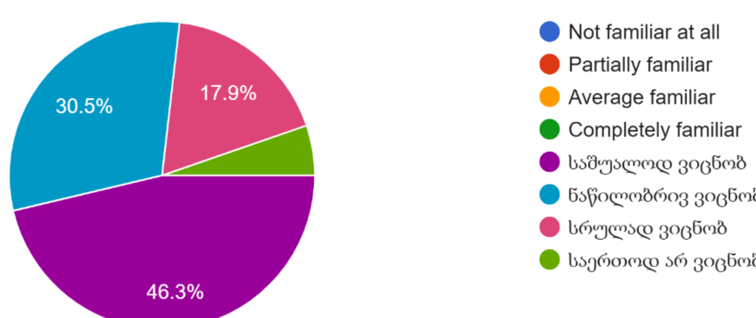
Analytical Interpretation

The juxtaposition of these findings reveals an important dynamic. While awareness of EU recommendations remains uneven and largely moderate, their normative legitimacy is exceptionally high among respondents. This indicates that EU conditionality is broadly perceived as a credible and desirable framework for democratic reform, even among those who may not be deeply familiar with its specific content.

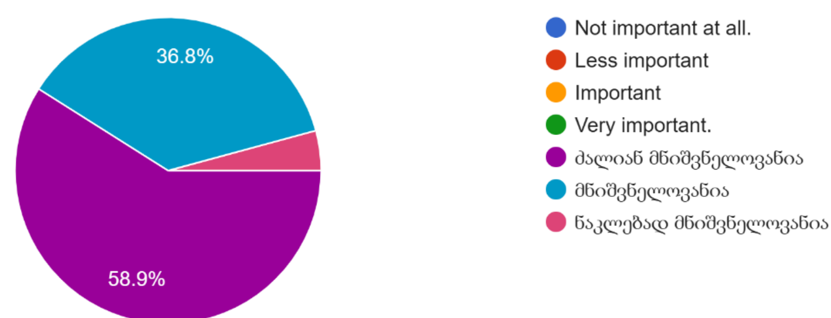
From an analytical perspective, this gap between awareness and perceived importance has two key implications. First, it suggests that the European Union continues to enjoy a strong level of trust and normative influence within Georgian society, reinforcing its role as a central external driver of reform. Second, it highlights a potential vulnerability: limited depth of understanding may reduce the capacity of society to critically assess the implementation of reforms and hold institutions accountable.

Importantly, this finding also provides an indirect lens into the broader "implementation gap" explored in this study. The high level of perceived importance attached to EU recommendations contrasts with growing concerns highlighted in EU policy reports regarding their effective implementation. This divergence suggests that while public expectations of EU-driven reforms remain high, their practical outcomes may not fully meet societal expectations, thereby reinforcing perceptions of inconsistency between commitment and delivery.

◆ Section II — Awareness of EU Recommendations To what extent are you familiar with the European Union's recommendations regarding Georgia's reform process?
95 responses



In your opinion, how important are EU recommendations for Georgia's democratic development?
95 responses



Section III - Perceptions of the Implementation Gap

The third section of the survey directly addresses the central analytical concept of this study the implementation gap by examining how respondents evaluate the effectiveness of the Georgian government in implementing EU recommendations and the extent to which reforms produce substantive outcomes.

When asked to assess the effectiveness of implementation, the responses reveal a predominantly critical perception. The largest share of respondents (38.9%) indicated that EU recommendations are only partially implemented, followed by 25.3% who consider implementation to be moderate. Notably, a significant proportion (22.1%) believe that recommendations are not implemented at all. In contrast, only 11.6% of respondents perceive implementation as mostly effective, while a marginal 2.1% consider it to be fully effective.

These findings suggest that, from a societal perspective, the implementation of EU recommendations is largely viewed as incomplete, inconsistent, and insufficiently effective.

Further evidence supporting this perception emerges from responses to the statement:

"Reforms are often formally adopted but do not lead to substantive changes in practice."

A combined majority of respondents express agreement with this statement: 38.9% agree and 10.5% strongly agree, indicating that nearly half of the respondents explicitly recognise a disconnect between formal reform adoption and practical outcomes. Meanwhile, 26.3% remain neutral, suggesting a degree of uncertainty or ambivalence, while a smaller share (15.8% disagree and 8.4% strongly disagree) reject this claim.

Analytical Interpretation

Taken together, these results provide strong empirical support for the existence of an implementation gap in Georgia's EU integration process. The predominance of responses indicating partial or ineffective implementation, combined with widespread agreement that reforms often lack substantive impact, reflects a clear perception of divergence between formal compliance and real-world transformation.

Importantly, the relatively high proportion of neutral responses points to an additional layer of complexity. It suggests that while a significant segment of the population perceives an implementation deficit, there is also a notable degree of uncertainty regarding the actual effectiveness of reforms. This may be linked to limited transparency, insufficient communication of reform outcomes, or the technical nature of policy changes, which are not always easily observable at the societal level.

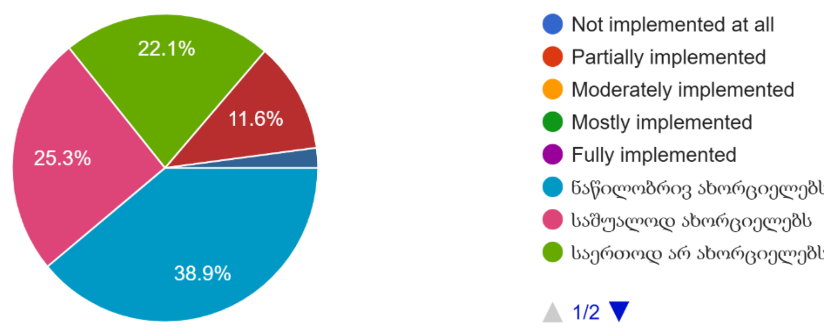
From a theoretical perspective, these findings align closely with the concept of "shallow Europeanisation," where reforms are adopted in formal terms but fail to produce deep institutional or behavioural change. They also reinforce the argument that EU conditionality, while effective in driving legislative alignment, is less successful in ensuring consistent and meaningful implementation.

Furthermore, the data highlight a critical tension between the high normative value attributed to EU recommendations (as demonstrated in Section 5.2) and their perceived limited effectiveness in practice. This gap between expectations and outcomes may contribute to growing scepticism and undermine the credibility of the reform process over time.

In this sense, the implementation gap emerges not only as an institutional phenomenon but also as a perception-based reality, shaping how citizens evaluate the trajectory of democratic governance and European integration in Georgia.

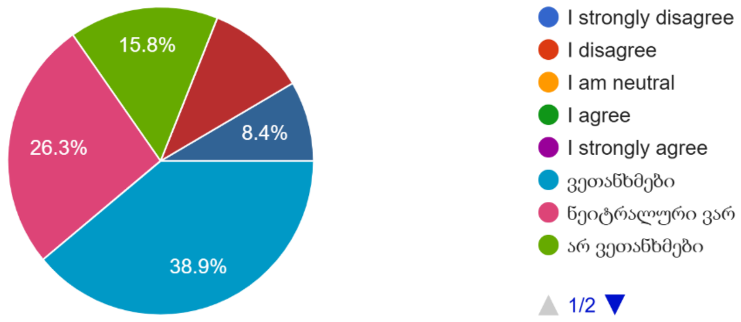
◆ Section III — Perception of the Implementation Gap In your view, how effectively does the Georgian government implement EU recommendations?

95 responses



Please indicate your level of agreement with the following statement: “Reforms are often formally adopted but do not lead to substantive changes in practice.”

95 responses

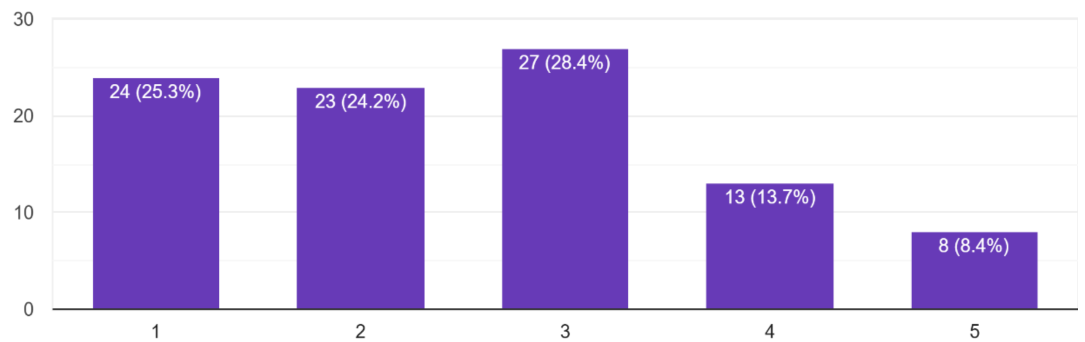


Section IV - Evaluation of Governance Areas

The fourth section of the survey provides a sector-specific assessment of progress across key domains of democratic governance in Georgia. Respondents were asked to evaluate developments using a five-point Likert scale (1 = very poor progress; 5 = very strong progress), enabling a comparative analysis of perceived reform effectiveness.

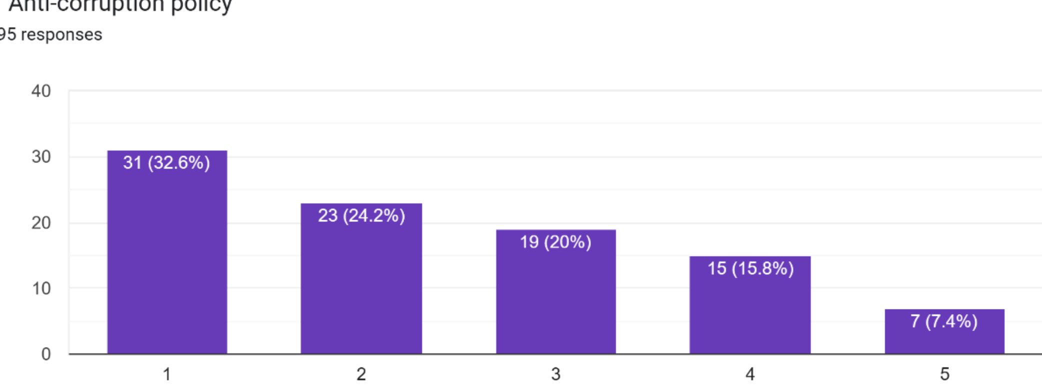
- **Judicial Independence**

Perceptions of judicial independence reflect a moderately negative assessment, with the largest share of respondents (28.4%) assigning a score of 3, followed by 25.3% rating it 1 and 24.2% rating it 2. Only a minority of respondents evaluated progress positively (13.7% rated it 4, and 8.4% rated it 5). The average score of 2.8 suggests that while some incremental progress may be acknowledged, overall confidence in judicial independence remains limited.



- **Anti-Corruption Policy**

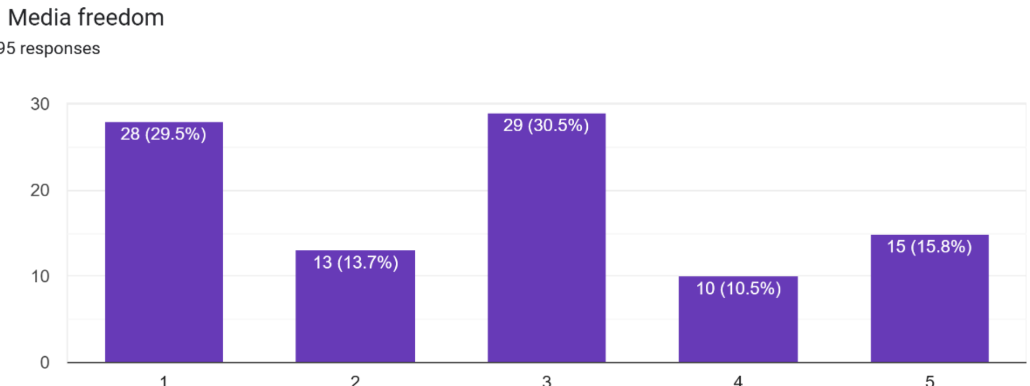
Anti-corruption efforts receive the most critical evaluation among all governance areas. A significant proportion of respondents (32.6%) rate progress as very poor (1), while 24.2% assign a score of 2. Only 23.2% of respondents provide positive evaluations (scores of 4 or 5 combined). The average score of 2.2 indicates a substantial deficit in perceived effectiveness, pointing to persistent concerns regarding the credibility and enforcement of anti-corruption mechanisms.



- **Media Freedom**

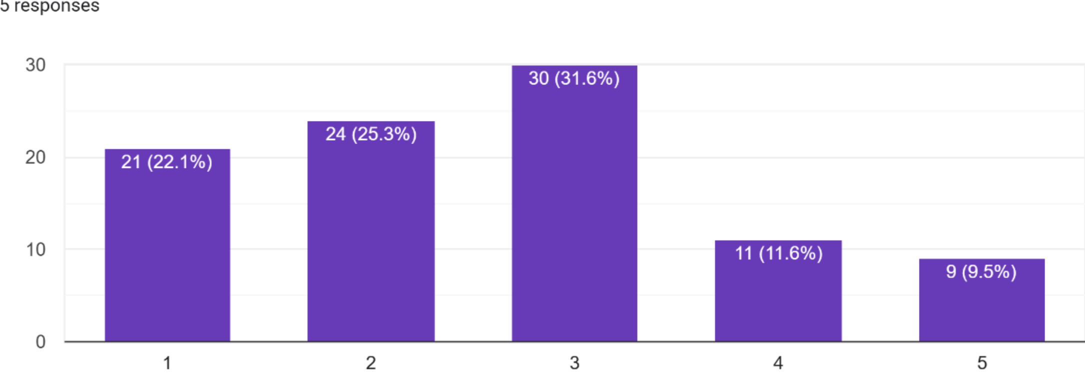
Assessments of media freedom reveal a polarised perception. While the largest share of respondents (30.5%) assign a neutral score of 3, a nearly equal proportion (29.5%) rate progress as very poor (1). At the same time, 15.8% provide the highest score (5), suggesting the presence of divergent experiences or interpretations of media conditions.

The overall average score of 2.5 reflects a mixed but generally cautious evaluation, indicating concerns about the sustainability of media pluralism.



- **Political Pluralism**

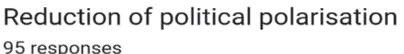
Political pluralism is similarly assessed at a moderate-to-low level, with 31.6% of respondents assigning a score of 3 and a combined 47.4% rating it negatively (scores of 1 or 2). Only 21.1% of respondents provide positive evaluations (scores of 4 or 5). The average score of 2.5 suggests that while pluralism formally exists, it is perceived as limited in its effective functioning, potentially due to structural imbalances or unequal political competition.

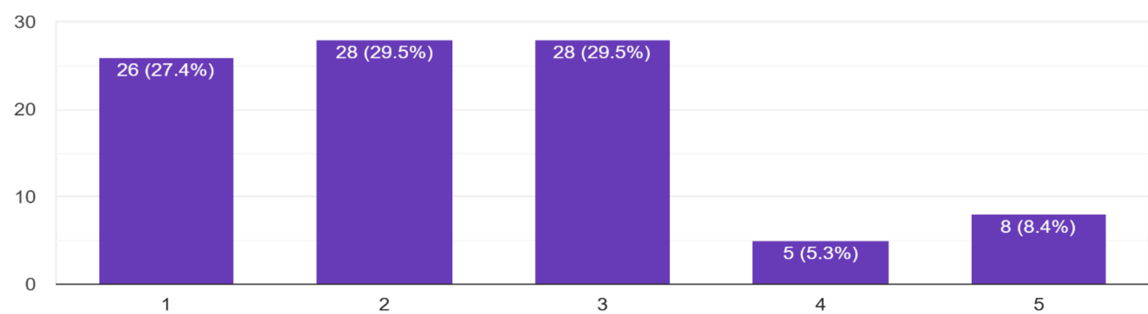


- **Reduction of Political Polarisation**

The reduction of political polarisation emerges as one of the weakest areas of perceived progress. Nearly equal proportions of respondents assign scores of 3 (29.5%) and 2 (29.5%), while a substantial share (27.4%) rate progress as very poor (1). Only 13.7% provide positive assessments (scores of 4 or 5 combined). The average score of 2.1

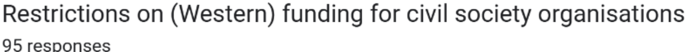
indicates that political polarisation is widely perceived as persistent and largely unresolved, representing a significant structural obstacle to democratic consolidation.

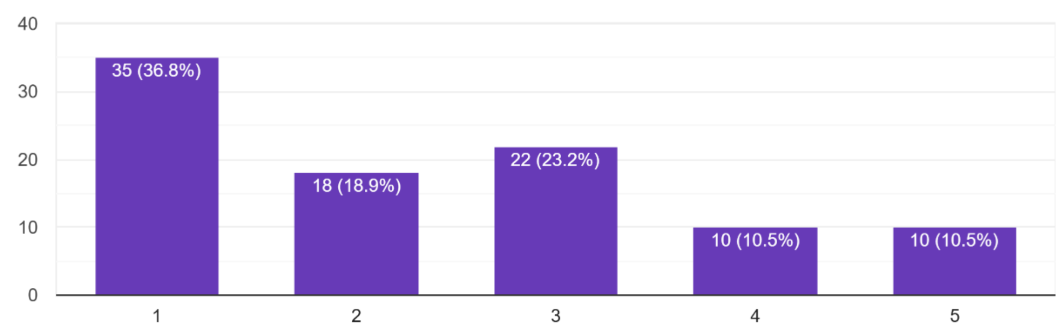




- **Restrictions on Civil Society Funding**

Perceptions of restrictions on (Western) funding for civil society organisations further reinforce concerns regarding the democratic environment. A majority of respondents provide negative evaluations, with 36.8% assigning a score of 1 and 18.9% assigning 2. While a smaller group (23.2%) rates the situation as neutral (3), only 10.5% perceive positive developments (5), and a negligible share assigns a score of 4. The average score of 2.4 reflects a predominantly critical view, suggesting that recent regulatory developments are perceived as constraining the operational space of civil society actors.





Comparative Analysis and Interpretation

Across all governance areas, the findings reveal a consistent pattern of moderate to low evaluations, with average scores ranging between 2.1 and 2.8. Notably, none of the

assessed domains reaches an average score above the midpoint of the scale, indicating a systematic perception of limited or insufficient progress.

Three key insights emerge from this comparative analysis:

First, areas traditionally central to EU conditionality such as judicial independence and anti-corruption are perceived as particularly weak, reinforcing concerns highlighted in EU policy reports regarding the lack of substantive reform in these sectors.

Second, the low evaluation of political polarisation underscores the broader political context within which reforms are implemented. Persistent polarisation appears to undermine both institutional effectiveness and the credibility of reform processes.

Third, the negative perception of restrictions on civil society funding highlights the growing tension between formal commitments to democratic governance and recent legislative developments, which are widely viewed as constraining civic space.

Analytical Implications

These findings provide strong empirical support for the argument that the implementation gap in Georgia is not limited to isolated sectors but rather reflects a systemic pattern across multiple governance domains. The consistently low scores suggest that formal alignment with EU standards has not translated into equally strong outcomes in practice.

Moreover, the convergence between survey results and the critical assessments found in EU reports indicates that public perceptions closely mirror institutional evaluations, thereby reinforcing the validity of the implementation gap as both an analytical and empirical phenomenon.

Section V - Barriers to the Implementation of EU Recommendations

The fifth section of the survey focuses on identifying the key obstacles to the effective implementation of EU recommendations in Georgia. By allowing respondents to select up to two primary barriers, this section provides insight into the perceived drivers behind the implementation gap identified in previous sections.

The findings indicate that the most significant barrier, by a considerable margin, is the lack of political will, identified by 46.3% of respondents. This result highlights a widespread perception that the primary constraint on reform implementation is not technical capacity or external limitations, but rather the insufficient commitment of political actors to fully realise EU-driven reforms.

The second most frequently cited factor is political polarisation (18.9%), which reflects the broader political environment characterised by adversarial competition and limited consensus-building. This finding aligns with earlier results (Section 5.4), where

the reduction of political polarisation was identified as one of the weakest areas of progress.

A further 16.8% of respondents identify weak institutional capacity as a key barrier, suggesting that structural limitations within public administration and governance systems also contribute to the implementation gap. Meanwhile, 13.7% point to geopolitical factors, indicating that external pressures and regional dynamics are perceived as influencing domestic reform trajectories.

Finally, 10.5% of respondents selected “other” factors, which may encompass a range of additional considerations not explicitly captured in the predefined options, including socio-economic conditions, governance culture, or public trust deficits.

Analytical Interpretation

These findings provide a clear hierarchy of perceived obstacles, with political factors dominating over institutional and external ones. The prominence of political will as the primary barrier is particularly significant, as it directly challenges the effectiveness of EU conditionality. While the EU framework assumes that incentives and conditionality mechanisms can drive reform, the data suggest that without genuine domestic commitment, formal compliance is unlikely to translate into substantive change.

The role of political polarisation further reinforces this argument. High levels of political contestation appear to undermine both the continuity and credibility of reform processes, limiting the ability of institutions to function effectively and implement complex policy changes.

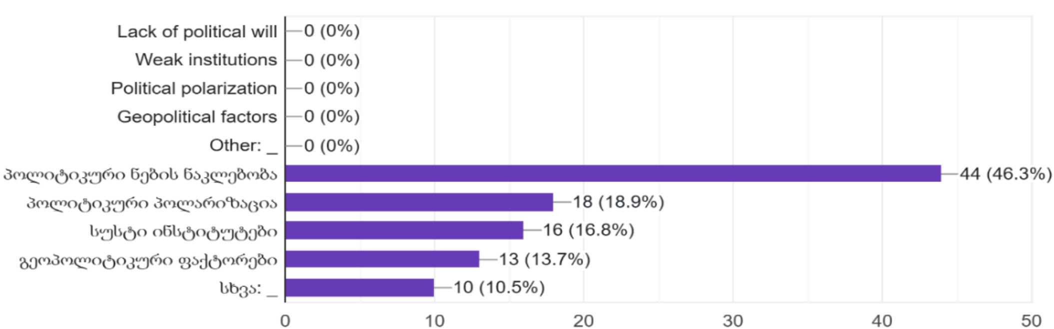
At the same time, the identification of weak institutions as a secondary factor suggests that the implementation gap is not solely political but also reflects underlying structural constraints. This duality political unwillingness combined with institutional weakness—creates a reinforcing cycle that hinders effective reform implementation.

The inclusion of geopolitical factors, while less dominant, adds an important contextual layer. It indicates an awareness among respondents that external influences may shape domestic political priorities and constrain reform dynamics, particularly in a region characterised by strategic competition and security concerns.

Theoretical Implications

From a theoretical perspective, these findings support the argument that the effectiveness of EU conditionality is fundamentally mediated by domestic political dynamics. The predominance of political will as a barrier aligns with existing scholarship emphasising that conditionality is most effective when domestic elites are both willing and incentivised to pursue reform.

In the Georgian case, the data suggest that the implementation gap cannot be understood as a purely technical failure, but rather as a politically driven phenomenon, where formal commitments coexist with limited incentives for genuine transformation.



Section VI - Perceived Influence of the European Union on Democratic Reforms

The sixth section of the survey evaluates respondents' perceptions of the overall influence of the European Union on democratic reforms in Georgia. This dimension is particularly important for assessing the perceived effectiveness of EU conditionality as an external driver of political and institutional transformation.

The findings indicate a moderate assessment of EU influence, with the majority of respondents (57.9%) describing the EU's impact as average. A further 25.3% perceive EU influence as weak, while only 15.8% consider it to be strong. Notably, no dominant perception of strong influence emerges, suggesting a limited level of confidence in the EU's ability to effectively shape reform outcomes.

Analytical Interpretation

These results reveal a nuanced and somewhat ambivalent perception of the European Union's role in Georgia's reform process. While the EU is widely recognised as an important normative and political actor (as demonstrated in Section 5.2), its practical impact on democratic reforms is perceived as moderate at best.

This discrepancy points to a broader tension between normative authority and practical effectiveness. On the one hand, the EU continues to function as a key reference point for democratic standards and reform expectations. On the other hand, its ability to ensure the consistent implementation of these standards appears to be constrained.

The relatively high proportion of respondents who perceive EU influence as weak further reinforces concerns regarding the declining effectiveness of conditionality mechanisms. This may reflect growing scepticism about the EU's capacity to enforce

compliance, particularly in the context of recent political and legislative developments in Georgia that appear to diverge from European norms.

Link to the Implementation Gap

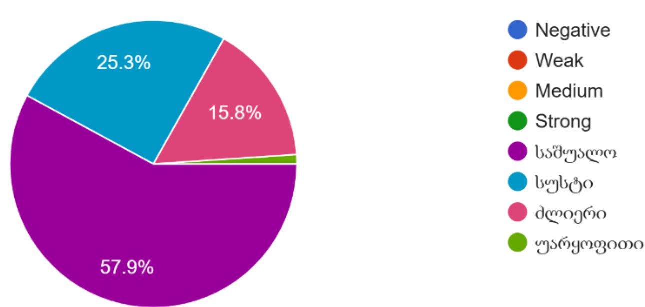
The findings from this section are closely connected to the concept of the implementation gap explored throughout the article. While EU recommendations retain strong normative legitimacy, their perceived influence on actual reform outcomes remains limited, suggesting that conditionality alone is insufficient to drive substantive transformation.

In this sense, the EU's role can be characterised as structurally influential but operationally constrained. It sets the framework and expectations for reform, but lacks the capacity—or in some cases the leverage to ensure their effective realisation within domestic political systems.

Theoretical Implications

From a theoretical perspective, these results support the argument that the effectiveness of EU conditionality depends not only on external incentives but also on domestic political conditions. The moderate evaluation of EU influence suggests that Europeanisation processes in Georgia are increasingly mediated by internal dynamics, reducing the direct transformative impact of external actors.

Section VI — EU Influence How would you assess the overall influence of the European Union on democratic reforms in Georgia?
95 responses



VII - Perceptions of Recent Legislative Developments

The seventh section of the survey examines respondents' attitudes toward recent legislative developments in Georgia and their perceived impact on the country's EU integration process and democratic environment. This dimension is particularly

important in light of ongoing debates surrounding regulatory changes affecting civil society and governance structures.

When asked to evaluate the statement:

"Recent legislative developments in Georgia complicate the country's EU integration process," a clear majority of respondents expressed agreement. Specifically, 41.1% indicated that they agree, while an additional 25.3% strongly agree, resulting in a combined 66.4% of respondents who perceive recent legislative changes as negatively affecting EU integration. In contrast, 22.1% of respondents remain neutral, while only a small minority (6.3% disagree and 5.3% strongly disagree) reject this claim.

These findings point to a dominant perception that recent legal developments are misaligned with the country's European integration trajectory.

Further insight is provided by responses concerning the impact of the so-called "transparency law" and regulations on grants and foreign funding. A majority of respondents assess these measures negatively: 35.8% consider their impact partially negative, while 32% view it as very negative. In contrast, a smaller share of respondents perceive some positive effects (16.8% partially positive and 6.3% very positive), while 8.4% believe these changes have no significant impact.

In addition, when asked to characterise the primary effect of these laws, nearly half of respondents (47.4%) indicated that they restrict civic space and civil society organisations. A further 24.2% perceive a mixed impact, while 15.8% believe the laws strengthen state control and accountability. Finally, 12.6% report insufficient information to form an opinion.

Analytical Interpretation

The findings from this section reveal a strongly critical societal perception of recent legislative developments, particularly in relation to their compatibility with EU integration objectives and democratic governance standards.

First, the overwhelming agreement that recent legal changes complicate EU integration suggests a growing disconnect between governmental policy direction and public expectations regarding the European trajectory. This perception aligns closely with concerns raised in EU policy assessments, which highlight tensions between formal commitments to integration and domestic legislative practices.

Second, the predominantly negative evaluation of the "transparency law" and related regulations indicates that these measures are widely perceived as having a constraining effect on civil society. Given the central role of civil society organisations in supporting democratic accountability, policy monitoring, and reform implementation, such perceptions are particularly significant. They point to a broader concern that

regulatory frameworks may be limiting the operational space of key actors involved in the Europeanisation process.

Third, the distribution of responses regarding the primary effect of these laws further reinforces this interpretation. The fact that nearly half of respondents explicitly identify restrictions on civic space as the dominant outcome suggests that these legislative changes are not viewed as neutral regulatory adjustments, but rather as structurally impactful interventions in the governance environment.

Link to the Implementation Gap

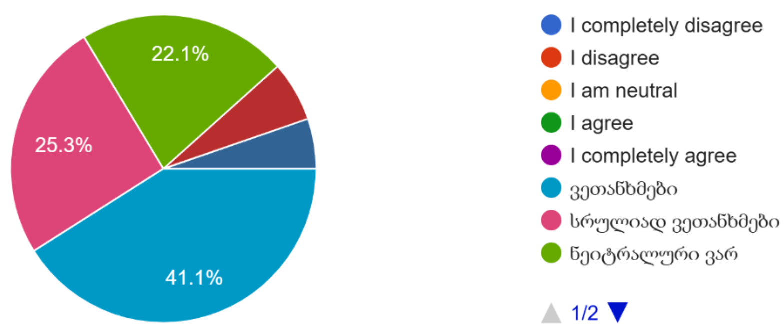
These findings provide critical insight into one of the mechanisms underlying the implementation gap. While EU recommendations emphasise the importance of inclusive governance, transparency, and the protection of fundamental freedoms, the perception that recent legislation restricts civic space suggests a direct contradiction between formal commitments and practical developments.

This tension not only affects the implementation of specific reforms but also undermines the broader ecosystem required for effective Europeanisation. In particular, constraints on civil society and independent actors may weaken monitoring, reduce accountability, and limit public engagement in reform processes thereby reinforcing the gap between legislative alignment and substantive democratic transformation.

Theoretical Implications

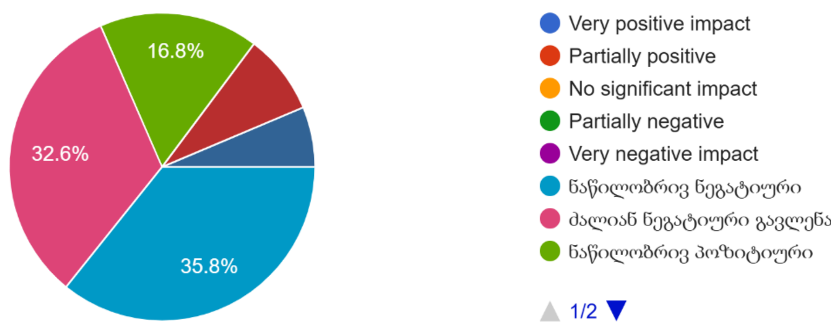
From a theoretical perspective, these findings illustrate how domestic political and legal dynamics can actively reshape the trajectory of Europeanisation. Rather than merely limiting the effectiveness of EU conditionality, recent legislative developments may contribute to a form of selective or contested Europeanisation, where certain norms are formally adopted while others are resisted or reinterpreted in practice.

◆ Section VII — Recent Legislative Developments To what extent do you agree with the following statement: "Recent legislative developments in Geo... complicate the country's EU integration process."
95 responses



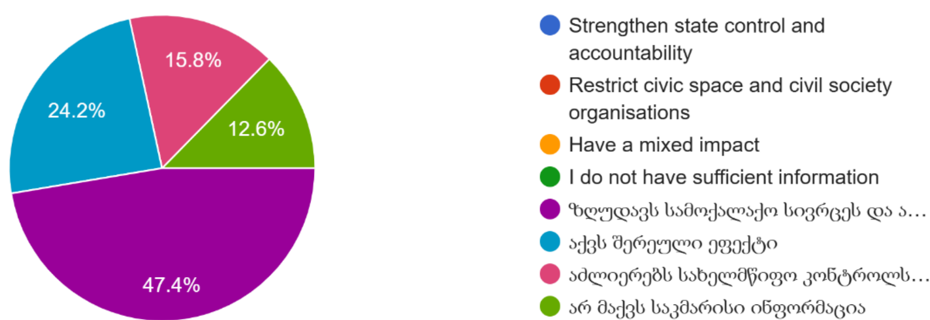
How would you assess the impact of the so-called “transparency law” and regulations on grants/foreign funding on civil society?

95 responses



In your view, these laws primarily: Have a mixed impact I do not have sufficient information

95 responses



Section VIII - EU Integration Outlook

The final section of the survey explores respondents’ perceptions of the extent to which the current political and legal environment in Georgia supports the country’s EU integration process. This forward-looking dimension provides a broader evaluative perspective, linking present governance conditions with future integration prospects.

The findings reveal a predominantly negative assessment. A majority of respondents (54.7%) indicate that the existing political and legal environment does not support Georgia’s EU integration. An additional 33.7% believe that it partially supports the process, suggesting limited or conditional effectiveness. Only a small minority (6.3%) consider the current environment to be fully supportive, while 5.3% of respondents report uncertainty.

Analytical Interpretation

These results point to a substantial level of scepticism regarding the compatibility of current domestic conditions with the requirements of EU integration. The fact that more than half of respondents explicitly perceive the environment as unsupportive suggests a significant gap between formal integration aspirations and the perceived reality of governance and legal frameworks.

Importantly, the relatively high proportion of respondents selecting "partially supportive" indicates that the issue is not viewed in absolute terms, but rather as a fragmented and inconsistent process. This reinforces earlier findings (Sections 5.3–5.7), which demonstrate that while certain elements of reform may be present, they are not perceived as coherent, sustained, or sufficiently aligned with EU standards.

Link to Previous Findings

This section synthesises and reflects the broader patterns observed throughout the survey. The negative evaluation of the integration environment is consistent with:

- The perception of limited implementation effectiveness;
- The low performance across key governance areas;
- The identification of political will as the primary barrier to reform;
- The moderate and constrained influence of the EU;
- The negative impact of recent legislative developments on democratic governance and civic space.

Taken together, these findings indicate that the challenges to EU integration are not isolated, but rather reflect a systemic pattern across political, institutional, and legal dimensions.

Analytical Implications

The perception that the current environment does not support EU integration provides strong empirical confirmation of the study's central argument regarding the implementation gap. It suggests that the divergence between formal commitments and practical developments has reached a level where it is increasingly visible and recognised at the societal level.

Moreover, this finding highlights the importance of moving beyond a formalistic understanding of integration progress. While legislative alignment remains an important benchmark, the survey results indicate that the broader political and governance context plays a role in shaping the credibility and sustainability of the integration process.

Qualitative Insights: Priorities for Improving EU Integration

The final open - ended question asked respondents to identify the main priority for improving Georgia's EU integration process. The qualitative responses largely reinforce the quantitative findings of the survey, particularly the emphasis on political will, depolarisation, institutional reform, and the revision of recent legislative developments.

Several respondents directly identified political will as the central precondition for progress, while others emphasised the need for reducing political polarisation and ensuring that public opinion is meaningfully taken into account. These responses are consistent with the survey results, where lack of political will was identified as the primary obstacle to the effective implementation of EU recommendations.

A particularly comprehensive response highlighted that the main priority should be:

"the strengthening of democratic institutions and the consistent implementation of reforms," including the rule of law, judicial independence, fair justice, equal application of the law, reduction of political polarisation, greater dialogue among political actors, and full implementation of EU recommendations".

This response reflects the broader logic of the study: EU integration cannot be reduced to formal compliance or candidate status alone, but requires substantive democratic transformation.

Another respondent similarly stressed that improving the EU integration process requires:

"a stronger fight against corruption, reduction of political polarisation, real judicial independence, and the rule of law."

This view directly corresponds with the lowest-rated governance areas in the survey, particularly anti-corruption policy, political polarisation, and judicial independence.

One of the strongest responses framed the issue in more normative and systemic terms:

"The main issue is not only obtaining status, but building a state system in which European values become part of everyday life. The quality of internal reforms determines the speed and success of our integration."

This statement is especially important for the article, as it captures the essence of the implementation gap: European integration is not merely a legal or procedural process, but a transformation of governance practices, institutional culture, and democratic standards.

Respondents also referred to the need for legislative changes, including the repeal or revision of laws adopted in recent years that are perceived as inconsistent with the

European integration process. This qualitative finding reinforces earlier survey results regarding the perceived negative impact of recent legislative developments on civic space and EU integration.

Taken together, the open - ended responses confirm that respondents view the improvement of Georgia's EU integration process as dependent primarily on domestic political and institutional transformation. The emphasis on political will, depolarisation, rule of law, anti-corruption reforms, and democratic institutions strengthens the article's central argument that the key challenge lies not in formal alignment with EU recommendations, but in their genuine implementation and internalisation.

Conclusion: Reassessing EU Conditionality and the Implementation Gap (Condensed)

The findings of this study reveal a persistent and structurally embedded implementation gap between formal compliance and substantive democratic transformation in Georgia's EU integration process.

At the normative level, the European Union retains strong legitimacy as a driver of reform. Survey data confirm that EU recommendations are widely perceived as highly important for democratic development, reinforcing the EU's role as a key external reference point. However, this normative influence is not matched by perceived effectiveness. Implementation is widely viewed as partial, inconsistent, and insufficient, with particularly weak performance in areas such as anti-corruption, judicial independence, and political polarisation.

The analysis identifies domestic political factors as the primary drivers of the implementation gap, with lack of political will emerging as the most significant constraint. This challenges the core assumption of EU conditionality that external incentives alone can ensure reform, demonstrating instead that outcomes are mediated by internal political dynamics.

Recent legislative developments further illustrate this trend. The perception that new laws restrict civic space and complicate EU integration suggests not only stagnation but also the emergence of countervailing dynamics that may undermine democratic governance. In this context, the implementation gap reflects not only incomplete reform, but also selective or contested Europeanisation, where certain norms are adopted while others are resisted or reinterpreted.

The moderate assessment of EU influence reinforces this interpretation. While the EU remains structurally significant, its transformative capacity appears increasingly constrained in a polarised political environment. This points to a shift from transformative conditionality towards a more limited model, where formal alignment coexists with growing implementation deficits.

Overall, the enlargement process in Georgia can no longer be understood as a linear, compliance-driven trajectory. Instead, it reflects a complex interaction between external conditionality and domestic political incentives, with reform outcomes shaped primarily by internal dynamics.

Policy Implications

This study demonstrates that while Georgia has achieved measurable progress in formal alignment with EU recommendations, this has not resulted in equivalent institutional transformation. The persistence of the implementation gap, combined with the central role of political will, indicates that the main challenge lies in the effective and consistent implementation of reforms.

Recent legislative developments further complicate this dynamic, highlighting tensions between formal commitments and actual governance practices, particularly through perceived restrictions on civic space and weakening democratic institutions.

Several key policy implications emerge:

First, EU conditionality should shift from a narrow focus on legislative compliance towards a stronger emphasis on implementation quality and institutional performance, including enhanced monitoring and qualitative evaluation mechanisms.

Second, the effectiveness of EU engagement depends on domestic political dynamics. Without sustained political commitment and alignment of elite incentives, external conditionality is unlikely to generate lasting reform.

Third, protecting civic space is essential. Civil society plays a critical role in accountability and reform monitoring, and restrictive regulatory environments risk undermining the impact of EU-driven reforms.

Finally, successful European integration requires not only formal compliance but the internalisation of democratic norms within political and institutional practices. As reflected in survey responses, long-term success depends on embedding European values in governance and public life.

In conclusion, while EU recommendations remain an important framework for reform, their transformative impact in Georgia is increasingly contingent upon domestic political conditions. Bridging the implementation gap therefore requires both sustained external engagement and genuine internal commitment to democratic governance.

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REGULATION OF CRYPTO-ASSETS IN THE EUROPEAN UNION AND GEORGIA

Introduction

The rapid expansion of virtual assets, particularly cryptocurrencies, has become one of the defining developments of the contemporary international financial system. The increasing adoption of blockchain-based digital assets has generated significant opportunities for innovation in financial services while simultaneously creating complex legal and regulatory challenges. These challenges primarily concern consumer protection, financial stability, market integrity, and the prevention of money laundering and terrorist financing (Duy Thien An Nguyen & Ka Ching Chan, 2024).

In response to these developments, the European Union has established a comprehensive regulatory framework through the **Markets in Crypto-Assets Regulation (MiCA)**, which constitutes the first harmonized legal regime governing crypto-assets across all EU Member States. MiCA establishes common rules concerning the classification of crypto-assets, the authorization and supervision of crypto-asset service providers, and mechanisms designed to protect investors and consumers while ensuring market transparency and financial stability. Crypto-assets have emerged as one of the fastest-growing sectors of the digital economy. They are increasingly used as investment instruments, payment mechanisms, stores of value, and tools for accessing various financial services within decentralized digital ecosystems. Their expanding role in global financial markets has transformed crypto-assets from a technological innovation into an important subject of legal regulation, attracting considerable attention from legislators, financial regulators, and international organizations.

In Georgia, the crypto-asset market has experienced substantial growth in recent years. Although the use of virtual assets has become increasingly widespread, the country's legal framework remains fragmented and continues to evolve. The legal status of crypto-assets has not yet been comprehensively defined, despite ongoing legislative efforts to align domestic regulation with international standards and the legal framework of the European Union.

The harmonization of Georgian legislation with EU law has become particularly significant following Georgia's European integration process. In this context, the National

Bank of Georgia plays a central role in regulating and supervising the virtual asset sector by establishing registration requirements, prudential standards, and supervisory mechanisms applicable to Virtual Asset Service Providers (VASPs).

The relevance of this study derives from the growing importance of establishing an effective legal framework for crypto-assets. Such regulation directly influences financial stability, investor and consumer protection, economic development, and the country's attractiveness for domestic and foreign investment. Furthermore, an examination of the European Union's regulatory model provides valuable insights for evaluating the effectiveness of Georgia's current legal framework and identifying future directions for legislative development.

The primary objective of this research is to conduct a comparative analysis of the legal regulation of crypto-assets in the European Union and Georgia, to evaluate existing regulatory mechanisms, and to identify the principal legal challenges associated with the development of digital financial markets.

The study pursues the following objectives:

- to examine the legal nature and classification of crypto-assets;
- to analyze the legal rationale for regulating crypto-assets;
- to evaluate the principal provisions of the European Union's Markets in Crypto-Assets Regulation (MiCA);
- to assess the current legal and institutional framework governing crypto-assets in Georgia; and
- to formulate recommendations based on a comparative analysis of the European Union and Georgian regulatory approaches.

This research employs doctrinal, comparative, analytical, and systematic legal research methods. The analysis is based on European Union legislation, Georgian statutory law, international legal instruments, and contemporary academic literature, thereby providing a comprehensive assessment of the legal regulation of crypto-assets in both jurisdictions.

1. The Legal Nature, Classification, and Selected Issues of the Regulation of Crypto-Assets

In contemporary legal doctrine, a crypto-asset is generally regarded as a sui generis legal phenomenon that does not fit within the traditional categories of property law. Unlike tangible property, crypto-assets lack physical substance; nevertheless, they possess independent economic value and are capable of generating legally protected rights and obligations. From a legal perspective, a crypto-asset may be defined as a digital representation of value or rights that is secured through cryptographic techniques and recorded on distributed ledger technology (DLT). Consequently, crypto-assets constitute

digital representations of value or rights that can be transferred and stored by means of distributed ledger technology (European Union, Regulation (EU) 2023/1114, 2023).

One of the most significant challenges associated with the legal regulation of crypto-assets is their legal classification. Owing to their transformative nature and the rapid evolution of the digital asset ecosystem, crypto-assets frequently combine characteristics traditionally associated with money, commodities, securities, and other intangible property rights. Their hybrid nature makes it particularly difficult to assign them to a single legal category or to establish a universal regulatory framework applicable to all forms of crypto-assets.

The issue is further complicated by continuous technological innovation, which regularly gives rise to new categories of digital assets possessing distinct legal and economic characteristics. As a result, the development of a uniform regulatory regime capable of accommodating every type of crypto-asset remains practically impossible. Furthermore, in many jurisdictions the existing financial legislation was enacted before the emergence of crypto-assets and therefore fails to adequately address their unique technological and legal characteristics.

International practice generally recognizes a functional classification of crypto-assets, which forms the basis for the segmentation of the crypto-asset market. According to this widely accepted approach, crypto-assets are classified into the following principal categories.

Payment Tokens (Cryptocurrencies)

Payment tokens are digital assets primarily designed to function as a medium of exchange. Although they generally do not confer any claim against an issuer and possess no intrinsic value, they perform the traditional economic functions of money—including serving as a medium of exchange, a unit of account, and a store of value—based on market acceptance and social consensus. Bitcoin and Litecoin are among the most prominent examples of this category.

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Utility Tokens

Utility tokens provide their holders with the right to access specific goods, services, or functionalities available within a digital platform or ecosystem developed by the issuer. Their primary purpose is not investment but rather facilitating access to products or services offered through blockchain-based applications.

Security Tokens

Security tokens represent digital equivalents of traditional financial instruments such as shares, bonds, or other investment securities. They grant their holders financial rights, including entitlement to dividends, participation in capital appreciation, profit-sharing, or voting rights in relation to the management of a project or enterprise. Due to these

characteristics, security tokens are frequently regulated under securities legislation in many jurisdictions.

Asset-Referenced Tokens (ARTs)

Asset-referenced tokens constitute a category of crypto-assets whose value is linked to one or more underlying assets. Such reference assets may include fiat currencies, commodities such as gold, other crypto-assets, or baskets of different assets. Their principal objective is to maintain price stability and mitigate the high volatility that traditionally characterizes crypto-asset markets (Tina van der Linden & Tina Shirazi, 2023).

The necessity for regulating crypto-assets stems primarily from their decentralized nature and the legal and economic risks associated with their use. Although blockchain technology provides a highly secure technological infrastructure that significantly reduces the possibility of counterfeiting or unauthorized alteration of transaction records, it does not eliminate risks affecting legally protected interests. Consequently, comprehensive legal regulation remains essential (John Michael J. Zamoras, Sheila S. Dalumpines & Joseph G. Refugio, 2024).

The protection of consumers and investors constitutes one of the principal objectives of crypto-asset regulation. Crypto-asset markets are characterized by considerable price volatility, elevated investment risks, and the existence of fraudulent schemes capable of causing substantial financial losses. Accordingly, legal regulation provides additional safeguards for investors by enhancing market transparency, establishing disclosure obligations, and reducing the likelihood of financial harm.

Another fundamental objective of regulation is the prevention of money laundering and terrorist financing. Due to the pseudonymous and cross-border nature of crypto-asset transactions, digital assets may be exploited for illicit financial activities. Consequently, international regulatory standards require Crypto-Asset Service Providers (CASPs) and Virtual Asset Service Providers (VASPs) to implement comprehensive compliance mechanisms, including Know Your Customer (KYC) procedures, Customer Due Diligence (CDD) measures, and Anti-Money Laundering (AML) monitoring systems designed to identify and report suspicious transactions.

2. Regulation of Crypto-Assets in the European Union

The European Union is among the first jurisdictions in the world to establish a comprehensive and harmonized legal framework governing crypto-assets. The primary objective of this regulatory framework is to strike an appropriate balance between promoting technological innovation, ensuring consumer and investor protection, preserving financial stability, and preventing financial crime. To achieve these objectives, the European Union adopted the Markets in Crypto-Assets Regulation (MiCA), which represents the first unified legislative framework regulating crypto-assets across all EU Member States.

MiCA establishes a single set of rules applicable throughout the European Union, thereby replacing the fragmented national regulatory approaches that previously governed crypto-assets. One of its principal objectives is to provide legal certainty for crypto-asset issuers, investors, and Crypto-Asset Service Providers (CASPs). The Regulation applies to crypto-assets that were not previously covered by existing EU financial services legislation and establishes harmonized requirements governing the issuance, public offering, admission to trading, provision of crypto-asset services, and prudential supervision of market participants.

A fundamental feature of MiCA is its functional classification of crypto-assets into three principal categories. The first category comprises Asset-Referenced Tokens (ARTs), whose value is linked to one or more underlying assets, including official currencies, commodities, or baskets of assets. The second category consists of Electronic Money Tokens (EMTs), which maintain a stable value by referencing a single official currency, such as the euro. The third category encompasses all other crypto-assets, including Utility Tokens, which provide access to specific goods or services within blockchain-based ecosystems. This classification enables legislators to impose regulatory obligations proportionate to the legal and economic characteristics of each category of crypto-assets.
One of the most significant innovations introduced by MiCA is the mandatory publication of a Crypto-Asset White Paper. Before offering crypto-assets to the public or seeking admission to trading, issuers are generally required to prepare and publish a comprehensive disclosure document containing detailed information regarding the project, the underlying technology, the rights attached to the crypto-assets, associated risks, governance arrangements, and other material information relevant to prospective investors. The White Paper must be clear, accurate, fair, and not misleading, thereby enabling investors to make informed investment decisions and promoting transparency within the crypto-asset market.
MiCA places particular emphasis on the regulation of Crypto-Asset Service Providers (CASPs). This category includes crypto-asset exchanges, custody service providers, trading platforms, portfolio managers, transfer service providers, and other entities offering crypto-related financial services. Such entities are required to obtain prior authorization from the competent national authority before commencing operations. In addition, CASPs must satisfy prudential capital requirements, establish effective internal governance and risk management systems, implement comprehensive compliance procedures, and ensure the secure custody of clients' crypto-assets.

The authorization regime established under MiCA constitutes one of the Regulation's most significant achievements. Once authorized in a single Member State, a CASP may provide services throughout the European Union under the principle of passporting, without obtaining additional licenses in each Member State. This mechanism significantly enhances the integration of the European digital financial market by facilitating cross-

border service provision while maintaining a consistently high level of regulatory oversight (ESMA, 2025).

Consumer protection occupies a central position within the MiCA framework. The Regulation requires CASPs to act honestly, fairly, professionally, and in the best interests of their clients. Service providers must disclose all relevant information regarding the nature of the services offered, associated risks, applicable fees, and the legal rights of consumers. Furthermore, they are required to establish effective complaint-handling procedures and internal mechanisms for resolving disputes promptly and fairly.

Another cornerstone of MiCA concerns the custody and safeguarding of clients' crypto-assets. Given the significant cybersecurity risks associated with the storage of digital assets—including hacking attacks, theft of private cryptographic keys, data breaches, and operational failures—the Regulation obliges CASPs to implement robust cybersecurity measures and operational resilience frameworks. In particular, clients' crypto-assets must be segregated from the service provider's own assets, thereby ensuring enhanced legal protection in the event of insolvency or financial distress.

The Markets in Crypto-Assets Regulation also introduces comprehensive rules designed to prevent market abuse within crypto-asset markets. These provisions prohibit insider dealing, unlawful disclosure of inside information, market manipulation, and other practices that could undermine market integrity, transparency, and fair competition. In this respect, MiCA aligns the regulation of crypto-assets with the well-established legal principles governing traditional financial markets.

Finally, MiCA operates in close conjunction with the European Union's anti-money laundering and counter-terrorist financing framework. Crypto-Asset Service Providers are required to implement robust Know Your Customer (KYC) procedures, conduct ongoing customer due diligence, monitor transactions, and report suspicious activities to the competent authorities. These obligations significantly reduce the risk that crypto-assets may be misused for illicit financial activities and strengthen the integrity of the European financial system.

Overall, MiCA represents one of the most comprehensive regulatory frameworks governing crypto-assets worldwide. By establishing harmonized rules applicable across the European Union, the Regulation enhances legal certainty, strengthens investor and consumer protection, promotes financial stability, facilitates innovation, and contributes to the development of a transparent, secure, and competitive digital financial market. Its adoption has established the European Union as a global leader in the legal regulation of crypto-assets and serves as an influential model for jurisdictions seeking to modernize their regulatory frameworks.

3. Regulation of Crypto-Assets in Georgia

Compared with the European Union, the legal regulation of crypto-assets in Georgia remains at a relatively early stage of development. Although the use of virtual assets has expanded considerably in recent years, Georgia has not yet adopted a comprehensive legislative act specifically governing crypto-assets. Consequently, the legal regulation of

this sector is based primarily on sector-specific legislation, regulatory acts issued by the National Bank of Georgia, and anti-money laundering legislation rather than on a unified statutory framework (Nana Sreseli & Lia Kozmanashvili, 2022).

The rapid development of digital financial technologies and the growing volume of virtual asset transactions have prompted Georgian policymakers to strengthen the country's regulatory framework. These reforms have been driven not only by domestic economic considerations but also by Georgia's obligations arising from its Association Agreement with the European Union and its broader objective of approximating national legislation to the EU acquis. Accordingly, the principal objectives of the recent legislative reforms have been to ensure financial stability, protect consumers and investors, prevent money laundering and terrorist financing, and facilitate the gradual harmonization of Georgian law with European regulatory standards (Government of Georgia, 2019).

A significant milestone in the development of Georgia's regulatory framework was the legislative reform implemented during 2022–2023. Amendments to the Law of Georgia on Facilitating the Prevention of Money Laundering and the Financing of Terrorism introduced statutory definitions of Virtual Assets and Virtual Asset Service Providers (VASPs). At the same time, the National Bank of Georgia (NBG) was designated as the competent supervisory authority responsible for regulating and overseeing the activities of VASPs operating within the country.

The National Bank of Georgia currently serves as the principal regulatory authority responsible for supervising the virtual asset sector. Its powers include the registration of Virtual Asset Service Providers, ongoing prudential supervision, monitoring compliance with statutory and regulatory requirements, conducting inspections, and imposing administrative sanctions where necessary. In addition, the NBG is authorized to adopt secondary legislation governing registration procedures, corporate governance standards, internal control systems, risk management frameworks, and anti-money laundering compliance mechanisms.

Under the current legal framework, a Virtual Asset Service Provider (VASP) is defined as a legal entity that professionally conducts activities involving virtual assets. Such activities include the exchange of virtual assets for fiat currency, the exchange of one virtual asset for another, the transfer of virtual assets, the custody or administration of virtual assets on behalf of clients, the operation of trading platforms, and services relating to the issuance and placement of virtual assets. These activities may only be carried out following registration with the National Bank of Georgia in accordance with the procedures established by law (European Commission, Georgia 2024 Report).

The registration process for VASPs incorporates a range of prudential and organizational requirements intended to ensure the integrity and stability of the market. Applicants must demonstrate adequate financial resources, sound corporate governance arrangements, effective internal control mechanisms, comprehensive risk management systems, and the professional competence and integrity of senior management. Furthermore, service providers are required to implement internal audit procedures, data

protection mechanisms, cybersecurity measures, and effective anti-money laundering compliance programmes. Collectively, these requirements are designed to enhance transparency, strengthen market confidence, and ensure the reliable operation of virtual asset service providers.

A central component of Georgia's regulatory framework concerns the prevention of money laundering and terrorist financing (AML/CFT). The relevant legal requirements are largely based on the recommendations of the Financial Action Task Force (FATF), which constitute the internationally recognized benchmark for combating financial crime. Accordingly, VASPs operating in Georgia are required to implement Know Your Customer (KYC) procedures, conduct customer due diligence, assess customer risk profiles, continuously monitor transactions, identify suspicious activities, and submit reports to the Financial Monitoring Service whenever required by law.

Consumer protection has also become an increasingly important objective of Georgian crypto-asset regulation. Although Georgia has not yet adopted legislation comparable to the European Union's Markets in Crypto-Assets Regulation (MiCA), the National Bank of Georgia has progressively strengthened regulatory requirements applicable to service providers. VASPs are expected to provide consumers with comprehensive information regarding their registration status, the nature of the services offered, applicable contractual terms, and the risks associated with virtual asset transactions. These disclosure obligations aim to promote informed decision-making and reduce the likelihood of unfair commercial practices.

Georgia's regulatory policy is increasingly oriented toward the harmonization of national legislation with European Union law. In light of Georgia's European integration process and its status as a candidate country for EU membership, particular attention has been devoted to studying the principles embodied in MiCA and identifying regulatory mechanisms that may be incorporated into domestic legislation. Such harmonization is expected to improve market transparency, strengthen investor protection, enhance financial stability, and facilitate the integration of Georgia into the European financial system.

Nevertheless, several regulatory challenges remain unresolved. These include the legal treatment of Decentralized Finance (DeFi), stablecoins, tokenized assets, and other innovative financial products that continue to evolve at a rapid pace. Additional challenges concern the further development of cybersecurity standards, the enhancement of financial literacy among consumers, and the strengthening of cooperation between Georgian supervisory authorities and their international counterparts. Addressing these issues will be essential for establishing a modern, transparent, and resilient crypto-asset ecosystem capable of supporting sustainable economic development.

In conclusion, Georgia has made significant progress in developing the legal and institutional foundations necessary for regulating the virtual asset sector. Although the existing framework represents an important step toward effective supervision, further legislative refinement and closer alignment with the European Union's regulatory model

remain necessary. The continued approximation of Georgian law to international best practices—particularly the principles embodied in MiCA—is expected to strengthen investor confidence, enhance consumer protection, improve financial stability, and facilitate Georgia's integration into the global digital financial market.

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https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/RBA-VA-VASPs.pdf.coredownload.inline.pdf
Registration of a virtual asset service provider (VASPs)
https://www.cssf.lu/en/registration-virtual-asset-service-provider/

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THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AS A COMPARATIVE SOURCE OF LAW IN CONSTITUTIONAL PROCEEDINGS

I. Introduction

One of Georgia's twelve recommendations for EU membership is the proactive application of European Court of Human Rights (ECtHR) judgments by national courts.[609] Pursuant to a legislative amendment, the Constitutional Court of Georgia may, when determining the content of a contested normative act, draw upon interpretations reflected in ECtHR judgments concerning analogous legal issues.[610] According to the explanatory note accompanying the bill, the application of ECtHR standards was intended to bring the Constitutional Court's practice closer to the best practices of the Strasbourg Court and to maintain continuous progress.[611] Recognition of ECtHR case law and reliance upon it in decision-making promotes European integration of states undergoing democratization.[612] For the effective implementation of the EU recommendation, it is important that courts apply precedent law in a targeted manner,[613] which facilitates the establishment of the highest standard of human rights protection, the effective operation of the European Convention, and the strengthening of judicial dialogue.[614] This is particularly relevant given that the European Convention on Human Rights forms part of Georgian domestic law.[615]

A search of the Constitutional Court's official database yields several dozen decisions in which the Court applied ECtHR case law to determine the content of a right, to reinforce its position, or to review the Strasbourg Court's standards.[616] For the Constitutional Court of Georgia, ECtHR interpretations constitute merely an additional argument in determining the content of a contested norm.[617] The Constitutional Court

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[609] Tracking Georgia's Reforms: An Analysis of 12 EU Conditionalities, <https://civil.ge/archives/538119> [17.06.2026].
[610] Organic Law of Georgia „On the Constitutional Court of Georgia", Article 26(3).
[611] Explanatory Note to the Organic Law of Georgia „On Amendments to the Organic Law of Georgia „On the Constitutional Court of Georgia" No. 1914-IXMS-XMP of October 18, 2022.
[612] Karlsson S.J., Why Incorporate the ECHR? The Domestic Incentives of Human Rights Commitment, International Studies Quarterly, Vol. 68, No. 2, 2024, 5.
[613] Korkelia K., Kurdadze I., International Law on Human Rights According to the European Convention on Human Rights, Tbilisi, 2004, 42.
[614] Chanturia L., The Application of the European Convention on Human Rights and Judicial Dialogue, Journal of Law, N2, 2019, 5.
[615] Constitution of Georgia, Article 4(5); Organic Law of Georgia „On Normative Acts", Article 7(5); Law of Georgia „On International Treaties of Georgia", Article 6(1).
[616] Official Search Website for Judicial Acts of the Constitutional Court of Georgia, <https://www.constcourt.ge/ka/judicial-acts> [17.06.2026].
[617] Korkelia K., Application of the European Convention on Human Rights in Georgia, Tbilisi, 2004, 146; Vakhtang Masurashvili and Onise Mebonia v. Parliament of Georgia, Decision N1/3/393,397, December 15, 2006.

may adopt ECtHR interpretations when defining the content of a right, yet not necessarily base its decision directly upon them.[618] Under such conditions, the application of ECtHR standards has had virtually no practical impact on the resolution of disputes.[619] It should be noted that the Constitutional Court does not have a unified position on the role and purpose of ECtHR case law, including the scope of the Court's discretion in considering such case law.[620] There is a limited body of literature on this topic.[621]

Based on an analysis of the Constitutional Court's case law, this paper focuses on the role of ECtHR precedent in the hierarchy of comparative law sources and identifies the role and purpose of the Constitutional Court. The Court's practice and procedural shortcomings are analyzed. In order to seek rational solutions to existing problems, the approaches and practices of model countries for Georgia are examined. The recommendations put forward are intended to contribute to the effective implementation of ECtHR case law by the Constitutional Court.

II. The Legal Force of ECtHR Case Law

1. The Place of ECtHR Case Law in Constitutional Proceedings

National courts enjoy a wide margin of appreciation in applying ECtHR case law; however, in implementing such precedent law, national context and the factual circumstances of the case must be taken into account.[622] The ECtHR regards the European Convention as a „living instrument“[623], so as to be responsive to the legal and political processes taking place in European states.[624] Consequently, the European Convention on Human Rights, as interpreted by the ECtHR, requires changes to the legislation, judicial practice, and administrative practice of its signatory states.[625] Following ratification of the European Convention on Human Rights by the Parliament of Georgia,[626] the Convention became part of domestic law and occupies third place in the hierarchy of normative acts -

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[618] Public Defender of Georgia v. The Parliament of Georgia, Judgment N1/1/1602,1603, 7 March 2025.
[619] Korkelia K., Judicial Activism and the Impact of the European Convention on Human Rights on Georgian Judicial Practice, Journal Constitutional Court Review, No. 1, 2011, 46.
[620] Maia Natadze and others v. The Parliament of Georgia, Decision N 2/2-389, October 26, 2007, II-5.
[621] Goradze G., Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Constitutional Court of Georgia, in: Current Issues of Contemporary International Law, Edited by M. Jikia, P. Javakhishvili and K. Guchua, Tbilisi, 2020; Goradze G., Case Law of the European Court of Human Rights in Decisions of the Constitutional Court of Georgia, Journal of Development Studies, Vol. 3, No. 1(3), 2022.
[622] Katrougalos G., European Convention on Human Rights and National Constitutions, Report 15741, Council of Europe, 11 April 2023, 9-10.
[623] Helfer L.R., Voeten E., Walking Back Human Rights in Europe?, The European Journal of International Law, Vol. 31, No. 3, 2020, 800-801.
[624] Djajic S., The Concept of Precedent at the European Court for Human Rights and National Responses to the Doctrine With Special Reference to the Constitutional Court of the Republic of Serbia, Harmonisation of Serbian and Hungarian Law With the European Union Law, Vol. 6, 2018, 226.
[625] Petrov J., Unpacking the Partnership: Typology of Constitutional Courts' Roles in Implementation of the European Court of Human Rights' Case Law, European Constitutional Law Review, Vol. 14, No. 3, 2018, 499.
[626] Korkelia K., Towards Integration of the European Standards: European Convention on Human Rights and Experience of Georgia, Published by Institution of State and Law and Council of Europe, Tbilisi, 2007, 6.

after the Constitution of Georgia and the Constitutional Agreement.[627] Being a party to the Convention obliges states to comply with its obligations.[628] States party to the Convention must respect ECtHR case law in order to ensure the protection of human rights at the same level.[629] ECtHR case law ensures the harmonization of constitutional review in Europe and the consolidation of a „European constitutional order".[630]

When reviewing the constitutionality of a norm, the Constitution of Georgia serves as the guiding standard for the Constitutional Court.[631] The Constitutional Court of Georgia reviews the constitutionality of a normative act solely in relation to the Constitution of Georgia; it is not within its competence to determine the constitutionality of a norm in relation to the European Convention.[632] Accordingly, the Constitutional Court cannot review a contested act's conformity with the European Convention.[633] In the assessment of the Constitutional Court, the requirements of international human rights law are taken into account in resolving a matter, but this does not entail the substitution of constitutional norms with norms of international law.[634] The interpretation given by the ECtHR does not constitute the sole source for decision-making in dispute resolution.[635] For Georgia as, for instance, for Germany the European Convention on Human Rights represents a supplementary source.[636] With this in mind, ECtHR precedent carries evidentiary weight and may have a real impact on the outcome of a case. The Constitutional Court should base its decisions on ECtHR case law in such a manner as to ensure a higher level of rights protection than that previously established by its own jurisprudence.[637]

In view of the particular significance of ECtHR case law, some states' constitutional courts have changed their practice and adopted the Strasbourg Court's approach. For example, the Czech Constitutional Court adopted the ECtHR standard for ensuring effective investigations pursuant to Articles 2 and 3 of the Convention. The Constitutional Court of Croatia amended eviction procedures in conformity with ECtHR

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[627] Organic Law of Georgia „On Normative Acts", Article 7(3).

[628] McBride J., The Doctrines and Methodology of Interpretation of the European Convention on Human Rights by the European Court of Human Rights, Council of Europe, 2021, 8.

[629] Judgments of the European Court of Human Rights - Effects and Implementation, Edited by A. Seibert-Fohr and M. Villiger, Germany, 2014, 247.

[630] Sadurski W., Constitutional Review in Europe and in the United States: Influences, Paradoxes, and Convergence, Legal Studies Research Paper, No. 11/15, 2011, 7.

[631] Constitutional Proceeding, P., Javakishvili (ed.), Tbilisi, 2024, 279.

[632] „LtD Sveti Development", „LtD Sveti Group", „LtD Sveti", „LtD Sveti Nutsubidze", Givi Djibladze, Tornike Djanelidze and Giorgi Kamladze v. The Government of Georgia and the Parliament of Georgia, Ruling N1/4/1416, April 30, 2020, II-14.

[633] Citizen of Georgia Valerian Gelbakhiani v. the Parliament of Georgia, Recording Notice 1/6/557, 20 December 2013, II-7.

[634] The Public Defender of Georgia v. the Parliament of Georgia, Judgment N 2/1/415, 6 April 2009, II-5.

[635] Goradze G., Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Constitutional Court of Georgia, in: Current Issues of Contemporary International Law, Edited by M. Jikia, P. Javakhishvili and K. Guchua, Tbilisi, 2020, 50.

[636] Chanturia L., The Application of the European Convention on Human Rights and Judicial Dialogue, Journal of Law, N2, 2019, 5-6.

[637] Davituri G., Davitashvili G., Practical Guide to the use of the Constitutional Submission Instrument by Ordinary Courts, Tbilisi, 2021, 58-59.

standards.[638] The Czech Constitutional Court played a significant role in protecting freedom of expression and the right to private life in accordance with ECtHR standards and in the effective fulfillment by the state of its obligations under the Convention.[639]

Accordingly, it is important that the Constitutional Court adequately assess the impact of the European Convention on Human Rights and ECtHR standards on the proper protection of human rights.[640] In one of its earlier cases, the Constitutional Court assessed the compatibility of a contested norm with the European Convention on Human Rights.[641] References to ECtHR case law by the Constitutional Court in resolving a dispute must must have practical significance and should not be merely „decorative."[642] The application of European standards by the Constitutional Court should result in the protection of human rights at a higher standard.[643] In earlier decisions, the Constitutional Court relied more extensively on ECtHR case law to interpret contested norms and gave them a Convention-compliant interpretation - an approach that has not been employed in recent years.[644] Regrettably, in recent times the Constitutional Court has been issuing decisions that disregard ECtHR standards.[645]

Thus, the implementation of ECtHR case law by the Constitutional Court must produce real results aimed at improving the standard of rights protection, the effectiveness of the right to a fair trial, and the strengthening of democracy.

2. The Influence of ECtHR Judgments on the Interpretation of Contested Norms

In one of its decisions, the Constitutional Court noted that the only act guiding the Court when reviewing the constitutionality of a norm is the Constitution of Georgia, and that its task is not the interpretation of international treaties and agreements.[646] For the Constitutional Court, the Constitution of Georgia must be the primary yardstick for determining the content of a contested norm; however, this does not preclude the consideration of ECtHR judgments or basing a decision upon them.[647] The Constitutional Court should apply the European Convention for the correct interpretation of the Constitution and other legal acts,[648] and for self-correction of its own practice.[649] The

[638] Petrov J., Unpacking the Partnership: Typology of Constitutional Courts' Roles in Implementation of the European Court of Human Rights' Case Law, European Constitutional Law Review, Vol. 14, No. 3, 2018, 511.

[639] Kosař D., Vyhnánek L., The Constitution of Czechia: A Contextual Analysis, Hart Publishing, 2021, 188-192.

[640] Human Rights and the European Experience of Georgia, Published by Institution of State and Law and Council of Europe, Tbilisi, 2007, 56.

[641] „Uniservisi" v. The Parliament of Georgia, Judgement N 2/6/264, December 21, 2004, II-4.

[642] Citizen of Georgia Giorgi Ugulava v. the Parliament of Georgia, Judgment N3/2/646, 15 September 2015.

[643] Kosař D., Vyhnánek L., The Constitution of Czechia: A Contextual Analysis, Hart Publishing, 2021, 188-192.

[644] Vakhtang Masurashvili and Onise Mebonia v. The Parliament of Georgia, Judgment N1/3/393,397, 15 December 2006.

[645] The Dissenting Opinion of the Member of the Constitutional Court of Georgia – Giorgi Kverenchkhiladze Regarding the Judgment N1/9/1735 dated November 7, 2025, of the Constitutional Court of Georgia.

[646] The Citizen of Georgia Mrs. Maia Natadze and others v. The Parliament and the President of Georgia, Judgment N2/2-389, 26 October 2007.

[647] Loladze B., Macharadze Z., Phirtskhalashvili A., (ed.), Constitutional Justice, Tbilisi, 2021, 147.

[648] Korkelia K., Application of the European Convention on Human Rights in Georgia, Tbilisi, 2004, 146.

Constitutional Court should use ECtHR case law as a benchmark for interpreting the rights enshrined in the Constitution.[650] The European Court of Human Rights is the most successful international human rights tribunal in the world.[651] The European Convention on Human Rights is currently the most effective human rights instrument.[652]

The primary purpose of the Constitutional Court, as the body of constitutional review, must be to consolidate an order that is in conformity with the best European practice for which it must not leave unaddressed the arguments raised by parties, including those cited in support of their submissions.[653] The Constitutional Court does not assess the compliance of a contested act with the European Convention when rendering a decision.[654] In constitutional disputes, applicants cite ECtHR case law in support of their positions because they consider ECtHR precedent to be a driver of stable and sound rule of law.[655] However, this is not sufficient for the Constitutional Court, which does not engage with the relevance and appropriateness of the case law cited by the party.[656] This is despite the fact that, in the Constitutional Court's own interpretation, parties have the opportunity to reinforce their arguments with articles of the European Convention and ECtHR case law.[657]

The influence of ECtHR case law on constitutional proceedings is of particular importance; to that end, the Constitutional Court must not leave the applicants' arguments unaddressed. For example, when assessing the constitutionality of the right to family visits being granted exclusively to female convicts, the Constitutional Court, by invoking ECtHR case law, underscored the right of all persons in custody to personal communication with their families. In this regard, the Constitutional Court found the differential treatment unjustified; however, it did not further develop its reasoning using that same case law as to what objective and reasonable justification existed for the differential treatment of female convicts, female accused persons, and male convicts/accused persons, despite the applicant party's reliance on such case law[658] and

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649 Petrov J., Unpacking the Partnership: Typology of Constitutional Courts' Roles in Implementation of the European Court of Human Rights' Case Law, European Constitutional Law Review, Vol. 14, No. 3, 2018, 499.

650 Germany considers the European Convention to be a favourable means of interpretation, but this does not prevent it from giving preference to an interpretation consistent with the Convention on Human Rights, provided that the applicable methodological standards „leave space for interpretation and weighing up interests", See., Bjorge E., National Supreme Courts and the Development of ECHR Rights, International Journal of Constitutional Law, Vol. 9, No. 1, 2011, 25-26.

651 Meyer S.J., The Constitutional Potential Of European Court Of Human Rights, NUJS Law Review, Vol. 5, No. 2, 2012, 211.

652 Zand J., The Concept of Democracy and the European Convention on Human Rights, University of Baltimore Journal of International Law, Vol. 5, No. 2, 2017, 196.

653 Goradze G., Application of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Constitutional Court of Georgia, in: Current Issues of Contemporary International Law, Edited by M. Jikia, P. Javakhishvili and K. Guchua, Tbilisi, 2020, 51.

654 Constitutional Proceeding, P., Javakishvili (ed.), Tbilisi, 2024, 281.

655 Gogiashvili G., How Judges Develop Law, Journal Georgian Law Review, Nos. 1-2, 2005, 60.

656 Lela Intskirveli and Ekaterine Chachanidze v. The Parliament of Georgia, judgement N1/1/107, January 25, 2000; Non-Entrepreneurial (Non-Commercial) Legal Per son "Phrema" v. The Parliament of Geor-gia, the judgement No2/8/734, December 28, 2017.

657 Vakhtang Masurashvili and Onise Mebonia v. Parliament of Georgia, Decision N1/3/393,397, December 15, 2006.

658 The Public Defender of Georgia v. the Parliament of Georgia, Judgment N1/6/1737, 27 July 2023.

despite the Strasbourg Court having declared differential treatment on the grounds of sex to constitute a violation of the Convention.[659]

Accordingly, the Constitutional Court should accord ECtHR landmark judgments the function of orienting legal precedents, which must have a real impact on the protection of human rights in accordance with ECtHR standards. A reference to ECtHR case law in resolving a dispute is relevant only when, on the basis of such reference, a higher standard of protection of human rights can be expected.

III. The Scope of Consideration of ECtHR Case Law by the Constitutional Court of Georgia

1. The Use of ECtHR Standards as an Additional Argument in Norm Interpretation

In light of the existing practice of the Constitutional Court, ECtHR case law constitutes an additional source for determining the content of a right.[660] In one case, when discussing the right of a victim to a fair trial in criminal proceedings, the Constitutional Court noted that it would take into account the ECtHR's approach on the same issue and, based thereon, interpreted that a victim has the right to a fair trial and, more specifically, the right to demand an effective investigation for the purpose of identifying and punishing the accused.[661] Notwithstanding this, such a reference by the Constitutional Court was was merely formal in nature, as the Court ultimately relied entirely on its own case law when reasoning about the scope of the right, regardless of whether the Strasbourg Court had established a higher standard of protection.[662] It is possible that the Constitutional Court, when reasoning about a specific aspect of the content of a contested norm, may incidentally use ECtHR case law as an additional argument.[663]

The Constitutional Court must assess the constitutionality of a contested norm with due consideration for ECtHR case law; however, for the Constitutional Court, ECtHR case law remains merely declaratory in nature.[664] It would be advisable for the Constitutional Court to adopt the German approach, where the Federal Constitutional Court takes into account ECtHR judgments and standards provided that their application

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[659] Mchedlidze N., Reasoning Standards Under the European Convention on Human Rights, Dissertation, Tbilisi, 2024, 196.

[660] The Federal Constitutional Court of Federal Republic of Germany, 14 October 2004, 2 BvR 1481/04.

[661] Khatuna Shubitidze v. Parliament of Georgia, Judgment N1/8/594, 30 September 2016, II-11.

[662] The Constitutional Court of Germany interprets the Constitution in accordance with the case law of the European Court of Human Rights, provided that its application does not restrict the rights guaranteed by the Constitution, See., The Federal Constitutional Court of Federal Republic of Germany, 22 October 2014, 2 BvR 661/12; The Federal Constitutional Court of Federal Republic of Germany, 12 June 2018, 2 BvR 1738/12.

[663] Constitutional Submission of the Supreme Court of Georgia on Constitutionality of the Fourth Section of article 306 of the Criminal Procedure Code of Georgia and Constitutional Submission of the Supreme Court of Georgia on Constitutionality of Subparagraph „g“ of Article 297 of the Criminal Procedure Code of Georgia, Judgment N3/1/608,609, 29 September 2015, II-27.

[664] Spain and Hungary Experineces, See., Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts, Adopted by the Venice Commission at its 100th Plenary Session, CDL-AD(2014)036, European Commission For Democracy Through Law (Venice Commission), 10-11 October 2014, Para. 102.

does not restrict constitutionally guaranteed rights. Such an approach leads to a reasoned position by the Constitutional Court, a thorough examination of the case, and an assessment of likely outcomes. The resolution of a dispute by the Constitutional Court with due regard for ECtHR standards is relevant when such standards have a real impact on the decision. The Constitutional Court should use ECtHR standards as a kind of benchmark that promotes the protection of human rights at a higher standard.[665]

2. Determining the Content of a Right by the ECtHR Standard

The Constitutional Court must apply ECtHR case law to establish a better standard of human rights protection. It is not necessary for rights to be explicitly enshrined in the Constitution in order to receive protection - they may be the product of principled judicial creativity.[666] In this process, the Constitutional Court has a real lever to assign content to a contested norm that is in conformity with progressive practice; and in this regard, ECtHR precedent constitutes an authoritative source of law.

There are cases in the Constitutional Court's practice where ECtHR case law has had an influence on the satisfaction of a constitutional complaint. For example, in one case concerning the refusal of compulsory military service on grounds of religious belief and the question of whether conscientious objection falls within the sphere protected by freedom of religion, the Constitutional Court invoked ECtHR case law and recognized pacifism as a belief. Likewise, the Court relied on ECtHR case law to recognize conscientious objection as falling within the protected sphere of freedom of religion.[667] With these findings in mind, the Constitutional Court defined the content of the right with reference to ECtHR case law and resolved the complaint in the spirit of that same case law. Although the Constitutional Court did not explicitly state that it was relying on the ECtHR standard, a holistic reading of the Constitutional Court's decision creates the impression that the ECtHR interpretation proved to be an influential factor in reaching the final decision in the case.[668]

When assessing the constitutionality of a contested norm, the Constitutional Court may apply the standard established by the ECtHR to determine the content of a right. However, the Constitutional Court should not grant interpretive priority to the ECtHR's interpretation of the Convention — such interpretation serves a supplementary function for the Constitutional Court in determining the content of a right.[669] It is possible that the Constitutional Court may invoke ECtHR case law to interpret a right enshrined in the Constitution of Georgia in a manner analogous to the Strasbourg Court, noting the

[665] Korkelia K., Why Should We Use European Human Rights Standards in the Administration of Justice?, Journal Constitutional Law Review, No. 1, 2009, 13.

[666] Kharshiladze I., Gvamachava T., Perspectives on the Development of Judicial Law in Georgia, Journal of Comparative Law, N12, 2022, 31-32.

[667] Public Defender of Georgia v. The Parliament of Georgia, Judgment N1/1/477, 22 December 2011, II-17-19.

[668] Citizens of Georgia Zaur Elashvili, Suliko Mashia, Rusudan Gogia and Others and Public Defender of Georgia v. The Parliament of Georgia, Judgment N2/1/370, 382, 390, 402, 405, 18 May 2007.

[669] Zviad Kuprava v. the Parliament of Georgia, Judgment N1/4/1394, 27 July 2023; Public Defender of Georgia v. The Minister of Justice of Georgia, Judgment N1/10/1676, December 21, 2022.

institutional resemblance between the provisions of the Georgian Constitution and those of the European Convention.[670]

It is important that the Constitutional Court based its decisions more actively on ECtHR case law where such case law does not conflict with the Constitution. Otherwise, defining the content of a right in accordance with the ECtHR standard will serve a formal function and will have no real impact on the protection of rights in conformity with the ECtHR standard.

IV. Conclusion

The findings revealed through an analysis of the Constitutional Court's approach to drawing upon ECtHR case law in dispute resolution indicate that it is important to refine the existing practice and for the Court to develop a coherent approach. Under a broad interpretation of the Constitution, the Constitutional Court may take ECtHR precedent into account in one case but not in another. For effective constitutional review, the Constitutional Court must treat ECtHR precedent as a source of law and base its decisions on it, provided that such case law does not conflict with the values guaranteed by the Constitution of Georgia. The targeted consideration of relevant ECtHR case law will contribute to Georgia's EU integration process. The purpose of the 2022 legislative amendments was precisely to bring national practice closer to the highest standards of human rights protection and to maintain continuous progress. Despite this legislative change, the Constitutional Court has not actively begun basing its decisions on ECtHR case law; on the contrary, following these amendments and particularly in recent years the Constitutional Court uses ECtHR case law even less frequently when determining the content of rights in its decision-making. What is more, the Constitutional Court is rendering decisions contrary to the standards established by the ECtHR.

The Constitutional Court must not merely formally reference the ECtHR standard but must base its decisions upon it for which it must assess the factual circumstances of the case, examine ECtHR standards, and determine the consequences of applying those standards for rights protection. This applies in particular to cases where the ECtHR has established a high standard of rights protection. The Constitutional Court must not merely mention ECtHR judgments when interpreting a norm, but must base its decisions on such case law and uphold a „Convention-friendly" position provided that such a decision does not violate the Constitution. The obligation to give due regard to the Convention obliges the Constitutional Court to explain why it is not taking ECtHR precedent into account, in circumstances where such case law does not conflict with the supreme law.

For the effective protection of human rights, the Constitutional Court must, in resolving disputes, take into account ECtHR case law that establishes a higher standard of rights protection than national practice. The constructive dialogue between the Constitutional Court and the ECtHR will be reinforced if the Constitutional Court

[670] Citizen of Georgia Giorgi Ugulava v. The Parliament of Georgia, Judgment N3/2/646, 15 September 2015, II-24.

resolves disputes with reliance on the Strasbourg Court's precedent law. The recommendations put forward will assist the Constitutional Court in genuinely applying ECtHR case law and in basing dispute resolution upon it.

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DEMOCRATIC REFORMS IN GEORGIA WITHIN THE CONTEXT OF EUROPEAN UNION INTEGRATION

Georgia's aspiration toward European Union (EU) integration has been a defining feature of its foreign and domestic policy trajectory since independence, gaining particular momentum after the signing of the EU-Georgia Association Agreement in 2014. Democratic reform has emerged both as a prerequisite for and a consequence of this process, influencing institutional development, governance practices, and political culture. This paper examines the trajectory of democratic reforms in Georgia through the lens of EU integration, with particular attention to judicial independence, electoral processes, anti-corruption measures, and other democratic reforms. It evaluates the role of EU conditionality and normative influence in shaping reform outcomes, while also addressing persistent structural challenges such as informal governance, and weak institutional implementation. The analysis argues that although EU integration remains a powerful catalyst for democratization, the sustainability of reforms depends on domestic political ownership and societal engagement. The analysis also considers the impact of recent developments, including Georgia's EU membership perspective. It concludes that while EU integration continues to serve as a powerful catalyst for democratic reform, the success of this process ultimately depends on the commitment of domestic actors to uphold democratic principles beyond formal compliance.

1. Introduction

Since regaining independence in 1991, Georgia has consistently articulated a strategic orientation toward Euro-Atlantic integration, positioning itself as a reform-oriented state seeking alignment with Western political, economic, and security structures.[671] Among these, the European Union (EU) has emerged as a central partner, offering not only economic opportunities but also a normative framework for democratic governance and institutional development.[672] This trajectory reached a critical milestone with the signing of the EU-Georgia Association Agreement in 2014,[673] which established a comprehensive framework for political association and economic integration, including the Deep and

[671] Stephen Jones, *Georgia: A Political History Since Independence*, London: I.B. Tauris, 2013, pp. 13-17.
[672] Elżbieta Kawecka-Wyrzykowska, *The EU-Georgia Association Agreement: An Instrument to Support, The Development of Georgia or Lip Service?* Comparative Economic Research, Volume 18, No. 2, 2015.
[673] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, 27.06.2014, Brussels, https://mfa.gov.ge/en/european-union/377295-asotsirebis-shesakheb-shetankhmeba

Comprehensive Free Trade Area (DCFTA).[674] The Agreement marked a significant deepening of EU-Georgia relations, embedding democratic reform as a central condition for closer integration. The EU's engagement with Georgia has reflected a broader strategy of promoting stability, democracy, and rule of law in its neighborhood through mechanisms of conditionality and normative influence.[675] In this context, democratic reform in Georgia has not been merely a domestic objective but also an externally incentivized process tied to tangible benefits such as financial assistance, market access, and political support.

Despite notable progress in certain areas, Georgia's democratization process remains uneven and contested. Yet, more than a decade after this milestone, the trajectory of democratic reform in Georgia reveals a complex and often contradictory picture. On the one hand, the country has undertaken extensive legislative and institutional changes, frequently positioning itself as a regional frontrunner in reform.[676] On the other hand, persistent concerns regarding judicial independence, lack of accountability, political polarization, and the concentration of informal power suggest that these reforms have not fully translated into substantive democratic consolidation.[677] While legislative alignment with EU standards has advanced, the implementation of reforms has often lagged behind, revealing persistent structural challenges. These include political polarization, elite dominance, informal governance practices, and limited public trust in institutions.[678] This tension between formal progress and practical limitations lies at the heart of the Georgian case.

One of the central challenges in understanding Georgia's democratic trajectory lies in the interaction between formal institutions and informal power structures.[679] While formal rules and procedures have undergone significant reform, political decision-making continues to be influenced by informal networks, elite relationships, and patronage systems.[680] This coexistence of formal and informal governance is characteristic of hybrid regimes, where democratic institutions operate alongside mechanisms of control that are not fully transparent or accountable. Such systems are marked by the presence of

[674] EU-Georgia Deep and Comprehensive Free Trade Area (DCFTA), European Commission, 2014, https://trade.ec.europa.eu/access-to-markets/en/content/eu-georgia-deep-and-comprehensive-free-trade-area

[675] Georgia 2024 Report, Accompanying the document Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of Regions, 2024 Communication on EU enlargement policy, Commission Stuff Working Document, https://enlargement.ec.europa.eu/document/download/7b6ed47c-ecde-41a2-99ea-41683dc2d1bd_en?filename=Georgia%20Report%202024.pdf

[676] Martin Russell, *Georgia's bumpy road to democracy on track for a European future?* European Parliament, EPRS - European Parliamentary Research Service, PE690.626, Briefing, May 2021, https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690626/EPRS_BRI(2021)690626_EN.pdf

[677] Thomas de Waal, *Georgia's Slide Away from Democracy*, Carnegie Europe, 2021.

[678] Georgia Governance Index, Georgian Institute of Politics, 2023, https://gip.ge/wp-content/uploads/2024/02/Georgia-Goverance-Index-Report-2023_Eng.pdf

[679] Lia Tsuladze, *Georgia's Contested European Trajectory. Current* History, October 2023, 255-260, DOI:10.1525/curh.2023.122.846.255.

[680] Bidzina Lebanidze, Kornely Kakachia, *Informal Governance & Electorate Perceptions in Hybrid Regimes: The 2016 Parliamentary Elections in Georgia*, Demokratizatsiya: The Journal of Post-Soviet Democratization 25: 4 (Fall 2017): 529-550.

elections and formal institutions, but these are often undermined by unequal access to resources and informal influence.[681] In the Georgian context, informal governance manifests in various forms, including influence over judicial appointments, control of media narratives, and the concentration of power.[682] These dynamics complicate the implementation of reforms and limit the effectiveness of EU conditionality, which is primarily oriented toward formal institutional change.

This article seeks to analyze the interplay between EU integration and democratic reform in Georgia by addressing the following key questions: To what extent has EU conditionality contributed to democratic transformation in Georgia since 2014; what are the main achievements and limitations of reform efforts; how sustainable are EU-driven reforms in the absence of strong domestic political consensus. Particular attention is given to the implementation of the European Commission's twelve priorities outlined on 17 June 2022,[683] which represent a critical benchmark in Georgia's path toward candidate status. The analysis demonstrates that although Georgia has achieved significant formal alignment with EU standards, the persistence of political polarization, informal governance practices, and weak institutional enforcement has limited substantive democratization. The article claims that the Georgian case illustrates the structural limits of externally driven reform in hybrid regimes and underscores the centrality of domestic political ownership for democratic consolidation.

2. Europeanization and Conditionality – Achievements and Boundaries

The EU's influence on domestic political systems in partner countries is commonly analyzed through the concepts of Europeanization and conditionality.[684] Europeanization refers to the process through which EU norms, rules, and institutional practices are incorporated into national political and legal systems.[685] Conditionality, on the other hand, involves linking the benefits of cooperation (such as financial assistance, trade access, and eventual membership prospects) to compliance with specific political and institutional criteria.[686] The EU sets clear benchmarks related to rule of law, human

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[681] Council of Europe, Parliamentary Assembly, Observation of the parliamentary elections in Georgia (26 October 2024). Election observation report, Ad hoc Committee of the Bureau Rapporteur: Mr Iulian BULAI, Doc. 16079, 28 November 2024, https://pace.coe.int/pdf/144db85bb64182323ad79b770c99dfe6757b3b7b1f5cdd969ee8811c30764ac7/doc.%2016079.pdf

[682] Human Rights Crisis in Georgia, following the 2024 Parliamentary Elections 28 November 2024, Georgian Young Lawyers' Association, 28 February 2025, https://admin.gyla.ge/uploads_script/publications/pdf/HUMAN%20RIGHTS%20CRISIS%20IN%20GEORGIA%20-%20final.pdf

[683] Commission Opinion on Georgia's application for membership of the European Union, Communication from the Commission to the European Parliament, The European Council and the Council, COM(2022) 405, final, Brussels, 17.6.2022, https://enlargement.ec.europa.eu/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf

[684] Mehmet Ugur, *"Europeanization, EU Conditionality, and Governance Quality: Empirical Evidence on Central and Eastern European Countries",* International Studies Quarterly 57, no. 1 (2013): 41-51. http://www.jstor.org/stable/41804845.

[685] Zoltán Grünhut, Ákos Bodor, *Europeanization: The role of objectives, principles and institutions,* Studia Regionalia, 2015, 41-42.

[686] Peter Becker, *Conditionality as an Instrument of European Governance - Cases, Characteristics and Types*, January 2024, JCMS Journal of Common Market Studies 63(3), DOI:10.1111/jcms.13580; Maryna Rabinovych, Anne

rights, and governance, and evaluates progress through monitoring mechanisms and periodic assessments.[687] In the context of enlargement and neighborhood policies, conditionality has been a central tool for promoting democratic reforms.

Georgia represents a particularly interesting case of external governance without immediate membership prospects. While the country has been granted a "European perspective",[688] in November 2023 it achieved full candidate status under conditions.[689] This creates a hybrid model in which EU influence remains strong but less binding than in formal accession processes. In Georgia, EU conditionality has driven some legislative reforms, particularly in areas such as anti-corruption, democratic oversight, and public administration.[690] However, the depth of transformation has been limited by domestic political dynamics, raising questions about the sustainability of externally driven reforms.

The European Commission's opinion of 17 June 2022 marked a critical juncture in Georgia's European integration process by outlining twelve priorities that the country must address to advance toward candidate status.[691] These priorities extend beyond technical reforms and engage directly with the structural deficiencies of Georgia's political system, including polarization, judicial independence, and democratic oversight.[692] What distinguishes this framework from earlier reform agendas is its explicit focus on political dynamics and governance practices rather than solely on legislative alignment. In this sense, the twelve priorities can be interpreted as an attempt by the EU to move beyond formal Europeanization toward a more substantive evaluation of democratic performance.

The implementation of these priorities, however, has been uneven and, in some areas, largely symbolic. Efforts to address political polarization have yielded limited results, as

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[687] Marta Ballesteros Perals, Milieu Consulting SRL, *Monitoring the implementation of EU law: tools and challenges, Policy Department for Citizens, Equality and Culture Directorate-General for Citizens' Rights*, Justice and Institutional Affairs PE 769.042, January 2025. https://www.europarl.europa.eu/RegData/etudes/STUD/2025/769042/IUST_STU(2025)769042_EN.pdf

[688] Opinion on Georgia's application for membership of the European Union, Directorate-General for Neighbourhood and Enlargement Negotiations, 16 June 2022, https://enlargement.ec.europa.eu/opinion-georgias-application-membership-european-union_en

[689] European Council conclusions, 14-15 December 2023, Brussels, https://www.consilium.europa.eu/media/68967/europeancouncilconclusions-14-15-12-2023-en.pdf

[690] Georgia 2024 Report, Accompanying the document Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of Regions, 2024 Communication on EU enlargement policy, Commission Stuff Working Document, https://enlargement.ec.europa.eu/document/download/7b6ed47c-ecde-41a2-99ea-41683dc2d1bd_en?filename=Georgia%20Report%202024.pdf; Malkhaz Nakashidze, *Georgia's Progress in Implementation of Fundamentals of the EU Accession Process,* RSC 2024/48, Robert Schuman Centre for Advanced Studies, 2024. SSRN Electronic Journal, DOI:10.2139/ssrn.4996748.

[691] Opinion on Georgia's application for membership of the European Union, 16 June 2022, Directorate-General for Neighbourhood and Enlargement Negotiations, https://enlargement.ec.europa.eu/opinion-georgias-application-membership-european-union_en

[692] Ibid.

confrontational politics continues to dominate the political landscape.[693] Judicial reform remains incomplete, with ongoing concerns about the influence of entrenched interests within the judiciary.[694] These shortcomings highlight a recurring pattern in Georgia's reform trajectory: the adoption of formal measures that signal compliance without fundamentally altering underlying power structures. The European Commission's subsequent assessments have consistently pointed to this discrepancy, emphasizing that progress remains partial and insufficient.[695] This structural limitation has important implications for the depth of reform. Conditionality is most effective when incentives are both credible and substantial.[696] In the absence of a concrete accession timeline, the EU's leverage in Georgia, while still significant, becomes more diffuse and contingent on domestic political calculations.

Although Georgia occupied a more ambiguous position within this framework, while it is deeply integrated into EU structures through the Association Agreement and enjoyed a formally recognized European perspective, it remained outside the formal accession process. This places Georgia within as a regime of external governance, in which EU rules are extended beyond its borders without the full institutional and political guarantees associated with membership.[697] Such arrangements weaken the credibility of conditionality by decoupling compliance from a clear and attainable reward.

The impact of EU-driven reform in Georgia is most visible at the level of formal institutional alignment. Across multiple sectors, including public administration, anti-corruption policy, and regulatory governance, Georgia has adopted legislation that partly mirrored European standards.[698] These reforms have been supported by substantial financial and technical assistance from the EU, reinforcing a pattern of rapid legal convergence. In the field of anti-corruption, for instance, Georgia has often been presented as a success story, particularly in reducing petty corruption and improving

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[693] Givi Silagadze, *Partnership and affective Polarization in Georgia*, Caucasus Research Resource Centers (CRRC), 2023, Georgia. https://crrc.ge/wp-content/uploads/2024/02/eng-partisanship-and-affective-polarization_ned-1.pdf

[694] Sopho Verdzeuli, Judicial System Reform in Georgia, (2013-2021), GYLA, https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/2021/JUDICIAL%20SYSTEM%20REFORM-2.pdf; „By refusing to check the integrity of the judicial clan, the government is hindering the process of European integration", The joint statement is signed by the following organizations: Transparency International - Georgia; Georgian Democracy Initiative; Court Watch; Democracy Defenders; Civil Society Foundation, 13.03.2024. https://csf.ge/en/by-refusing-to-check-the-integrity-of-the-judicial-clan-the-government-is-hindering-the-process-of-european-integration/

[695] Commission Staff Working Document, Georgia 2023 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Brussels, 8.11.2023 SWD(2023) 697, Communication on EU Enlargement policy.

[696] Bernard Steunenberg, Antoaneta Dimitrova, *Compliance in the EU enlargement process: The limits of conditionality*, 22 Jun 2007. European Integration online Papers (EIoP) Vol. 11 (2007) N°5; http://eiop.or.at/eiop/texte/2007-005a.htm

[697] Georgia Governance Index, Georgian Institute of Politics, 2023, https://gip.ge/wp-content/uploads/2024/02/Georgia-Goverance-Index-Report-2023_Eng.pdf.

[698] Overview of Public Administration Reform in Georgia, IDFI, 2024, https://idfi.ge/en/overview_of_public_administration_reform_in_georgia; OECD (2022), Anti-Corruption Reforms in Georgia: Pilot 5th Round of Monitoring Under the OECD Istanbul Anti-Corruption Action Plan, https://doi.org/10.1787/d709c349-en;

public service delivery.[699] Similarly, electoral legislation has undergone multiple revisions aimed at enhancing transparency and inclusiveness,[700] while judicial reforms have introduced new procedures intended to strengthen independence and accountability.[701]

However, the transformative potential of these reforms is constrained by a persistent gap between formal compliance and practical implementation. This "implementation gap" reflects not only institutional weaknesses but also deeper structural dynamics within the political system. The existence of legal frameworks aligned with EU standards does not automatically translate into their effective enforcement, especially in contexts where political incentives favor selective application. These shortcomings highlight a recurring pattern in Georgia's reform trajectory: the adoption of formal measures that signal compliance without fundamentally altering underlying power structures. The European Commission's subsequent assessments have consistently pointed to this discrepancy, emphasizing that progress remains partial and insufficient.[702]

3. Key Areas of Democratic Reform

3.1 Judicial Independence

While EU conditionality has been effective in prompting legislative change, it has proven less capable of transforming informal practices and power relations that shape the functioning of the judiciary.[703] The European Commission's emphasis on judicial reform within the twelve priorities outlined on 17 June 2022 underscores the centrality of this issue in Georgia's integration trajectory. In particular, the Commission has highlighted the need to improve the functioning of the High Council of Justice, ensure transparent and merit-based judicial appointments, and address concerns related to undue influence within the system.[704] The repeated inclusion of these issues in EU assessments indicates that judicial independence is not viewed as a one-time reform objective but as an ongoing process requiring sustained political commitment.

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[699] Georgian Government's stalled Anti-Corruption Policy, Transparency International Georgia, December, 2021, https://transparency.ge/sites/default/files/govs_stalled_ac_policy_eng_0.pdf

[700] Giorgi Iakobishvili, *EU-Georgia Relations and Democratization: An Analysis of Reforms and Challenges*, Georgian Journal for European Studies 12-13, 2023-2024, 124-139; Eto Midelashvili, Georgia's Electoral Reforms: Challenges Ahead of Crucial Elections, https://ifact.ge/en/challenges-ahead-of-crucial-election/

[701] Georgia falling short of its obligations regarding the judicial reform under the EU Association Agenda, 22 March 2022, https://socialjustice.org.ge/en/products/sakartvelo-sasamartlostan-dakavshirebit-evroasotsirebis-dghis-tsesrigit-nakisr-valdebulebebs-ar-asrulebs

[702] Commission Staff Working Document, Georgia 2025 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions, Communication on EU enlargement policy, Brussels, 4.11.2025 SWD(2025), https://enlargement.ec.europa.eu/document/download/b3089ad4-26be-4c6a-84cc-b9d680fe0a48_en?filename=georgia-report-2025.pdf

[703] General Affairs Council, Council Conclusions on Enlargement. Brussels, 17 December 2024, 16983/24 https://data.consilium.europa.eu/doc/document/ST-16983-2024-INIT/en/pdf

[704] Commission Opinion on Georgia's application for membership of the European Union, Communication from the Commission to the European Parliament, The European Council and the Council, COM(2022) 405, Brussels, 17.6.2022, P. 17. https://enlargement.ec.europa.eu/document/download/a95905d5-9783-4a1b-aef2-1740a79eda49_en?filename=Georgia%20opinion%20and%20Annex.pdf

Judicial independence constitutes a foundational element of democratic governance, ensuring the impartial application of law, the protection of fundamental rights, and the effective functioning of checks and balances.[705] Within the context of European Union integration, it is not merely a normative ideal but a concrete political requirement, embedded in accession criteria and consistently emphasized in EU-partner relations.[706] In the case of Georgia, judicial reform has emerged as one of the most complex and contested dimensions of the broader democratization process.[707] The persistence of challenges in this area also reflects broader characteristics of hybrid governance. As noted by Steven Levitsky and Lucan Way, hybrid regimes often maintain the formal structures of democratic institutions while allowing informal mechanisms of control to shape outcomes.[708] In Georgia, this manifests in a judiciary that operates within a formally reformed legal framework but remains vulnerable to internal hierarchies and external pressures.

Since the signing of the EU-Georgia Association Agreement in 2014, governments have undertaken multiple waves of judicial reform aimed at aligning the institutional framework with European standards.[709] According the Authors from ruling party, these reforms have focused on enhancing transparency, strengthening accountability mechanisms, and promoting professionalism within the judiciary.[710] On a formal level, these changes represent a significant departure from earlier practices and signal a sustained commitment to legal and institutional convergence with EU norms. However, the effectiveness of these reforms has been persistently undermined by deeper structural and political constraints. Despite improvements in the legal framework, concerns continue to be raised regarding the concentration of influence within judicial governance

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[705] Azeem Doger, *The Challenges of Independence of Judiciary, Lahore Leads University*; ELI-Mount Scopus European Standards of Judicial Independence European Law Institute, International Journal of Law and Policy, Vol. 3, Issue: 12, 49, https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI-Mount_Scopus_European_Standards_of_Judicial_Independence.pdf

[706] Gelanda Shkurtaj, *EU Integration and Judicial Reform: Cross-Country Lessons drawn from the Romanian and Albanian Perspectives*, Romanian Journal of European Affairs (Dec 2025), Vol. 25, no. 2, pp. 145-163.

[707] Commission Staff Working Document, Georgia 2025 Report, Accompanying the document Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of Regions, Communication on EU enlargement policy, Brussels, 4.11.2025 SWD(2025) 757, https://enlargement.ec.europa.eu/document/download/b3089ad4-26be-4c6a-84cc-b9d680fe0a48_en?filename=georgia-report-2025.pdf; Kornely Kakachia, Bidzina Lebanidze, Georgia's Slide to Authoritarianism, Mar 14, 2023, https://carnegieendowment.org/europe/strategic-europe/2023/03/georgias-slide-to-authoritarianism

[708] Ryszard Ficek, *Hybrid Regimes and Political (Dis)Order*, Historia i Polityka, No.46(53)/2023, pp. 49-70, DOI: http://dx.doi.org/10.12775/HiP.2023.030

[709] The "European Model" of Judicial Institutional Arrangement: Salvation or Obstacle to Successful Judicial Reform, Lessons for Georgia, Social Justice Center, Tbilisi, 2021, https://socialjustice.org.ge/uploads/products/pdf/JUDICIAL_INSTITUTIONAL_ARRANGEMENT_-_ENG_1639584294.pdf; Judicial Reform and European Integration, The state of fulfilling the European Commission's 3rd recommendation and future prospects, Social Justice Center, Tbilisi, 2023, https://socialjustice.org.ge/uploads/products/pdf/Judicial_Reform_and_European_Integration_1702983451.pdf; Tinatin Erkvania, Bidzina Lebanidze, *The Judiciary Reform in Georgia and its Significance for the Idea of European Integration*, POLICY BRIEF, January 2021 / Issue N31.

[710] Venice Commission, CDL-AD(2023)033, https://www.coe.int/en/web/venice-commission/-/cdl-ad-2023-033-e; Keti Gachechiladze, *The new opinion of the Venice Commission and critical evaluations - does the perspective of Judicial Reform remain?* 11.10.2023, https://courtwatch.ge/en/articles/bc0e5db2-1bae-439b-bf00-08c4bb56668e.

bodies and the limited pluralism in decision-making processes.[711] Critics point to the existence of informal networks and entrenched interests within the judiciary, which are perceived to exercise disproportionate control over appointments, promotions, and disciplinary procedures.[712] This dynamic suggests that formal institutional reforms have not fully translated into genuine independence in practice.

From an analytical perspective, this discrepancy can be understood through the broader concept of the "implementation gap," which captures the divergence between formal rule adoption and actual institutional behavior.[713] In the Georgian context, the persistence of this gap reflects the interaction between external reform incentives and domestic political realities. Moreover, the issue of judicial independence is closely linked to public trust in state institutions. Surveys and policy analyses consistently indicate that perceptions of bias, lack of transparency, and selective justice continue to undermine confidence in the judiciary.[714] This erosion of trust has broader implications for democratic consolidation, as it weakens the legitimacy of legal institutions and reduces the willingness of citizens to rely on formal mechanisms for dispute resolution.

The trajectory of judicial reform in Georgia illustrates both the achievements and limitations of EU-driven democratization. While substantial progress has been made in establishing a modern legal framework, the persistence of informal influence and institutional inertia continues to constrain the realization of genuine judicial independence. Addressing these challenges requires not only further legislative refinement but also a deeper transformation of governance practices, professional norms, and political incentives. Without such changes, the gap between formal compliance and substantive independence is likely to endure, limiting both the effectiveness of the judiciary and Georgia's prospects for deeper European integration.

3.2 Electoral Processes

Free and fair elections constitute a central pillar of democratic governance, providing the primary mechanism through which political authority is legitimized and accountability is exercised.[715] Within the framework of European Union integration, the conduct of elections is not evaluated solely in procedural terms but also in relation to broader democratic standards, including political pluralism, media freedom, and equal

[711] 10 Years of Judicial Reforms: Challenges and Perspectives, Social Justice Centre, 23 May 2023, https://socialjustice.org.ge/en/products/martlmsajulebis-reformebis-10-tseli-gamotsvevebi-da-perspektivebi
[712] Assessing 10 Years of Reform and the Need for Systemic Change, Coalition for an Independent and Transparent Judiciary, 25 May 2023, http://coalition.ge/index.php?article_id=292&clang=1
[713] Bob Hudsona, David Hunterb, Stephen Peckhamc, *Policy failure and the policy-implementation gap: can policy support programs help?* Policy design and practice, https://doi.org/10.1080/25741292.2018.1540378
[714] Sadia Saeed, *The Independence of Judiciary: Challenges and Reforms*, International Journal of Law and Policy, Vol. 3, Issue: 11, 2025.
[715] The Integrity of Elections: The Role of Regional Organizations. International IDEA, International Institute for Democracy and Electoral Assistance 2012. https://www.idea.int/sites/default/files/publications/integrity-of-elections.pdf

participation.[716] In the case of Georgia, electoral reform has been a key component of the democratization agenda, reflecting both domestic political pressures and external incentives associated with EU conditionality.

Since the mid-2010s, Georgia has undertaken a series of electoral reforms aimed at improving the integrity and transparency of the electoral process. These reforms have included amendments to the electoral code, changes to the composition and functioning of election administration bodies, and efforts to enhance voter registration systems and campaign finance regulations.[717] The gradual shift toward a more proportional electoral system, culminating in the adoption of a predominantly proportional model, has been particularly significant in addressing concerns about representativeness and political inclusiveness.[718]

International observation missions, including those conducted by the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (ODIHR), have acknowledged these improvements, noting increased professionalism in election administration and greater procedural transparency.[719] At the same time, such assessments have consistently emphasized that the credibility of elections depends not only on technical administration but also on the broader political environment in which they take place.[720]

Despite formal progress, elections in Georgia remain highly contested and continue to generate significant political tension. Allegations of irregularities, including the misuse of administrative resources, voter pressure, and imbalances in campaign conditions, persist across multiple electoral cycles.[721] While these issues may not fundamentally invalidate electoral outcomes, they contribute to a perception of unfairness that undermines public confidence in the electoral process. Such developments reflect deeper structural weaknesses in democratic consolidation. Contemporary forms of democratic erosion often occur not through outright electoral fraud but through the gradual degradation of

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[716] Bertjan Wolthuis, Ben Crum, Alvaro Oleart, Patrick Overeem (2025). *Democracy and pluralism after European integration: Incorporating the contested character of the EU*, Critical Review of International Social and Political Philosophy, 28(6), 1136–1160. https://doi.org/10.1080/13698230.2023.2216043

[717] Georgia at a crossroads: October 2024, parliamentary elections, https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762474/EPRS_BRI(2024)762474_EN.pdf.

[718] Georgia 2020 parliament vote to use proportional system: ruling party head. https://www.reuters.com/article/us-georgia-protests-parliament/georgia-2020-parliament-vote-to-use-proportional-system-ruling-party-head-idUSKCN1TP0TQ; ISFED (13 Nov. 2019). *MPs Should Support the Move to a Proportional System*. International Society for Fair Elections and Democracy. https://www.isfed.ge/eng/gantskhadebebi/parlamentis-tsevrebma-proportsiul-sistemaze-gadasvlas-mkhari-unda-dauchiron; Zedelashvili, Davit (2020). *Georgia's battle on electoral rules and the pivot towards proportional representation*. Constitution Net. 26 August. https://constitutionnet.org/news/georgias-battle-electoral-rules-and-pivot-towards-proportional-representation

Venice Commission Opinion on Amendments to the Electoral Code of Georgia

[719] Office for Democratic Institutions and Human Rights, Georgia Parliamentary Elections 26 October 2024, ODIHR Election Observation Mission Final Report, Warsaw 20 December 2024.

[720] Ibid.

[721] Misuse of Administrative Resources in Parliamentary Elections 2024 - Interim Report, 21 October, 2024, Transparency International Georgia, https://transparency.ge/en/post/misuse-administrative-resources-parliamentary-elections-2024-interim-report

electoral integrity and trust.[722] In Georgia, this manifests in a situation where elections are formally competitive but substantively contested, placing the country within the broader category of hybrid regimes.

The European Union has consistently emphasized the importance of electoral integrity in its engagement with Georgia, framing it as a core condition for further integration.[723] EU institutions have repeatedly called for inclusive political dialogue, cross-party cooperation, and the depolarization of the political environment as essential prerequisites for credible elections.[724] These recommendations have been reiterated in the context of the European Commission's 2022 priorities, where political polarization and institutional functioning are identified as interconnected challenges affecting democratic governance.[725] However, the effectiveness of EU influence in this domain remains contingent on domestic political dynamics. While external pressure has contributed to the adoption of electoral reforms, it has been less successful in fostering a culture of political compromise and mutual recognition of democratic rules. This limitation underscores a broader tension within the Europeanization process: the capacity to induce formal institutional change does not necessarily extend to transforming political behavior and norms.

The trajectory of electoral reform in Georgia illustrates both progress and fragility. While the legal and procedural framework has improved significantly, the persistence of political polarization, unequal campaign conditions, and contested legitimacy continues to undermine the consolidation of democratic electoral practices. Addressing these challenges requires not only further technical reforms but also a deeper transformation of political culture, including greater commitment to democratic norms, respect for electoral outcomes, and constructive engagement between political actors. Without such changes, elections will remain a source of instability rather than a mechanism for democratic consolidation.

3.3 Anti-Corruption Measures

Anti-corruption policy has long occupied a central position in Georgia's post-independence reform trajectory and is frequently identified as one of the most visible areas of success in the country's state-building efforts.[726] In the broader framework of democratic governance, the control of corruption is essential not only for ensuring

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[722] Nancy Bermeo, "*On Democratic Backsliding,*" Journal of Democracy, vol. 27, no. 1 (2016): 5-19. Johns Hopkins University Press, 10.1353/jod.2016.0012

[723] Evaluation of the EU's cooperation with Georgia Final report, 2022, https://enlargement.ec.europa.eu/system/files/2022-10/GEO%20CSE%20-%20Final%20Report%20-%20September%202022.pdf

[724] Council of Europe Congress urges Georgia to resume political dialogue at all levels of government, STRASBOURG, FRANCE 26 March 2025, https://www.coe.int/en/web/tbilisi/-/council-of-europe-congress-urges-georgia-to-resume-political-dialogue-at-all-levels-of-government

[725] Key findings of the 2023 Report on Georgia Brussels, 8 November 2023, European Commission, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_23_5626/QANDA_23_5626_EN.pdf

[726] Stephen F. Jones, *Georgia: A Political History Since Independence*, London: I.B. Tauris, 2013.

administrative efficiency but also for maintaining political accountability and public trust in institutions.[727] Within the context of European Union integration, anti-corruption reforms are treated as a core component of the rule of law, closely linked to judicial independence, public administration reform, and the functioning of democratic institutions.[728]

Georgia's early reform efforts, particularly in the aftermath of the Rose Revolution, achieved remarkable results in reducing petty corruption in public services.[729] The introduction of simplified administrative procedures, the digitalization of government services, and the establishment of one-stop public service centers significantly limited opportunities for everyday bribery and improved citizen-state interactions.[730] These measures contributed to a substantial increase in state capacity and were widely recognized by international organizations as a model for anti-corruption reform in the post-Soviet space. The success of these reforms, however, has been uneven across different levels of governance. While petty corruption has largely been contained, attention has increasingly shifted toward more complex forms of corruption, including high-level corruption, elite influence, and state capture.[731] Unlike administrative corruption, which can be addressed through procedural and technological solutions, these forms of corruption are deeply embedded in political and economic structures, making them significantly more resistant to reform.

The persistence of elite-level corruption in Georgia reflects broader patterns observed in hybrid regimes, where formal institutions coexist with informal networks of power.[732] Successful anti-corruption reform requires not only the reduction of opportunities for corruption but also the dismantling of systems in which public resources are systematically used for private or political gain.[733] In Georgia concerns have been raised

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[727] Susan Rose-Ackerman, Bonnie J. Palifka, *Corruption and Government: Causes, Consequences, and Reform*, 2nd ed., Cambridge: Cambridge University Press, 2016, DOI:10.1017/CBO9781139962933

[728] Giorgi Iakobishvili, *EU-Georgia Relations and Democratization: An Analysis of Reforms and Challenges*, DOI: https://doi.org/10.52340/gjes.2024.01.05

[729] Lincoln A. Mitchell, *Uncertain Democracy: U.S. Foreign Policy and Georgia's Rose Revolution*, Philadelphia: University of Pennsylvania Press, 2008; Fighting Corruption in Public Services Chronicling Georgia's Reforms, 2012, International Bank for Reconstruction and Development / International Development Association or The World Bank.

[730] GovTech Case Studies: Solutions that Work, Georgia: Promoting, Digital Transformation through GovTech, A Whole-of-Government Approach https://documents1.worldbank.org/curated/en/099120106302215366/pdf/P1755300fbdc870560bdc10530cf9e4973c.pdf; World Bank – Fighting Corruption in Public Services: Chronicling Georgia's Reforms. https://documents.worldbank.org/en/publication/documents-reports/documentdetail/518301468256183463

[731] Alleged Cases of the High-Level Corruption - A Periodically Updated List, 21 November, 2025 https://transparency.ge/en/blog/alleged-cases-high-level-corruption-periodically-updated-list; OECD Anti-Corruption Network – Anti-Corruption Reforms in Georgia, https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/05/anti-corruption-reforms-in-georgia_3606e61d/d709c349-en.pdf

[732] Liam O'Shea, *Shadow states high-level Corruption and state Capture in the south Caucasus*, 2025. https://globalinitiative.net/wp-content/uploads/2025/08/Liam-OShea-Shadow-states-High-level-corruption-and-state-capture-in-the-South-Caucasus-GI-TOC-August-2025.pdf

[733] Anticorruption in Transition A Contribution to the Policy Debate, The World Bank Washington, D.C., 2000, https://documents1.worldbank.org/curated/en/825161468029662026/pdf/multi-page.pdf; Alina Mungiu-Pippidi, *The Quest for Good Governance: How Societies Develop Control of Corruption*, Cambridge: Cambridge University Press, 2015.

about the concentration of economic and political power among a relatively small group of actors, which creates conditions conducive to state capture and limits the effectiveness of formal anti-corruption mechanisms.[734]

The European Union has consistently prioritized anti-corruption within its cooperation framework with Georgia, linking financial assistance, sectoral support, and political engagement to measurable progress in this area.[735] This emphasis is reflected in both the Association Agreement and the European Commission's subsequent policy instruments, including the twelve priorities outlined in June 2022, which explicitly call for strengthening anti-corruption institutions and ensuring their independence.[736] The EU's approach combines legislative alignment with monitoring and evaluation mechanisms, aiming to promote both formal compliance and practical enforcement.

Despite these efforts, concerns remain regarding the independence, capacity, and effectiveness of anti-corruption institutions in Georgia.[737] While new bodies and strategies have been introduced, questions persist about their ability to operate free from political influence and to address high-level corruption cases in an impartial manner.[738] This challenge is closely linked to the broader issue of institutional autonomy, which affects not only anti-corruption agencies but also the judiciary and law enforcement bodies responsible for investigating and prosecuting corruption-related offenses.

The limitations of anti-corruption reform in Georgia can be understood through the concept of selective enforcement. While formal rules and institutions exist, their application may be uneven, reflecting political priorities rather than consistent legal standards.[739] This dynamic undermines both the deterrent effect of anti-corruption measures and public confidence in their fairness. Moreover, the effectiveness of anti-corruption policy is closely tied to the functioning of other democratic institutions, particularly the judiciary and parliament. Weak judicial independence limits the prosecution of corruption cases, while insufficient parliamentary oversight reduces accountability in the use of public resources.[740] As a result, anti-corruption reform cannot

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[734] From concentrated power to state capture: Georgia's backsliding anti-corruption reforms Corruption Perceptions Index 2018 in focus, Transparency International Georgia, https://www.transparency.org/en/blog/from-concentrated-power-to-state-capture-georgias-backsliding-anti-corruption-reforms

[735] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part", 27/06/2014, Brussels, https://mfa.gov.ge/en/european-union/377295-asotsirebis-shesakheb-shetankhmeba

[736] Commission Opinion on Georgia's application for membership of the European Union, Communication from the Commission to the European Parliament, The European Council and the Council, COM(2022) 405, Brussels, 17.6.2022, https://enlargement.ec.europa.eu/system/files/2022-06/Georgia%20opinion%20and%20Annex.pdf

[737] GRECO, Fifth Evaluation Round, preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies Evaluation Report Georgia.

[738] European Commission for Democracy through Law (Venice Commission) On the Provisions of the Law on the Fight Against Corruption Concerning the Anti-Corruption Bureau, December 18, 2023.

[739] Michael Johnston, *Syndromes of Corruption: Wealth, Power, and Democracy*, Cambridge: Cambridge University Press, 2005.

[740] European Commission Georgia Report 2023; Georgia in 2023, Assessment of the Rule of Law and Human rights, GYLA, https://admin.gyla.ge/uploads_script/publications/pdf/GEORGIA%20IN%202023.pdf

be treated as an isolated policy domain but must be understood as part of a broader system of governance.

Ultimately, Georgia's experience in anti-corruption reform illustrates a dual trajectory. On the one hand, the country has achieved significant progress in reducing low-level corruption and improving administrative transparency. On the other hand, the persistence of elite influence and structural imbalances continues to constrain efforts to address more complex forms of corruption. Bridging this gap requires not only technical reforms but also a deeper transformation of political incentives, institutional independence, and accountability mechanisms. Without such changes, anti-corruption policy risks remaining effective at the surface level while leaving underlying power structures largely intact.

3.4 Parliamentary Oversight as a Test Case of Institutional Functioning

Parliamentary oversight represents one of the most critical mechanisms through which democratic systems ensure the accountability of the executive branch, maintain institutional balance, and safeguard the rule of law.[741] In well-functioning democracies, legislatures are not confined to law-making but perform an essential supervisory role, scrutinizing government actions, evaluating policy implementation, and providing a forum for political contestation within institutionalized boundaries.[742] Within the framework of European Union integration, the effectiveness of parliamentary oversight is increasingly understood as a key indicator of democratic maturity and institutional resilience.

The European Commission's emphasis on the functioning of state institutions in its 17 June 2022 priorities implicitly acknowledges these challenges, recognizing that formal institutional arrangements alone are insufficient to ensure democratic accountability. The Commission's assessments repeatedly highlight the need for strengthening parliamentary procedures, enhancing opposition participation, and improving the overall quality of legislative scrutiny. This reflects a broader shift in EU conditionality toward evaluating not only the existence of institutions but also their actual performance.

Parliamentary oversight in Georgia offers a particularly revealing lens through which to assess the broader functioning of state institutions. On a formal level, the constitutional and legal framework provides the Parliament with a range of oversight instruments, including interpellation procedures, thematic hearings, investigative commissions, and budgetary review powers.[743] These mechanisms, in principle, align with European standards and reflect a deliberate effort to institutionalize checks and balances within the political system.

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[741] Sven T. Siefken, Parlamentarische Kontrolle im Wandel, Theorie und Praxis des deutschen Bundestages, Nomos, 2018.

[742] Werner J. Patzelt, Parlamentarische Kontrolle. Begriffe, Leitgedanken und Erscheinungformen. in: Birgit Eberbach-Born, Sabine Kropp, Andrej Stuchlik, Wolfgang Zeh (Hrsg.). Parlamentarische Kontrolle und Europäische Union.

[743] Constitution of Georgia and Rules of Procedures of Parliament of Georgia.

Within the broader framework of democratic governance, parliamentary oversight occupies a central role in ensuring executive accountability and maintaining the balance of power.[744] In Georgia, the constitutional framework formally grants the Parliament significant oversight functions, including the ability to question government officials, establish investigative commissions, and exercise budgetary control.[745] In practice, however, the effectiveness of parliamentary oversight is significantly constrained. The dominance of the ruling party within the legislature, combined with a highly polarized political environment, limits the capacity of opposition actors to exercise meaningful scrutiny.[746] Oversight mechanisms often become instruments of political contestation rather than tools of institutional accountability. This dynamic is particularly evident in the functioning of investigative commissions and parliamentary hearings, which are frequently shaped by partisan considerations.[747] As a result, the Parliament's role as a check on executive power is weakened, contributing to broader concerns about democratic accountability.

At the same time, the high degree of political polarization in Georgia further complicates the functioning of oversight mechanisms. Rather than serving as structured processes of accountability, parliamentary debates and investigative procedures are frequently transformed into arenas of political confrontation, where competing narratives are reinforced rather than critically examined.[748] This adversarial environment not only reduces the effectiveness of oversight but also contributes to a broader erosion of trust in parliamentary institutions. Institutional factors also play a significant role in constraining parliamentary oversight. Limitations in analytical capacity, access to independent expertise, and administrative resources reduce the ability of parliamentary committees to conduct thorough investigations and policy evaluations.[749] These limitations illustrate the broader tension between formal institutional design and political practice.

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[744] Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven: Yale University Press, 2012.

[745] The Parliamentary oversight since the rules of procedure reform, GYLA, Tbilisi, 2020, https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/%E1%83%A2%E1%83%A3%E1%83%A0%E1%83%9C%E1%83%98%E1%83%A0%E1%83%98/%E1%83%91%E1%83%9A%E1%83%9D%E1%83%92/THE%20PARLIAMENTARY%20OVERSIGHT%20SINCE%20THE%20RULES%20OF%20PROCEDURE%20REFORM.pdf

[746] Parliamentary oversight in the parliament of 10th convocation of Georgia, part two, GYLA, Tbilisi, 2025 https://admin.gyla.ge/uploads_script/publications/pdf/PARLIAMENTARY%20OVERSIGHT%20IN%20THE%20PARLIAMENT%20OF%2010th%20CONVOCATION%20OF%20GEORGIA.pdf .

[747] The state of the implementation of the recommendations of the European Commission on June 17, 2023, in Georgia, monitoring of the activities of the Parliament of Georgia in connection with parliamentary Oversight, Elections and Judicial Reforms Tbilisi 2023 https://www.asocireba.ge/files/GYLA_Parliament_monitoring_reporteng.pdf

[748] Vladimeri Napetvaridze, Tina Tskhovrebadze, Tamila Niparishvili, Kristina Niparishvili, Deliberation level of constitutional debates in Georgian Parliament, , Politics in Central Europe (ISSN: 1801-3422) Vol. 16, No. 1 DOI: 10.2478/pce-2020-0014, https://scispace.com/pdf/deliberation-level-of-constitutional-debates-in-georgian-zcx4vc8kfx.pdf

[749] Birgit Eberbach-Born und Sabine Kropp, *Parlamentarische Kontrolle und Europäische Union: Chancen und Restriktionen nach dem Lissabon-Vertrag - einleitende Überlegungen*, Birgit Eberbach-Born, Sabine Kropp, Andrej Stuchlik, Wolfgang Zeh (Hrsg.). Parlamentarische Kontrolle und Europäische Union.

From the perspective of EU integration, strengthening parliamentary oversight is essential not only as a technical reform but also as a reflection of deeper democratic norms. The emphasis placed by the EU on institutional functioning within the twelve priorities implicitly underscores the importance of effective legislative oversight in consolidating democratic governance.[750] Parliamentary oversight in Georgia cannot be understood as an isolated institutional function but must be situated within the broader dynamics of political competition, institutional development, and governance practices. While the formal framework partly provides a foundation for effective accountability, its realization depends on the willingness of political actors to prioritize institutional integrity over partisan advantage. Strengthening parliamentary oversight therefore requires not only technical improvements in procedures and resources but also a deeper transformation of political norms and behavior. In the absence of such changes, the gap between formal institutional design and practical effectiveness is likely to persist, limiting the overall functioning of the state and the consolidation of democratic governance.

4. The Implementation Gap

A central challenge in Georgia's democratization process lies in what is commonly described as the "implementation gap", which means the persistent discrepancy between the formal adoption of legislative and institutional reforms and their effective application in practice.[751] This gap has become one of the defining features of Georgia's Europeanization trajectory, reflecting the tension between rapid legal convergence with European Union standards and the slower, more complex process of institutional transformation.

Over the past decade, Georgia has made substantial progress in aligning its legal and regulatory framework with EU norms, particularly within the context of the Association Agreement and subsequent reform agendas.[752] Legislative changes have been adopted across a wide range of policy areas, including judicial governance, anti-corruption, electoral law, and public administration.[753] On paper, these reforms position Georgia as one of the most advanced reformers among Eastern Partnership countries, demonstrating a high degree of formal compliance with EU requirements.

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[750] Georgia 2023 Report Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2023 Communication on EU Enlargement policy, Brussels, 8.11.2023 SWD(2023) 697, Commission Staff working document, https://enlargement.ec.europa.eu/georgia-report-2023_en

[751] Bacho Bitari Khuroshvili, *The policy planning system in Georgia: design and implementation challenges*, Eastern Journal of European Studies, DOI: 10.47743/ejes-2025-0108, June 2025, vol. 16, ISSUE 1, https://ejes.uaic.ro/articles/EJES2025_1601_08_KHU.pdf

[752] Association Implementation Report on Georgia, High representative of the union for foreign affairs and security policy, 30.1.2019 SWD(2019). https://www.eeas.europa.eu/sites/default/files/2019_association_implementation_report_georgia.pdf

[753] Georgia 2025 Report Accompanying the document, Communication from the commission to the European parliament, the council, the European economic and social committee and the committee of the region 2025, Communication on EU enlargement policy, Brussels, 4.11.2025 SWD(2025) 757 final, Commission Staff working document, https://enlargement.ec.europa.eu/document/download/b3089ad4-26be-4c6a-84cc-b9d680fe0a48_en?filename=georgia-report-2025.pdf

The effectiveness of these reforms is frequently undermined at the level of implementation. Enforcement remains inconsistent and, in some cases, selective, limiting the practical impact of legislative changes.[754] This inconsistency is closely linked to a combination of structural and political factors. Weak institutional capacity, including limited administrative resources and insufficient professional expertise, constrains the ability of state bodies to enforce new regulations effectively.[755] At the same time, political interference and the persistence of informal governance networks often shape how laws are applied, creating discrepancies between formal rules and actual practices.[756]

The absence of robust accountability mechanisms further exacerbates this problem. Institutions responsible for oversight, such as parliament, independent regulatory bodies, and the judiciary, often lack the autonomy or capacity to ensure consistent enforcement of reforms.[757] As a result, compliance may depend less on legal requirements and more on political considerations, undermining both the predictability and credibility of governance.

The implementation gap illustrates a well-documented limitation of externally driven reform processes. Europeanization tends to be less effective in contexts characterized by "limited statehood," where formal institutions exist but lack the capacity or authority to enforce rules consistently.[758] In such environments, external incentives can facilitate the adoption of legislation but are less capable of ensuring its effective application.

This dynamic is particularly evident in Georgia, where EU conditionality has encouraged rapid legislative change but has not always been matched by corresponding improvements in institutional performance. The European Commission's assessments, including those related to the twelve priorities outlined in June 2022, repeatedly emphasize the need to move beyond formal compliance toward tangible and measurable outcomes. The focus on implementation reflects a broader shift in EU policy from rule adoption to performance-based evaluation.

The persistence of the implementation gap also raises questions about the sustainability of reform. When reforms are primarily driven by external incentives, they may lack deep domestic ownership, making them vulnerable to stagnation or reversal once external pressure diminishes.[759] This challenge underscores the importance of embedding reforms

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[754] Mariami Tsiklauri, *Challenges to the Transformative Power of the European Union in the Eastern Neighbourhood*: The Case of Georgia. HWR Berlin (Berlin School of Economics and Law)

[755] Sopho Verdzeuli, Independent Institutions at Risk: A Constant Challenge to Democracy in Georgia, 15 July 2022 https://ge.boell.org/en/2022/07/15/independent-institutions-risk-constant-challenge-democracy-georgia

[756] Nino Tsereteli, *Constructing the Pyramid of Influence: Informal Institutions as Building Blocks of Judicial Oligarchy in Georgia*, Cambridge University Press: 08 March 2024, German Law Journal (2023), 24, pp. 1469–1487 doi:10.1017/glj.2023.74

[757] Assessment of interaction of the Parliament of Georgia with independent institutions and regulatory agencies, Westminster Foundation for Democracy (WFD) with the support of the European Union (EU) and the United Nations Development Programme (UNDP). 2022.

[758] Risse, Thomas, *Governance Under Limited Sovereignty*. APSA 2010 Annual Meeting Paper, Available at SSRN: https://ssrn.com/abstract=1642081.

[759] Oleh Havrylyshyn, External Incentives and Pressures. In: *Present at the Transition: An Inside Look at the Role of History, Politics, and Personalities in Post-Communist Countries*. Cambridge University Press; 2020:130-154.

within domestic political and institutional frameworks, ensuring that they are supported not only by legislation but also by consistent practice and normative commitment.

Bridging the implementation gap therefore requires a multidimensional approach. Strengthening institutional capacity is a necessary but insufficient condition; it must be accompanied by efforts to enhance accountability, reduce political interference, and promote a culture of rule of law.[760] Equally important is the role of societal actors, including civil society organizations and independent media, in monitoring implementation and holding institutions accountable.[761]

However, the transformative potential of these reforms is constrained by a persistent gap between formal compliance and practical implementation. This "implementation gap" reflects not only institutional weaknesses but also deeper structural dynamics within the political system. The existence of legal frameworks aligned with EU standards does not automatically translate into their effective enforcement, especially in contexts where political incentives favor selective application. The implementation gap represents more than a technical deficiency. It reflects the broader challenges of democratic consolidation in a context where formal reforms coexist with entrenched informal practices.[762] Addressing this gap is essential not only for the effectiveness of individual policy reforms but also for the credibility of Georgia's broader European integration process. Without tangible improvements in implementation, the alignment of legal frameworks with EU standards risks remaining largely symbolic, limiting its transformative impact on governance and democratic development.

9. Conclusion

The Georgian case provides important insights into the broader limitations of externally driven democratization. While the EU has been instrumental in promoting reform, its influence is mediated by domestic political structures and incentives. Europeanization, in this context, emerges as a necessary but insufficient condition for democratic consolidation.

Georgia's experience illustrates the complex interplay between external incentives and domestic political dynamics in shaping democratic reform. The EU has played a crucial role in promoting reforms, providing both material support and normative guidance. However, the effectiveness of these efforts is constrained by structural challenges, including political polarization, informal governance, and weak institutional implementation. While significant progress has been made, particularly in legislative

[760] Preliminary draft for consultations and discussion, strengthening institutions for effective implementation discussion, note 8, Towards Accountability and Transparency.

[761] The role of civil society organisations in human capital development and lifelong learning. Thematic paper, European Training Foundation, 2024, https://www.etf.europa.eu/sites/default/files/2025-01/CSO%20HCD%20LLL%20THEMATIC%20PAPER%202024%20FINAL.pdf

[762] Sofija Ajdar, The Gap Between Citizens' Perceptions and Institutional Reality in Serbia's Hybrid Regime. University of Pavia, World Politics and International Relations, 2024, https://unitesi.unipv.it/retrieve/8f56776c-eded-478c-b05b-79e6a0db78ac/Sofija%20Ajdar_Thesis.pdf

alignment and anti-corruption efforts, key areas such as judicial independence and media freedom remain problematic.

The experience of Georgia suggests that the effectiveness of EU conditionality is contingent not only on the design of incentives but also on the internalization of democratic norms by domestic actors. Where reforms are driven primarily by external pressure, they are more likely to remain superficial and vulnerable to reversal.

The sustainability of democratic reform in Georgia depends on the commitment of domestic actors to uphold democratic principles beyond formal compliance. EU integration can serve as a catalyst, but it cannot substitute for genuine political will and societal engagement. Georgia's path toward EU integration remains both promising and uncertain, reflecting broader challenges of democratization in post-Soviet contexts. Georgia's path toward European integration has generated significant momentum for democratic reform, positioning the country as a key case study in the EU's external governance strategy. However, the persistence of structural challenges, including political polarization, informal governance, and weak institutional enforcement, continues to limit the depth of transformation.

The implementation of the European Commission's twelve priorities has further exposed the gap between formal compliance and substantive change, highlighting the need for a more comprehensive approach to reform that goes beyond legislative alignment. Thus, the sustainability of democratic reform in Georgia will depend on the emergence of genuine domestic political commitment to democratic principles. While the EU can provide guidance, incentives, and support, it cannot substitute for internal political will. The Georgian case thus underscores a fundamental lesson of democratization: external actors can facilitate change, but they cannot ensure its consolidation.

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GEORGIA'S EU INTEGRATION THROUGH LEGAL APPROXIMATION: HARMONISATION WITH THE ACQUIS COMMUNAUTAIRE AND THE BLACK SEA GREEN ENERGY CORRIDOR

Keywords: Georgia, European Union, legal approximation, acquis communautaire, Association Agreement, DCFTA, Black Sea Submarine Cable, energy law, regulatory harmonisation, EU enlargement

1. Introduction

Georgia's aspiration to join the European Union has been a defining feature of its foreign and domestic policy since the Rose Revolution of 2003. The country's European trajectory acquired formal institutional expression through the EU-Georgia Association Agreement, signed in 2014, which established a comprehensive framework for political association and economic integration.[763] Yet European integration is not merely a geopolitical or symbolic project. At its core, it is a legal and normative process rooted in the systematic approximation of national legislation to the body of EU law known as the acquis communautaire.

This article argues that the effectiveness of Georgia's integration depends primarily on the depth and credibility of its legal harmonisation efforts. Political declarations and institutional ambitions, while necessary, are insufficient without corresponding legislative and regulatory convergence. The Association Agreement and its trade component, the DCFTA, create binding obligations to align Georgian law with EU standards across a wide range of policy fields, including competition, consumer protection, energy, the environment, and public procurement.[764]

The article proceeds in five parts. Following this introduction, section 2 examines the legal framework governing Georgia's approximation obligations. Section 3 analyses the substantive benefits of harmonisation. Section 4 addresses the persistent gap between formal legislative adoption and effective implementation, drawing on the European Commission's 2025 Enlargement Package. Section 5 presents the Black Sea Submarine Cable project as a case study illustrating why regulatory convergence is essential to Georgia's participation in European strategic infrastructure. Section 6 concludes with reflections on legal approximation as a form of strategic state-building.

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763 Association Agreement between the European Union and Georgia [2014] OJ L261/4.

764 ibid Title IV.

2. Legal Framework: the Association Agreement, the DCFTA, and Approximation Obligations

The legal relationship between Georgia and the European Union is governed principally by the Association Agreement, which entered into force on 1 July 2016.[765] The Agreement establishes a framework for bilateral cooperation in areas including the rule of law, governance, human rights, and economic reform. Title IV, which constitutes the DCFTA, sets out the most detailed approximation obligations, requiring Georgia to align its commercial and regulatory legislation with specified EU directives and regulations within defined timeframes.[766]

The concept of legal approximation, as distinct from full accession, deserves careful attention. Approximation does not require the verbatim transposition of EU legislation into domestic law. It does, however, require the achievement of regulatory outcomes functionally equivalent to those produced by the acquis.[767] This distinction is important. Although Georgia is not integrated into the accession process in the same way as Member States in waiting, the approximation obligations under the Association Agreement and the DCFTA already create a structured pathway towards internal market compatibility.

The acquis communautaire comprises the accumulated body of EU legislation, judicial decisions, and regulatory standards governing the European single market. Harmonisation with the acquis is therefore the means by which non-member states acquire the legal certainty and institutional credibility necessary for deeper economic and political partnership with the Union.[768] For Georgia, this entails gradual alignment in areas such as competition and state aid, consumer protection and product safety, energy regulation and electricity market design, environmental standards, public procurement, and intellectual property.

Legal certainty is both a condition and a consequence of this process. As Georgian legislation converges with EU norms, it creates a more predictable regulatory environment for trade, investment, and institutional cooperation, thereby strengthening the rationale for further integration.

3. Benefits of Harmonising Georgian Legislation with the Acquis Communautaire

The harmonisation of Georgian legislation with the acquis communautaire yields benefits that extend well beyond formal legal compliance. These benefits operate across several interconnected dimensions: governance, market confidence, institutional credibility, and strategic positioning.

3.1 Rule-based governance and institutional strengthening

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[765] ibid.

[766] ibid Title IV.

[767] Guillaume Van der Loo, The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration Without Membership (Brill Nijhoff 2016).

[768] Michael Emerson and Tamara Kovziridze, Deepening EU-Georgian Relations: What, Why and How? (Rowman & Littlefield 2018).

Approximation to EU law is not simply a matter of legislative borrowing. At a deeper level, it encourages a shift from discretionary governance towards rule-based governance, in which public authority is exercised through clearer legal standards, more transparent procedures, and more predictable institutional practice. This is one of the most important structural effects of alignment with the acquis communautaire. EU law is not limited to substantive rules; it also embodies a wider regulatory culture built on transparency, proportionality, non-discrimination, accountability, and procedural fairness. When these principles are incorporated into domestic law and administrative practice, they contribute to the strengthening of state institutions and to the gradual consolidation of the rule of law.

For Georgia, this dimension of approximation is particularly significant. The value of harmonisation lies not only in opening access to European markets, but also in reshaping the internal quality of governance. Meaningful approximation requires more than statutory change: it presupposes regulators capable of acting independently, administrative bodies able to apply technical rules consistently, and decision-making structures that reduce arbitrariness in the exercise of public power. In this respect, the benefits of harmonisation are institutional as much as economic. As the literature on EU association and legal convergence has shown, approximation can function as a mechanism of internal modernisation, helping partner states move towards more stable, transparent, and legally disciplined systems of governance[769].

At the same time, the effectiveness of this process depends on implementation. A formally harmonised legal framework cannot strengthen institutions unless it is accompanied by administrative capacity, regulatory professionalism, and political commitment to enforcement. This is why the broader challenge identified throughout Georgia's integration process is not the absence of legal models, but the difficulty of embedding them within domestic practice. Rule-based governance is therefore both an objective of approximation and a test of its credibility.

3.2 Consumer and market protection

The acquis communautaire provides a dense and sophisticated framework for consumer protection, covering product safety, unfair commercial practices, consumer information, contractual fairness, and access to redress. For Georgia, approximation in this field is not only a matter of social policy; it is also a condition of market integration. Alignment with EU consumer standards helps to reduce regulatory asymmetries between Georgia and the Union, improves the quality and safety of goods and services placed on the domestic market, and increases confidence among both consumers and economic operators. In practical terms, consumer-law harmonisation contributes to the predictability and trust on which market transactions depend[770].

The significance of consumer protection also extends beyond the domestic sphere. A state seeking deeper participation in the EU internal market must demonstrate that its

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769 ibid.

770 Association Agreement between the European Union and Georgia [2014] OJ L261/4, Title IV.

regulatory framework offers standards broadly comparable to those operating within the Union. This is especially important in the context of the DCFTA, where trade liberalisation is closely tied to regulatory approximation rather than simple tariff reduction. The European Commission's 2025 Georgia Report, however, suggests that progress in this area remains incomplete. Its finding of only partial alignment indicates that legislative approximation has not yet been matched by sufficiently developed enforcement structures, administrative capacity, or institutional practice.

3.3 Competition and state aid discipline

Competition law occupies a central place in the EU legal order because it safeguards the conditions of fair market participation on which the internal market depends. Approximation to EU competition rules therefore carries significance far beyond technical legislative reform. It requires the establishment of institutions capable of preventing abuses of market power, controlling anti-competitive agreements, scrutinising concentrations, and limiting distortive state intervention in the economy. For Georgia, harmonisation in this field is particularly important because it bears directly on the credibility of its market economy and on its capacity to operate within a rules-based European economic environment.

The importance of this area is underscored by the European Commission's 2025 Georgia Report, which records no progress in competition policy during the relevant reporting period. That finding is especially serious because competition law is not a peripheral chapter of approximation: it is one of the clearest indicators of whether a state is genuinely committed to market discipline, regulatory neutrality, and the rule of law in economic governance. Weaknesses in this field may discourage investment, preserve opportunities for selective advantage, and undermine confidence in the fairness of market conditions. For a country seeking closer integration with the EU, an underdeveloped competition regime is therefore not simply a technical shortcoming, but a structural obstacle. Effective approximation requires not only statutory alignment, but also a competition authority with sufficient independence, expertise, and enforcement capacity to apply the law in a credible and consistent manner.[771]

3.4 Investor confidence and economic integration

Legal harmonisation plays a crucial role in shaping investor confidence because it signals whether a jurisdiction operates according to stable, intelligible, and enforceable rules. For international investors, especially in sectors such as energy, transport, and infrastructure, the quality of the legal environment is often as important as market size or geographical location. Long-term investment decisions depend on regulatory continuity, predictable decision-making, effective dispute resolution, and confidence that public authorities will act within a transparent legal framework. Approximation to the acquis therefore serves not merely as a symbol of European orientation, but as a practical mechanism for reducing legal uncertainty and transaction costs.

771 ibid; European Commission, 'Georgia Report 2025' (n 2).

This point is particularly relevant in the Georgian context. The deeper economic opportunities opened by the DCFTA can generate their full value only where market access is supported by credible domestic regulation. A formally liberalised trade framework is of limited use if investors remain uncertain about enforcement, administrative discretion, or the durability of regulatory commitments. The relevance of this issue is especially evident in strategic sectors linked to the Black Sea Green Energy Corridor. Large-scale cross-border infrastructure projects require not only capital, but confidence in grid regulation, permitting systems, environmental compliance, tariff methodologies, and sectoral governance.

In this sense, investor confidence is not a secondary outcome of harmonisation; it is one of the clearest practical tests of whether approximation is producing functional integration. Where legal convergence is credible, investment becomes more likely. Where it remains incomplete or inconsistently enforced, strategic potential may exist on paper without translating into market reality.

3.5 Institutional credibility and candidate-state development

Institutional credibility is one of the most important, and often least visible, products of legal approximation. For a state seeking deeper integration with the European Union, the issue is not only whether legislation has been adopted, but whether institutions can implement, interpret, and enforce that legislation in a manner consistent with European legal expectations. In this respect, approximation is inseparable from state capacity. It requires functioning regulators, administratively competent ministries, independent oversight bodies, and a legal culture capable of sustaining rules beyond the moment of formal adoption.

Georgia's position as an EU candidate state makes this question particularly important. Candidate status has political significance, but it does not in itself establish readiness for integration. What matters is whether domestic institutions can translate European commitments into operational practice across key policy areas. The European Commission's 2025 Georgia Report points to the continuing fragility of this process. Its findings on competition policy, consumer protection, and energy market regulation suggest that the central challenge is no longer simply the declaration of European ambition, but the consolidation of administrative and regulatory structures capable of delivering implementation. This confirms a broader insight found in the literature on association-based integration: approximation without institutional internalisation produces only superficial convergence.

From this perspective, legal harmonisation should be understood not as a narrow technical requirement imposed from outside, but as a process of institutional development that directly shapes Georgia's credibility as a European partner. A state that can adopt laws but not enforce them remains only partially integrated, however strong its formal commitments may be. By contrast, a state that develops reliable institutions, consistent regulatory practices, and enforceable legal standards builds the kind of trust on

which deeper integration depends. Institutional credibility is therefore both a condition for accession-related progress and a substantive achievement in its own right[772].

4. The Gap Between Aspiration and Implementation

Georgia's commitment to European integration is no longer in serious doubt as a matter of declared policy. The more difficult question is whether that commitment has been translated into sufficiently credible legal and institutional practice. In this respect, the central challenge is not the absence of a formal approximation framework, but the uneven quality of implementation across key sectors. The European Commission's 2025 Georgia Report makes clear that the problem is no longer simply whether Georgia is willing to align with EU norms, but whether it can do so in a manner that is operationally effective, institutionally sustainable, and capable of producing regulatory outcomes comparable to those expected within the European Union.[773]

This distinction is critical. Approximation under the Association Agreement and the DCFTA is not satisfied by the formal adoption of legislative texts alone. Its practical value depends on enforcement, institutional independence, administrative capacity, and the existence of decision-making structures capable of applying EU-compatible rules consistently in practice. The persistence of implementation deficits therefore raises a broader concern: Georgia risks demonstrating legal alignment at the level of legislative form without yet securing convergence at the level of regulatory substance.

4.1 Competition policy and the limits of formal market reform

Competition policy remains one of the clearest examples of this gap. The 2025 report records no progress in competition policy during the reporting period.[774] That finding is significant not merely because competition policy is one chapter within the approximation process, but because it is a central indicator of whether market governance is genuinely rule-based. A functioning competition regime requires more than legislative transposition. It presupposes an authority capable of acting independently, applying technical standards consistently, and resisting political or sectoral pressure in the exercise of its powers.

For Georgia, the weakness of competition enforcement has wider implications for the credibility of economic reform. The absence of visible progress in this field may undermine confidence in the neutrality of market regulation and weaken the broader claim that legal approximation is generating a genuinely competitive economic order. This is particularly important in a country seeking deeper integration into European markets, where state aid control, anti-monopoly enforcement, and fair conditions of market access are not peripheral regulatory issues, but structural features of the internal market model. In this respect, stagnation in competition policy points to a deeper issue: the persistence of formal reform without sufficiently robust institutional internalisation.

4.2 Consumer protection and the problem of incomplete enforcement

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772 European Commission, 'Georgia Report 2025' (n 2).

773 ibid.

774 ibid.

The report notes only partial alignment in consumer protection and indicates that significant gaps remain.[775] This matters because consumer protection is one of the fields in which approximation has immediate practical significance. It affects not only market access and regulatory compatibility, but also the everyday credibility of the state as a guarantor of legal rights and market fairness.

The existence of EU-compatible legislation is only one element of an effective consumer protection regime. Equally important are the mechanisms through which that regime is enforced: supervisory institutions, administrative remedies, accessible complaint procedures, judicial awareness, and consumer knowledge of available protections. (footnotes 1–3, 8) Where these elements remain weak, approximation risks becoming declaratory rather than transformative. The Georgian case demonstrates that the adoption of legal standards alone does not necessarily create the behavioural, institutional, and procedural conditions required for those standards to shape market practice. This is precisely why consumer protection should not be viewed as a secondary social-policy chapter, but as a field through which the broader credibility of legal harmonisation can be measured.

4.3 Energy regulation

Energy market regulation is perhaps the most strategically important area in which the gap between legal commitment and implementation becomes visible. The Commission's 2025 Georgia Report identifies insufficient further progress in the transposition and implementation of the Electricity Integration Package[776]. This shortcoming has direct significance because Georgia's obligations in this field are not abstract or aspirational. As a Contracting Party to the Energy Community, Georgia undertook commitments linked to the transposition of core elements of the EU energy acquis, including reforms necessary for electricity market opening, regulatory alignment, and cross-border integration.

The deadline for transposition of the Electricity Integration Package was 31 December 2023[777]. (footnote 4) Continued delay therefore raises more than a narrow compliance issue. It affects Georgia's capacity to participate credibly in regional electricity trade, to develop a competitive and properly regulated power market, and to position itself as a reliable energy corridor between the South Caucasus and the European Union. A market that is not fully unbundled, transparently governed, and integrated with European regulatory expectations remains constrained not only in legal terms, but also in commercial and geopolitical terms.

This issue becomes even more important in light of the Black Sea Submarine Cable project discussed in the next section. The success of that initiative depends not only on physical infrastructure, but on regulatory compatibility, market rules, and institutional reliability. Energy regulation is therefore the point at which legal approximation moves most visibly from a formal reform agenda to a question of functional integration. It shows

[775] ibid.

[776] ibid.

[777] Energy Community Secretariat, Annual Implementation Report 2024 (Energy Community 2024).

whether Georgia is merely associated with European regulatory structures, or increasingly capable of operating within them.

4.4 Formal adoption versus effective enforcement

A recurring theme in EU assessments of partner-country reform is the distinction between formal legislative adoption and effective enforcement. Georgia has adopted a substantial body of EU-compatible legislation, but the practical impact of those laws depends on administrative capacity, regulatory independence, judicial competence, and political will. Implementation deficits weaken the substance of harmonisation and reduce Georgia's practical readiness for deeper integration.[778]

This critical assessment is not intended to discount Georgia's achievements. Rather, it underscores the seriousness of the integration challenge and highlights that credible legal approximation requires sustained institutional investment as well as legislative activity.

5. Case Study: the Black Sea Submarine Cable and Integration Through Law

The Black Sea Submarine Cable project offers a particularly useful case study for understanding the relationship between legal harmonisation and practical European integration. Described by the World Bank as one of the most ambitious energy and digital connectivity projects in the region, it envisages the construction of submarine power and fibre-optic cables linking the South Caucasus to the European Union, with landing points in Georgia and Romania.[779]

5.1 Strategic context

The project was conceived within a strategic partnership involving Azerbaijan, Georgia, Romania, and Hungary.[780] It reflects the EU's broader interest in diversifying energy supply routes and enhancing digital connectivity with the Eastern Neighbourhood and the South Caucasus. Additional interest has also been expressed by Armenia and Bulgaria, while the European Commission has identified the project as a priority under its Global Gateway initiative.[781]

The cable is intended to carry both electricity, enabling the export of renewable energy from the Caspian and South Caucasus region to the EU, and data, through a separate fibre-optic component. It is therefore simultaneously an energy project, a digital project, and a geopolitical instrument of connectivity.

5.2 Legal and regulatory dimensions

The significance of the Black Sea Submarine Cable project lies not only in its engineering complexity, but also in its legal and regulatory implications. Successful cross-border electricity trade and interconnection require regulatory compatibility between participating electricity markets, harmonised rules on grid access and tariff-setting,

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[778] European Commission, 'Georgia Report 2025' (n 2); Emerson and Kovziridze (n 9).

[779] World Bank, Black Sea Green Energy Submarine Cable: Project Documentation (World Bank Group 2024).

[780] Agreement on Strategic Partnership in the Field of Green Energy Development and Transmission between the Governments of Azerbaijan, Georgia, Romania and Hungary (2022).

[781] European Commission, 'Global Gateway: Black Sea Submarine Cable' (2024).

aligned environmental and permitting frameworks, investment governance arrangements capable of protecting private and multilateral investors, and compliance with EU energy law, particularly the Third Energy Package and the Clean Energy Package.[782]

The European Commission's own Global Gateway materials make clear that the project is to proceed in parallel with the alignment of partner-country legal frameworks with the fundamentals of EU energy law and electricity market regulation.[783] This legal alignment is treated not as an optional supplement, but as a structural precondition for increased trade and investment.

5.3 World Bank and Energy Community perspectives

World Bank project documentation identifies as a key milestone the development of a roadmap for aligning the Georgian power sector with EU and ENTSO-E regulations.[784] This is not merely a political statement. It is a technical and legal programme requiring specific legislative and regulatory reforms within Georgia.

Similarly, reporting from the Energy Community, of which Georgia is a Contracting Party, notes that Georgia has not yet fully transposed the Electricity Integration Package.[785] The continuing implementation gap raises legitimate concerns about Georgia's practical readiness to act as a reliable transmission corridor for electricity exports to the EU.

5.4 The cable as a test of regulatory credibility

The Black Sea Submarine Cable project therefore functions as a concrete test of Georgia's regulatory credibility. If Georgia seeks to serve as a green energy corridor between the Caspian region and the European market, it must demonstrate not only the physical infrastructure required for that role, but also the legal and regulatory framework that makes cross-border trade possible, predictable, and attractive to investors.

The broader lesson is clear: strategic connectivity in the European context is inseparable from legal convergence. Infrastructure investment flows to jurisdictions where the regulatory environment is transparent, stable, and compatible with EU norms. Without credible legal harmonisation, Georgia risks creating physical corridors without the legal architecture required for them to function as genuine market pathways.

6. Conclusion

Georgia's European integration is, at its most fundamental level, a process of legal approximation. The Association Agreement and the DCFTA establish the normative framework; the acquis communautaire provides the substantive benchmarks; and the

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[782] ENTSO-E, Ten-Year Network Development Plan 2024 (ENTSO-E 2024); Energy Community Secretariat, Annual Implementation Report 2024 (Energy Community 2024).

[783] European Commission, 'Global Gateway: Black Sea Submarine Cable' (2024).

[784] World Bank, Black Sea Green Energy Submarine Cable: Project Documentation (World Bank Group 2024).

[785] Energy Community Secretariat, Annual Implementation Report 2024 (Energy Community 2024).

effectiveness of integration depends on the depth, consistency, and credibility of harmonisation efforts.

The benefits of this process are substantial. Legal harmonisation strengthens governance, enhances market protections, improves competition conditions, increases investor confidence, and builds the institutional credibility required of a candidate state. Yet, as the European Commission's 2025 Georgia Report makes clear, formal legal adoption is not enough. Effective implementation, regulatory independence, and administrative capacity are essential complements to legislative alignment.

The Black Sea Submarine Cable project crystallises this argument. As one of the most ambitious cross-border connectivity projects in the region, it demonstrates that European integration is not an abstraction. It is embedded in specific infrastructure projects, investment decisions, and regulatory frameworks. Georgia's capacity to benefit from such projects, and to act as a credible green energy corridor between the Caspian region and the EU, depends directly on the quality of its legal approximation to EU energy law and electricity market regulation.

Without credible legal harmonisation, Georgia may remain politically pro-European yet institutionally underprepared for full participation in European strategic infrastructure and market systems. Conversely, when legal approximation is approached as a form of strategic state-building rather than the mechanical adoption of external rules, it becomes one of the most effective instruments available for deepening Georgia's European integration.

The path to Europe, for Georgia as for other candidate states, is paved not only with declarations, but with laws.

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GENDER INEQUALITY IN LABOR RELATIONS BASED ON THE EXAMPLE OF GEORGIA

Cases of Sex Discrimination in Employment Relations (Georgia)

EU's 12 priorities for Georgia lists Discrimination and Inequality problems towards women caused by the criteria of sex, as one of the problems in modern day Georgian reality, which prevents integration into European Union. Sex discrimination in modern day Georgia exists in many fields of social life and relations and the labor relations, employment field are the one of such fields where sex discrimination towards women becomes visible on social level, so it stands as an actual legal barrier preventing Georgia from further progress in EU integration.

In relation to cases of labor discrimination in Georgia, it is advisable to review the relevant literature, the Public Defender's reports and statistics, through which we will see that this problem is real in the present reality and exists in the field of labor law as a topical issue that requires proper regulation.

With regard to this problem, legal literature contains a developed view that, due to both gender and age characteristics, female persons often become subjects of unequal treatment by employers. The reason for this, according to employers, is that older women cannot perform work with the required quality; they often point to their lack of professional experience and do not take the necessary measures to enable an employed older woman to improve her qualifications in her field and career activity.[786]

There is another reason for discriminatory treatment that leads to economic inequality between the two sexes: men enter employment relationships earlier than women (if we consider the age category). This, of course, creates a situation in which

[786] Irina Batiashvili, Legal Regulation of the Employment of Elderly Women in Georgia, Tbilisi, 2024, p. 49.

Article 11 is violated on the ground of sex and men unjustifiably acquire a privileged position compared to women. This is then reflected in relatively lower remuneration for women in the future; at the same time, it may also be expressed in obstacles to career advancement. In other words, within employment relationships there is a factor whereby a shortage of female employees becomes apparent, and the number of employees identified by gender does not become the subject of equal pay with men, even though the work functions they perform are substantively similar or almost the same as the work performed by male employees. This reality in the labour market naturally creates the basis and the conditions for the equality principle to be violated on the ground of sex and for gender inequality against women to occur, which, when differentiation is applied, results in discrimination. Of course, this will also be reflected in pensions: when women and men reach retirement age, the problem becomes apparent that women's pensions are quantitatively lower than men's.[787]

As we can see, the legal literature sets out the causes and circumstances that lead to discrimination against women in labour law. Therefore, as a recommendation, it would be appropriate for the Government of Georgia (the Ministry of Labour and Health) to develop an anti-discrimination policy that defines the elimination of the causes of inequality and to implement reforms in the field of employment relations, which will help provide women with tools that support them in labor law so that, within the same age spectrum, they can enter employment relationships just as men do, and accordingly the problem of inequality will be addressed. The reasoning developed in the literature reflects the country's social reality; therefore, we support the author's view that discrimination defined by gender indicators and criteria genuinely exists in the country. Batiashvili notes the following circumstance in her work: "According to the statistics on domestic workers from the thematic inquiry report of the Permanent Parliamentary Council on Equality, as of 2019, domestic workers constituted 1.1% of all employed persons in Georgia, of whom 99% are women. Of these, 88% are women aged 35 to 70.

[787] Ibid., p. 50.

However, the Gender Equality Council's research also notes that, according to the explanations of respondents, to this day Georgia does not have reliable statistical data on persons employed in the informal sector by gender or age. The existing data fluctuates between 31% and 34%."[788]

As we can see, the author provides statistics about the reality of women's employment in Georgia, on the basis of which gender-based discrimination is carried out. These statistics indicate an age category of 35–70. Although the statistics are not entirely reliable—again, according to the author and the sources cited by her—they show approximate data, which is sufficient for us to form an understanding of the reality that exists in the state. Below, 2018 unemployment statistics are mentioned; the majority of the unemployed are female.

Now let us consider the relevant report of the Public Defender on this issue. According to the Public Defender's 2015 report, reference is made to a global index, which indicates that, when determining the category of women's job remuneration, Georgia was assigned a status that grouped women's remuneration in Georgia into a low-tier classification. Taking women's incomes into account, in the list of 145 sovereign states, Georgia was registered in the last place among the first sixty states. The index also determined the gender percentages of the employed part of the population in Georgia, thereby assessing the composition of the labour force and establishing that, within this composition, men numerically and statistically outnumber women. In this regard, annual income was determined, which further emphasizes the fact that discrimination on the ground of sex exists, because, with respect to remuneration, there is a large average arithmetic difference: men's annual income exceeds ten thousand dollars, which is quantitatively and mathematically twice as large as women's annual remuneration.[789]

The report also emphasizes sexual harassment. It is one of the most widespread problems of gender-based discrimination in Georgia. The Public Defender emphasizes

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[788] Ibid., p. 51.

[789] Public Defender's Report, Women's Legal Status and Gender Equality, Tbilisi, 2015, pp. 14–15.

that, both in the European Union and in Georgia, fifty percent of employed women are victims of such treatment. However, the Public Defender stresses the nature of this act: he/she identifies this discriminatory treatment as an act characterized by its "concealed" nature. The Ombudsman also points to its dangerous character and describes this violation in the report as the gravest act that causes significant harm.[790]

Now let us see what women's average monthly remuneration is and compare it to men's remuneration. The website Tbilisi Times states: "According to the data of the National Statistics Office for the 4th quarter of 2016, in Georgia women's average monthly income was determined to be 795.2 GEL, while the corresponding figure for men's salary in the same period is 1306.6 GEL. This statistic shows that the difference between women's and men's average monthly salaries is 511.4 GEL."[791]

The same website also points to the circumstance that, in the course of performing labour activities, services necessary to facilitate work were actively provided to male employees, while similar services were not ensured by the employer for women. One employed woman indicates that she performed the same work as her male colleague, but she was not assisted by a service vehicle in carrying out her official duties, whereas her male colleague was the recipient of such employer-provided services in order to perform his work more effectively.[792]

As we can see, this problem is relevant for our state and is mainly expressed in women's participation in work, access to workplace support/resources, and differences in remuneration. This is conditioned by gender, and to eliminate it, proper compliance with legislation is necessary.

Georgian Court Practice

In Georgia, there are cases of labor discrimination on the ground of gender that concern discrimination against women in such relationships; on the ground of sex, it can

[790] Ibid., p. 16.
[791] The Tbilisi Times – https://www.ttimes.ge/archives/79381
[792] Ibid.

also be caused by pregnancy. Let us consider a court precedent in Georgia. In 2017 and 2018, the decisions adopted in those years were published on the website of Georgia's courts. More than 30 cases were published electronically, but among the listed decisions only three cases substantively established the precedent and practice that have essential significance for this paper—that is, they addressed gender-based discrimination that violated the principle of equality and constituted a direct infringement of the right established by Article 11 of the Constitution. It is also indicated that one of the cases even covered the issue of pregnancy, and this indicator was the reason for discriminatory treatment against an employed woman. Two cases have this content. Of these three cases concerning discrimination in employment relations, they were heard at first instance by the local court in Batumi and then appealed to a higher instance and reviewed on appeal. The third case, which was decided in favour of the plaintiff at the appellate instance, substantively concerned gender-based discrimination and the dismissal of that plaintiff from work on the basis of the sex criterion. During the hearing, the court established discrimination on the basis of the gender criterion, assessed the plaintiff's position objectively, and rendered a decision in favour of that position.[793]

Since our topic concerns sex-based discrimination against women in employment relations, it will be purposeful to review one of the cases that concerns gender-based discrimination due to the circumstance of pregnancy. The authors Jugheli and Kvachadze state: "According to the plaintiff's explanation, the ground for termination of the employment contract was discrimination on the basis of pregnancy. The defendant denied the fact of different treatment towards her on the basis of pregnancy and noted that the plaintiff was employed in the position of a reserve employee (they claimed she had a continuous connection with the work process) and that the employment relationship was terminated due to the expiry of the probationary period." As we can see from the above quotation, this case involves discrimination on the ground of sex, the

[793] Marine Kvachadze, Natia Jugheli, Nino Dzidziguri, Discrimination-Related Issues in National Court Practice, Tbilisi, 2019, p. 83.

precondition for which is the circumstance of pregnancy, which served as the basis for dismissal from the position for that reason.[794]

In the case, the court explains in its decision that the defendant points to the factual circumstances of concluding the employment contract and tries to prove with this that there was no different and unequal treatment by it towards the employed woman; that is, it denies the existence of discriminatory action on its part, because at the pre-contract stage it already knew the factual circumstance that the subject with whom it was concluding the employment contract was pregnant, and the ground for termination of the employment relationship was the expiry of its term. The court refers to the organic law—the Labor Code of Georgia—and specifically explains the legal provision established by Article 37 of that act. From the content of this norm, the employer bears the duty, as an obligation, to take all necessary measures so that the person who performs work for its benefit is informed in advance about the termination of the employment relationship, which may become the basis for dismissal from work.[795]

From the reasoning developed above, the defendant's position in this case is already clear. Ultimately, the defendant's legal position in relation to this case consisted of emphasizing the ground for termination of the contract and indicating that the basis for this was Article 9 of the Labour Code of Georgia, and that on the basis of this norm the contractual relationship between the two parties to the employment relationship was ultimately terminated. The plaintiff indicates that at the time of concluding the contract she was 8 months pregnant, and therefore, at the time of concluding the contract, she knew nothing about the legal consequences that would result from concluding the contract. Accordingly, it should be emphasized that, based on the case, the plaintiff's legal position was revealed: she indicated that, because of pregnancy, her ability to perceive information was reduced, which made it difficult for her to understand the legal content of the contract, and for this reason she was deceived; the employer intentionally misled her in advance, which was followed by termination of the employment relationship.

[794] Ibid., p.85.
[795] Ibid., p. 85.

Naturally, the defendant referred to the employee's will and intention and stated that Ms. N.G. herself wanted the employment contract to be terminated and that this was her desire during the ongoing employment relationship. However, the court did not take this position of the defendant into account and did not agree with it; it took into account circumstances such as the complainant's pregnancy, her uncertainty about her rights and obligations and the contract terms. Ultimately, the court declared the contested decision on dismissal invalid and recognized that this ground does not constitute a basis for dismissal of the plaintiff from the position; therefore, it still considered her to be employed. Although the court invalidated the employer's decision, it also set out in its decision the reasoning that discriminatory treatment by the employer had not been carried out, taking into account the circumstance already indicated by the employer: it knew in advance that the subject it was employing was already pregnant. To verify this, the court applied the 2014 Law of Georgia "On the Elimination of All Forms of Discrimination" and its norms. As the authors of this study indicate, the court established in its decision the legal fact that if the employer had wished to discriminate against Ms. N.G. on the basis of gender, it would have done so by another act with legal significance—for example, arising from the already terminated employment relationship, it would have extended the period of legal effect of the contract concluded on the basis of that relationship, but would have done so only for a short time, which would have truly turned into unequal treatment.[796]

Cases of Gender Discrimination in Great Britain

Examples of gender discrimination also exist in Britain. In relation to this issue, we will discuss the information presented on relevant websites and in statistical reports and evaluate it. Foreign-language British sources, of course, refer to the Equality Act 2010,

[796] Ibid., p. 86.

and discussion in these sources is generally centered around the principle of equality. In this regard, the legal reality in Scotland is particularly noteworthy.

The British website MSHBLegal states: "Scotland leads the way in female unemployment, and this region of Britain has one of the lowest unemployment rates in Europe. During the last three months of 2014, Scotland's female unemployment rate was almost 1.5% lower than the EU average. According to Eurostat, from October to December 2014, the female unemployment rate in Scotland stood at 4%. This was significantly lower than the average for the United Kingdom and other European countries, which was 5.3%."[797]

As we can see, unemployment and women's involvement in the labor process remain relevant issues in Britain, just as they do in Georgia. Naturally, this leads to the same consequences as those discussed in the subsection above concerning the legal reality in Georgia. This, of course, underscores the fact that Georgia and Britain, given this reality, face a similar problem. This creates a basis for inequality, meaning that the legal norms established by international instruments and by the Equality Act 2010 are being violated on the basis of gender.

The information posted on this website also indicates that many experts and specialists in the United Kingdom point to the existence of sex inequality and gender discrimination in the Kingdom in the field of labor law. A social experiment was conducted in Britain: more than 1,500 employed women were surveyed, and 25% indicated that they were victims of discriminatory treatment in their own office. Based on the responses of 19%, it was also indicated that because of sex they were not granted maternity leave or were not promoted. Twenty-six percent also indicate that they are targets of discriminatory treatment. A survey conducted by Business Environment

[797] MSHBLegal — https://www.mshblegal.com/news/gender-discrimination-rife-in-the-uk-despite-scotland-low-female-unemployment-levels.html

identified the reasons why employers did not hire women. These reasons included: 1. Being pregnant. 2. Having many children (often indicated as two or more children). [798]

It should be emphasized that the Equality Act, which was adopted in 2010 and establishes gender equality in labor law, was followed by the social experiment mentioned above. The survey conducted in 2014–2015 found that even five years after the Act's adoption, this problem remained relevant to contemporary British legal reality. Therefore, strict compliance by employers with the legal provisions and norms established in 2010 is essential, because, as discussed above, the Act prohibits discrimination against pregnant women in the workplace at any stage of the employment relationship, whether at the pre-contractual stage, during the employment relationship itself, or at the stage of termination of the contract. The two reasons given above violate this provision established by the 2010 Act. Accordingly, strict compliance with it will contribute to eliminating this problem and will in turn give women the opportunity to participate in labor-law relations on an equal footing with men.

Regarding this problem, specifically the issue of pregnancy, in 2017 the British government issued a relevant recommendation, which included ministerial advice on eliminating sex-based discrimination against pregnant women in employment relations.

According to the recommendation: "Employers should be required to carry out an individual risk assessment when they are informed that a woman working for them is pregnant or has given birth within the last six months." [799]

Through this first recommendation, the government establishes the threshold that imposes a legal obligation on employers to determine and measure what risks may arise from employing a pregnant woman and, accordingly, to take appropriate steps to prevent those risks, because if such employment is associated with risks, it is necessary and

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[798] Ibid.

[799] Margot James, Government response to the House of Commons Women and Equalities Committee report on pregnancy and maternity discrimination, London, 2017, p. 6.

essential that they be prevented in order to avoid gender-based discrimination. In the recommendation, the government agrees with the committee that employers should take all measures to protect the health of pregnant women, as well as women who have recently given birth; the recommendation establishes a six-month limit in this regard. In the fourth recommendation, the government also undertakes to review the provisions concerning rights related to pregnancy and motherhood that are accessible to employees and employers, and to develop relevant norms that will help ensure equality between employees and employers from a legal point of view. Naturally, this will also help eliminate sex inequality between women and men in the labor market, thereby resolving the problem of gender inequality and discrimination. [800]

According to one source: "Gender stereotypes are deeply rooted in society and are often manifested in the workplace. Women are often perceived as less ambitious or less committed than their male colleagues. These biases often affect hiring, career progression, and negotiations over pay, making it more difficult for women to advance in their careers at the same pace as their male colleagues." [801]

Another problem identified in Britain's field of employment is gender stereotypes and misguided views caused by the belief that women are weaker than men. Naturally, the existence of such views leads to repression and later develops into discrimination. Below are statistics indicating the existence of the gender pay gap in labor law in Great Britain. This means that wages differ between representatives of the two sexes in Great Britain, and the statistics establish the relevant difference according to age categories. This difference changes sharply after both the employer and the employee reach the age of 40.

[800] Ibid., p. 17
[801] Workinconfidence.com — https://www.workinconfidence.com/tackling-gender-bias-and-discrimination-against-women-in-the-workplace-uk

Conclusion

As we can see, based on the given information, the problem of gender inequality in Georgia's employment sector exists and still persists nowadays, this is one of the issues what prevents Georgia's progress in becoming one of the member states of the European Union. Since the gender pay gap and discrimination towards the female employees exists in modern day reality of Georgian employment relations persists as one of the problematic topics of our country, there will always be the such social issues as difference in salary for performing the same kind of work obligation, what causes the difference in the terms of yearly earning, when men earn twice more compared to women employees.

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