

CHAPTER 6

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

SECTION 1

GENERAL PROVISIONS

ARTICLE 76

Objective, scope and coverage

1. The Parties, reaffirming their respective commitments under the WTO Agreement hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of establishment and trade in services and for cooperation on electronic commerce.
2. Public procurement is covered in Chapter 8 (Public procurement) of Title IV (Trade and Trade-related Matters) of this Agreement and nothing in this Chapter shall be construed to impose any obligation with respect to public procurement.
3. Subsidies are covered in Chapter 10 (Competition) of Title IV (Trade and Trade-related Matters) of this Agreement and the provisions of this Chapter shall not apply to subsidies granted by the Parties.
4. Consistent with the provisions of this Chapter, each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives.
5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or

employment on a permanent basis.

6. Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment in this Chapter and Annex XIV to this Agreement¹.

ARTICLE 77

Definitions

For the purposes of this Chapter:

- (a) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;
- (b) "measures adopted or maintained by a Party" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
- (c) "natural person of a Party" means a national of a Member State of the EU or a national of Georgia in accordance with the respective legislation;

¹ The sole fact of requiring a visa for natural persons of certain countries and not for those of other countries shall not be regarded as nullifying or impairing benefits under a specific commitment.

- (d) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (e) "juridical person of a Party" means a juridical person as defined in point (d) and set up in accordance with the law of a Member State of the EU or of Georgia respectively, and having its registered office, central administration, or principal place of business in the territory² to which the Treaty on the Functioning of the European Union applies or in the territory of Georgia, respectively;

Should that juridical person have only its registered office or central administration in the territory to which the Treaty on the Functioning of the European Union applies or in the territory of Georgia respectively, it shall not be considered as a juridical person of the Union or a juridical person of Georgia respectively, unless its operations possess a real and continuous link with the economy of the Union or of Georgia, respectively;

Notwithstanding the preceding subparagraph, shipping companies established outside the Union or Georgia and controlled by nationals of a Member State of the EU or of Georgia, respectively, shall also be beneficiaries under this Agreement, if their vessels are registered in accordance with their respective legislation, in that Member State or in Georgia and fly the flag of a Member State or of Georgia;

² For greater certainty, that territory shall include the exclusive economic zone and continental shelf, as provided for in the United Nations Convention on the Law of the Sea (UNCLOS).

- (f) "subsidiary" of a juridical person of a Party means a juridical person which is owned or effectively controlled by that juridical person³;
- (g) "branch" of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management structure and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will, if necessary, be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension;
- (h) "establishment" means:
- (i) as regards juridical persons of the Union or of Georgia, the right to take up and pursue economic activities by means of setting up, including the acquisition of, a juridical person and/or create a branch or a representative office in Georgia or in the Union respectively;
 - (ii) as regards natural persons, the right of natural persons of the Union or of Georgia to take up and pursue economic activities as self-employed persons, and to set up undertakings, in particular companies, which they effectively control;

³ A juridical person is controlled by another juridical person if the latter has the power to name a majority of its directors or otherwise to legally direct its actions.

- (i) "economic activities" shall include activities of an industrial, commercial and professional character and activities of craftsmen and do not include activities performed in the exercise of governmental authority;
- (j) "operations" shall mean the pursuit of economic activities;
- (k) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
- (l) "services and other activities performed in the exercise of governmental authority" are services or activities which are performed neither on a commercial basis nor in competition with one or more economic operators;
- (m) "cross-border supply of services" means the supply of a service:
 - (i) from the territory of a Party into the territory of the other Party (Mode 1), or
 - (ii) in the territory of a Party to the service consumer of the other Party (Mode 2);
- (n) "service supplier" of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;
- (o) "entrepreneur" means any natural or juridical person of a Party that seeks to perform or performs an economic activity through setting up an establishment.

SECTION 2

ESTABLISHMENT

ARTICLE 78

Scope

This Section applies to measures adopted or maintained by the Parties affecting establishment in all economic activities with the exception of:

- (a) mining, manufacturing and processing⁴ of nuclear materials;
- (b) production of or trade in arms, munitions and war matériel;
- (c) audio-visual services;
- (d) national maritime cabotage⁵, and
- (e) domestic and international air transport services⁶, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:

⁴ For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

⁵ Without prejudice to the scope of activities which may be considered as cabotage under the relevant domestic legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Georgia or a Member State of the EU and another port or point located in Georgia or Member State of the EU, including on its continental shelf, as provided in the UNCLOS and traffic originating and terminating in the same port or point located in Georgia or a Member State of the EU.

⁶ The conditions of mutual market access in air transport are dealt with by the Agreement between the EU and its Member States and Georgia on the establishment of a Common Aviation Area.

- (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
- (ii) the selling and marketing of air transport services;
- (iii) computer reservation system (CRS) services;
- (iv) ground-handling services;
- (v) airport operation services.

ARTICLE 79

National treatment and most favoured nation treatment

1. Subject to the reservations listed in Annex XIV-E to this Agreement, Georgia shall grant, upon entry into force of this Agreement:
 - (a) as regards the establishment of subsidiaries, branches and representative offices of juridical persons of the Union: treatment no less favourable than that accorded to its own juridical persons, their branches and representative offices; or to subsidiaries, branches and representative offices of any third country's juridical persons, whichever is the better;
 - (b) as regards the operation of subsidiaries, branches and representative offices of juridical persons of the Union in Georgia, once established: treatment no less favourable than that accorded to its own juridical persons, their branches and representative offices; or to subsidiaries, branches and representative offices of any third country's juridical persons,

whichever is the better.⁷

2. Subject to reservations listed in Annex XIV-A to this Agreement, the Union shall grant, upon entry into force of this Agreement:
 - (a) as regards the establishment of subsidiaries, branches and representative offices of juridical persons of Georgia: treatment no less favourable than that accorded to its own juridical persons, their branches and representative offices; or to subsidiaries, branches and representative offices of any third country's juridical persons, whichever is the better;
 - (b) as regards the operation of subsidiaries, branches and representative offices of juridical persons of Georgia in the Union, once established: treatment no less favourable than that accorded to its own juridical persons, their branches and representative offices; or to subsidiaries, branches and representative offices of any third country's juridical persons, whichever is the better.⁸
3. Subject to reservations listed in Annexes XIV-A and XIV-E to this Agreement, the Parties shall not adopt any new regulations or measures which introduce discrimination as regards the establishment of juridical persons of the Union or of Georgia on their territory or in respect of their operation, once established, by comparison with their own juridical persons.

⁷ This obligation does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-to-state dispute settlement procedures, as found in other agreements.

⁸ This obligation does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-to-state dispute settlement procedures, as found in other agreements.

ARTICLE 80

Review

1. With a view to progressively liberalising the establishment conditions, the Parties shall regularly review the provisions of this Section and the list of reservations referred to in Article 79 of this Agreement as well as the establishment environment, consistent with their commitments in international agreements.
2. In the context of the review referred to in paragraph 1, the Parties shall assess any obstacles to establishment that have been encountered. With a view to deepening the provisions of this Chapter, the Parties shall find, if need be, appropriate ways to address such obstacles, which could include further negotiations, including with respect to investment protection and to investor-to-state dispute settlement procedures.

ARTICLE 81

Other agreements

This Chapter shall not affect the rights of entrepreneurs of the Parties arising from any existing or future international agreement relating to investment, to which a Member State of the EU and Georgia are parties.

ARTICLE 82

Standard of treatment for branches and representative offices

1. The provisions of Article 79 of this Agreement do not preclude the application by a Party of particular rules concerning the establishment and operation in its territory of branches and

representative offices of juridical persons of another Party not incorporated in the territory of the first Party, which are justified by legal or technical differences between such branches and representative offices as compared to branches and representative offices of juridical persons incorporated in its territory or, as regards financial services, for prudential reasons.

2. The difference in treatment shall not go beyond what is strictly necessary as a result of such legal or technical differences or, as regards financial services, for prudential reasons.

SECTION 3

CROSS-BORDER SUPPLY OF SERVICES

ARTICLE 83

Scope

This Section applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:

- (a) audio-visual services;
- (b) national maritime cabotage⁹, and

⁹ Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this Chapter covers transportation of passengers or goods between a port or point located in Georgia or a Member State of the EU and another port or point located in Georgia or Member State of the EU, including on its continental shelf, as provided in the UNCLOS and traffic originating and terminating in the same port or point located in Georgia or a Member State of the EU.

- (c) domestic and international air transport services¹⁰, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights other than:
- (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
 - (ii) the selling and marketing of air transport services;
 - (iii) computer reservation system (CRS) services;
 - (iv) ground-handling services;
 - (v) airport operation services.

¹⁰ The conditions of mutual market access in air transport are dealt with by the Agreement between the EU and its Member States and Georgia on the establishment of a Common Aviation Area.

ARTICLE 84

Market access

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party a treatment not less favourable than that provided for in the specific commitments contained in Annexes XIV-B and XIV-F to this Agreement.

2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annexes XIV-B and XIV-F to this Agreement are defined as:
 - (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test, or
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test.

ARTICLE 85

National treatment

1. In the sectors where market access commitments are inscribed in Annexes XIV-B and XIV-F to this Agreement, and subject to any conditions and qualifications set out therein, each Party shall grant to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and services suppliers.
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of the other Party either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of the other Party.
4. Specific commitments entered into under this Article shall not be construed to require any Party to compensate for inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

ARTICLE 86

Lists of commitments

The sectors liberalised by each Party pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annexes XIV-B and XIV-F to this Agreement.

ARTICLE 87

Review

With a view to the progressive liberalisation of the cross-border supply of services between the Parties, the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement, shall regularly review the list of commitments referred to in Article 86 of this Agreement. This review shall take into account the process of gradual approximation, referred to in Articles 103, 113, 122 and 126 of this Agreement, and its impact on the elimination of remaining obstacles to cross-border supply of services between the Parties.

SECTION 4

TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

ARTICLE 88

Scope and definitions

1. This Section applies to measures of the Parties concerning the entry and temporary stay in their territories of key personnel, graduate trainees, business sellers, contractual service suppliers and independent professionals in accordance with Article 76(5) of this Agreement.
2. For the purposes of this Section:
 - (a) "key personnel" means natural persons employed within a juridical person of one Party other than a non-profit organisation¹¹ and who are responsible for the setting-up or the proper control, administration and operation of an establishment. "Key personnel" comprise "business visitors" for establishment purposes and "intra-corporate transferees":
 - (i) "business visitors" for establishment purposes means natural persons working in a senior position who are responsible for setting up an establishment. They do not offer or provide services or engage in any other economic activity than required for establishment purposes. They do not receive remuneration from a source located within the host Party;

¹¹ The reference to other than a "non-profit organisation" only applies for Belgium, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Portugal, Slovenia, Finland and United Kingdom.

- (ii) "intra-corporate transferees" means natural persons who have been employed by a juridical person or have been partners in it for at least one year and who are temporarily transferred to an establishment that may be a subsidiary, branch or head company of the enterprise / juridical person in the territory of the other Party. The natural person concerned must belong to one of the following categories:
- (1) managers: persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or from stockholders of the business or their equivalent, including at least:
 - directing the establishment or a department or sub-division thereof;
 - supervising and controlling the work of other supervisory, professional or managerial employees; and
 - having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions;
 - (2) specialists: persons working within a juridical person who possess uncommon knowledge essential to the establishment's production, research equipment, techniques, processes, procedures or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.
- (b) "graduate trainees" means natural persons who have been employed by a juridical person of one Party or its branch for at least one year, possess a university degree and are temporarily transferred to an establishment of the juridical person in the territory of the other Party, for career development purposes or to obtain training in business techniques or

methods¹²;

- (c) "business sellers"¹³ means natural persons who are representatives of a services or goods supplier of one Party seeking entry and temporary stay in the territory of the other Party for the purpose of negotiating the sale of services or goods, or entering into agreements to sell services or goods for that supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party, nor are they commission agents;
- (d) "contractual services suppliers" means natural persons employed by a juridical person of one Party which itself is not an agency for placement and supply services of personnel nor acting through such an agency, has no establishment in the territory of the other Party and has concluded a bona fide contract to supply services with a final consumer in the latter Party, requiring the presence on a temporary basis of its employees in that Party, in order to fulfil the contract to provide services;
- (e) "independent professionals" means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) to supply services with a final consumer in the latter Party, requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services;
- (f) "qualifications" means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.

¹² The recipient establishment may be required to submit a training programme covering the duration of the stay for prior approval, demonstrating that the purpose of the stay is for training. For Czech Republic, Germany, Spain, France, Hungary and Austria, training must be linked to the university degree which has been obtained.

¹³ United Kingdom: the category of business sellers is only recognised for services sellers.

ARTICLE 89

Key personnel and graduate trainees

1. For every sector committed in accordance with Section 2 (Establishment) of this Chapter and subject to any reservations listed in Annexes XIV-A and XIV-E to this Agreement, or in Annexes XIV-C and XIV-G to this Agreement, each Party shall allow entrepreneurs of the other Party to employ in their establishment natural persons of that other Party provided that such employees are key personnel or graduate trainees as defined in Article 88 to this Agreement. The temporary entry and temporary stay of key personnel and graduate trainees shall be for a period of no longer than three years for intra-corporate transferees, 90 days in any 12-month period for business visitors for establishment purposes, and one year for graduate trainees.

2. For every sector committed in accordance with Section 2 (Establishment) of this Chapter, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in Annexes XIV-C and XIV-G to this Agreement, are defined as limitations on the total number of natural persons that an entrepreneur may employ as key personnel and graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

ARTICLE 90

Business sellers

For every sector committed in accordance with Section 2 (Establishment) or Section 3 (Cross-border supply of services) of this Chapter and subject to any reservations listed in Annexes XIV-A, XIV-E, and XIV-B and XIV-F to this Agreement, each Party shall allow the entry and temporary stay of business sellers for a period of no longer than 90 days in any 12-month period.

ARTICLE 91

Contractual service suppliers

1. The Parties reaffirm their respective obligations arising from their commitments under the General Agreement on Trade in Services (GATS) as regards the entry and temporary stay of contractual services suppliers. In accordance with Annexes XIV-D and XIV-H to this Agreement, each Party shall allow the supply of services into their territory by contractual services suppliers of the other Party, subject to the conditions specified in paragraph 2 of this Article.
2. The commitments undertaken by the Parties are subject to the following conditions:
 - (a) the natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract not exceeding 12 months;
 - (b) the natural persons entering the other Party should be offering such services as employees of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience¹⁴ in the sector of activity which is the subject of the contract;
 - (c) the natural persons entering the other Party must possess:
 - (i) a university degree or a qualification demonstrating knowledge of an equivalent

¹⁴ Obtained after having reached the age of majority, as defined under applicable domestic legislation.

level¹⁵; and

- (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or legal requirements of the Party where the service is supplied;
- (d) the natural person shall not receive remuneration for the provision of services in the territory of the other Party other than the remuneration paid by the juridical person employing the natural person;
- (e) the entry and temporary stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks in any 12-month period or for the duration of the contract, whichever is less;
- (f) access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is supplied;
- (g) the number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be requested by the laws, regulations or other legal requirements of the Party where the service is supplied.

¹⁵ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree in its territory.

ARTICLE 92

Independent professionals

1. In accordance with Annexes XIV-D and XIV-H to this Agreement, the Parties shall allow the supply of services into their territory by independent professionals of the other Party, subject to the conditions specified in paragraph 2 of this Article.
2. The commitments undertaken by the Parties are subject to the following conditions:
 - (a) the natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding 12 months;
 - (b) the natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract;
 - (c) the natural persons entering the other Party must possess:
 - (i) a university degree or a qualification demonstrating knowledge of an equivalent level¹⁶ and
 - (ii) professional qualifications where this is required to exercise an activity pursuant to the laws, regulations or other legal requirements of the Party where the service is supplied;
 - (d) the entry and temporary stay of natural persons within the Party concerned shall be for a

¹⁶ Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks in any 12-month period or for the duration of the contract, whichever is less;

- (e) access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of the Party where the service is provided.

SECTION 5

REGULATORY FRAMEWORK

SUB-SECTION 1

DOMESTIC REGULATION

ARTICLE 93

Scope and definitions

1. The following disciplines apply to measures by the Parties relating to licencing requirements and procedures, qualification requirements and procedures that affect:
 - (a) cross-border supply of services;
 - (b) establishment in their territory of juridical and natural persons defined in Article 77(9) of this Agreement, and

(c) temporary stay in their territory of categories of natural persons as defined in points (a) to (e) of Article 88(2) of this Agreement.

2. In the case of cross-border supply of services, those disciplines shall only apply to sectors for which the Party has undertaken specific commitments and to the extent that these specific commitments apply in accordance with Annexes XIV-B and XIV-F to this Agreement. In the case of establishment, those disciplines shall not apply to sectors to the extent that a reservation is listed in accordance with Annexes XIV-A and XIV-E to this Agreement. In the case of temporary stay of natural persons, these disciplines shall not apply to sectors to the extent that a reservation is listed in accordance with Annexes XIV-C, XIV-D, XIV-G and XIV-H to this Agreement.

3. Those disciplines do not apply to measures to the extent that they constitute limitations under the relevant Annexes to this Agreement.

4. For the purposes of this Section:

(a) "licencing requirements" means substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorisation to carry out the activities as defined in points (a) to (c) of paragraph 1;

(b) "licencing procedures" means administrative or procedural rules that a natural or a juridical person, seeking authorisation to carry out the activities as defined in points (a) to (c) of paragraph 1, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licencing requirements;

(c) "qualification requirements" means substantive requirements relating to the competence of a natural person to supply a service, and which are required to be demonstrated for the purpose of obtaining authorisation to supply a service;

- (d) "qualification procedures" means administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorisation to supply a service;
- (e) "competent authority" means any central, regional or local government and authority or non-governmental body in the exercise of powers delegated by central or regional or local governments or authorities, which takes a decision concerning the authorisation to supply a service, including through establishment or concerning the authorisation to establish in an economic activity other than services.

ARTICLE 94

Conditions for licencing and qualification

1. Each Party shall ensure that measures relating to licencing requirements and procedures, qualification requirements and procedures are based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.
2. The criteria referred to in paragraph 1 shall be:
 - (a) proportionate to a public policy objective;
 - (b) clear and unambiguous;
 - (c) objective;
 - (d) pre-established;
 - (e) made public in advance;

(f) transparent and accessible.

3. An authorisation or a licence shall be granted as soon as it is established, in the light of an appropriate examination, that the conditions for obtaining an authorisation or licence have been met.

4. Each Party shall maintain or institute judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected entrepreneur or service supplier, for a prompt review of, and where justified, appropriate remedies for, administrative decisions affecting establishment, cross-border supply of services or temporary presence of natural persons for business purposes. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, each Party shall ensure that the procedures in fact provide for an objective and impartial review.

5. Where the number of licences available for a given activity is limited because of the scarcity of available natural resources or technical capacity, each Party shall apply a selection procedure to potential candidates which provides full guarantees of impartiality and transparency, including, in particular, adequate publicity about the launch, conduct and completion of the procedure.

6. Subject to the provisions specified by this Article, in establishing the rules for the selection procedure, each Party may take into account public policy objectives, including considerations of health, safety, the protection of the environment and the preservation of cultural heritage.

ARTICLE 95

Licencing and qualification procedures

1. Licencing and qualification procedures and formalities shall be clear, made public in advance and be such as to provide the applicants with a guarantee that their application will be dealt with objectively and impartially.
2. Licencing and qualification procedures and formalities shall be as simple as possible and shall not unduly complicate or delay the provision of the service. Any licencing fees¹⁷ which the applicants may incur from their application should be reasonable and proportionate to the cost of the authorisation procedures in question.
3. Each Party shall ensure that the procedures used by, and the decisions of, the competent authority in the licencing or authorisation process are impartial with respect to all applicants. The competent authority should reach its decision in an independent manner and not be accountable to any supplier of the services for which the licence or authorisation is required.
4. Where specific time periods for applications exist, an applicant shall be allowed a reasonable period for the submission of an application. The competent authority shall initiate the processing of an application without undue delay. Where possible, applications should be accepted in electronic format under the same conditions of authenticity as paper submissions.
5. Each Party shall ensure that the processing of an application, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application. Each Party shall endeavour to establish the normal timeframe for processing of an application.
6. The competent authority shall, within a reasonable period of time after receipt of an

¹⁷ Licencing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

application which it considers incomplete, inform the applicant, to the extent feasible identify the additional information required to complete the application, and provide the opportunity to correct deficiencies.

7. Authenticated copies should be accepted, where possible, in place of original documents.

8. If an application is rejected by the competent authority, the applicant shall be informed in writing and without undue delay. In principle, the applicant shall, upon request, also be informed of the reasons for rejection of the application and of the timeframe for an appeal against the decision.

9. Each Party shall ensure that a licence or an authorisation, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.

SUB-SECTION 2

PROVISIONS OF GENERAL APPLICATION

ARTICLE 96

Mutual recognition

1. Nothing in this Chapter shall prevent a Party from requiring that natural persons must possess the necessary qualifications and/or professional experience specified in the territory where the service is supplied, for the sector of activity concerned.

2. Each Party shall encourage the relevant professional bodies in their respective territories to provide recommendations on mutual recognition to the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement, for the purpose of the fulfilment, in whole or in part, by entrepreneurs and service suppliers of the criteria applied by each Party for the authorisation, licensing, operation and certification of entrepreneurs and service suppliers and, in particular, professional services.

3. On receipt of a recommendation referred to in paragraph 2, the Association Committee in Trade configuration shall, within a reasonable time, review that recommendation with a view to determine whether it is consistent with this Agreement, and on the basis of the information contained therein, assess in particular:

(a) the extent to which the standards and criteria applied by each Party for the authorisation, licenses, operation and certification of services providers and entrepreneurs are converging, and

(b) the potential economic value of a mutual recognition agreement.

4. Where these requirements are satisfied, the Association Committee in Trade configuration shall establish the necessary steps to negotiate and thereafter the Parties shall engage into negotiations, through their competent authorities, of a mutual recognition agreement.

5. Any such agreement shall be in conformity with the relevant provisions of the WTO Agreement and, in particular, Article VII of GATS.

ARTICLE 97

Transparency and disclosure of confidential information

1. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application or international agreements which pertain to or affect this Agreement. Each Party shall also establish one or more enquiry points to provide specific information to entrepreneurs and services suppliers of the other Party, upon request, on all such matters. The Parties shall notify each other enquiry points within three months after the date of entry into force of this Agreement. Enquiry points need not be depositories of laws and regulations.
2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

SUB-SECTION 3

COMPUTER SERVICES

ARTICLE 98

Understanding on computer services

1. To the extent that trade in computer services is liberalised in accordance with Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter, the Parties shall comply with paragraphs 2, 3 and 4 of this Article.

2. CPC¹⁸ 84, the UN code used for describing computer and related services, covers the basic functions used to provide all computer and related services:

- (a) computer programmes defined as the sets of instructions required to make computers work and communicate (including their development and implementation);
- (b) data processing and storage, and
- (c) related services, such as consultancy and training services for staff of clients.

Technological developments have led to the increased offering of those services as a bundle or package of related services that can include some or all of those basic functions. For example, services such as web- or domain-hosting, data mining services and grid computing each consist of a combination of basic computer services functions.

3. Computer and related services, regardless of whether they are delivered via a network, including the internet, include all services that provide:

- (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems;
- (b) computer programmes defined as sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or

¹⁸ CPC means the Central Products Classification as set out in Statistical Office of the UN, Statistical Papers, Series M, N° 77, CPC prov, 1991.

(c) data processing, data storage, data hosting or database services; or maintenance and repair services for office machinery and equipment, including computers; or training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.

4. Computer and related services enable the provision of other services (e.g. banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g. web-hosting or application-hosting) and the content or core service that is being delivered electronically (e.g. banking). In such cases, the content or core service is not covered by CPC 84.

SUB-SECTION 4

POSTAL AND COURIER SERVICES

ARTICLE 99

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for all postal and courier service liberalised in accordance with Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter.

2. For the purpose of this Sub-Section and of Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter:

- (a) "licence" means an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service;
- (b) "universal service" means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.

ARTICLE 100

Universal service

Each Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

ARTICLE 101

Licences

1. A licence may only be required for services which are within the scope of the universal service.
2. Where a licence is required, the following shall be made publicly available:
 - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence; and
 - (b) the terms and conditions of licences.

3. The reasons for the denial of a licence shall be made known to the applicant upon request and an appeal procedure through an independent body will be established by each Party. Such a procedure will be transparent, non-discriminatory and based on objective criteria.

ARTICLE 102

Independence of the regulatory body

The regulatory body shall be legally separate from, and not accountable to any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants.

ARTICLE 103

Gradual approximation

With a view to considering further liberalisation of trade in services, the Parties recognise the importance of the gradual approximation of the existing and future legislation of Georgia to the list of the Union acquis included in Annex XV-C to this Agreement.

SUB-SECTION 5

ELECTRONIC COMMUNICATION NETWORKS AND SERVICES

ARTICLE 104

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for all electronic communication services liberalised pursuant to Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter.

2. For the purpose of this Sub-Section and Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter:

- (a) "electronic communication services" means all services which consist wholly or mainly in the conveyance of signals on electronic communication networks, including telecommunication services and transmission services in networks used for broadcasting. Those services exclude services providing, or exercising editorial control over, content transmitted using electronic communication networks and services;
- (b) "public communication network" means an electronic communication network used wholly or mainly for the provision of publicly available electronic communication services;
- (c) "electronic communication network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial

networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

- (d) a "regulatory authority" in the electronic communication sector means the body or bodies charged with the regulation of electronic communication mentioned in this Sub-Section;
- (e) a services supplier shall be deemed to have "significant market power" if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers;
- (f) "interconnection" means the physical and logical linking of public communication networks used by the same or a different supplier in order to allow the users of one services supplier to communicate with users of the same or another services supplier, or to access services provided by another services supplier. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;
- (g) "universal service" means the set of services of specified quality that is made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; its scope and implementation are decided by each Party;
- (h) "access" means the making available of facilities and/or services, to another services supplier, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communication services. It covers, inter alia, access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure, including buildings, ducts, and masts; access to relevant software systems, including operational support systems; access to numbering translation or systems

offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital televisions services; access to virtual network services;

- (i) "end-user" means a user not providing public communication networks or publicly available electronic communication services;
- (j) "local loop" means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public communication network.

ARTICLE 105

Regulatory authority

1. Each Party shall ensure that regulatory authorities for electronic communication services shall be legally distinct and functionally independent from any supplier of electronic communication services. If a Party retains ownership or control of a supplier providing electronic communication networks or services, such Party shall ensure the effective structural separation of the regulatory function from activities associated with ownership or control.
2. Each Party shall ensure that the regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. Each Party shall ensure that the decisions of and the procedures used by the regulatory authorities are impartial with respect to all market participants and transparent.

4. The regulatory authority shall have the power to carry out an analysis of relevant product and service markets liable to an ex ante regulation. Where the regulatory authority is required to determine under Article 107 of this Agreement whether to impose, maintain, amend or withdraw obligations it shall determine on the basis of a market analysis whether the relevant market is effectively competitive.

5. Where the regulatory authority determines that a relevant market is not effectively competitive, it shall identify and designate services suppliers with significant market power on that market and shall impose, maintain or amend specific regulatory obligations referred to in Article 107 of this Agreement as it is appropriate. Where the regulatory authority concludes that the market is effectively competitive it shall not impose or maintain any of the regulatory obligations referred to in Article 107 of this Agreement.

6. Each Party shall ensure that a services supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved in the decision. Each Party shall ensure that the merits of the case are duly taken into account. Pending the outcome of any such appeal, the decision of the regulator shall stand, unless the appeal body decides otherwise. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

7. Each Party shall ensure that where the regulatory authorities intend to take measures related to any of the provisions of this Sub-Section and which have a significant impact to the relevant market, they give the interested parties the opportunity to comment on the draft measure within a reasonable period of time. Regulators shall publish their consultation procedures. The results of the consultation procedure shall be made publicly available except in the case of confidential information.

8. Each Party shall ensure that suppliers providing electronic communication networks and services provide all the information, including financial information, necessary for regulatory

authorities to ensure conformity with the provisions of this Sub-Section or decisions made in accordance with this Sub-Section. These suppliers shall provide such information promptly on request and to the time-table and level of detail required by the regulatory authority. The information requested by the regulatory authority shall be proportionate to the performance of that task. The regulatory authority shall give the reasons justifying its request for information.

ARTICLE 106

Authorisation to provide electronic communication services

1. Each Party shall ensure that the provision of services shall, as much as possible, be authorised following mere notification.
2. Each Party shall ensure that a licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available.
3. Each Party shall ensure that where a licence is required:
 - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;
 - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request;
 - (c) the applicant of a licence shall be able to seek recourse before an appeal body in case that a licence is unduly denied;

- (d) licence fees¹⁹ required by any Party for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences. Licence fees for the use of radio spectrum and numbering resources are not subject to the requirements of this paragraph.

ARTICLE 107

Access and interconnection

1. Each Party shall ensure that any services suppliers authorised to provide electronic communication services have the right and obligation to negotiate access and interconnection with suppliers of publicly available electronic communication networks and services. Access and interconnection should in principle be agreed on the basis of commercial negotiation between the services suppliers concerned.
2. Each Party shall ensure that services suppliers that acquire information from another services supplier during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.
3. Each Party shall ensure that upon the finding in accordance with Article 105 of this Agreement that a relevant market is not effectively competitive, the regulatory authority shall have the power to impose on the supplier designated as having significant market power one or more of the following obligations in relation to interconnection and/or access:
 - (a) obligation on non-discrimination to ensure that the operator applies equivalent conditions in equivalent circumstances to other suppliers providing equivalent services, and provides

¹⁹ Licence fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners;

- (b) obligation of a vertically integrated company to make transparent its wholesale prices and its internal transfer prices, where there is a requirement for non-discrimination or for prevention of unfair cross-subsidy. The regulatory authority may specify the format and accounting methodology to be used;
- (c) obligations to meet reasonable requests for access to, and use of, specific network elements and associated facilities, including unbundled access to the local loop, inter alia, in situations where the regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end user's interest.

Regulatory authorities may attach conditions covering fairness, reasonableness and timeliness to the obligations included under this point;

- (d) to provide specified services on a wholesale basis for resale by third parties; to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services; to provide co-location or other forms of facility sharing, including duct, building or mast sharing; to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services; to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services; to interconnect networks or network facilities.

Regulatory authorities may attach conditions covering fairness, reasonableness and timeliness to the obligations included under this point;

- (e) obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision

of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users.

Regulatory authorities shall take into account the investment made by the operator and allow the operator a reasonable rate of return on adequate capital employed, taking into account the risks involved;

- (f) to publish the specific obligations imposed on services suppliers by the regulatory authority identifying the specific product/service and geographical markets. Up-to-date information, provided that it is not confidential and it does not comprise business secrets is made publicly available in a manner that guarantees all interested parties easy access to that information;
- (g) obligations for transparency requiring operators to make public specified information and, in particular, where an operator has obligations of non-discrimination, the regulator may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that services suppliers are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices.

4. Each Party shall ensure that a service supplier requesting interconnection with a supplier designated as having significant market power shall have recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 104(2)(d) of this Agreement, to resolve disputes regarding terms and conditions for interconnection and/or access.

ARTICLE 108

Scarce resources

1. Each Party shall ensure that any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, shall be carried out in an objective, proportionate, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.
2. Each Party shall ensure the effective management of radio frequencies for electronic communication services in their territory with a view to ensure effective and efficient use of the spectrum. Where demand for specific frequencies exceeds their availability, appropriate and transparent procedures shall be followed for the assignment of these frequencies in order to optimise their use and facilitate the development of competition.
3. Each Party shall ensure that the assignment of national numbering resources and the management of the national numbering plans are entrusted to the regulatory authority.
4. Where public or local authorities retain ownership or control of suppliers operating public communications networks and/or services, effective structural separation needs to be ensured between the function responsible for granting the rights of way from activities associated with ownership or control.

ARTICLE 109

Universal service

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and be not more burdensome than necessary for the kind of universal service defined by the Party.
3. Each Party shall ensure that all suppliers should be eligible to ensure universal service and no services supplier shall be a priori excluded. The designation shall be made through an efficient, transparent, objective and non-discriminatory mechanism. Where necessary, each Party shall assess whether the provision of universal service represents an unfair burden on organisation(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit, if any, which accrues to an organisation that offers the universal service, regulatory authorities shall determine whether a mechanism is required to compensate the services supplier(s) concerned or to share the net cost of universal service obligations.
4. Each Party shall ensure that, where directories of all subscribers are available to users, whether printed or electronic, the organisations that provide those directories apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

ARTICLE 110

Cross-border provision of electronic communication services

Neither Party may require a service supplier of the other Party to set up an establishment, to establish any form of presence, or to be resident, in its territory as a condition for the cross-border supply of a service.

ARTICLE 111

Confidentiality of information

Each Party shall ensure the confidentiality of electronic communications and related traffic data by means of a public communication network and publicly available electronic communication services without restricting trade in services.

ARTICLE 112

Disputes between services suppliers

1. Each Party shall ensure that in the event of a dispute arising between suppliers of electronic communication networks or services in connection with rights and obligations referred to in this Section, the regulatory authority concerned shall, at the request of either Party, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months.
2. The decision of the regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The suppliers of electronic communication networks and services concerned shall be given a full statement of the reasons on which it is based.

3. When such a dispute concerns the cross-border provision of services, the regulatory authorities concerned shall co-ordinate their efforts in order to bring about a resolution of the dispute.

ARTICLE 113

Gradual approximation

With a view to considering further liberalisation of trade in services, the Parties recognise the importance of the gradual approximation of the existing and future legislation of Georgia to the list of the Union acquis included in the Annex XV-B to this Agreement.

SUB-SECTION 6

FINANCIAL SERVICES

ARTICLE 114

Scope and definitions

1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter.

2. For the purpose of this Sub-Section and of Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter:

(a) "financial service" means any service of a financial nature offered by a financial service supplier of a Party. Financial services comprise the following activities:

(i) insurance and insurance-related services:

(1) direct insurance (including co-insurance):

(a) life;

(b) non-life;

(2) reinsurance and retrocession;

(3) insurance inter-mediation, such as brokerage and agency; and

(4) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(ii) banking and other financial services (excluding insurance):

(1) acceptance of deposits and other repayable funds from the public;

(2) lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(3) financial leasing;

- (4) all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
- (5) guarantees and commitments;
- (6) trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
 - (a) money market instruments (including cheques, bills, certificates of deposits);
 - (b) foreign exchange;
 - (c) derivative products including, but not limited to, futures and options;
 - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
 - (e) transferable securities;
 - (f) other negotiable instruments and financial assets, including bullion;
- (7) participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
- (8) money broking;
- (9) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

- (10) settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
 - (11) provision and transfer of financial information, and financial data processing and related software;
 - (12) advisory, intermediation and other auxiliary financial services on all the activities listed in points (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;
- (b) "financial service supplier" means any natural or juridical person of a Party that seeks to provide or provides financial services. The term "financial service supplier" does not include a public entity;
- (c) "public entity" means:
- (i) a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
 - (ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions;
- (d) "new financial service" means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party.

ARTICLE 115

Prudential carve-out

1. Each Party may adopt or maintain measures for prudential reasons, such as:
 - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
 - (b) ensuring the integrity and stability of a Party's financial system.
2. Those measures shall not be more burdensome than necessary to achieve their aim, and shall not discriminate against financial service suppliers of the other Party in comparison to its own like financial service suppliers.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

ARTICLE 116

Effective and transparent regulation

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:
 - (a) by means of an official publication; or

(b) in other written or electronic form.

2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

3. Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, inter alia, the Basel Committee's "Core Principles for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the "Agreement on Exchange of Information on Tax Matters" of the Organisation for Economic Co-operation and Development (OECD), the G20 "Statement on Transparency and Exchange of Information for Tax Purposes" and the Financial Action Task Force's "Forty Recommendations" on money laundering and "Nine Special Recommendations" on terrorist financing.

The Parties also take note of the "Ten Key Principles for Information Exchange" promulgated by the G7 Finance Ministers, and will take all steps necessary to try to apply them in their bilateral contacts.

ARTICLE 117

New financial services

Each Party shall permit a financial service supplier of the other Party to provide any new financial service of a type similar to those services that the Party would permit its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for prudential reasons.

ARTICLE 118

Data processing

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.
2. Each Party shall adopt adequate safeguards for the protection of privacy and fundamental rights, and freedom of individuals, in particular with regard to the transfer of personal data.

ARTICLE 119

Specific exceptions

1. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Chapter shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities.

ARTICLE 120

Self-regulatory organisations

When a Party requires membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles 79 and 85 of this Agreement.

ARTICLE 121

Clearing and payment systems

Under the terms and conditions that accord national treatment, each Party shall grant to financial service suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This Article is not intended to confer access to the Party's lender of last resort facilities.

ARTICLE 122

Gradual approximation

With a view to considering further liberalisation of trade in services, the Parties recognise the importance of the gradual approximation of the existing and future legislation of Georgia to the international best practices standards listed under Article 116(3) of this Agreement as well as to the list of the Union *acquis* included in Annex XV-A to this Agreement.

SUB-SECTION 7

TRANSPORT SERVICES

ARTICLE 123

Scope

This Sub-Section sets out the principles regarding the liberalisation of international transport services pursuant to Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter.

ARTICLE 124

International maritime transport

1. For the purpose of this Sub-Section and Section 2 (Establishment), Section 3 (Cross-border supply of services) and Section 4 (Temporary presence of natural persons for business purposes) of this Chapter:
 - (a) "international maritime transport" includes door-to-door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect the right to directly contract with providers of other modes of transport;
 - (b) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies.

The activities covered include the organisation and supervision of:

- (i) the loading/discharging of cargo to/from a ship;
 - (ii) the lashing/unlashing of cargo;
 - (iii) the reception/delivery and safekeeping of cargoes before shipment or after discharge;
- (c) "customs clearance services" (alternatively "customs house brokers' services") means activities consisting in carrying out on behalf of another Party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of that service provider or a usual complement of the service provider's main activity;
- (d) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- (e) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- (i) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - (ii) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

- (f) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- (g) "feeder services" means the pre- and onward transportation of international cargoes by sea, notably containerised, between ports located in a Party.

2. As regards international maritime transport, each Party agrees to ensure effective application of the principle of unrestricted access to cargoes on a commercial basis, the freedom to provide international maritime services, as well as national treatment in the framework of the provision of such services.

In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) each Party shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships or those of any third country, whichever are the better, with regard to, inter alia, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

3. In applying these principles, each Party shall:

- (a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and

(b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

4. Each Party shall permit international maritime transport service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better.

5. Each Party shall make available to maritime transport service suppliers of the other Party on reasonable and non-discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

6. Each Party shall permit the movement of equipment such as empty containers, not being carried as cargo against payment, between ports of a Member State of the EU or between ports of Georgia.

7. Each Party, subject to the authorisation of the competent authority shall permit international maritime transport service suppliers of the other Party to provide feeder services between their national ports.

ARTICLE 125

Air transport

The progressive liberalisation of air transport between the Parties adapted to their reciprocal commercial needs and the conditions of mutual market access are governed by the Common Aviation Area Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part.

ARTICLE 126

Gradual approximation

With a view to considering further liberalisation of trade in services, the Parties recognise the importance of the gradual approximation of the existing and future legislation of Georgia to the list of Union acquis included in Annex XV-D to this Agreement.

SECTION 6

ELECTRONIC COMMERCE

SUB-SECTION 1

GENERAL PROVISIONS

ARTICLE 127

Objective and principles

1. The Parties, recognising that electronic commerce increases trade opportunities in many sectors, agree to promote the development of electronic commerce between them, in particular by cooperating on the issues raised by electronic commerce under the provisions of this Chapter.
2. The Parties agree that the development of electronic commerce must be compatible with the international standards of data protection in order to ensure the confidence of users of electronic commerce.
3. The Parties agree that electronic transmissions shall be considered as the provision of services, within the meaning of Section 3 (Cross-border supply of services) of this Chapter, which cannot be subject to customs duties.

ARTICLE 128

Cooperation in electronic commerce

1. The Parties shall maintain a dialogue on regulatory issues raised by electronic commerce, which will inter alia address the following issues:

- (a) the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services;
- (b) the liability of intermediary service providers with respect to the transmission, or storage of information;
- (c) the treatment of unsolicited electronic commercial communications;
- (d) the protection of consumers in the ambit of electronic commerce, and
- (e) any other issue relevant for the development of electronic commerce.

2. Such cooperation can take the form of exchange of information on the Parties' respective legislation on those issues as well as on the implementation of such legislation.

SUB-SECTION 2

LIABILITY OF INTERMEDIARY SERVICE PROVIDERS

ARTICLE 129

Use of intermediaries' services

1. The Parties recognise that the services of intermediaries can be used by third parties for infringing activities and shall provide the measures for intermediary service providers as laid down in this Sub-Section.²⁰
2. For the purposes of Article 130 of this Agreement, "service provider" means a provider of transmission, routing, or connections for digital online communication between or among points specified by the user, of material of the user's choosing without modification of its content. For the purposes of Articles 131 and 132 of this Agreement "service provider" means a provider or operator of facilities for online services or network access.

²⁰ Georgia shall implement the provisions of this Sub-Section within two years from the date of entry into force of this Agreement.

ARTICLE 130

Liability of intermediary service providers: "mere conduit"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, each Party shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

ARTICLE 131

Liability of intermediary service providers: "caching"

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- (a) the provider does not modify the information;
- (b) the provider complies with conditions on access to the information;
- (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information, and
- (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge²¹ of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with the Parties' legal systems, of requiring the service provider to terminate or

²¹ For the purposes of this Sub-Section, the term "actual knowledge" shall be interpreted in accordance with each Party's domestic law.

prevent an infringement.

ARTICLE 132

Liability of intermediary service providers: "hosting"

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

- (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent, or
- (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with the Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for a Party of establishing procedures governing the removal or disabling of access to information.

ARTICLE 133

No general obligation to monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 130, 131 and 132 of this Agreement, to monitor the information which they transmit or store, nor shall they impose a general obligation to actively seek facts or circumstances indicating illegal activity.
2. A Party may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

SECTION 7

EXCEPTIONS

ARTICLE 134

General exceptions

1. Without prejudice to general exceptions set in Article 415 of this Agreement, the provisions of this Chapter and of Annexes XIV-A and XIV-E, XIV-B and XIV-F, XIV-C and XIV-G, XIV-D and XIV-H to this Agreement are subject to the exceptions contained in this Article.

2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public security or public morals or to maintain public order;
- (b) necessary to protect human, animal or plant life or health;
- (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic entrepreneurs or on the domestic supply or consumption of services;
- (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
- (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter, including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;

(f) inconsistent with Articles 79 and 85 of this Agreement, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, entrepreneurs or services suppliers of the other Party²².

3. The provisions of this Chapter and of Annexes XIV-A and XIV-E, XIV-B and XIV-F, XIV-C and XIV-G, XIV-D and XIV-H to this Agreement shall not apply to the Parties' respective social security systems or to activities in the territory of each Party, which are connected, even occasionally, with the exercise of official authority.

²² Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (a) apply to non-resident entrepreneurs and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory;
- (b) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory;
- (c) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures;
- (d) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory;
- (e) distinguish entrepreneurs and service suppliers subject to tax on worldwide taxable items from other entrepreneurs and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (f) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in point (f) of this provision and in this footnote are determined in accordance with tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

ARTICLE 135

Taxation measures

The most-favoured-nation treatment granted in accordance with the provisions of this Chapter shall not apply to the tax treatment that Parties are providing or will provide in future on the basis of agreements between the Parties designed to avoid double taxation.

ARTICLE 136

Security exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests;
 - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) connected with the production of or trade in arms, munitions or war matériel;
 - (ii) relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (iii) relating to fissionable and fusionable materials or the materials from which they are derived; or
 - (iv) taken in time of war or other emergency in international relations; or
 - (c) to prevent any Party from taking any action in pursuance of obligations it has accepted for

the purpose of maintaining international peace and security.