

## CHAPTER 8

### PUBLIC PROCUREMENT

#### ARTICLE 141

##### Objectives

1. The Parties recognise the contribution of transparent, non-discriminatory, competitive and open tendering to sustainable economic development and set as their objective the effective, reciprocal and gradual opening of their respective procurement markets.
2. This Chapter envisages mutual access to public procurement markets on the basis of the principle of national treatment at national, regional and local level for public contracts and concessions in the traditional sector as well as in the utilities sector. It provides for a gradual approximation of the public procurement legislation in Georgia with the Union public procurement acquis based on the principles governing public procurement in the Union and the terms and definitions set out in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (Directive 2004/18/EC) and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (Directive 2004/17/EC).

## ARTICLE 142

### Scope

1. This Chapter applies to works, supplies and services public contracts, as well as works, supplies and services contracts in the utilities sectors and, if and where such contracts are used, to works and services concessions.
2. This Chapter applies to any contracting authority and any contracting entity which meets the definitions of the Union public procurement acquis (hereinafter referred to as "the contracting entities"). It covers also bodies governed by public law and public undertakings in the field of utilities such as state-owned enterprises carrying out the relevant activities and private undertakings operating on the basis of special and exclusive rights in the field of utilities.<sup>1</sup>
3. This Chapter applies to contracts above the value thresholds set out in Annex XVI-A to this Agreement.
4. The calculation of the estimated value of a public contract shall be based on the total amount payable, net of taxes on value added. When applying these thresholds, Georgia shall calculate and convert contract values into its national currency, using the conversion rate of its national bank.

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<sup>1</sup> The expression "private undertakings operating on the basis of special and exclusive rights" shall be interpreted in accordance with the European Commission's Explanatory Note CC/2004/33 of 18 June 2004.

5. Value thresholds shall be revised regularly every two years, beginning in the year of entry into force of this Agreement, based on the average daily value of the euro, expressed in Special Drawing Rights, over the 24 months terminating on the last day of August preceding the revision with effect from January 1. The value of the thresholds thus revised shall, where necessary, be rounded down to nearest thousand euro. The revision of the thresholds shall be adopted by the decision of the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement.

## ARTICLE 143

### Institutional background

1. Each Party shall establish or maintain an appropriate institutional framework and mechanisms necessary for the proper functioning of the public procurement system and the implementation of the principles in this Chapter.
2. Georgia shall designate in particular:
  - (a) an executive body at central government level tasked with guaranteeing a coherent policy and its implementation in all areas related to public procurement. That body shall facilitate and coordinate the implementation of this Chapter and guide the process of gradual approximation to the Union acquis, as set out in Annex XVI-B to this Agreement;
  - (b) an impartial and independent body tasked with the review of decisions taken by contracting authorities or entities during the award of contracts. In this context, "independent" means that that body shall be a public authority which is separate from all contracting entities and economic operators. There shall be a possibility to subject the decisions taken by this body to judicial review.
3. Each Party shall ensure that decisions taken by the authorities responsible for the review

of complaints by economic operators concerning infringements of domestic law shall be effectively enforced.

## ARTICLE 144

### Basic standards regulating the award of contracts

1. No later than three years from the entry into force of this Agreement, the Parties shall comply with a set of basic standards for the award of all contracts as stipulated in paragraphs 2 to 15 of this Article. These basic standards derive directly from the rules and principles of public procurement, as regulated in the Union public procurement acquis, including the principles of non-discrimination, equal treatment, transparency and proportionality.

### Publication

2. Each Party shall ensure that all intended procurements are published in an appropriate media<sup>2</sup> in a manner that is sufficient:

- (a) to enable the market to be opened up to competition; and
- (b) to allow any interested economic operator to have appropriate access to information regarding the intended procurement prior to the award of the contract and to express its interest in obtaining the contract.

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<sup>2</sup> Wherever Union legislation that is subject to the process of approximation under this Chapter makes reference to publication in the Official Journal of the European Union, it is understood that in Georgia such publication shall be in the official means of publication of Georgia.

3. The publication shall be appropriate to the economic interest of the contract to economic operators.

4. The publication shall contain at least the essential details of the contract to be awarded, the criteria for qualitative selection, the award method, the contract award criteria and any other additional information that the economic operators reasonably need to decide whether to express their interest in obtaining the contract.

#### Award of contracts

5. All contracts shall be awarded through transparent and impartial award procedures that prevent corruptive practices. This impartiality shall be ensured in particular through the non-discriminatory description of the subject matter of the contract, equal access for all economic operators, appropriate time-limits and a transparent and objective approach.

6. When describing the characteristics of the required work, supply or service, the contracting entities shall use general descriptions of performance and functions and international, European or national standards.

7. The description of the characteristics required of a work, supply or service shall not refer to a specific make or source, or a particular process, or to trademarks, patents, types or a specific origin or production unless such a reference is justified by the subject matter of the contract and accompanied by the words "or equivalent". Preference shall be given to the use of general descriptions of performance or functions.

8. Contracting entities shall not impose conditions resulting in direct or indirect discrimination against the economic operators of the other Party, such as the requirement that economic operators interested in the contract must be established in the same country, region or territory as the contracting entity.

Notwithstanding the above, in cases where it is justified by the specific circumstances of the

contract, the successful applicant may be required to establish certain business infrastructure at the place of performance.

9. The time-limits for expression of interest and for submission of offers shall be sufficiently long to allow economic operators from the other Party to make a meaningful assessment of the tender and prepare their offer.

10. All participants must be able to know the applicable rules, selection criteria and award criteria in advance. Those rules must apply equally to all participants.

11. Contracting entities may invite a limited number of applicants to submit an offer, provided that:

- (a) this is done in a transparent and non-discriminatory manner; and
- (b) the selection is based only on objective factors such as the experience of the applicants in the sector concerned, the size and infrastructure of their businesses or their technical and professional abilities.

In inviting a limited number of applicants to submit an offer, account shall be taken of the need to ensure adequate competition.

12. Contracting entities may use negotiated procedures only in exceptional and defined cases when the use of such a procedure effectively does not distort competition.

13. Contracting entities may use qualification systems only under the condition that the list of qualified operators is compiled by means of a sufficiently advertised, transparent and open procedure. Contracts falling within the scope of such a system shall be awarded also on a non-discriminatory basis.

14. Each Party shall ensure that contracts are awarded in a transparent manner to the applicant who has submitted the economically most advantageous offer or the offer with the lowest price, based on the tender criteria and the procedural rules established and communicated in advance. The final decisions shall be communicated to all applicants without undue delay. Upon request of an unsuccessful applicant, reasons must be provided in sufficient detail to allow the review of such a decision.

#### Judicial protection

15. Each Party shall ensure that any person having or having had an interest in obtaining a particular contract and who has been, or risks, being harmed by an alleged infringement is entitled to effective, impartial judicial protection against any decision of the contracting entity related to the award of that contract. The decisions taken in the course and at the end of such review procedure shall be made public in a manner that is sufficient to inform all interested economic operators.

### ARTICLE 145

#### Planning of gradual approximation

1. Prior to the commencement of gradual approximation, Georgia shall submit to the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement, a comprehensive roadmap for the implementation of this Chapter with time schedules and milestones which shall include all reforms in terms of approximation to the Union acquis and institutional capacity building. This roadmap shall comply with the phases and time schedules set out in Annex XVI-B to this Agreement.

2. Following a favourable opinion by the Association Committee in Trade configuration, the roadmap shall be considered as the reference document for the implementation of this Chapter. The Union shall make its best efforts in assisting Georgia in the implementation of the roadmap.

## ARTICLE 146

### Gradual approximation

1. Georgia shall ensure that its legislation on public procurement will be gradually approximated to the Union's public procurement acquis.
2. Approximation to the Union acquis shall be carried out in consecutive phases as set out in the schedule in Annex XVI-B to this Agreement and further specified in Annexes XVI-C to XVI-F, XVI-H, XVI-I, and XVI-K thereto. Annexes XVI-G and XVI-J to this Agreement identify non-mandatory elements that need not be approximated, whereas Annexes XVI-L to XVI-O to this Agreement identify elements of the Union acquis that remain outside the scope of approximation. In this process, due account shall be taken of the corresponding case law of the Court of Justice of the European Union and the implementing measures adopted by the European Commission as well as, should it become necessary, of any modifications of the Union acquis occurring in the meantime. The implementation of each phase shall be evaluated by the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement, and, following a positive assessment by that Committee, be linked to the reciprocal granting of market access as set out in Annex XVI-B to this Agreement. The European Commission shall notify Georgia without undue delay of any modifications of the Union acquis. It shall, upon request, provide appropriate advice and technical assistance for the purpose of implementing such modifications.



3. The Association Committee in Trade configuration shall only proceed to the evaluation of a next phase once the measures to implement the previous phase have been carried out and approved in accordance with the modalities set out in paragraph 2.

4. Each Party shall ensure that those aspects and areas of public procurement which are not covered by this Article comply with the principles of transparency, non-discrimination and equal treatment as set out under Article 144 of this Agreement.

## ARTICLE 147

### Market access

1. The Parties agree that the effective and reciprocal opening of their respective markets shall be attained gradually and simultaneously. During the process of approximation, the extent of the market access mutually granted shall be linked to the progress made in this process as stipulated in Annex XVI-B to this Agreement.

2. The decision to proceed to a further phase of market opening shall be made on the basis of an assessment of the compliance of the legislation adopted with the Union *acquis* as well as its practical implementation. Such assessment shall be carried out regularly by the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement.

3. In so far as a Party has, in accordance with Annex XVI-B to this Agreement, opened its procurement market to the other Party:

- (a) the Union shall grant access to contract award procedures to Georgian companies, whether established or not in the Union, pursuant to the Union public procurement rules under treatment no less favourable than that accorded to Union companies;
- (b) Georgia shall grant access to contract award procedures for Union companies, whether

established or not in Georgia, pursuant to national procurement rules under treatment no less favourable than that accorded to Georgian companies.

4. After the implementation of the last phase in the process of approximation, the Parties will examine the possibility to mutually grant market access with regard to procurement below the value thresholds set out in Annex XVI-A to this Agreement.
5. Finland reserves its position with regard to the Åland Islands.

## ARTICLE 148

### Information

1. Each Party shall ensure that contracting entities and economic operators are appropriately informed about public procurement procedures, including through the publication of all relevant legislation and administrative rulings.
2. Each Party shall ensure the effective dissemination of information on tendering opportunities.

## ARTICLE 149

### Cooperation

1. The Parties shall enhance their cooperation through exchanges of experience and information relating to their best practices and regulatory frameworks.

2. The Union shall facilitate the implementation of this Chapter, including through technical assistance where appropriate. In line with the provisions on financial cooperation in Title VII (Financial Assistance, and Anti-fraud and Control Provisions) of this Agreement, specific decisions on financial assistance shall be taken through the relevant Union funding mechanisms and instruments.

3. An indicative list of issues for cooperation is included in Annex XVI-P to this Agreement.