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# Towards Harmonisation in State Aid Law: The Case of Moldova and Georgia

## 1. Introduction

Both Moldova and Georgia are similar to each other in certain aspects of their political and economic situations, which could well be the reason why their political leaders (but also the politicians of many other countries) opted for EU Integration, being driven by the benefits of access to a large internal market.

One could ask "*why*?" do countries like Georgia and Moldova need to have a state aid system like the EU does, if no membership perspective is actually promised. This question has to be answered by the politicians of all countries which harmonise their legislation with that of the EU. The promoters of reforms have to "sell" the European solutions back home in order to get the laws passed in the Parliament and to still preserve peoples' trust and be re-elected for a new mandate. This does not look like an easy task because one has to answer a series of stake-holders' questions related to the envisaged reforms, like: "who will cover the expenses?", "what will the benefits be?" and "what will the changes be?"

In the case of state aid, the authorities who are usually granting aid (government, ministries, local authorities and companies with public controlling shareholding) and the market players which receive aid may be uncomfortable with introducing a monitoring system and a ban on state aid. As in Moldova, the market-players are well-organised and have created a consultation body under the government. It is interesting to see what the "say" of this group will be, be-cause on the one hand, the ban on state aid helps to create genuine competition; and on the other hand, those market players which received aid, shall abstain from receiving more aid in the future.

Although certain expenses will be incurred for the training of the staff of donors and of the na-tional state aid authorities, for the creation of software and its maintaining, it is clear that the benefits of such a system will clearly outweigh the shortcomings.

## 2. Prerequisites for Moldova's and Georgia's EU harmonization choice

### *2.1. Economy of Moldova*[1]

The Republic of Moldova's transition to a market economy was marked by a particularly prolonged and deep recession. Although growth finally restarted in 2000, the strength of the recovery from 2000 onwards was weaker than in other neighbouring countries. This was largely due to Moldova's high vulnerability to external shocks and adverse internal conditions. Nearly 2000 small, medium, and large enterprises and 80% of all housing units have been privatised based on a programme begun in March 1993. Almost all agricultural land passed from state to private ownership.

Real GDP in 2005 was still less than half of the 1989 level. This was one of the worst performances amongst the transition countries listed by the EBRD. Economic growth has also been affected by the fact that most Moldovan industry, including electricity generating plants, are located in secessionist Transnistria. The country's real GDP of USD 1,000 per capita is the lowest in Europe. Although the manufacturing sector, specialised in textiles and leather products, has been recovering, Moldova's economy has a large agricultural sector which accounted for only almost one fifth of GDP in 2004. Agricultural and food-processing products accounted for 54% of all exports in 2004.

Substantial emigration (close to 400 000 Moldovans were estimated to be working abroad in November 2004 - 2006) has resulted in a strong and growing influx of worker's remittances. According to official National Bank of Moldova statistics, the overall level is estimated at USD 900 million which represents close to 30% of Moldovan GDP. Remittances are thus a key feature of economic development and social life and have contributed directly to reducing poverty. Investment is picking up and is beginning to replace remittances as the main source of growth, which is an encouraging sign that the earlier model of consumption-driven growth is changing to a more sustainable one.

[1] European Neighbourhood and Partnership Instrument. Republic of Moldova Country Strategy Paper 2007-2013, 8 available at http://ec.europa.eu/world/enp/pdf/country/enpi_csp_moldova_en.pdf

## 2.2 Economy of Georgia[2]

Like many post-Soviet countries, Georgia went through a period of sharp economic decline during 1990s, with high inflation and large budget deficits, due to persistent tax evasion. The situation started to change mainly after 2000.

Georgia's macroeconomic performance and general progress with reforms in the past years have been strong. Georgia achieved significant economic growth mainly driven by large foreign capital inflows.[3] Foreign investments across different sectors of the economy have contributed to broadening the economic base. Domestic credit grew rapidly, supported by increased confidence in the banking sector and access to international financial markets, and the level of dollarisation in the sector gradually decreased. Progress with structural reforms has also been significant. The main achievements included significant improvements in the legal and regulatory framework for business creation and operations including liberalisation of the customs regime, reduction corruption, simplification of the tax system and completion of large-scale privatisation across different sectors of the economy.

Notwithstanding significant progress, government effectiveness and regulatory quality, although in line with or slightly above the transition country average, still falls below the standards of the advanced countries. Regional instability had a perceived impact on the functioning of state institutions and almost 80 percent of Georgian firms in the 2008/2009 Business Environment and Enterprise Performance Survey (BEEPS) reported that political uncertainty is an obstacle to their operations.[4]

Major challenges remain in trade and investment climate, in particular in regulatory and institutional reform, including improvement in property rights, independence of judiciary, reinforcing the rule of law, further modernisation of the bureaucracy and administrative reform, and further reduction in corruption.

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[2] Appraisal of economic situation is based on the data provided by EBRD's Strategy for Georgia 2010. Document of the European Bank of for Reconstruction and Development. as approved by the Board of Directors at its meeting on 9 February 2010. (available at: http://www.ebrd.com/downloads/country/strategy/georgia.pdf).

[3] Foreign investments of about 15 per cent of GDP in 2006-2007 across different sectors have contributed to consolidating the economy.

[4] Georgian economy has been significantly affected both by the conflict with Russia in August 2008 and the international financial crisis. The August conflict undermined investor and consumer confidence, put stress on public finances, damaged infrastructure. The intensification of the international financial crisis has put further pressure on the currency and foreign investments. The ongoing internal political uncertainty has further lowered investor confidence.

The financial crisis has highlighted the need to further diversify and widen the economic base. Although the economic base has broadened significantly in recent years, growth is mainly driven by financial services and the construction sector. Developing the trade sector, by supporting exports and improving competitiveness, especially in manufacturing, and developing import substitution, in particular in agribusiness, are important for long-term sustainable growth. In the context of ongoing discussions with the EU on setting up a DCFTA, further progress is needed with establishing a sound regulatory framework in trade-related areas that is aligned with international and EU laws and standards.

Further improvements of the business climate are necessary to boost confidence and attract more foreign investments. These include improvement in property rights, independence of the judiciary, and a further reduction in corruption.

### 2.3. Politics and laws of Moldova

Generally from the 90's onwards, the whole legal system was reformed from a communist to a democratic one. It allowed international experts to note that the legislation was quite modern (more progressive than in many prosperous countries), but only "in the books". In reality, Moldova faces corruption in public institutions, institutions being seen as still weak, due to insufficient funding and education provided to personnel. The trainings offered by many programmes lack the desired impact, due to the fact that institutions are characterized by high personnel fluctuation, as the jobs for the government are generally seen as low-paid.

Since 2005, Moldova began to harmonise its laws with those of the EU. The legislation-making process has changed tremendously and so did the whole legal system. A compulsory stage has been introduced in the legislative process: *check for compliance with EU legislation* (where the primary legislation, soft-law, including case-law and other Member States' experience is looked closely at). The authors of a draft law are required to present to the Centre of Harmonisation (under the Ministry of Justice) the assessment of compatibility of the proposed act with EU Law. The Centre reviews the compatibility as well and passes the act further to the Parliament.

### 2.4. Politics and laws of Georgia

The Georgian parliamentary election of 2012 was held on 1 October 2012. The oppositional Georgian Dream coalition won a majority of mandates. A government is presently formed by the new parliamentary majority.

The basis for the political system before the elections was established by the Rose Revolution of November 2003. The post-revolutionary government has pursued a reform programme aimed at reviving the national economy, improving living standards of the population and reducing poverty. The fight against corruption was put at the centre of the reform agenda. Even though significant results have been reached after the revolution the work is still to be done in respect to combating corruption, improving governance, alleviating poverty and resolving territorial conflicts. Now, since Georgia has a new government, it remains to be seen how it will handle the challenges in this respect. The Government of Georgia has a reform program, in which combating of corruption, poverty and improving governance are on top of the agenda.

As for the legal environment, Georgia has implemented notable reforms to its legal system in the last years. Recently implemented changes include amendments to various laws dealing respectively with the financial sector, entrepreneurial activities and tax law. In particular, the new laws have removed certain restrictions on the inflow of foreign capital and made it easier for foreign banks to enter the local market as well as facilitated integration of the financial system of Georgia into the worldwide financial system.

However, the country continues to face considerable challenges in establishing legal rules and strengthening legal institutions. Although significant improvements in the legal and regulatory framework for business creation and operations have been made in the recent years, including liberalisation of the customs regime and reducing corruption, insufficient understanding and respect for the rule of law do not allow for adequate and fair enforcement in judiciary. The trend of reforms (the direction of which remains to be seen) will be continued by the new Government of Georgia. Already, numerous draft legislation is currently in preparation in various fields, including competition.

## 3. Why harmonise with EU Law?

The less successful economic and political circumstances (mentioned in section 2.1. and 2.2.), the desire for further economic development coupled with the attractiveness of the EU model prompted the politicians and the people of both countries to look for closer relations with the EU, undertaking positive obligations of harmonisation with EU Law.

The main point of attraction of integration for both countries (and for other countries which declared the willingness to adhere to the EU) is the “internal market” - a defining element of the EU, its principal economic rationale, which opens great economic perspectives of development. Art 26 para (2) TFEU describes the internal market as “an area without internal frontiers

in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties", where the "free movement of goods" is at its heart and one of the principal freedoms of the EU.[5]

According to Art 3 TFEU, for the purpose of ensuring the effective functioning of the internal market, the regulation of competition is listed as an area of exclusive competence of the EU. Therefore the ban on state aid, which is implicitly an area of competition, is exclusively controlled and managed by the EU institutions. The necessity of having a common competition policy within EU Member States and more precisely, of having harmonized rules and standards within the EU, is dictated by the economic rationale of the internal market. A common regulatory framework is the only way to ensure the proper functioning of the internal market.

Therefore aiming at maintaining the sustainable development of the internal market, lets third countries "play the game" in whole or quantified to certain rights, it asks the countries to apply EU products' standards and competition rules. This shall not be surprising, as long as the EU Members are subject to compliance rules. As a result the market actors, whether from the EU or from third countries are subject to the same rules and therefore are not distorting competition for the sake of safeguarding EU interests. Consequently the internal market is fair and functioning effectively.

## 4. Legal basis for harmonization in Moldova and Georgia

### 4.1. Development of Moldova's and Georgia's relations with the EU

The foreign policies of both Moldova and Georgia at some point in time have been oriented to integration into the EU. Both countries in respect to their relationships with the EU have many things in common, which they can share and build upon.

The relations of the EU with Georgia, as well as with Moldova are based on PCAs[6] which were concluded between the EU and third countries for a duration of 10 years, which is extended automatically if no party denunciates the agreement. The PCAs usually provide a framework for developing political relations by establishing political dialogue, promoting bilateral commercial

[5] Articles 28 and 29 of TFEU.

[6] *Partnership and Cooperation Agreement* between the European Communities and their Member States, on one part, and the Republic of Moldova, on the other part, signed on 28 November 1994 and entered into force on 1 July 1998, OJ 1998 L 181 of p.3 (3); *Partnership and Cooperation Agreement* between the European Communities and their Member States, on the one part, and the Republic of Georgia, on the other part, signed on April 22, 1996, and entered into force on July 1, 1999, OJ 1999 L205 of p.1 (1).

relations and development of investments, as well as by establishing economic cooperation in many other fields.

Both Georgia (since 2003) and Moldova (since 2005) are included, by the European Council's decision, into the EU's external policy, aiming to promote closer relations with the countries adjacent to the EU, the so called "ring of neighbours"- "The European Neighborhood Policy".

Inclusion into the ENP was followed by Action Plans - policy documents, adopted by the Governments of Georgia and Moldova jointly with the EU, which particularly served as "roadmaps" of reforms to strengthen the democratic and economic situation of the countries, and therefore indicated the concrete steps for approximation.[7]

Since 2008, both countries are also included in the relatively new policy of the EU in regard to its eastern neighbours - EaP, which aims at accelerating the growth of interdependence between the EU and the countries of Eastern Europe.

Currently, Georgia and Moldova[8] within the framework of ENP and PCAs, are negotiating new enhanced agreements with the EU. The agreements will belong to the new type of external agreements to be negotiated by the EU and third countries. These documents shall be ambitious, going beyond the established framework of co-operation and opening a new stage in political dialogue and cooperation. The Association Agreements (AA) would replace the EU-Moldova and EU-Georgia PCAs. In addition, both Moldova and Georgia have started negotiations with the EU on the establishment of a DCFTA, which will emerge when the relevant conditions will be met.[9]

### 4.2. Harmonisation with EU state aid law

EU integration efforts of Georgia and Moldova as regards state aid legislation have been specifically agreed in a series of agreements and political documents, among which are the mentioned PCAs and the ENP APs of the countries.

The PCAs, as well as the Action Plans with both countries, contain provisions on the duty to harmonise the countries' regulations in the area of state aid.

[7] The ENP AP for Moldova has been adopted in 2005, ENAP for Georgia has been adopted in 2006.

[8] Moldova started negotiations on an EU-Moldova Association Agreement in Chisinau on 12 January 2010.

[9] According to the official website of the Delegation of European Union to Moldova: http://www.delmda.ec.europa.eu/eu_and_moldova/index_en.shtml.

### 4.2.1. Georgian and Moldovan PCA approximation clauses

A general provision concerning law approximation is provided in Art 50 para (1) of the PCA with Moldova, stating that the latter shall endeavour to ensure that its legislation will be gradually made compatible with that of the EU. The same approximation clause, in a so called "embryonic form"[10] is also provided in Art 43 para (1) of the Georgian PCA.

Further, the Art 50 para (2) of the Moldovan PCA, and accordingly Art 43 para (2) of the Georgian PCA list the areas to which the approximation clause shall extend. Among these areas is competition law, and thus, state aid being part of competition policy, shall also be approximated with the EU Law. The common approach to the state aid issues is the requirement to establish a national state aid system, which will be in line with the EU system, ensuring full transparency in regards to state aid.

It should be taken into account, that Moldova and Georgia are not singular cases of slow harmonisation in the area of state aid. No PCA country has yet accomplished a credible attempt of harmonization, and it should be retained that state aid regulation remains one of the most complicated and diffused spheres of approximation to EU principles for non - EU countries.

Unlike Georgia, Moldova is also a member of the Central European Free Trade Agreement (hereinafter CEFTA) 2006[11] and has assumed a similar obligation of harmonisation in the area of state aid. Art 21 of CEFTA regulates state aid, much in the manner this is done within the EU. CEFTA makes express reference to assessment of unlawful practices of granting state aid, on the basis of EU Law principles, and particularly Art 107 TFEU. Though, Art 107 TFEU being cited in CEFTA, allows the same broad interpretation of the scope of State aid rules as developed by EU courts, but should allow fairly enough the same exemptions and limitations as in the EU. Moreover, under the CEFTA 2006 Agreement, Moldova was required to establish a state aid regulatory authority by the end of 2010.[12] This obligation was complied with in 2012.

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[10] *M. Marsesceau and E. Montaguti*, Relations between the EU and Eastern Europe: A Legal Appraisal, CMLR 1995 No 32, 1327 (1341).

[11] Moldova, Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Kosovo are CEFTA 2006 members. CEFTA objectives are to expand trade in goods and services and foster investment by means of fair, stable and predictable rules, eliminate barriers to trade between the Parties, provide appropriate protection of intellectual property rights in accordance with international standards and harmonize provisions on modern trade policy issues such as competition rules and state aid. It also includes clear and effective procedures for dispute settlement.

[12] *Dirk Schuebel* in *E. Stuart* ,State Aid Law and Policy – approximation to EU standards in the Republic of Moldova, (2010) 3.

### 4.2.2. European Neighborhood Action Plans

The ENP APs of Moldova and Georgia do not aim at replacing the existing bases of bilateral agreements (i.e. PCAs). ENP APs are built upon the PCAs and complement them. Even though the EU generally practices a regional approach, the ENP APs of Georgia and Moldova are partly different from one another. This is due to the fact, that they have been elaborated taking into consideration the needs of the particular country and in close cooperation with the governments.

### 4.2.3. Moldovan ENP AP

The Moldova - EU ENP AP was adopted on 25 February 2005[13], although just a political document, it is of course of specific importance in the promotion of reforms with short and medium-term priorities. Essentially, in the area of State aid, Section 37 of the ENP AP specifically declares that Moldova shall endeavour to implementing state aid commitments under Art 48 / 2.2 of the PCA, by developing full transparency in the field of state aid, having as priorities:

- to establish a binding, uniform definition of state aid which is compatible with that of the EU (either by legislation or by autonomous government act);
- to establish full transparency as regards state aid granted in Moldova, in particular by:
  (i) drawing up a complete list of aid grantors,
  (ii) creating a national mechanism for centralising all information on state aid granted in Moldova, with a view to drawing up annual reports on the amounts, types and recipients of aid;

The Commission Progress Reports[14] refer to *some progress* in the sector of state aid only since the national competition authority was finally set-up by the Government in 2007. Even so, it is easily seen that the first Progress Report submitted in 2008 for the year 2007 was optimistic and expected speedy developments in state aid, while the subsequent Reports only referred to a standstill situation with the draft law. The 2011 Report noted that there was no progress at all in 2010. In 2011-2012 the Moldovan national competition authority has been active in drafting national legislation, which is now being passed by the Parliament.

[13] The full text is available at: http://ec.europa.eu/world/enp/pdf/action_plans/moldova_enp_ap_final_en.pdf

[14] European Commission staff working document accompanying the Progress Report Republic of Moldova (in 2007), Sec (2008) 399, p.11 and European Commission staff working document accompanying the Progress Report Republic of Moldova (in 2008), Sec (2009) 514/2, p.13.

### 4.2.4. Georgian ENP AP

The ENP AP of Georgia has been adopted on November 14, 2006. One of the priorities of the ENP AP is to "encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment, further the convergence of economic legislation and administrative practices". The aim of the said priority is to encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment, further the convergence of economic legislation and administrative practices. In the AP, convergence in the field of economic legislation means practically the approximation of legislation of Georgia to that of the EU, rather than a "common endeavour" to find a middle way as convergence would tend to suggest.[15] This presumption is supported by Part 4 of Georgian AP, on General Objectives and Actions' whereas, section 4.5. Trade Related Issues, Market and Regulatory Reforms, provides for the concrete approximation commitments listed thereof. The subsection of 4.5.5. "Other Key Areas" includes competition policy and makes the emphasis on the following points:

Anti- trust and control of state aids policy

- ensure enforcement of the competition law, in particular by optimization of the administrative capacity enhancing the independence of the Free trade and Competition Agency;
- converge with EU principles on Competition according to title V Art 43 and 44 of the PCA;
- examine the possibility of establishing further transparency as regards State Aid granted in Georgia, in particular by (i) elaborating general rules of state aid and (ii) drawing up annual reports on the amounts, types and recipients of aid.

Therefore, this part of the AP actually provides for the commitments of Georgia in the field of competition.

[15] *C. Hillion*, Thou shalt love thy neighbour… The European Neighborhood Policy Action Plan between the EU and Ukraine, in *A. Mayhew and N. Copsey* (editors), Just Good Friends? Ukraine, Belarus, Moldova and European Neighborhood Policy, Brighton, Sussex European Institute, (2005), 17-25.

# 5. EU state aid law

## 5.1. General framework

The EU is regulating market competition for more than 50 years and that is why competition law is now a much-encompassing, detailed and developed area of law (extensive case-law, regulations and policy documents). The EU has six exclusive competences of regulation, among them competition. Competition is the sphere of regulation in the internal market where all actors shall operate in equal positions and the results shall be directly related to their performances, with no external interference.

Harmonisation with EU Law is much about harmonisation with competition law, as this is the most relevant part of the *acquis,* which shall eventually bring economic benefits of access to the internal market for both Moldova and Georgia. However, it shall not be disregarded that these countries are former Soviet countries (with long experience of state regulated economy) and therefore had no dedicated and embedded competition rules. Competition rules, together with state aid rules began to be learned and introduced by the decision-makers for the advantages they offer to the market quite late.

In order for a measure to qualify as "state aid", it is required that it cumulatively meets four criteria, namely: (i) it is a selective advantage; (ii) it is granted by the state or through state resources; (iii) it distorts or threatens to distort competition; and (iv) it affects trade between MS.

State aid is generally prohibited, and only in well-reasoned cases it may be allowed. State aid measures shall be limited to situations when market failures need to be corrected. Donors of state aid shall be allowed to interfere with competition in order to deal with market malfunctions only when the social aims of such measures may not be disregarded.

The aid may take any form implying a transfer of capital, non-collection of revenues or any other economic advantage such as tax exemptions, loan guarantees, reduction in social security contributions,[16] loans at preferential rates, exemptions from parafiscal levies, goods supply or service rendering at preferential prices, capital contributions, sale of lands[17] etc. The so-called "private investor principle" has been developed in European case-law to differentiate a measure where the state has acted as a private investor and assumed informed decisions of making investments in order to gain mid-term or long-term benefits, from other measures, where the

[16] CoJ, case C-75/97 *Belgium/Commission, report 1999, Page I-03671/* 3671, margin 23.

[17] Commission Communication concerning aid elements in land sales by public authorities, OJ 1997C 209/3.

state acted as a sovereign power, irrespective of economic circumstances and perspectives of income.

The discretionary derogations or discretionary exemptions from the state aid prohibition are listed in Art 107 para (3) TFEU, where the wording "may be considered compatible" is used, thus enabling the Commission to decide if certain measures are compatible with the internal market. The exceptions to the general ban that are flagged by the strong wording "shall be compatible" are viewed as mandatory derogations or mandatory exceptions from the prohibition of state aid. While Art 107 para (3) TFEU has been extensively interpreted by the Commission to provide a basis for tailoring measures to fit a wide range of policy objectives, by contrary, Art 107 para (2) TFEU is of somewhat narrow use (and offers little discretion to the Commission).

Art 107 para (2) (listing mandatory derogations) provides that the following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

At analyzing aid which falls under Art 107 para (2) letters (a) – (c) TFEU, the Commission does not have the discretion to decide whether to authorise such aid or not, it shall rather assess whether the conditions set out in Art 107 para (2) TFEU are met, and if so, shall be obliged to authorize envisaged state aid measures.

Art 107 para (3) (listing discretionary derogations) provides that the following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Art 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Where regional economic development is sought, Art 107 para (3) letters (a) and (c) TFEU allow the granting of state aid. While Art 107 para (3) letter (a) TFEU is of somewhat limited application due to the fact that regional development is assessed as compared to the "European" level, Art 107 para (3) letter (c) allows the Commission to approve aid for underdeveloped regions as compared to the "national" level. The beneficial effects of the aid must outweigh the distortions of competition. The Commission has developed guidelines[18] for examining the compatibility of national regional aid with the internal market under Art 107 para (3) letters (a) and (c) TFEU. Criteria for granting aid include population density and unemployment level. According to the guidelines, it follows that the regional aid subject to the derogation of Art 107 para (3) letter (c) TFEU is intended for regions which are less disadvantaged than those referred to in letter (a) of the same Article.

Art 107 para (3) letter (b) TFEU is designed for two cases: (i) important projects of common European interest and (ii) serious disturbances in the economy of a MS. The Court underlined that the "common European interest" is in place if it forms part of a transnational European programme supported jointly by a number of governments of the MS, or arises from concerted action taken by a number of MS to combat a common threat such as environmental pollution.[19] The financial crisis helped to expand the case-law of granting state aid based on the criterion of serious disturbance in the economy of a MS. The Commission acknowledged that the severity of the crisis justified the grant of aid on the basis of Art 107 para (3) letter (b) TFEU and set out

[18] Commission Guidelines on national regional aid for 2007-2013, OJ 2006 C 54/13.

[19] CoJ joined cases 62/87 and 72/87 Exécutif régional wallon and SA Glaverbel/Commission of the European Communities, report 1988 01573, margin no 22.

a coherent framework for the provision by MS of public guarantees, recapitalisation measures and impaired asset relief, whether to individual banks or as part of a national scheme. The primary rationale of the guidance in the Commission's communications is to ensure that emergency measures for reasons of financial stability guarantee a level playing-field between banks located in different MS as well as between banks who receive public support and those who do not.[20] Art 107 para (3) letter (d) was added to the TFEU (Art 87 para (3) letter (d) TEC) by the Maastricht Treaty in 1993. It has been used as the basis for authorising aid to the film industry, as well as schemes for theatre, dance activities[21] and museums.[22]

### 5.2. "de minimis" aid

Regulation No 994/98/EC[23] empowered the Commission to set out in a Regulation a threshold under which aid measures are deemed not to meet all the criteria of Art 107 para (1) TFEU and therefore do not fall under the notification procedure provided for in Art 108 para (3) TFEU. This possibility to provide a threshold of minimal aid considered not to affect intra-community trade comes against the wording of the TFEU[24] and against the general line of case-law developed historically by the ECJ. On the other hand, this approach is pragmatic because it allowed decreasing the workload of the Commission, which was busy with "rubber-stamping", as such measures were clearly permissible and set free Commission's resources to focus on serious infringements of state aid law.

While notification is not required, monitoring requirements are quite firm:

- the grantor of aid shall explicitly inform the beneficiary of aid that aid is given on the basis of Commission Regulation No. 1998/2006/EC;

- beneficiaries / recipients shall provide a declaration about other *de minimis* aid received during the past 3 years;

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[20] European Commission *State Aid Scoreboard.* COM(2009) 661 final of 12.10.2009, 8.

[21] *Commission Decision*, Spain: aid for theatre, dance, music and audiovisual activities in the Basque country, 368/2008 of 22.08.2008, OJ, 2008 C 281.

[22] *Wishlade F./Michie R* Pandora's Box and the Delphic Oracle: EU Cohesion Policy and State Aid Compliance *in IQ-Net Thematic Paper* (2009) *24(2)* 19.

[23] Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of state aid, OJ 1998 L 142/1.

[24] Please refer to criteria „distorts of threatens to distort competition" and „affect trade between Member States" at section 4 above.

- MS shall record all the information according to the *de minimis* Regulation and shall maintain such records for the next 10 years since granting the aid.

Alternatively to the above, it should be possible to ensure that the ceiling is respected by means of a central register. It follows that if the MS are not obliged to keep a central register, compliance with *de minimis* rule can be assured only if the beneficiary is one of good-faith and declares the true and exact amount received in the past three years.

### 5.3. General Block Exemption Regulation

Under the General Block Exemption Regulation (hereinafter GBER)[25] more categories of state aid need not be notified. According to the scope of GBER, it shall apply to the following categories of aid: (a) regional aid; (b) small and medium enterprises (hereinafter SME)[26] investment and employment aid; (c) aid for the creation of enterprises by female entrepreneurs; (d) aid for environmental protection; (e) aid for consultancy in favour of SMEs and SMEs participation in fairs; (f) aid in the form of risk capital; (g) aid for research, development and innovation; (h) training aid; (i) aid for disadvantaged or disabled workers.

Other previously existing Regulations, namely No. 68/2001, 70/2001, 2204/2002 and 1628/2006 providing block exemptions have been replaced by the GBER for reasons of simplification.

## 6. Moldova and Georgia: Institutional and legislative background

The relevance of national state aid rules in Georgia and Moldova is increasing due to the fact that both countries began negotiating DCFTAs with the EU.

[25] Commission Regulation (EC) No 800/08 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation), *OJ 2008 L 214, 3 (14)*.

[26] According to Annex 1 of GBER the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million and a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

## 6.1. Moldova's institutional background

### 6.1.1. The national competition authority ("NCA")

The National Agency for Protection of Competition was instituted through the Law on protection of competition of 2000, but was created only later, in 2007 by effect of a Parliament Decision. The agency is now in the process of reorganization into a Competition Council, the process having the final goal of increasing the institutional power of the NCA.

According to the law on state aid, the NCA's powers of investigation in state aid matters will be similar to those in competition. The new law on competition[27] is significantly tougher toward the market players than the old law in matters of enquiring information, initiation of investigations, carrying out inspections in the premises of economic units and in any other premises where relevant information may be stored.

Under the old law, the NCA had to ask the support of police in carrying out its legal attributions and had limited powers to sanction market players for non-compliance with its orders to provide access to documents. Thus the NCA's officials had to submit written requests to police on such refusals and ask that police officially concluded that administrative offences took place.[28] Previously, possibly the major concern about the NCA's ability to fulfill its tasks was that unlike similar authorities in EU Member States, the NCA did not have enough powers to achieve its tasks. It is especially the case where the companies did not comply with the NCA's order to submit information and where incorrect factual data was presented. This proved that the NCA, as in competition matters, would have lacked some authoritarian attributions in state aid as well, being relatively toothless in taking effective measures in state aids.

Under the new law on competition, the main tool of the NCA is the fine. The fine will be applied including for providing incomplete, inexact or misleading information. The fines are relatively burdensome, as for infringing of the procedural rules fines between 0,15% and 0,45% of the total early turnover are set and for infringing of material rules, the fine reaches up to 4% of the total early turnover, depending on the circumstances of the case. For delays to comply with an order or to allow an inspection, penalties of up to 5% per day of the daily turnover will be due.

[27] Law No. 1103 of 30.06.2000 on the protection of competition was replaced by a new Law on competition No. 183 of 11.07.2012, published in the Official Gazette No. 193-197 of 14.09.2012, accessible (in Romanian and Russian) at the official legislation portal: http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=344792.

[28] *Code on administrative offences* No. 218 of 24.10.2008, published in the Official Gazette 3-6 of 16.01.2009 allows a multitude of public authorities to sanction administrative offences.

The NCA has co-operated with the European Commission through its Directorate General for Competition, the European Commission Delegation in Moldova, the World Bank and also with competition authorities of a number of MS by concluding cooperation agreements e.g. with Austria, Bulgaria, Romania and Hungary. Such international contacts have beneficial implications for creating of a strong state aid authority in Moldova.

### 6.1.2. Courts: inexperienced in what is called "state aid"

Moldovan courts generally prove to be proactive and duly penalize market players which showed an unlawful conduct in the market and infringed competition rules.

Since its creation in 2007 and until 2011, the NCA brought 109 cases to court, out of which 72 cases have been finalised. Of these, 55 were ruled in favour of the NCA (76.3%).

Based on this experience, the NCA has indicated that the major problem faced by its lawyers is for the judges to understand why a cartel is a violation of competition law.

Clearly in line with EU standards, the law on state aid introduces revolutionary concepts in competition for Moldovan legislation.

It should be noted that in the past specialized economic courts dealt with competition matters.[29] The judges working in such courts were generally more refined in economic aspects and dealt with litigations of a commercial nature between companies, insolvency cases, intellectual property and licenses misuse cases, etc. Since March, 2012 the economic courts were liquidated and commercial cases have been distributed to general courts[30] .

The general courts, now in charge of competition matters, are rather traditional and like to preserve some common decision-making practice. Thus the authors are of the opinion that it will take time and effort to educate judges in new competition law matters, including state aids, and even more difficult, to explain why an aid given by state in a willful manner is illegal given that it distorts competition and affects trade.

A central element of a realistic development strategy for state aid law and policy is the training of judges in competition law and economics and more specifically in state aid. It should be as-

[29] *Stuart E., Mateus A.* IBF International Consulting in consortium with DMI, IRZ, Nomisma, Incom and Institutute of Public Policy, "*Competition Law and Policy – approximation to EU standards in the Republic of Moldova*", Chisinau, (2009), 117.

[30] Law No. 29 of 06.03.2012 on the amendment of some legislative acts, published in the Official Gazette No. 48 of 13.03.2012, accessible (in Romanian and Russian) at the official legislation portal: http://lex.justice.md/md/342444/.

certained that it is impossible to enforce state aid law without proper application of substance and procedures by courts.

The courts are an essential element of the institutional state aid enforcement. There is no win-win situation to have the NCA's decisions cancelled by courts - as last instances, when market players know they will go bankrupt if the NCA's decision on the recovery of aid is enforced.

This being said, the conclusion is that huge efforts shall be assumed to train and retrain judges from general courts to comprehend the European approach to internal market, competition and state aid.

Since 2002, the Competition Directorate-General of the European Commission operates a subsidies programme dedicated to the training of national judges in EU competition law and judicial co-operation between national judges. Approximately 30 projects have now been co-financed, involving more than 3500 national judges.[31]

There are on-going training projects for judges in state aid matters.[32] The view here is that the judges from third countries (at least those from supreme courts or from specialized panels) shall also be offered the possibility to participate at some of such trainings.

Additionally, the NCA shall organize trainings of communicating state aid rules to the judiciary, but also to attorneys and the staff of grantors of aid. The Commission's guidelines interpreting legal provisions, for ease of understanding the rationale of state aid rules is also a *lessons-learned* from EU experience. The NCA should actively use its soft-law making powers to improve enforcement of state aid rules where it becomes aware of deficiencies in implementing the Law on State aid in the future.

### 6.2. Moldovan law on state aid

In 2008 the NCA attempted to lobby the passing of a law on state aid, but this attempt was paused while preparing a more laborious draft of law. The new law on state aid has been

[31] http://ec.europa.eu/competition/court/training.html.

[32](i) Italian project: " EC Competition and State Aid Law training and judicial co-operation network: Building bridges between EC Institutions, National Judiciary and the Universities across Europe" Duration: February 2011 - June 2012; (ii) German project: " Training of the Polish judiciary on the enforcement of EU State aid rules" Duration: October 2010 - June 2012; (iii) Greek project: " Training of national judges in EU Competition Law: Anticompetitive Agreements, Unilateral Conduct, Mergers, State Aid" Duration: October 2010 - June 2012; (iv) German project: " Training of the Finnish and Estonian judiciary on the enforcement of EC State aid rules"; (v) German project: " Training of the Romanian judiciary on the enforcement of EC State aid rules" Duration: October 2010 - June 2012.

drafted by the national competition authority with the assistance of international experts[33] and has recently been passed by the Parliament[34] . It is important that the law on state aid was finally enacted by Parliament and shall enter into force in August 2013. The compatibility of the national legal act with EU state aid law is partial, due to the fact that Moldova needs to gradually introduce the state aid system and also due to the fact that it is designed rather for the "national competition dimension", rather than for the "EU dimension". According to the calculations of the NCA, as from 2009 the amount of given state aid was of 1 billion 300 million Moldovan lei (i.e. approx 81 million Euro).

As compared to EU law where the limitation period is of 10 years, the limitation period in the Republic of Moldova is of 6 years. According to the Moldovan law, the "de minimis" threshold is of 2 million lei[35] (Euro 125000), which comparable to the EU "de minimis" threshold of Euro 200000. In the authors' view, given that the Moldovan market is much smaller than the internal market of 27 MS, there was space to establish a smaller threshold in order to ensure that the "de minimis" rule is justified and is relatively small as not to distort competition.

The existing aid shall be reported to the NCA, by the beneficiaries of state aid or by grantors of state aid, the latest 12 months after the entry into force of the law. Unreported aid is deemed illegal and shall be recovered accordingly. Illegal and misused state aid shall be recovered together with an interest of 5 percent added to the base rate of the National Bank of Moldova (currently 4,5%) for the whole period of using of aid by the beneficiary, until full recovery.

Moreover, the Moldovan National Plan of harmonisation with EU Law for 2012[36] envisages that the national competition authority shall pass secondary legislation in the area of state aid: (i) on notification procedure; on investigation procedure and (iii) on horizontal aid (aid for SMEs; employment and training aid; aid for environmental protection, aid for research, development and innovation; and regional aid). It is expected that the above rules will be adopted in the second

[33] Assistance was provided in drafting secondary legislation, guidelines and Rules as envisaged in the final provisions of the draft law on state aid through the twinning project "Support for implementation and alignment to the policy in the area of competition and State aid in the Republic of Moldova". In the area of state aid, assistance for approximation of legislation was provided by Romanian experts.

[34] The Law No. 139 of 15.06.2012 on the state aid, published in the Official Gazette No. 166-169a of 16.08.2012.

[35] The initial version of the draft law on state aid provided for the „de minimis" threshold of 3 million lei (close to Euro 200000).

[36] Approved through the Government Decision No. 962 of 19.12.2011, published in the Official Gazette No. 227-232 of 23.12.2011.

semester of 2012. However it shall be noted that it is not uncommon that the regulations are passed with delays, for different reasons.

## 6.3. Georgian institutional background

### 6.3.1. The national competition authority

The so called Free Trade and Procurement Agency (the "Agency") is an institution responsible for the competition in Georgia. The Agency has been created as a result of the merger of the Free trade and competition agency, which was created by the Free trade and competition law of 2005[37], with the Public Procurement Agency.

Compared to similar institutions in the EU MS, the old law (Georgian "Law on free trade and competition" of 2005) granted limited institutional powers to the Free Trade and Competition Agency. The new law[38] was planned to strengthen the competition authority's administrative capacity, as well as to increase the agencies powers and independence.

In respect to the changes of administrative capacity after the merger, the following shall be noted: the number of civil servants at Agency was 9 (including the head of the agency). After the merger of the two agencies, the number of employees at the Agency's Competition department remained the same, however the staff of the legal department (6) and of the analytical group (5) will also possibly be used for competition cases.

As regards the changes in respect to the powers and independence of the Agency, the plans, considered in the Comprehensive strategy, have been only partly reflected in the new law.

The main concern, which also has been present in the Georgian "Law on free trade and competition" of 2005 still remains that the Agency lacks power to issue a binding decisions. The procedure of granting state aid requires that a state body shall notify the Agency about the aid it intends to grant. Notification shall include information relating to the recipient of the aid, to the amount of the aid and the assessment that the aid does not seriously distort competition. After the receipt of these documents the Agency shall present its conclusion on the issue, and/or issue a recommendation to the Government of Georgia, which takes a binding decision on the grant of the state aid.

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[37] Georgian Law No 1550 of June 3, 2005 on „Free Trade and Competition" Published in Sakartvelos Sakanonmdeblo Macne (Official Gazette) No. 31 on July 23, 2005.

[38] Georgian Law No 6148 of May 8, 2012 on "Free Trade and Competition", published in Sakartvelos Sakanonmdeblo Macne (Official Gazette).

Another issue which was met with certain skepticism is that priority directions of the Agency are decided by the Government of Georgia periodically and the Agency may refuse to start investigation, on the grounds that the case referred is not falling under the priorities of the Agency.

In respect of the investigative powers a few positive as well as negative developments could be noted. As a positive development, the power of the Agency to request information from private as well as public undertakings is envisaged to be strengthened, whereas the Agency shall have the authority, in case of not providing the requested information, to impose a fine [a fee of 1000 to 3000 GEL (equivalent to 490-1450 EUR)] upon the person infringing the rule. On the other hand, the negative development of the law in this respect is the inability of the Agency to start investigation on its own initiative. According to the new law the Agency may only start investigation in two cases: (i) if the person who has information about the state aid (applicant) granted without authorization informs the Agency about the granted aid, and (ii) if an economic unit (undertaking) to whom the granted aid has a direct concern, submits a complaint to the Agency. On the other hand the last two points could also be considered as a positive development, as the persons and undertakings concerned did not have such opportunities of referral before.

Another aspect which could be seen as signaling the lack of power and independence of the Agency is that the head of the Agency is appointed (and dismissed) by the Prime Minister of Georgia. In addition, the rules drafted by the Agency referring to the general procedure for the grant aid also have to be approved by the Government. The statute (act of incorporation) of the Agency is also approved by the Government of Georgia.

#### 6.3.2. Court

According to the new law, the court in charge of competition cases, including state aid cases, is the Tbilisi Municipal Court. Both effectiveness and trends in the field of state aid are yet to be seen, as they greatly depend on the proficiency and experience of the judges in the field of competition.

### 6.4. Georgia's new law on state aid

In September 2011, the Government of Georgia presented a new draft law (mentioned above) on "Free trade and Competition" to the Parliament. The elaboration of this draft law was part

of the reforms which were planned by the Government in accordance with the Comprehensive Strategy in Competition Policy of 2010.

The new piece of legislation was finally passed (being approved in the third reading) on April 10, 2012. When the new law entered into force, all the previous laws concerning competition were abolished. A number of institutional as well as substantive changes in the field of competition (including in state aid law) have been made. The previous law on Free Trade and Competition is no longer in force.

In respect to state aid, the new law provides for new definitions, principles and procedures of granting state aid. *De minimis* state aids as well as sector exemptions are also being introduced.

In respect of the regulation of state aid in Georgia, a few remarks relating to state aid definition and exemptions from the definition shall also be made.

The definition of the state aid according to the new legislation is the following:

> "State aid (subsidy) - an individual decision made in respect to an undertaking, including tax exemptions, tax reduction or their postponement, discharging (write off) of debt, restructuring, providing loans on beneficial conditions, transfer of operational assets, providing of pecuniary aid, of preferential condition in the public procurement, of profit guarantee and other exclusive rights. State aid is not implied in the privatisation process, licenses and/ or permits issuance, and also public procurement, which is made through the reserve funds of President of Georgia, Government of Georgia and Mayor of Tbilisi."[39]

Hence, the definition provides that the privatisation process, licenses and/or permits issuance, and also public procurement, which is made through the reserve funds of President of Georgia, Government of Georgia and Mayor of Tbilisi is not covered by the state aid definition at all. In respect of the resources from the reserve funds of the President of Georgia, Government of Georgia and Mayor of Tbilisi, it should be noted that the amounts could be quite substantial for the Georgian market. For example for 2011 it equaled to 102 million GEL (equivalent to 50.4 million EUR).[40]

[39] Art 3, Georgian Law No 6148 of May 8, 2012 on "Free Trade and Competition".

[40] Competition Policy, Customs Procedures, Intellectual property rights. Accomplishment of the ENP AP in Georgia 2011. Evaluation of the representatives of the civil society. p. 14.

As regards exemptions of state aid, according to Art 12 para (1) the following may be exempted: aid for the development of specific economic activity and aid for the development of a specific economic sector.

The following forms of aid are allowed and do not require the consent of the Agency: state aid granted in cases of *force majeure* situations; social type of aid granted to individuals; aid for regional development of the country; aid for maintenance of cultural heritage; aid given to an entity which is considered as an important object of security; research aid; *de minimis* aid is set by a decree of the government; cases of reductions of taxes and restructuration, if the decision is taken by the Government of Georgia; release from tax liabilities; suspension and write-offs of tax arrears.

Overall, the provisions on state aid in the new law have been substantially changed, compared to their previous version in the old law, however, concerns still remain, the main being that the scope of the exceptions on the state aid provisions, as well as the list of measures not considered as state aid, according to the definition, is very broad and thus, precluding too many measures from being caught by the state aid rules.

## 7. What will state aid rules bring in the end?

The benefits if the Moldovan and Georgian state aid laws were seriously aligned with EU principles are expected to be:

a) *Fair competition*. No one can guarantee that fair competition will instantly be achieved in countries like Moldova and Georgia, however progress will be made and certain positive results will be achieved. Some of the current unfair practices will be abandoned, while other practices will be used rarely. “A level playing field” will be created due to the creation of a neutral platform for competitors, who will have to design their market strategies in a way as to gain a market sector by their own. On its turn, this would demand companies’ management to think of wise solutions to resuscitate the business or run into insolvency. A genuine market would be the best judge of competitors’ performances.

b) *Consumer benefits and innovation*. Where a given market is not distorted by extensive and systematic state aid, competitors will have the incentives to come up with new products and services, to work on getting the best quality for the best price. The consumers would benefit of such effects, having the right tools to distribute market shares to competitors according to their performances;

c) *Transparency.* By effectively presenting a clear picture of all state aid measures, including those which are given as allowances or exemptions, the public and the market players shall be informed on how much aid was given to a company. If an aid is given contrary to the set procedure, it shall be recovered as "illegal aid", together with the interest set by law;

d) *Budget structure*. Due to the fact that the ban on state aid will be a part of the national legal systems, it becomes clear that the structure of the budgets will also be reformed. The money which was usually given as aid for diverse beneficiaries of such aid will be used for other purposes, presumably for institution-building and sustainable growth. The section of budgetary expenses will thus be decreased or optimised, and the section of budgetary income will register additional money due to the fact that no aids in form of non-collection of revenues or waivers from paying taxes will be provided.

e) *Accountability of politics and of officials for public expenditure.* By also having changed the law on public procurement, the way of selling public property (this is now largely seen as illegal due to very low prices paid to authorities for such property) and control over privatisation of companies which are still state owned, defining of what is Services of General Economic Interest (SGEI) and making a fair calculation of expenses incurred and price to be paid by public authorities for such services.

f) *Attraction of foreign investments.* Foreign investors might be encouraged to invest in countries like Moldova and Georgia due to the fact that such investors will learn, after duly studying the market, that there are no benefits granted by government to individual firms, which could eventually distort competition. Therefore the entry and operation of firms with foreign investments will more likely increase.

g) *Poorly performing firms will be eliminated.* Fair competition will strengthen the battle for market shares between firms, and thus, the poorly performing firms will naturally be eliminated. The elimination of firms is not a good outcome *per se*, as this means that jobs will be lost and the government will not gain revenues from such firms, but the positive outcome shall be that the competitors will focus on consumers by providing goods and services "of best quality for the best price". Non-gaining of revenues by government is also a tricky argument, as the government will actually save on "non-granting of state-aids" to such poorly-performing firms on one hand and the revenues in a larger amount will be collected from those successful firms

which gained the market shares lost by the poorly performing firms, when exiting the market. The loss of jobs is a serious concern which shall be taken into account by governments when deciding whether a notified measure shall be cleared or not.

h) *Industry will become more capital intensive.* By regulating state aid, the market environment shall become more competitive and provide more incentives to firms for further development, thus leading a higher capitalization.

## 8. Developments to be promoted in both countries

Moldova and Georgia have to make efforts to develop competition policies including state aid policies, in a way that it efficiently allows them to create free markets with better competition in order to foster both economies, and in the long-term to join the EU common market via DCFTAs. Both countries have to implement a series of reforms, as described below.

### 8.1. Moldova

#### 8.1.1. Enforcing of the state aid law

In Moldova, the passing of the law on state aid is the starting point for all reforms. It is essential that the law on state aid was finally enacted by Parliament in June 2012 and that it shall enter into force in August 2013.[41]

In the authors' view, it is of little importance that the law on state aid in Moldova does not totally mirror EU state aid law. Generally, the amount of aid given in Moldovan market is way too small and mostly would fall under national "de minimis"[42] and exemptions, and only a small part of aid shall be adjusted to become permissible.

#### 8.1.2. Monitoring authority

The NCA was vested with state aid monitoring functions. It became increasingly active in the past years since its creation in 2007 and has benefitted of EU technical assistance through twinning projects, thus having built some competence in the area of state aid. In the authors' view, the NCA shall be given additional financing, as it shall be independent from beneficiaries

[41] see reference 35.

[42] *de minimis aid* of 200000 Euro within a period of 3 years per enterprise which is the permissible aid under EU law is way too much for Moldovan firms, thus the law should have provided for a much lower ceiling. It provided for a *de minimis* of 130000 Euro.

of state aid and other authorities, and its capacity (including staff experience and knowledge) shall be increased.

#### 8.1.3. Registry of state aid law

In terms of monitoring and effective execution of the state aid law, it is necessary to have a central registry of existing aid and of granted aid, in order to effectively track the aid that particular firms receive, to monitor the cap of *de minimis* was reached, whether the aid has been misused or illegally granted and whether the investigation procedure and recovery of the aid shall be commenced by the Moldovan Agency.

#### 8.1.4. Training of judges and grantors of aid

It is essential to provide training not only to the monitoring authority, but also to the judges (who shall control the monitoring agency's decisions) and to the authorities granting aid (to make sure the measure is clearly permissible aid). Having in mind that state aid law was never part of the Moldovan legal system, a large information campaigns shall take place, informing: (i) the beneficiaries of aid about potential risks associated with receiving illegal aid, and (ii) the competitors about the benefits of state aid law and their rights on informing the monitoring authority of illegal aids.

### 8.2. Georgia

#### 8.2.1. Improvement to the new state aid law

As noted above, in September 2011 the Government presented new draft legislation on "Free Trade and Competition" to the Parliament. The new piece of legislation was adopted on May 8, 2012. This Law has been developed as a part of the reforms planned by the Government in the framework of the Comprehensive Strategy in Competition Policy.

Even though the law was envisaged to bring substantial changes in the field of state aid by providing new definitions and substantive provisions in state aid, the plans have not duly been carried out. Not only are the new law provisions not reflecting the main principles of EU Law, they are also not sophisticated enough in order to regulate effectively the different fields of competition, including state aid.

### 8.2.2. Enhancing the role of the monitoring authority

Even though there have been changes in institutional terms, the powers of the new Agency are still weak, and the Agency lacks independence. The sole decision maker in the field of competition is the Government, which issues binding decision. In the authors view, the problem of independence of the Agency will remain as long as the Government will have a decisive role in the process of granting state aid. For the Agency to function effectively, it shall have all authority, including the decision making power and authority to start investigations on its own initiative. The Agency could be advised to draft and issue by itself –where appropriate rules on general procedure for the granting of aid.

### 8.2.3. Trainings/ raising awareness for EU Law

The only way to proper implementation of the law would be to raise awareness of EU Law, precisely on state aid, in Georgia. Transfer of knowhow, lawyers' expertise, trainings, seminars and workshops would serve as an important step toward the proper use of the provisions. Some of the stakeholders in this respect shall be competition monitoring authorities, grantors of aid, receivers of aid, as well as judges.

## 9. Conclusion

In the authors' view, important steps have been taken to comply with obligations listed in PCAs concluded with Moldova and Georgia and ENP APs with both countries.

The fact that the state aid laws are not perfect and do not totally harmonise with EU state aid law, the fact that such laws allow for too many exemptions or that the *de minimis* ceilings tend to be too high (125000 Euro in Moldova and no ceiling yet in Georgia) shall not indicate *per se* that no progress has been made at all.

The good part of harmonisation is that business, grantors of aid, politicians and civil society understand the need and the rationale of having uncontrolled state aid stopped. Gradually, once both countries come closer to the EU, the latter will be entitled to require that more harmonisation is achieved by the countries.

For achieving transparency, public accountability and reporting requirements, it is very helpful that state aid registers shall be created in both Georgia and Moldova.

Once a system of state aid is actually being introduced in both countries and the stakeholders get acquainted with it, the legal mechanisms, ceilings of aid, procedures and other legal and /

or economic issues may well be adjusted in time, so that they fit the countries' needs and that they reach the goal of harmonization with EU Law for a deeper co-operation and mutual benefits.