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**COMMISSION STAFF WORKING DOCUMENT**  
*Accompanying the document*

**Second Report on progress by Georgia in fulfilling the requirements of the visa liberalisation roadmap**

{COM(2014) 681 final}

## **1. INTRODUCTION**

The Commission Staff Working Document (CSWD) accompanies the Second Progress Report on the implementation by Georgia of the Visa Liberalisation Action Plan (VLAP).<sup>1</sup>

Together with the Report, Part I of the CSWD builds on the information and the assessment provided in the First Progress Report on the implementation by Georgia of the VLAP<sup>2</sup> and, in accordance with the methodology outlined in the VLAP, it provides a detailed analysis of the most relevant developments relating to the implementation of the so-called first phase VLAP benchmarks concerning the policy framework (legislation and planning).<sup>3</sup> Furthermore, in view of the European Commission's (Commission) assessment that Georgia has successfully completed the first phase of the implementation of the VLAP,<sup>4</sup> and as required by the VLAP methodology, Part II of the CSWD includes an assessment of possible migratory and security impacts on the European Union (EU) of the future visa liberalisation for Georgia.

The factual information included in Part I of the CSWD is based on the progress reports submitted by Georgia on 3 February 2014, its updated versions received by the Commission on 21 March and 20 May, subsequent communications between June and 25 September 2014, as well as the information communicated during the EU evaluation mission that took place in Tbilisi, Georgia between 31 March and 11 April 2014.

The assessment was based on work carried out by the services of the Commission and the European External Action Service (EEAS), including the EU Delegation to Georgia. In addition, Block 3 and Block 4 benchmarks were assessed on-site by experts from EU Member States, assisted by the Commission services, the EEAS and the EU Delegation to Georgia during the 2014 evaluation mission.

Part II of the CSWD — the Assessment of Migratory and Security Impacts — is primarily based on the inputs provided by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex); the European Union's law enforcement agency – Europol; the European Asylum Support Office (EASO); the European University Institute – Migration Policy Centre; the European Union Monitoring Mission to Georgia, and Georgian authorities as well as on other available sources, including Eurostat data.

The CSWP follows the VLAP structure. Under the sections corresponding to individual VLAP blocks, Part I lists all the benchmarks from the first, legislative and planning, phase and, taking into account the recommendations of the first Progress Report, it describes the state of their implementation, in particular focussing on the developments that took place after the publication of the first Progress Report, that is, 15 November 2013.

## **2. PART I: ASSESSMENT OF THE IMPLEMENTATION OF THE VLAP**

### **2.1. BLOCK 1: DOCUMENT SECURITY, INCLUDING BIOMETRICS**

On 29 May 2014, the Georgian Parliament approved amendments to the 1996 'Law on the Procedure of Registration of the Georgian Citizens and Aliens Residing in Georgia, Issuance of ID (Residence) Card and Passport of a Citizen Georgia' ('Law on the Procedure of Registration') related to the rolling out of biometric passports in Georgian consulates.

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<sup>1</sup> COM (2014) 681 final.

<sup>2</sup> COM (2013) 808 final.

<sup>3</sup> The CSWD reflect the state of play as of 25 September 2014.

<sup>4</sup> See the 'Overall Assessment and Next Steps' section of the Report, above n 1.

Pursuant to the amendments, a biometric passport should be issued to a Georgian citizen residing abroad from 28 July 2014 onwards.<sup>5</sup> Accordingly, as a general rule, at present only ICAO compliant, second generation biometric passports are being issued to Georgian citizens residing in Georgia as well as abroad.<sup>6</sup>

The issuing of a second passport has become stricter. On 11 February 2014, a new Article 39 paragraph 6 of the 'Order no. 98 of the Minister of Justice on approval of the rule of registration and removal from the register of citizens of Georgia and aliens residing in Georgia and the rule of issuance ID (residence) card, passport, travel passport and travel document' entered into force. According to the provision, a written explanation is required for obtaining an additional passport and it is only possible if an additional passport is necessary for obtaining a visa and to travel to a foreign country during the same period of time. Additionally, the new Article 20 paragraph 1 of 'Law on the Procedure of Registration' stipulates that the validity period of the second and each successive biometric passport has been reduced and it will be issued for a year only. Furthermore, issuance of the passport without a biometric data will be possible only in exceptional cases, when biometric data cannot be obtained due to health or physical condition of the person or in cases specified by the respective order of the chairman of the PSDA. From 1 January 2015, the validity of non-biometric passports will be reduced and it will be issued for a year only.

The Code of Conduct of the Public Service Development Agency (PSDA) was approved on 31 October 2013 by the Order of the Chairman of PSDA. The Code lays down, among others, the rules concerning conduct of employees, principles of anti-corruption and anti-discrimination as well as protection and handling of personal data.

In January 2014, on the basis of the Digitalisation Action Plan's project, the Government approved the PSDA budget, which contains the resources for activities defined by the Action Plan. According to the Plan, the remaining 10 991 226 civil act records are to be digitised by December 2024. The Plan provides for the employment of 36 additional staff, including 25 digitisation operators, 10 reader-correctors and one digitisation coordinator. The implementation of the Action Plan started in March 2014.

The new provisions limiting the possibility of changing the first name have been introduced into the 'Law on Civil Acts', which was amended on 29 May and entered into force on 1 June 2014. According to the new Article 64 paragraph 1 'a person of legal age can change a name only once, upon his/her will if the law does not define otherwise'.

Article 20<sup>3</sup> paragraph 3 of 1996 'Law on the Procedure of Registration' stipulates that 'biometric passport must have data carrier (chip), which, along with other data, contains facial image, fingerprints and specimen of signature of passport holder'. It follows that the PSDA is required to collect fingerprints while issuing a biometric passport. In addition, the 2012 Methodological Guidelines of the PSDA define that fingerprints should be collected as of 12 years old and that only in exceptional cases fingerprints are not to be taken.<sup>7</sup>

Pursuant to Article 20<sup>4</sup> paragraph 1 of 'Law on the Procedure of Registration', a passport is valid for the period of 10 years for adults and for three years for minors. The specified periods cannot be prolonged. Furthermore, according to Article 46 paragraph 1 subparagraph (e) of Order no. 98 of 27 July 2011 of the Minister of Justice of Georgia, a passport is annulled upon the expiry of its validity.

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<sup>5</sup> Article 20 paragraph 3 lays down the general rule according to which consular services are to issue biometric passports. Article 20 paragraph 6 lists exceptions from the general rule of Article 20 paragraph 3.

<sup>6</sup> Since April 2010, on the territory of Georgia only ICAO compliant passports have been issued.

<sup>7</sup> If a person has not reached the age of 12 or if health conditions prevent a person from providing fingerprints.

The principle 'one person, one document' applies since 28 December 2005 when the amendment removing the possibility to include the information about minor children was introduced to the 'Law on the Procedure of Registration'.<sup>8</sup>

## **2.2. BLOCK 2: INTEGRATED BORDER MANAGEMENT, MIGRATION MANAGEMENT, ASYLUM**

### **2.2.1. INTEGRATED BORDER MANAGEMENT**

On 14 January 2014, the Government of Georgia adopted Resolution no. 49, creating a Temporary Interagency Council responsible for coordinating the elaboration of a new strategy and accompanying it action plan. On 13 March 2014, the Government adopted the 'State Border Management Strategy for the years 2014-2018' and, on 6 May 2014, the 'Action Plan for Implementation of Georgia's Border Management Strategy for the years 2014-2018'.

Recognising the importance of reinforcing border management of the green border, the Ministry of Internal Affairs (MoIA) identified green border as one of the main priorities areas for the upcoming years. Accordingly, in January 2014, within the framework of the 'More for More programme', the 'Capacity Building in Support of Integrated Border Management and Migration Management in Georgia' project was launched by the MoIA and implementing partners.<sup>9</sup> In February<sup>10</sup> and May 2014,<sup>11</sup> two assessment missions aimed at comprehensive evaluation of the green border were carried out by the experts of the EU Member States, accompanied by the Export Control and Related Border Security (EXBS) Program of the United States of America Department of State (USA)<sup>12</sup>, including the assessment of the existing equipment and infrastructure. Detailed reports with recommendations for further actions were presented in June 2014. The finalised report from the EU experts is to be delivered by October 2014.

Georgia continues to cooperate with its neighbours, partner countries and various international organisations. It has long-standing bilateral cooperation agreements on border issues with Armenia, Azerbaijan, Turkey and the Russian Federation. On the basis of these agreements regular bilateral meetings and joint trainings were organised. Furthermore, in order to further strengthen inter-governmental cooperation with Armenia and Azerbaijan, Georgia had elaborated draft Bilateral Agreements on Border Commissioners; the agreements were forwarded to the relevant authorities of concerned partner countries in May 2014.

Georgia also concluded bilateral cooperation agreements on border issues with Latvia, Estonia, Bulgaria, Moldova, China, Ukraine, USA, Finland, Romania, Germany and Switzerland. Based on these agreements the annual Plans of Cooperation are signed and implemented with the border and other relevant Agencies of Turkey, Bulgaria, Latvia, Moldova, Estonia, Germany, and France. On 27 June 2014, a Memorandum of Understanding on Co-operation between the Ministry of Internal Affairs of Georgia and the Ministry of Defence of the Republic of Latvia in the area of maritime security was concluded.

On 29 December 2013, a Cooperation Plan for the period of 2013-2015 on the development of cooperation between the MoIA and FRONTEX was signed.

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<sup>8</sup> The amendment entered into force on 16 January 2006.

<sup>9</sup> International Organisation for Migration and International Centre for Migration Policy Development.

<sup>10</sup> The mission concerned land borders with Armenia and Turkey.

<sup>11</sup> The mission concerned land borders with Azerbaijan and Russia.

<sup>12</sup> Hungary and Lithuania.

When it comes to the training, pursuant to the October 2013 Order of the Minister of Internal Affairs, trainings on the new 2013 'Law on Police' were delivered to Patrol Police and Border Police. Furthermore, an additional training module on asylum seekers and refugees of duration of six hours has been added into the basic training curriculum of Patrol Police and Border Control Officers.<sup>13</sup> Finally, on 13 June 2014, the National Centre for Education Quality Enhancement granted the MoIA Academy the status of a higher education institute and the permission to launch a Master programme on Police Regulation Law. The Master programme is aimed at middle level managers of relevant MoIA agencies, including border services and it will focus on developing knowledge, as well as general and specific competencies in police management. The official deadline to apply was 18 September 2014 and the programme itself will commence from October 2014.

### **2.2.2. MIGRATION MANAGEMENT**

The Law on 'Legal Status of Aliens and Stateless Persons' was adopted by the Georgian Parliament on 5 March 2014, signed by the President on 17 March 2014 and it entered into force on 1 September 2014.

The work on by-laws was carried out in parallel by the Working Group Responsible for the Planning and Implementation of Relevant Activities Prior to the Entry into Force of the new Law on Legal Status of Aliens and Stateless Persons (the Working Group) established by the State Commission on Migration Issues (SCMI).<sup>14</sup> The Working Group has elaborated by-laws concerning matters such as issuing, prolonging and terminating Georgian visas; approval of the list of the countries whose citizens are to be granted the visa-free entry to Georgia; issuing of residence permits for persons willing to stay in Georgia; expulsion of aliens from Georgia; creation of a temporary accommodation centre for irregular migrants, and establishment of the status of stateless person residing in Georgia. In June 2014, the Working Group transmitted the draft by-laws to international and local non-governmental organisations for their comments. On 21-23 July, the Government discussed the revised version of the by-laws and approved them on 26 August 2014.

The Working Group also drafted and published in March 2014 a bilingual (Georgian/English) '100 Questions about the New Law' document, which electronic version is available on websites of the SCMI, relevant ministries, diplomatic missions accredited in Georgia, various international and non-governmental organisations.

A Migration Department within the MoIA has been operational since 1 September 2014. The main responsibilities of the Migration Department are the implementation of migration-related policies and strategies; coordination of the migration management process within the MoIA; management of the over stayers' alert system and its database; management of the temporary accommodation centre; and cooperation with the relevant governmental agencies, diplomatic missions accredited in Georgia, non-governmental organisations and international organisations. The Department includes three divisions: division for fighting against irregular migration, division for legal affairs and the temporary accommodation centre division.

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<sup>13</sup> State Border Crossing Points are under the authority of the Ministry of Internal Affairs Patrol Police Department.

<sup>14</sup> The Working Group was established on 7 February 2014. The WG consists of following institutions: Ministry of the Internal Affairs; Ministry of Foreign Affairs; Public Services Development Agency/SCMI Secretariat under the Ministry of Justice; Ministry of Economy and Sustainable Development; Ministry of IDPs from the Occupied Territories, Accommodation and Refugees; and the Office of the State Minister on European and Euro-Atlantic Integration.

According to the organisational chart, the Department will eventually be staffed with 60 members and 15 contracted freelancers. Migration Department officers are assisted by Patrol Police and District Police officers on the operational level.

The Mobility Centre continued its activities within the 'Comprehensive Post-Arrival Reintegration Assistance Programme for Returned Migrants project' financed by the European Union's 'Eastern Partnership Integration and Cooperation Programme'.<sup>15</sup> The Georgian Government also considered other possibilities for additional human and financial resources allocation. Namely, the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (the Ministry of Internally Displaced Persons) will gradually take over the financial responsibility for the Mobility Centre as well other functions, including general counselling, training of the staff, medical assistance, etc.

Based on the preliminary agreement with the Ministry of Finance, the Ministry of Internally Displaced Persons elaborated the budget for 2015 for the reintegration program. The budget is under consideration and it is expected that it will be finalised by December 2014.

The construction of a temporary accommodation centre started in December 2013 and has been completed in summer 2014. The centre officially opened in September 2014. In order to gain knowledge on international practice in the field, a number of study visits were organised to Poland, Moldova, Austria, Belgium and the Netherlands in 2013-2014.<sup>16</sup>

The SCMI Secretariat continued the monitoring of the implementation of the 2013-2015 Migration Strategy and its Action Plan. Between March and June 2014, the Secretariat undertook five monitoring rounds of the implementation of the Action Plan. On the basis of monitoring's results, the SCMI gradually adjusted the Action Plan, including introducing changes aimed at ensuring the compatibility of EU funded projects with the goals set by the Strategy and the Action Plan. In April 2014, the SCMI Secretariat prepared a set of initial amendments to the Migration Strategy necessary due to the imminent entry into force of the new 'Law on Legal Status of Aliens and Stateless Persons'. In September 2014, with the support of the EU's More for More programme and in cooperation with the International Centre for Migration Policy Development (ICMPD), the SCMI Secretariat started elaborating a strategy for the next programming period 2016-2020.

In February 2014, a specialised working group<sup>17</sup> for the development of a Unified Migration Analytical System in line with data protection was created within the SCMI, under the chairmanship of PSDA. The PSDA prepared a comprehensive concept paper describing the architecture of the system, including aspects pertinent to data protection. The paper was shared with the working group in March, adopted by the SCMI working Group on 1 April 2014 and consulted with international experts provided by the International Organisation for Migration (IOM) and the ICMPD in August 2014. It is expected that the System will become operational by mid-2016.

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<sup>15</sup> The Mobility Centre Program will be implemented over a period of 42 months starting in January 2014 and ending in June 2017.

<sup>16</sup> Study visit in Poland: 30 September - 4 October 2013; study visit in Austria: 21-25 October 2013; study visit in Belgium and the Netherlands: 25-29 November 2013; study visit in Moldova: 12-15 June; 26 – 27 March 2014.

<sup>17</sup> The Working Group is composed of Public Services Development Agency under the Ministry of Justice; Ministry of IDPs from the Occupied Territories, Accommodation and Refugees; Ministry of Foreign Affairs; Office of the State Minister of Diaspora Issues; National Statistics Office; Ministry of Economy and Sustainable Development; Office of the State Minister on European and Euro-Atlantic Integration; Ministry of the Internal Affairs; International Organization for Migration; International Centre for Migration Policy Development; IOM; and ICMPD.

The so-called 'Over-stayers' Alert System' has been operating in the test mode since April 2013. The system was officially launched in September 2014, following the entry into force of the 'Law on the Legal Status of Aliens and Stateless Persons'.

The last meetings of the EU-Georgia Joint Visa Facilitation Committee and of the Joint Readmission Committee, which took place on 4 June 2014, confirmed the overall good implementation of the Visa Facilitation and Readmission Agreements.

### 2.2.3. ASYLUM

On 26 December 2013, Article 2(5) of the 2012 'Decree on the Procedures for Granting Refugee or Humanitarian Status' of the Ministry of Internally Displaced Persons was introduced. According to the new provision, the application for a refugee status should be deemed received upon its registration by the Ministry, following which a temporary certificate containing a photo and a personal data should be issued. The provision has been in force since 27 December 2013 and, until 1 August 2014, 273 certificates were issued. Since 1 September 2014, upon the entry into force of the 'Law on Legal Status of Foreigners and Stateless Persons', registered asylum seekers no longer receive an asylum seeker's temporary certificate, but they are issued with a temporary identity card.<sup>18</sup>

According to the 'Law on Refugee and Humanitarian Status', a person irregularly staying in Georgia has to apply for asylum within 24 hours of entering the territory of Georgia and only special circumstances beyond his or her control may justify an extension of this time limit. If the deadline has not been met, but the person has sound justification, this provision does not apply. According to the information provided by Georgian authorities, so far, there have been no cases of rejecting the application submitted after the stipulated 24 hours.

In November 2013, the Ministry of Internally Displaced Persons requested the Government to establish the Country of Origin Information Unit (COI Unit). Since January 2014, the unit composed of a head of unit and two staff members has been operating focusing on collecting, processing, and analysing data on the country of origin of the asylum seekers. In June 2014, the draft Standard Operational Procedures for the COI Unit document was elaborated and sent to the Tbilisi Office of the UNCHR for recommendations. These recommendations are being reviewed by the Ministry of Internally Displaced Persons. The members of the unit took two intensive on-line study courses, namely, European Asylum curriculum course on the country of origin information methods provided by the United Nations Refugee Agency (UNHCR),<sup>19</sup> and the course on drafting and decision making process led by Georgian national experts certified by the EASO with the financial support of the UNHCR. Additional trainings are planned for autumn 2014 and will be delivered by the UNHCR.

Due to the increasing number of the asylum seekers in Georgia, the Ministry is recruiting new staff members with a special focus on the procedure determining the refugee status. It is expected that by the end of 2014, seven specialists will be employed to determine the refugee status. Also, an intensive training for the new and current staff members is planned.

Asylum seekers continue to be accommodated in the existing reception centre in Martkopi. The centre has the capacity of 60 persons but, in exceptional circumstances, it can host up to 120 persons.<sup>20</sup> There is also the possibility that asylum seekers are granted monthly allowance

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<sup>18</sup> Article 2(r).

<sup>19</sup> Based on the European Asylum Support Office (EASO) Module on COI.

<sup>20</sup> During 2013, the centre received 92 persons and, on 1 August 2014, 56 persons were accommodated in the centre.

to rent accommodation.<sup>21</sup> In order to increase the reception and accommodation capacity of asylum seekers, on 20 February 2014, the United States Office of Defense Cooperation (US ODC) under the United States European Command (EUCOM) received the funding for the construction and furnishing of the extension of the centre in Martkopi. The additional building will have the capacity of 50 persons. In summer 2014, the planning work was completed and the construction process will be launched in autumn 2014.

In June 2014, in order to strengthen the data collection capacities, the Ministry of Internally Displaced Persons initiated the creation of a new database of asylum seekers, refugees, holders of a humanitarian status and COI. The Ministry in close cooperation and with financial support of the UNHCR has elaborated a concept for the creation of the new electronic database. The new database should be operational in December 2014 and it is expected that it will, amongst others, improve the efficiency of the registration procedures of the asylum seekers, and enable gathering more accurate quantitative and qualitative data.

The Ministry also considers the possibility of amending the asylum procedure. In February 2014, draft amendments to the 'Administrative Procedures Code of Georgia' were elaborated. They provide for the appeals concerning the asylum to be considered in two instances instead of three: the City (Regional) Chamber for Administrative Cases and the Chamber for the supreme administrative cases. In March 2014, the draft was sent to the UNHCR for comments. The General Prosecutor's Office and the Tbilisi Office of the UNHCR are conducting detailed discussion on this issue.

## **2.3. BLOCK 3: PUBLIC ORDER AND SECURITY**

### **2.3.1. PREVENTING AND FIGHTING ORGANISED CRIME, TERRORISM AND CORRUPTION**

**Consolidation, according to EU and international standards, of the legal and institutional framework on preventing and fighting organised crime, together with a national strategy and action plan containing, within a clear timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;**

Georgia continued to advance in the area of the prevention and fighting against organised crime. In October 2013, it adopted the National Strategy on the Fight against Organised Crime for 2013-2014 and, in November 2013, the accompanying Action Plan. The Interagency Coordinating Council for Combating Organised Crime operated. On 25 July 2014, during the third meeting of the Council, the report of the implementation of the Action Plan on the National Strategy for Combating Organised Crime during the first six months of 2014 was presented.

**Consolidation, according to EU and international standards, of the legal and institutional framework for addressing trafficking in human beings, together with the corresponding national action plan, including a clear timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;**

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<sup>21</sup> In 2013, 9 families (26 persons) received a monthly allowance. 38 families (111 persons) have been granted with financial aid between January and August 2014.



Georgia signed and ratified the Council of Europe Convention against Trafficking in Human Beings (THB), which entered into force on 1 February 2008. In June 2006, Georgia ratified the United Nations Convention against Transnational Organised Crime and its Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons.<sup>22</sup>

Georgia has a number of bilateral agreements relating to the fight against trafficking enabling it to work with key partners.<sup>23</sup> In 2013, further bilateral agreements were concluded with Lithuania and Israel and, in 2014, a Memorandum of Understanding was signed with the National Crime Agency of the United Kingdom. In July 2014, Georgia signed an international agreement with Germany. Draft agreements are waiting for signature or are under negotiation with Belgium, the Czech Republic, Slovakia, Qatar, the Saudi Arabia, and the United Arab Emirates.

The existing legal framework allows addressing properly trafficking in human beings. THB has been an offence listed in the Criminal Code of Georgia since 2003. Sentences of imprisonment range from seven to 12 years and terms of imprisonment are increased in respect of 'aggravated offences' concerning, for example, the trafficking of pregnant women or minors, with a maximum term of life imprisonment for child trafficking.

The Criminal Code is complemented by the Law of Georgia on Combating Human Trafficking, which is in force since 2006. This law determines the organisational and legal grounds for preventing and combating human trafficking; the competencies and obligations of the state agencies, public officials and legal entities and rules of coordination of their activities in the measures applied against human trafficking; as well as the legal status and rights of the victims of human trafficking and the guarantees of their social and legal protection. The law is comprehensive and reflects the 2012 Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) recommendations related to protection and assistance for child victims.

The National Action Plan (NAP) for 2013-14 was elaborated by the Inter Agency Coordination Council on Combating Trafficking in Human Beings (THB Council) and approved by the President of Georgia on 15 March 2013. It is the fourth NAP reflecting the '4 P's' approach to a counter trafficking strategy—Prevention, Protection, Prosecution and Partnership—and it takes proper account of relevant international and European standards.

The THB Council<sup>24</sup> is the central coordinating mechanism for the fight against THB.<sup>25</sup> In 2006, a Permanent Working Group within the THB Council was established, which is the

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<sup>22</sup> Entered into force on 5 October 2006.

<sup>23</sup> Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Estonia, France, Hungary, Israel, Italy, Kazakhstan, Latvia, Lithuania, Malta, Moldova, Poland, Romania, Turkey, Ukraine, the United Kingdom, and Uzbekistan.

<sup>24</sup> Permanent members of the THB Council are Ministry of Justice, Ministry of Internal Affairs, Chief Prosecutor's Office, Ministry of Labour, Health and Social Affairs, Ministry of Foreign Affairs, Ministry of Economy and Sustainable Development, Ministry of Education and Science, Office of the State Minister of Georgia for Diaspora Issues, State Fund for the Protection and Assistance of Victims of Trafficking, and Public Defender's Office. Ad hoc members are representatives of the Parliament of Georgia, the Council of Europe Delegation to Georgia, the EU Delegation to Georgia, the US Embassy to Georgia, the US Agency for International Development (USAID), UNICEF, International Organisation for Migration, Georgian Young Lawyers Association, NGO 'Tanadgoma', NGO Civil Development Agency, and NGO Anti Violence Network.

<sup>25</sup> Key tasks of the THB Council are elaboration and implementation of the NAP; development of proposals regarding issues of THB; coordination between governmental agencies working on THB issues; cooperation with NGOs and international organisations; and elaboration of periodic and annual reports and, generally, monitoring of the implementation of the NAP.

authorised entity to grant a person the status of victim within 48 hours.<sup>26</sup> The THB Council has also four temporary thematic working groups dealing with issues concerning legislative framework, evaluation of investigations, guidelines for law enforcement agencies and the delivery of a common information strategy.

The THB Council law enforcement-working group elaborated 'Guidelines for the Law Enforcements on the Investigation and Prosecution of Trafficking Cases and Treatment with Victims and Statutory Victims of Trafficking in Persons', which were disseminated to all competent law enforcement authorities in June 2014. The guidelines identify combating in THB as one of the top priorities of the Government of Georgia; comprehensively explained the offence of THB; encourage law enforcement officials to consider trafficking issues when conducting investigations into illegal border crossing and prostitution; and specify that 'compulsory investigations' should be carried out from the moment a possible trafficking case is reported.

The National Referral Mechanism (NRM) has been in place since February 2007. It ensures that all presumed and identified victims of trafficking are dealt with according to prescribed by law standards. It offers protection and assistance to all victims of trafficking regardless of whether they cooperate with law enforcement or not. It covers procedures from the point of first contact with an identified or potential victim of trafficking up until the moment the victim is repatriated or otherwise returned to a city or country of safety.

In Georgian law there are two categories of victims, namely statutory victim and victim of trafficking. The status of statutory victim is granted to a person by law enforcement agencies in accordance with the Criminal Procedure Code of Georgia. A victim identified by the Permanent Working Group of the THB Council is a person who has not been identified as a statutory victim.<sup>27</sup> The rights of victims of trafficking are not dependent on their status; all victims are entitled to report and cooperate with the law enforcement agencies and they receive the same levels of support and assistance. In addition, special measures are employed in respect of child victims of trafficking, including with regard to their role in court proceedings where expert advice and guidance is made available. Also, regardless of their status, victims of trafficking are entitled to a 30-day 'reflection period', up to three months-long stay<sup>28</sup> in a State Fund victim shelter,<sup>29</sup> a temporary residence permit, the right to work and, crucially, non-punishment.

In 2006, the State Fund for Protection of and Assistance to (Statutory) Victims of Trafficking in Human Beings<sup>30</sup> was established within the Ministry of Labour, Health and Social Affairs under the supervision of a Director appointed by a Presidential decree. The State Fund is responsible for the two victim shelters and the financing of victim protection, assistance, rehabilitation measures, and the payment of compensation to victims of trafficking.

The Central Criminal Police Department (CCPD) of the Ministry of Internal Affairs is the law enforcement agency competent for investigating THB. Within the CCPD, there is a Division Combating Trafficking and Illegal Migration with two services responsible for dealing with

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<sup>26</sup> The procedure of granting such status is regulated under the Law on Combating Trafficking in Human Beings (Article 11) and the Presidential Decree No 78 on Identification of a Victim and Granting a Status of Trafficking in Persons.

<sup>27</sup> For example, a victim of trafficking identified by an agency or institution which is not a law enforcement body and is being supported by that agency or a NGO.

<sup>28</sup> The three-month period can be extended by way of consultation of the Director of the State Fund.

<sup>29</sup> There two state shelters are located in Tbilisi and Batumi.

<sup>30</sup> Since 2006, the scope of responsibility of the Fund has been extended to include victims of domestic violence, two elderly care homes, five homes for the disabled and one childcare home.

human trafficking and irregular immigration respectively. In addition to these central services, in January 2014, a regional service has been established in the Adjara region as a dedicated response to the high levels of suspected cross border trafficking activity. Complementing the work of the central and regional services, are three 'mobile groups' which operate in other high risk areas.<sup>31</sup>

Training and awareness raising on THB related matters are important elements of Georgia's approach to preventing and combating THB. Since 2006, trainings on a wide range of THB issues were organised and delivered by external experts to professionals dealing with THB.<sup>32</sup> In parallel, various awareness raising campaigns addressed to secondary and high school pupils, and other risk groups were carried out. In general, the prevention-related activities are well developed and regularly delivered across the territory of Georgia.

**Consolidation, according to EU and international standards, of the legal and institutional framework on preventing and fighting corruption, as well as national anti-corruption strategy and action plan containing, within a clear timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources, including as regards the anti-corruption coordination efforts of anti-corruption bodies such as the Anti-Corruption Interagency Coordination Council (ACICC), aiming notably at ensuring the independence, efficiency, empowerment and accountability of the authorities responsible for the fight against corruption and strengthening information exchange between them; ensuring a sound legal and institutional framework, including necessary secondary legislation for efficient functioning of internal control mechanisms that contribute to the prevention and repression of corruption, including corruption at high-levels and corruption in international transactions, and to setting integrity standards within the public institutions/authorities; follow-up of GRECO (Council of Europe Group of States against Corruption) recommendations;**

The Anti-Corruption Interagency Coordination Council (the ACICC) continued to operate. In 2013 the Council amended the 2010–2013 Action Plan, elaborated 11 strategic priorities for the 2014-2016 Action Plan and established nine thematic Working Groups to draft sections of the new Action Plan. In April 2014, the Council approved the 12<sup>th</sup> strategic priority for the Action Plan 2014-2016, namely Prevention of Corruption in Defence. On 14 April 2014, the ACICC created an ad hoc Working Group on the implementation of the Group of States against corruption (GRECO) and the United Nations Convention against Corruption (UNCAC) recommendations. During the first meeting of the Working Group that took place in April 2014, the members of the Working Group discussed the recommendations on political party funding and, subsequently, submitted to the Analytical Department of the Ministry of Justice, serving as the Secretariat of the Council, relevant proposals. The Secretariat has been working on translating the submitted proposals into the Strategy and developing specific activities for the Action Plan.

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<sup>31</sup> The regions routinely covered by these groups are Tbilisi, Kakheti, Kvemo Kartli, Shida Kartli, Imereti, Samegrelo, Guria and Adjara. At present, a Labour Inspectorate or a similar body does not exist within the Government structure. However, the Georgian authorities intend to address the issue.

<sup>32</sup> For example, prosecutors, victim and witness coordinators, investigators, Patrol Police, judges, Legal Aid Service lawyers, consular offices, State Fund personnel, school teachers, etc.

New legislative provisions on the protection of whistle-blowers added to Chapter V of the 1997 'Law on Conflict of Interest and Corruption in Public Service' entered into force on 14 April 2014. The draft provisions were positively evaluated by a Council of Europe expert.

Since 2010, the Online Asset Declaration System of Georgia is in place. This system has significantly improved and simplified procedures for submitting declarations by senior officials; all submitted declarations are published online, which enables citizens and interested groups to monitor the income and expenditures of high-ranking officials.<sup>33</sup> However, at present, there is no agency or authority vested with the power to verify these declarations. In order to remedy the situation, the Civil Service Bureau conducted extensive research and public consultation on the future asset declaration monitoring system and it is going to present a legislative proposal to the Government in autumn 2014.

The Unified Electronic System of State Procurement under the State Procurement Agency continued to operate. The System is a very good and progressive one; however, currently only some 61% in value of all government contracts are awarded through the System, whereas 39% are awarded using simplified procurement without a tendering process.<sup>34</sup> Following the Organisation for Economic Co-operation and Development (OECD) recommendations, the Government is planning to make amendments to the 'Law on State Procurement' tightening up the rules authorising exemptions from the tendering process. The revision of the state procurement legislation was incorporated into the 2014-2016 Anti-Corruption Action Plan.

There have been positive developments in the areas related to the fight against corruption. A new law on the civil service is being elaborated. The so-called Civil Service Reform Concept has been drafted and is expected to be adopted by the Government in autumn 2014. The new law will define civil service classification, remuneration, social protection guarantees and a system for training and retraining for civil servants. It will provide for open competitions for entry positions and senior positions; it will stipulate that the Civil Service Bureau would be responsible for monitoring and evaluating of the recruitment carried out by state agencies; promotion will be based on regular performance appraisals; and a Code of Ethics for civil servants will be introduced.

At present, there is neither a specialised prosecutor for corruption cases nor are they dealt with by a specialised agency within the prosecutor's office.<sup>35</sup>

**Consolidation of the legal and institutional framework on preventing and fighting money laundering and financing of terrorism, in line with EU and international standards set by the Financial Action Task Force (FATF) on Money Laundering and Terrorist Financing, and regular updating of the corresponding national strategy; establishment and consolidation of an independent Financial Intelligence Unit, with adequate powers and resources;**

In order to fulfil the 2012 recommendations concerning combating money laundering made by the Committee of Experts on the Evaluation of Anti-Money Laundering (AML) Measures and the Financing of Terrorism (MONEYVAL), amendments to the 2003 Law of Georgia 'On Facilitating the Prevention of Illicit Income Legalization' were prepared. At present, the

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<sup>33</sup> [www.declaration.gov.ge](http://www.declaration.gov.ge)

<sup>34</sup> According to the Law on State Procurement of Georgia, simplified procurement can be used in order to implement an 'event of state and public importance' and it has to be authorised by a legal act of Government of Georgia. Furthermore, simplified procurement can be also resorted to in case of emergency or public contracts with a supplier having an exclusive right on provision of goods, services, etc.

<sup>35</sup> See also the recommendations of the OECD concerning on the appointment of specialised corruption prosecutors.

amendments are being reviewed by the Government and are expected to be adopted by the Georgian Parliament during the 2014 autumn plenary session. The draft amendments provide for the extension of the AML preventive legislation to electronic money institutions. They also define customer due diligence obligations of e-money institutions, terms and procedures of record keeping and reporting, as well as internal control procedures.

When it comes to the financing of terrorism (FT), the shortcomings identified by the MONEYVAL were addressed. In November 2013, the Parliament amended the relevant article of the 1999 Criminal Code of Georgia extending the scope of the terms 'terrorist' and 'terrorist organisation'. The amendments entered into force on 15 January 2014.

Georgia is a party to nearly all relevant international conventions, except for the 2005 Council of Europe Convention on the Prevention of Terrorism (CETS 196). Georgia signed the Convention in 2005 and the ratification procedure by the Georgian Parliament is on-going.

Governmental Resolution of 23 December 2013 established an Inter-Agency Council for Developing and Coordinating Implementation of the Strategy and Action Plan for Combating Money Laundering and Terrorism Financing under the chairmanship of the Ministry of Finance.<sup>36</sup> The main tasks of the Council are coordination of the timely implementation of the activities listed in the Action Plan, the annual review of the Strategy, fostering of the collaboration among the competent bodies, and supervision of the compliance of the actions carried out with international standards.

In March 2014, the Government adopted the 'Strategy for Combating Money Laundering and Terrorism Financing (2014–2017)' and the accompanying Action Plan. The Strategy and the Action Plan provide the necessary framework to combat money laundering and terrorism financing. Amongst its objectives, the Strategy lists developing risk-based state policy against ML/FT; improving AML/CFT legislation in accordance with international standards; enhancing the capacity of state agencies involved in fighting against ML/FT; assisting the monitoring entities in complying with AML/CFT regulations; and promoting domestic and international cooperation in the fight against ML/FT. The Strategy and the Action Plan lay down specific activities and measures, including legislative amendments, to be adopted in order to fulfil aforementioned goals. Both documents are in accordance with international and European standards. So far no additional financial resources have been allocated for the implementation of the Strategy and the Action Plan; the concerned institutions are to fulfil assigned tasks using their current budgets.

The Financial Monitoring Service – the Financial Intelligence Unit of Georgia – continued to operate. At present the Service is not empowered to suspend suspicious transactions, even on a temporary basis with the exception of transactions that may be used for terrorism financing.<sup>37</sup>

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<sup>36</sup> Members of the Council are: Minister of Finances of Georgia; Deputy Minister of Finances of Georgia; Head of the Investigation Service of the Ministry of Finance of Georgia; Deputy Head of the Investigation Service of the Ministry of Finance of Georgia; Head of the Legal Entity of Public Law – Revenue Service of the Ministry of Finance of Georgia; Deputy Head of the Legal Entity of Public Law – Revenue Service of the Ministry of Finance of Georgia; Deputy Minister of Foreign Affairs of Georgia; Deputy Minister of Georgia on European and Euro-Atlantic Integration; Deputy Minister of Justice of Georgia; Deputy Minister of Internal Affairs of Georgia; Deputy General Prosecutor of Georgia; Head of the Legal Entity of Public Law – Insurance State Supervision Service of Georgia; Chairman of the Head of the Legal Entity of Public Law – National Agency of Public Register; and Parliamentary Secretary of Georgia.

<sup>37</sup> According to current legal framework the FMS has the right to request the court to suspend a transaction when there are reasonable grounds to believe that it can be used for terrorism financing under paragraph 4 (f) of Article 10 of the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization.

**Adoption of a national anti-drug strategy and action plan, in line with EU and international standards, containing, within a clear timeframe, specific objectives, activities, results, performance indicators and sufficient human and financial resources;**

The National Drug Strategy and the accompanying Action Plan for 2014-2015 were adopted by the Inter-Agency Coordination Council Combating Drug Abuse (the Council) on 4 December 2013. In the preparation of the Strategy and the Action Plan, Georgia followed the recommendations of the Pompidou Group and both documents are in accordance with European and international standards. When it comes to financial resources, Georgia relies extensively on foreign donor assistance.

With the assistance of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Georgia is working towards setting up a national Focal Point and a National Drug Monitoring Centre. It is expected that the process will be completed by the end of 2014.

On 15 May 2014, an inter-ministerial State Commission Combating New Psychoactive Substances was established.<sup>38</sup> The Commission is responsible for the monitoring of developments concerning new psychoactive substances in Georgia and making recommendations concerning appropriate responses to the Georgian government. Answering the serious problems created by the misuse of legal pharmaceutical products for the production of homemade stimulants, new provisions entered into force on 15 March 2014.<sup>39</sup> Also, the 'Law on New Psychoactive Substances' criminalising the possession and use of a number of new psychoactive substances entered into force on 1 May 2014. Further legislative changes are foreseen aimed at addressing the drug-related use of the Internet.<sup>40</sup>

When it comes to the criminal justice aspect, Georgia adopts a rather strict approach. Drug use is considered as an administrative offence for the first time users and, in the case of the second use within a year, drug users are prosecuted for a criminal offence. However, the Strategy and the Action Plan provide for a possible review of the legislative framework and Georgian authorities are considering the revision of the legislative framework concerning the liability for drug possession for personal consumption. According to the draft legislation prepared by the Council, administrative detention will no longer be applied for the drug users apprehended first time and drug addicts will be able to choose between treatment and imprisonment, if their drug consumption is proved more than three times in a year. The draft law will be presented for consideration to the Government of Georgia and subsequently submitted to the Parliament in autumn 2014.

**Signature, ratification and transposition into national legislation of all relevant UN and Council of Europe conventions and respective protocols in the areas listed above and on the fight against terrorism, including: the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; the Hague Convention on Protection of Children (1996 Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of**

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<sup>38</sup> The members of the State Commission are the Ministry of Internal Affairs, the Ministry of Healthcare and the Ministry of Finance. The State Commission holds its meetings once in a month.

<sup>39</sup> The provisions were introduced to the Criminal Code of Georgia, the Law on Narcotic Drugs, Psychotropic Substances, Precursors and Narcotic Aid, and Law on Combating Drug related Crimes.

<sup>40</sup> For example, provision allowing blocking sites selling psychoactive substances.

**Children); the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the Additional Protocol to the Criminal Law Convention on Corruption.**

On 25 March 2013 Georgia signed the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. The convention was ratified by the Parliament on 4 October 2013 and it entered into force on 1 May 2014.

In April 2014, Georgia acceded to the 1996 Hague Convention, which will enter into force in respect of Georgia on 1 March 2015. The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was signed by Georgia on 12 March 2009 and it was ratified by the Parliament on 19 March 2014.

The Additional Protocol to the Criminal Law Convention on Corruption was signed on 25 March 2013 and ratified by the Parliament of Georgia on 27 July 2013. It entered into force on 1 May 2014.

## **2.4.2. JUDICIAL CO-OPERATION IN CRIMINAL MATTERS**

### **Consolidation of the legal and institutional framework on mutual assistance;**

The existing legal and institutional framework enables Georgia to request and grant international assistance in criminal matters. The framework consists of both international and domestic law instruments that duly cover mutual legal assistance, extradition, transfer of sentenced persons, transfer of proceedings, and enforcement of foreign criminal judgments.

Pursuant to Article 6 of the 1995 Constitution of Georgia and Article 7 of the 2009 Legal Statutes Act, international law is an inherent part of domestic law, even if not specifically transposed, and the former prevails over the latter.

The domestic legal framework is based on the Act on Mutual Legal Co-operation in Criminal Matters (MLC Act) which was adopted in July 2010, entered into force in October 2010 and was amended in 2013. In addition, the 2009 Criminal Procedure Code contains a number of provisions on execution of foreign criminal judgements and extradition.

The MLC Act lays down the grounds for refusal of mutual legal assistance and extradition. Both sets of grounds are in line with relevant European and international standards. The MLC Act also designates competent domestic authorities, namely the General Prosecutor Office (GPO), courts, Local Prosecution Offices and the Ministry of Justice. The Ministry of Justice is the central authority through which the incoming and outgoing requests for co-operation are mostly channelled. In line with an Order of the Ministry of Justice of September 2013, their processing falls within the functions of the GPO and, specifically, of the International Co-operation Unit (ICU) of the Department of Legal Affairs acting as a delegated authority of the Ministry of Justice. The ICU team consists of a manager, three prosecutors, two legal advisors, a trainee prosecutor and four law clerks<sup>41</sup>. In the second phase of the VLAP, Georgia should provide information on procedural safeguards available when dealing with mutual assistance requests.

Regarding statistics, currently the collection of data primary focuses on quantitative data and there is little information on types of criminal offences, nature of requested actions, number of

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<sup>41</sup> Information received during the 2014 expert assessment mission.

involved persons, etc. The collection and analysis of the data concerning court rulings is also not very comprehensive.

When it comes to the training of the personnel involved in handling mutual legal assistance requests, the High School of Justice foresees a day-long module on international legal cooperation during the initial training of future judges, and a two-day long module during the permanent training for active judges. Further information, including on training of prosecutors, should be provided in the second phase of the VLAP.

**Signature, ratification and transposition into national legislation of relevant international conventions and protocols, namely the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;**

Georgia is a party to 16 United Nations agreements<sup>42</sup> and 17 Council of Europe agreements.<sup>43</sup> In October 2013, Georgia ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters which entered into force in May 2014.

In addition to this, on 14 April 2014, Georgia signed the Third Additional Protocol to the 1957 European Convention on Extradition and, most likely, the ratification process will be finalised by the end of 2014. The ratification process of the Fourth Additional Protocol to the European Convention on Extradition is under discussion and it is expected to start in 2015.

Between 1995 and 2005, Georgia also signed a number of bilateral agreements on mutual legal assistance and extradition with Bulgaria, Turkey, Armenia, Turkmenistan, Ukraine, Kazakhstan, Azerbaijan, Greece, Cyprus, and the Czech Republic. Negotiations with the United States of America, Argentina, Brazil, Paraguay, Japan and China are planned.

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<sup>42</sup> International Convention for the Suppression of Acts of Nuclear Terrorism; United Nations Convention against Corruption; United Nations Convention against Transnational Organized Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf; International Convention against the Taking of Hostages; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents; International Convention for the Suppression of Terrorist Bombings; International Convention for the Suppression of the Financing of terrorism; United Nations Convention against Illicit Traffic in Drugs and Psychotropic Substances; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementing the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation; Convention on Offences and Certain Other Acts Committed on Board Aircraft; Convention for the Suppression of Unlawful Seizure of Aircraft; and Convention on Offences and Certain Other Acts Committed on Board Aircraft.

<sup>43</sup> Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; Second Additional Protocol to the European Convention on Extradition; Additional Protocol to the European Convention on Extradition; European Convention on Extradition; Convention on cybercrime; Criminal Law Convention on Corruption; Convention on Action against Trafficking in Human Beings; Convention on Laundering, Search and Confiscation of the Proceeds from Crime; Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; European Convention on the International Validity of Criminal Judgments; Convention on the Transfer of Sentenced Persons for the further enforcement of Sentence ; European Convention on the Suppression of Terrorism; European Convention on Mutual Legal Assistance in Criminal Matters; Additional Protocol to the Convention on the Transfer of Sentenced Persons; Convention on the Transfer of Sentenced persons; and Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.



### **2.4.3. LAW ENFORCEMENT COOPERATION**

#### **Establishment of an adequate coordination mechanism between relevant national agencies and a common database guaranteeing direct access to relevant officers;**

The 2013 Memorandum of Understanding on Inter-Agency Cooperation on Law Enforcement issues continues to be the basis for cooperation.<sup>44</sup> An intra-agency electronic exchange (InterFlow) software has been used by a number of governmental agencies since December 2013. The system is equipped with a digital signature, provides fast data search and allows users to manage tasks, enabling a real-time exchange of documents in a secured way. The databases/electronic systems have high standards of safety. The Information Security Policy of the Ministry of Internal Affairs of Georgia document has been elaborated by the Ministry of Internal Affairs Operative-Technical Department in coordination with the Data Exchange Agency operating under the Ministry of Justice. The document identifies information security manager responsible for establishment of information security system, identification of risks and elaboration of control mechanisms, relevant guidelines documents. It also specifies obligations of the employees and envisages creation of an Information Security Council. On 5 September 2014, the Minister of Internal Affairs approved the Information Security Policy by Order 681.

### **2.4.4. DATA PROTECTION**

#### **Consolidation of the legal and institutional framework for the protection of personal data, in line with EU and international standards, including through the adoption of by-laws, instructions and guidelines to regulate procedures, functions and responsibilities;**

The 2011 'Law on Personal Data Protection' has been in force since May 2012. Its general principles, definitions, provisions on legal grounds for processing of personal data are in line with European standards.<sup>45</sup> The law will apply to the private sector from 1 November 2014, following amendments adopted by the Parliament in August 2014. The Office of the Personal Data Protection Inspector (the PDPI) already undertook a number of activities concerning the private sector.<sup>46</sup>

In 2013-2014, further important changes to the existing data protection legal framework were elaborated and adopted by the Parliament. The Parliament adopted on 1 August 2014 two sets of amendments related to the data protection. The first set, submitted in June 2013 by several Members of the Parliament and civil society representatives, concerned the modification of the 2009 'Criminal Procedure Code', the 1999 'Law on Operative-Search Activities', the 2011 'Law on Personal Data Protection', and the 2005 'Law on Electronic Communications'. It introduced the extension of the Inspector's mandate towards data processing in police sector;<sup>47</sup> and empowered individuals to apply to the PDPI, a court or a higher administrative organ, if their rights are breached by the processing for the purposes of public, operative-investigative

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<sup>44</sup> See the 2013 Commission Report, p 19.

<sup>45</sup> Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108); Strasbourg, 28.I.1981.

<sup>46</sup> Over 100 consultations were provided to private sector data controllers and data processors. Private sector companies provided the notifications to the Inspector on Filing System Catalogues. Also, the Inspector dealt with a number of citizens' complaints regarding private sector companies without conducting inspections and sanctioning them, but adopting other measures such as requesting data erasure or restricting publicity of data.

<sup>47</sup> In line with the Council of Europe Committee of Ministers' Recommendation 87(15).

activities, or criminal investigation. The second set of amendments was submitted to the Parliament by the Government in July 2014 and it concerned the 2011 'Law on Personal Data Protection', the 1997 'Law on Civil Service', the 1997 'Law on Conflict of Interest and Corruption in Civil Service', the 2010 'Law on Normative Acts', the 1999 'Law on Operative-Search Activities' and the 1996 'Law on Grants'. The amendments relate to issues such as: giving the Inspector supervisory powers over the private sector from November 2014 onwards instead of 2016, the election of the Inspector by the Parliament, and the extension of the scope of the Data Protection Law and the mandate of the Inspector towards data processing for police purposes. In addition, the amendments require that data shall be processed only for explicitly specified legitimate purposes and prohibit the processing of personal data for a purpose incompatible with the primary one. They also foresee the blocking, erasure or destruction of data if these conditions are not met. The amendments cover the disclosure of sensitive data processed for employment obligations, protection of public health and in the course of legitimate activities by a political, philosophical, religious or trade-union, association, etc. They also regulate video surveillance in public places, including public transport. Regarding the election of the Inspector, the new procedure is meant to increase independence: the Inspector will be chosen by the Parliament from two candidates presented by the Prime Minister after a pre-selection procedure by a special competition commission. The Inspector can be reappointed only once for a consecutive term. The new procedure will apply after the expiration of the term of the current Inspector.

The first set of amendments entered into force upon publication, on 18 August 2014. The second set entered into force on 1 September 2014, with the exception of the amendments concerning private sector, which are to enter into force on 1 November 2014.

Moreover, on 2 May 2014, the Parliament adopted amendments to the Criminal Code criminalising violation of data protection rules. Illegal collection, storage, usage, disclosure or making available of personal data causing serious damage was defined as a criminal offence, punishable by imprisonment for up to three years. Illegal usage and/or disclosure of private life related information or personal data via the Internet, including social networks, was also criminalised and it is punishable by imprisonment for up to four years and, in aggravating circumstances, up to five years.<sup>48</sup> The amendments entered into force on 31 May 2014.

**Signature, ratification and transposition to national legislation of relevant international conventions, protocols and recommendations, including the 2001 Additional Protocol to the Council of Europe Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and cross-border data flows, and the Committee of Ministers of the Council of Europe Recommendation No. R (87) 15 regulating the use of personal data in the police sector;**

The Council of Europe Convention no 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data was signed in November 2001, ratified in December 2005 and entered into force in April 2006. The 2001 Additional Protocol to the Council of Europe Convention no 108 was signed by Georgia on 15 May 2013, ratified on 10 January 2014 and entered into force on 1 May 2014. As for the transposition to national legislation, both the Convention and its additional Protocol can be considered as transposed once the powers of the PDPI will apply towards private sector, that is, from 1 November 2014 onwards.

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<sup>48</sup> Articles 157, 158 and 159 of the Criminal Code of Georgia.

In view of transposing the Recommendation of the Council of Europe Committee of Ministers No. (87) 15 on Regulating the Use of Personal Data in the Police Sector, the Order of the Minister of Internal Affairs of Georgia Relating to the Processing and Protection of Personal Data within the Ministry of Internal Affairs of Georgia was adopted on 19 December 2013 and entered into force on 1 March 2014.<sup>49</sup> The abovementioned amendments extended the scope of the 'Law on Personal Data Protection' and the mandate of the PDPI towards the data processing for the purposes of the crime prevention, investigation, operative-investigational activities and protection of the public order that are classified as state secret. The amendments to the 'Law on Operative-Search Activities' also entitle the PDPI and persons authorised by him/her to have access to the information on operative-investigational activities that are strictly confidential.

As of September 2014, in order to implement the above mentioned reforms, a special unit responsible for ensuring the protection of personal data standards was established within the MoIA. It cooperates with the Personal Data Protection Inspector.

### **Establishment of an independent data protection supervisory authority with adequate powers and obligations**

The first Personal Data Protection Inspector was appointed on 28 June 2013. In July 2013, the Government approved the 'Statute on the Activities and Powers of the Personal Data Protection Inspector'.<sup>50</sup> The Inspector supervises lawfulness of personal data processing and ensures the implementation of the law and protection of citizens' personal data. In particular, the Inspector provides consultation to public and private institutions on the personal data related issues, receives and considers applications/complaints of individuals, inspects lawfulness of the personal data processing in public institutions and is responsible for raising public awareness on the data protection issues. The Inspector's powers towards private sector will enter into force on 1 November 2014.

On 3 April 2014, the PDPI became member of the Central and Eastern European Data Protection Authorities (CEEDPA), a cooperation framework gathering 17 data protection authorities from Central and Eastern Europe. On 14 August 2014, the PDPI applied for the observer status in the Article 29 Working Party set up under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The Inspector's Office has two departments, namely the Citizens' Complaints and Inspection Department, and the International Relations and Communications Department. There are 15 employees including lawyers, data security analysts, a training manager, and a filing systems catalogues specialist. In 2013, the Inspector's Office was funded from the budget reserve. In the 2014, the Inspector's Office received its own code in the state budget. For the movement, the Office appears to have sufficient budget; however, taking into account the imminent extension of its powers to the private sector, additional financial resources may be required. Also, it needs to be ensured that the PDPI Office is located in premises, which are suitable given its new functions and, especially, the need to guarantee accessibility to broader public.

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<sup>49</sup> It applies to the processing of data by automatic means as well as to manual processing. It defines principles for processing personal data, including biometrics, obligation of data processor towards data subject, right to appeal, etc. Chapter VIII addresses processing of data for the purposes of police activities, excluding state secrets.

<sup>50</sup> Resolution no 180, July 19th, 2013.

Regarding Block 3, beyond the VLAP benchmarks but relevant for their assessment, are developments related to the judiciary and the prosecutor office.

The 2013 amendments to the 'Law on Courts of General Jurisdiction' strengthened the independence and integrity of the judiciary. In line with the OECD recommendations,<sup>51</sup> on 16 July 2014, the Government submitted to the Parliament the draft 'Law on Amendments to the Organic Law of Georgia on Courts of General Jurisdiction' that would regulate the procedure for the lifetime appointment of judges after the probation period.<sup>52</sup> The law provides clear criteria, and transparent mechanism for the appraisal of judges. It also regulates the appellate procedure from the decision of the Council and lays down other legal guarantees for protection of the rights of the judges during their service. The law was adopted by the Parliament on 1 August 2014 and it entered into force on 19 August 2014.

While the 2013 amendments to the 'Law on the Prosecution Service' represent an important step towards ensuring compliance with European standards<sup>53</sup>, the appointment of the Chief Prosecutor continues to be made by the Prime Minister on the recommendation of the Minister of Justice. There is no system of assessment of the candidates by an expert commission.

## **2.4. BLOCK 4: EXTERNAL RELATIONS AND FUNDAMENTAL RIGHTS**

### **2.4.1. Freedom of movement within Georgia**

#### **Consolidation of legal and regulatory framework on registration procedures for legally staying foreigners or stateless persons with a view to avoiding unjustified restrictions.**

The 1996 'Law on the Procedure of Registration' is the legal basis for registration procedure.<sup>54</sup> The 'Rule of Registration and Removal from Registration of Citizens of Georgia and Aliens Residing in Georgia' and the 'Rule of Issuance of identity (Residence) Card, Passport, Travel Passport and Travel Document' approved by Order 98 of 27 July 2011 of the Minister of Justice specify the registration procedures.<sup>55</sup> The 2012 'Law on Public Service Development Agency' stipulates functions of the Agency in carrying out registration process. The 2012 'Law on Civil Acts' and 2012 'Order no 18 of the Ministry of Justice on Approval of the Rule of Civil Acts Registration' determine rules for birth registration.

The 2014 'Law on the Legal Status of Aliens and Stateless Persons'<sup>56</sup> provides the legal basis and mechanism for entry, stay, transit and departure of aliens. The law defines the rights and obligations of aliens, stateless persons, the types and procedures for removal of aliens staying in Georgia, as well as the competences of state institutions involved in the process of removal. The law provides for the following types of residence permits: work residence permit, study residence permit, residence permit for the purpose of family reunification, residence permit of a former citizen of Georgia, residence permit of a stateless person, special residence permit,

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<sup>51</sup> The OECD has recommended that promotion of judges be based on competitive procedures with open announcement of vacancies and based on clear criteria for promotion.

<sup>52</sup> As for the initial appointment for the probation period of 3 years, the procedure will be also changed. A separate set of amendments is being prepared in the framework of the second stage of the reform of the judiciary and will be presented to the Parliament by the end of 2014.

<sup>53</sup> See the November 2013 Commission Report, p. 16.

<sup>54</sup> See also the section on Block 2.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

investment residence permit, and permanent residence permit. The PSDA should grant a relevant residence card to an alien who has been granted a residence permit. A decision on the issuance of a residence permit may be appealed and the new law provides grounds for denial of a residence permit.

Pursuant to Article 3 of the 'Law on the Procedure of Registration', citizens of Georgia and aliens residing in Georgia, regardless of their age, should undergo registration at their place of residence and, if they have several places of residence, at one of their places of residence. Upon registration a person is given a unique personal number. Along with registration of a civil act of birth, an under-age person is being registered at his/her place of residence and is given a personal number.

#### **2.4.2. Conditions and procedures for the issuance of travel and identity documents**

##### **Consolidation of legal and regulatory framework so as to ensure full and effective access to travel and identity documentation without discrimination, including women, children, people with disabilities, internally displaced persons, people belonging to minorities and other vulnerable groups.**

Georgia has the necessary legal framework ensuring access to travel and identity documents. According to Georgian law, a citizen should obtain an identity (ID) card at the age of 14, but an ID card may be issued to persons under 14 years of age, with the consent of a parent or other legal representative.<sup>57</sup> An ID card is valid for four years when issued to persons under 18 years of age and for 10 years when issued to persons over 18 years of age.<sup>58</sup> In exceptional cases, defined by the Order 98 of the Minister of Justice of 27 July 2011, a non-electronic ID card should be issued for the validity up to six months. A passport for Georgian citizens is issued upon request and it is valid for three years when issued to persons under 18 years of age, and for 10 years when issued to persons over 18 years of age.<sup>59</sup>

Aliens, refugees or persons holding a humanitarian status, and persons holding a stateless status, after receiving a residence permit, must apply for a residence card within a month. According to the Article 20 paragraph 1 of the 'Law on the Procedure of Registration', the travel passport for the stateless person is issued for the validity of two years. If the validity of the residence permit issued for the stateless person is less than two years, the validity of the travel passport corresponds to the validity of the residence permit. A person possessing a status of a stateless person in Georgia, who had been issued with a permanent residence card,<sup>60</sup> should be issued a travel passport valid for five years. The travel documents for persons with the refugee status are issued for two years.

The recently adopted amendments to the 1996 'Law on the Procedure of Registration',<sup>61</sup> the 2011 'Law on Refugees and Humanitarian Status' and the new 2014 'Law on Legal Status of Aliens and Stateless Persons' envisage a new type of identification certificate, namely a temporary identity card. According to the new law, from 1 September 2014, the document is issued to a person seeking a refugee or a humanitarian status, a person seeking a status of a

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<sup>57</sup> Article 3 paragraph 2 of the 'Law on procedure for registration of citizens of Georgia and aliens residing in Georgia, issuance of identity (residence) card and passport of a citizen of Georgia'.

<sup>58</sup> Article 14 paragraph 2, *ibid.*

<sup>59</sup> Article 20<sup>4</sup> paragraph 1, *ibid.*

<sup>60</sup> Issued before the entry into force of the Presidential Decree no 515 of 27 July 2012 on 'Approval of the Procedure for Determining the Status of Stateless Persons'.

<sup>61</sup> Adopted on 5 March 2014 and entered into force on 1 September 2014

stateless person, and a person who cannot be removed in cases stipulated by the 'Law on Legal Status of Aliens and Stateless Persons'. The issuance of a temporary identity card will ensure rights stipulated by 1951 United Nations Convention Regarding the Status of Refugees.

### **2.4.3. Citizens' rights including protection of minorities**

#### **Adoption of a comprehensive anti-discrimination law, as recommended by UN and Council of Europe monitoring bodies, to ensure effective protection against discrimination;**

The 'Law on the Elimination of All Forms of Discrimination' (Anti-Discrimination Law) was adopted by the Parliament on 2 May 2014 and it entered into force on 7 May 2014. The purpose of the law is 'to eliminate every form of discrimination and to ensure equal rights of all natural and legal persons under the legislation of Georgia, irrespective of race, skin colour, language, sex, age, citizenship, origin, place of birth or residence, property or social status, religion or belief, national, ethnic or social origin, profession, marital status, health, disability, sexual orientation, gender identity and expression, political or other opinions, or other characteristics'. Such approach is consistent with other norms that form the anti-discriminatory legal framework of Georgia,<sup>62</sup> including Article 14 of the Georgian Constitution laying down the principle of equality, as well as the jurisprudence of the Constitutional Court of Georgian.<sup>63</sup>

The Anti-discrimination Law provides the definitions of 'direct discrimination' and 'indirect discrimination'. However, the derogations allowing direct discrimination for reasons related to "public order and morals" and of "overwhelming state interest and the necessity of state intervention in the democratic society" will need to be further examined in terms of their practical interpretation and implementation to ensure consistency with European standards<sup>64</sup>. The law also covers 'discrimination by association', namely the situations when a person is discriminated against because s/he is erroneously perceived as belonging to the protected group.<sup>65</sup> It explicitly prohibits forcing, encouraging or supporting a person to discriminate against a third person,<sup>66</sup> and multiple and multi-dimensional discrimination.<sup>67</sup> It introduces the notion of 'positive action', especially in relation to gender equality and specific situations such as maternity, pregnancy or disabilities.<sup>68</sup>

In an attempt to defuse strong opposition voiced by some groups of the Georgian society, the Government and the Parliament included in the law a number of provisions intended to reaffirm the autonomy of religious entities, including the principle that the legitimate exercise

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<sup>62</sup> Article 2(3) of the Labour Code of Georgia, last amended on 4 July 2013, states that 'discrimination of any kind is forbidden during labour relations, such as: discrimination by race, colour of skin, language, ethnic and social belonging, origin, property, class, working place, age, sex, sexual orientation, limited abilities, religion or membership of other unifications, family status, political and other beliefs'.

<sup>63</sup> Recently, the Constitutional Court of Georgia recognised sexual orientation as a protected ground against discrimination in the implementation of the constitutional principle of equality, by declaring unconstitutional the Order of the Health Minister of Georgia of 5 December 2000, prohibiting homosexuals to donate blood (Constitutional Court of Georgia, Judgment 10-11 February 2014). <http://dfwatch.net/constitutional-court-in-georgia-lifts-ban-on-homosexuals-giving-blood-10117>.

<sup>64</sup> Article 2(2), (3) and (9).

<sup>65</sup> Article 2(6).

<sup>66</sup> Article 2(5).

<sup>67</sup> Article 2(4).

<sup>68</sup> Article 2(7).

of freedom of religion should not be affected by the anti-discrimination legal framework.<sup>69</sup> However, such derogation providing a general exception is too broad and the application of such provision will have to be thoroughly reviewed during phase 2 of the VLAP implementation.

The anti-discrimination legislative framework as well as the powers of the Public Defender were extended to the private sector.<sup>70</sup> Although the Anti-Discrimination Law does not provide for setting up a specific, separate equality body with quasi-judicial functions, it envisages the strengthening of the role of the Public Defender as an equality body responsible for elimination of discrimination and ensuring equality.<sup>71</sup> To protect and assist victims of discrimination, the Public Defender should act as a mediator between the parties with the purpose of promoting reconciliation.<sup>72</sup> If the reconciliation fails, the Public Defender may, according to Article 14<sup>1</sup> of the 'Law of Georgia on Public Defender', within certain limits, initiate litigation before the competent court. Accordingly, Article 10 of the Anti-Discrimination Law envisages judicial litigation before the competent court as the main remedy to redress discrimination. In order to make the judicial remedy more accessible, a number of amendments have been introduced to the 'Civil Procedure Code', the 'Criminal Code', the 'Law on Gender Equality' and the 'Law on Public Defender' on 2 May 2014 to remove perceived, real or potential barriers to access to justice in discrimination cases.<sup>73</sup> In the second phase of the VLAP, Georgia should provide clear information on application of Article 11 (participation of a third party in the proceedings) and the modalities under which Non-governmental Organisations and other associations are able to assist victims of discrimination, not only before the Public Defender but also in Court proceedings.

**Signature, ratification and transposition into national legislation of relevant UN and Council of Europe instruments in the fight against discrimination, including taking into account the UN Convention on Statelessness and the standing recommendations of the Council of Europe on the European Charter for Regional or Minority Languages.**

Following the ratification of the European Framework Convention for the Protection of National Minorities in October 2005, Georgia had started to develop a comprehensive policy in the field of civic integration and protection of minority rights. In May 2009, the Government of Georgia adopted the National Concept for Tolerance and Civil Integration, and the accompanying Action Plan (2009-2014). These documents specify activities and programs in six fields: the rule of law; education and the State language; media and access to information; political integration and civic participation; social and regional integration; and culture and preservation of identity. The implementation of the Action Plan is coordinated by the Office of State Minister for Reconciliation and Civic Equality, while monitoring of its implementation is carried out by the State Inter-agency Commission with the involvement of the Ethnic Minorities Council at Public Defender's Office. Also, in 2012, the posts of the

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<sup>69</sup> Accordingly, Article 5 includes a safeguard clause referring to the Constitutional Agreement between the State of Georgia and the Orthodox Church of Georgia

<sup>70</sup> Article 3 of the Anti-Discrimination Law and Article 3(1) of the 'Law on Public Defender'.

<sup>71</sup> Article 6(1).

<sup>72</sup> Article 8.

<sup>73</sup> For example, the inclusion of the principle of sharing or shifting the burden of proof in civil law cases (Article 363 of the Code of Civil Procedure) and in the procedures before the Public Defender (Article 8(2) of the Anti-Discrimination Law); the legal standing of the Public Defender in administrative law cases, i.e. in the case of non-compliance or failure by an administrative body to respond to the recommendations issued on the establishment of the fact of discrimination (Article 14<sup>1</sup>(2)(h) of the Law on the Public Defender).

Prime Minister's Advisor on Ethnic Minorities and the President's Advisor on Ethnic Minorities were created.

In Georgia, there is no comprehensive law on national minorities. Instead, needs and specific rights of persons belonging to national minorities are catered for by incorporating various measures into different pieces of legislation; indeed, relevant provisions concerning minority protection are contained in a number of normative acts and codes of conducts relating to individual sectors such as education, culture and protection of cultural heritage, local-self-government, public broadcasting, etc.

Despite the wide range of fields and subjects covered by these specific measures, there are two areas where further improvements are being considered, namely, the right of use of minority languages in relations with public authorities, and local topographical indications.<sup>74</sup> On 21 June 2013, the Government established a high-level Inter-agency Commission bringing together Deputy Ministers and Members of Parliament and coordinated by the Office of State Minister for Reconciliation and Civic Equality responsible for formulation of relevant policies. By doing so, the Government of Georgia prepares the ground for the signature and ratification of the European Charter for Regional or Minorities Languages. The Government is also working towards a new national concept on civil integration and a related action plan.

On 2 April 2014, the Georgian Parliament adopted a Resolution Ratifying the 1961 United Nations Convention on Reduction on Statelessness. The instrument of accession to the Convention was deposited in Geneva on 1 July 2014.

### **Establish fair and transparent conditions for the acquisition of Georgian citizenship;**

On 30 April, the Georgian Parliament adopted the 'Law on Georgian Citizenship'. The law entered into force on 11 June 2014. The law brought the existing legal framework into conformity with the principles of the 1961 United Nation Convention on the Reduction of Statelessness.

Amongst others, the new law sets different conditions by age categories for granting Georgian citizenship on the ground of residence in Georgia on 31 March 1993. Accordingly, the requisite of length of residence of at least five years is no longer required for persons born after 31 March 1975. Such persons can obtain Georgian citizenship passing the test of the knowledge of Georgian language, history and core principles of the Georgian legal framework. The law also abolishes the requisite for at least one parent, a citizen of Georgia, having permanent residence in Georgia for the acquisition of Georgian citizenship by the child according to the principle of *jus sanguinis*. Furthermore, the law addresses the issue of children born in the territory of Georgia through surrogacy, namely it grants Georgian citizenship to such children if the country of alien biological parents does not grant the citizenship to the child. Finally, the 'Law on Georgian Citizenship' removes the possibility to deprive a person of Georgian citizenship due to his/her permanent residence in another country and the lack of a consular registration.

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<sup>74</sup> See also, the Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Georgia of adopted on 19 March 2009; Georgia in Transition. Report on the human rights dimension: background, steps taken and remained challenges, by Thomas Hammarberg, EU Special Adviser on Constitutional and Legal Reform and Human Rights in Georgia, issued on September 2013, pp. 24-25; Commissioner for Human Rights Council of Europe, Report by Nils Muiznieks following his visit to Georgia from 20 to 25 January 2014, para. 86-87, published on 12 May 2014.



**Adoption of a comprehensive National Human Rights Strategy and Action Plan; actively pursue in this strategy and action plan the specific recommendations of UN bodies, OSCE/ODIHR, the Council of Europe/ECRI and international human rights organisations notably in implementing anti-discrimination policies, protecting minorities and private life and ensuring the freedom of religion;**

The Interagency Council for Human Rights Strategy and Action Plan was established by Governmental Decree no 169 of 5 July 2013 with the aim to develop the strategy and the action plan. The Council comprised representatives of executive, legislative and judicial branches of the Government, as well as the Public Defender and representatives of non-governmental and international organisations, experts, and scholars. In order to ensure an inclusive and transparent process, the Council organised over 10 meetings with over 100 NGOs and other interested stakeholders.

The Council elaborated the draft strategy and action plan in accordance with the Constitution of Georgia, international human rights treaties and other legislative or legal normative acts. The United Nations Development Programme (UNDP) and the Council of Europe guidelines were taken into account in the drafting process. Also, an UNDP expert was involved in the process of developing the draft strategy and its action plan. On 13 February 2014, the Prime Minister presented the first drafts to the wider public. With the support of the UNDP, a special website containing all relevant information on the development of the strategy and the action plan was created.<sup>75</sup>

The National Human Rights Strategy of Georgia (2014-2020) was adopted by the Parliament on 30 April 2014 and the Government approved the accompanying Action Plan (2014-2015) on 9 July 2014.

The Strategy and the Action Plan identify human rights priorities and streamline the activities of various government agencies, while also making a positive contribution to the coordination of donor support which, in turn, should increase the effectiveness of the Government's work in the area of human rights protection. The Strategy lays down general principles, whereas concrete actions are specified in the Action Plan.

The Strategy is built on four cornerstones—the inviolability of human rights by the state; the protection of human rights from violations by other persons; the development of the system enabling people to enforce their rights; and the awareness raising of people about their rights—and it lists 23 strategic areas of intervention. It aims to develop a systematic approach ensuring the implementation of obligations stemming from human rights in everyday life. To this end, all representatives of all branches of government as well as all officials at the central and local level are to fulfil the constitutional duty to ensure respect for human rights. The Strategy is also to ensure that every person in Georgia understands the essence of his or her rights and is capable of enforcing these rights in practice.

The Action Plan is a comprehensive document covering the two first years of the implementation of the Strategy, namely 2014-2015. It lists goals, objectives, activities, responsible agencies, timeframes and indicators. The Plan is a 'living' document that can be amended depending on future developments and identified needs. Based on the experience of its implementation, the next action plan(s) will be drafted and adopted.

The Action Plan does not contain specific provisions concerning financing of the activities. The Georgian authorities see the implementation of the activities of the Action Plan as part of everyday work that is financed from the annual budget of each ministry in 2014 and, from

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<sup>75</sup> [www.yourhumanrights.ge](http://www.yourhumanrights.ge)

2015 onwards, the ministries will incorporate the human rights activities into their annual budgets. Financing from donors can be also used to implement the Action Plan.

The Human Rights Council is overseeing the implementation of the Action Plan, including the coordination of donor financing. It is also responsible for submitting annual performance assessment report on the implementation of the Action Plan to the Government and to the Parliament each year. In the second half of 2014, a number of thematic working groups will be established; they will meet once a month in order to assess on-going implementation. The Human Rights Secretariat will serve as a Secretariat for the Human Rights Council and, on a daily basis, will ensure the coordination of activities and the information flow amongst all concerned stakeholders.

The Georgian authorities plan to introduce the Strategy and the Action Plan to the general public. Translations into minority languages (Armenian, Azeri, and Russian) are being prepared and should be publicly available by the end of 2014. The Secretariat with the support of non-governmental organisation will organise public events to introduce both documents and, more broadly, the Government's human rights policies to Georgian citizens.

## PART II: ASSESSMENT OF MIGRATORY AND SECURITY IMPACTS

### 3.1 ASSESSMENT OF MIGRATORY IMPACTS

#### 3.1.1. Regular and irregular migration: trends and possible impacts of a visa-free travel

The migration of Georgians abroad is mostly a spontaneous circular migration to neighbouring countries. Unemployment is a major determinant of labour migration from Georgia. Among the most affected category of persons are the refugees from Georgia's breakaway regions of Abkhazia and South Ossetia as well as ethnic minorities (Azeri and Armenians).

Data on migration estimates that around 7% and 8% of the Georgians have experienced migration. Studies show that Georgian families have at least one member living and working in a foreign country.<sup>76</sup> The number of labour migrants from Georgia abroad is estimated at 140 000 people, while another 138 000 are estimated to be returnees in Georgia.<sup>77</sup>

As the data in Table 1 suggest, the number of Georgian citizens getting valid permits in the EU remained stable in the recent years. When it comes to regular migration to the EU, the highest number of valid residence permits were issued in 2013 in Italy (2 573), Germany (1 284), and Poland (1 211).

**Table 1: Number of first permits issued to Georgian citizens by EU Member States**

	2008	2009	2010	2011	2012	2013
<b>European Union (28 countries)<sup>78</sup></b>	<b>6,829</b>	<b>9,514</b>	<b>11,776</b>	<b>7,320</b>	<b>8,536</b>	<b>9,245</b>
<b>European Union (27 countries)</b>	<b>6,829</b>	<b>9,514</b>	<b>11,776</b>	<b>7,320</b>	<b>8,536</b>	<b>9,244</b>
Belgium	221	395	519	384	154	98
Bulgaria	23	23	22	22	26	13
Czech Republic	203	167	176	95	130	161
Denmark	25	27	26	24	9	17
Germany (until 1990 former territory of the FRG)	712	806	799	806	1,243	<b>1,284</b>
Estonia	41	65	83	66	58	64
Ireland	67	79	45	56	49	57
Greece	630	697	757	569	698	346
Spain	984	922	872	1,240	992	901
France	551	602	575	600	718	857
Croatia	:	:	:	:	:	1
Italy	1,091	3,590	5,898	1,483	1,952	<b>2,573</b>
Cyprus	312	243	187	184	133	137
Latvia	133	59	72	94	81	100
Lithuania	94	72	34	45	122	95
Luxembourg	:	6	1	2	3	4
Hungary	96	68	59	56	50	:

<sup>76</sup> The Caucasus Institute for Peace, Democracy and Development, 'Labour migration from Georgia and bilateral migration agreements: Needs and Prospects', 2009.

<sup>77</sup> Migration Policy Centre's input to the Assessment of Impacts, July 2014.

<sup>78</sup> Including Croatia.

Malta	14	22	8	12	19	:
Netherlands	164	156	112	85	93	142
Austria	145	352	384	552	500	341
Poland	139	147	241	73	640	<b>1,211</b>
Portugal	190	111	107	86	67	58
Romania	14	28	13	9	13	45
Slovenia	2	4	7	9	6	3
Slovakia	19	21	20	24	16	12
Finland	19	14	8	11	19	17
Sweden	88	150	156	163	172	143
United Kingdom	852	688	595	570	573	565

Source: Eurostat data, last update: 31 July 2014, extracted on 18 August 2014.

When it comes to irregular migration, Georgians represented 18% of the 1 316 attempts to irregularly cross the border detected in 2013 at the Eastern land border route of the EU.<sup>79</sup>

In general, irregular migration of Georgian citizens to the EU presents the following characteristics:<sup>80</sup>

- sudden increases in (2009 and 2012-2013) and decreases of irregular flows, presumably due to political developments (2008 military conflict and 2012 political power shift);
- the main transit country remains Belarus, which has no visa requirement for Georgian citizens;
- there has been a gradual shift from illegal border-crossing towards abuse of legal entry and, to a lesser extent, use of false documents;
- there have been changes of destination countries: the number of irregular migrants to Greece decreased, whereas an increase has been noted in the case of Germany and Sweden, and other European countries such as Switzerland;<sup>81</sup>
- irregular migration trends have as common nominator unemployment and poverty, especially during 2012 when the country faced high unemployment rates.

<sup>79</sup> Frontex's Annual Risk Analysis 2014

[http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2014.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf), p.40.

<sup>80</sup> Frontex's input to the Assessment of Impacts, July 2014.

<sup>81</sup> For instance, of the overall number of detections between 2012 and 2013, Germany was the country recording a sharp increase (27%) of Georgians illegally staying.

**Table 2: Georgian nationals found to be in an irregular migration situation**

	2008	2009	2010	2011	2012	2013
Belgium	140	110	125	90	125	115
Bulgaria	25	25	25	25	15	30
Czech Republic	95	165	30	70	65	45
Denmark	5	0	0	0	0	0
Germany (until 1990 former territory of the FRG)	460	605	710	585	1,085	1,380
Estonia	10	0	10	20	45	20
Greece	1,915	2,395	1,340	850	795	:
Spain	635	595	440	355	290	245
France	0	410	400	285	390	400
Croatia	:	:	:	:	:	0
Italy	265	245	370	335	445	395
Cyprus	280	275	280	325	295	160
Latvia	15	5	5	15	70	75
Lithuania	30	80	55	130	265	220
Luxembourg	:	0	0	5	5	5
Hungary	15	30	30	35	45	65
Malta	0	0	0	0	10	10
Netherlands	95	140	280	160	:	:
Austria	490	895	450	345	410	340
Poland	20	255	75	95	210	215
Portugal	120	40	40	45	50	35
Romania	0	20	20	30	10	10
Slovenia	5	0	0	0	0	0
Slovakia	230	130	85	40	65	55
Finland	10	20	55	65	15	10
Sweden	0	345	270	240	505	405
<b>EU26</b>	<b>4,860</b>	<b>6,785</b>	<b>5,095</b>	<b>4,145</b>	<b>5,210</b>	<b>4,235</b>
Iceland	0	0	:	:	:	:
Liechtenstein	0	0	0	:	0	0
Norway	5	0	:	10	15	:
Switzerland	:	0	0	205	200	245
<b>Schengen associated</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>215</b>	<b>215</b>	<b>245</b>
Ireland	145	250	120	45	25	25
United Kingdom	125	135	105	90	110	75
<b>UK and EI</b>	<b>270</b>	<b>385</b>	<b>225</b>	<b>135</b>	<b>135</b>	<b>100</b>
<b>TOTAL above</b>	<b>5,135</b>	<b>7,170</b>	<b>5,320</b>	<b>4,495</b>	<b>5,560</b>	<b>4,580</b>

Source: Eurostat data, - annual data (rounded), last update: 04 April 2014 extracted on 26 May 2014.

When it comes to the facilitation of irregular migration, Europol data shows that the Georgian organised criminal groups (OCGs) are active in the production and distribution of false documents facilitating migration.<sup>82</sup>

<sup>82</sup> Europol's input to the Assessment of Impacts, July 2014.

Also Polish and Russian citizens are involved in the facilitation of the travel and long term-stay of the Georgian citizens in the EU. They focus on the facilitation of migration of Georgian citizens issuing to them forged Latvia, Lithuania or Romanian passports and fraudulently obtained Polish visas. In 2013, Germany detected the largest number of Georgian illegal stayers. Other popular destination countries for facilitated illegal migration are Greece, Sweden, France, and Italy. The main entry point to the EU is Poland. Poland issues the majority of refusals to Georgian nationals. For instance, in 2013, Poland issued 7 252 refusals of entry out of total 8 100 issued at the Polish-Belarusian section of the border.

Georgian irregular migrants combine the abuse of legal entry, illegal border-crossings and asylum applications as entry methods to the EU. After being refused entry due to the lack of visa, some apply for asylum, while others try to cross Lithuanian, Latvian, or Polish borders illegally.

According to European Union Monitoring Mission in Georgia, it is likely that Georgia remains an attractive transit country for irregular and circular migrants to the EU, Russian Federation and Turkey.<sup>83</sup> However, Georgian citizens do not constitute quantitatively an important group among the EU migrants. The strict quota system that regulates the employment of non-EU migrants makes it difficult for Georgian citizens to obtain a work contract. A visa-free regime would help Georgians to regularise migration status and their working conditions, and would foster regular temporary and circular migration.<sup>84</sup>

According to Europol, the visa liberalisation is not likely to result in an increase of facilitated irregular migration from Georgia to the EU. On the contrary, the visa-free regime will provide a framework for legal travel and, consequently, should have a positive impact on reducing the facilitation services offered by Georgian OCGs and other criminal networks.

A possible risk resides in the number of over-stayers, which might increase since visa liberalisation creates the opportunity for Georgians to legally travel to the EU. Further, changes in entry points can be expected through a shift from land to air borders, which will bring about a shift of locations of issuance of refusals of entry.

**3.1.2. Asylum: trends and possible impacts of a visa-free travel**

According to the EASO data, Georgia has consistently been among the top 15 main citizenships of asylum applicants in the EU; however an important decrease has been noted over the years: Georgia ranked 7<sup>th</sup> in 2009 and 15<sup>th</sup> in 2013.

**Table 3: Asylum applications by Georgian citizens**

	2008	2009	2010	2011	2012	2013
European Union (28 countries)	<b>5,015</b>	<b>10,500</b>	<b>6,865</b>	<b>7,060</b>	<b>10,830</b>	<b>9,110</b>
European Union (27 countries)	<b>5,015</b>	<b>10,500</b>	<b>6,865</b>	<b>7,060</b>	<b>10,830</b>	<b>9,110</b>
Belgium	275	385	365	400	505	370
Bulgaria	5	15	15	5	5	5
Czech Republic	40	35	10	15	10	15
Denmark	25	15	15	15	75	65
Germany (until 1990 former territory)	285	640	750	<b>525</b>	<b>1,430</b>	<b>2,485</b>

<sup>83</sup> European Union Monitoring Mission in Georgia input to the Assessment of Impacts, July 2014.

<sup>84</sup> EASO's input to the Assessment of Impacts, July 2014.

of the FRG)						
Estonia	0	5	0	5	35	10
Ireland	180	90	55	15	20	15
Greece	2,240	2,170	1,160	<b>1,120</b>	<b>895</b>	<b>535</b>
Spain	60	35	50	10	10	10
France	460	540	1,435	<b>1,740</b>	<b>2,680</b>	<b>2,695</b>
Croatia	:	:	:	:	:	0
Italy	65	85	80	30	65	105
Cyprus	120	75	40	15	10	0
Latvia	15	0	0	175	105	145
Lithuania	10	75	250	230	310	120
Luxembourg	0	0	5	15	5	20
Hungary	160	115	70	20	10	40
Malta	5	0	0	0	0	0
Netherlands	75	425	610	235	250	240
Austria	510	975	370	260	300	255
Poland	70	4,180	1,085	<b>1,735</b>	<b>3,235</b>	<b>1,240</b>
Portugal	5	0	5	5	5	0
Romania	55	40	10	25	0	25
Slovenia	0	0	5	0	0	0
Slovakia	120	100	65	65	55	35
Finland	10	20	55	70	30	15
Sweden	225	370	290	280	750	<b>620</b>
United Kingdom	:	100	85	45	30	50
Iceland	5	0	0	5	10	5
Liechtenstein	0	0	0	0	0	0
Norway	20	45	85	50	110	65
Switzerland	480	640	640	400	725	655
<b>Total</b>	<b>5,520</b>	<b>11,185</b>	<b>7,595</b>	<b>7,515</b>	<b>11,675</b>	<b>9,835</b>

Source: Eurostat data, last updated: 18.08.2014, extracted on 18.08.2014.

Most of Georgian asylum seekers applied to Germany, France, Poland, Sweden and Greece.

The highest rises in asylum applicants from Georgia were registered during times of crisis, e.g. in 2003 (after the Rose revolution), 2008-2009 (following the August 2008 war and recognition by Russia of the 'independence' of Georgia's breakaway regions of Abkhazia and South Ossetia) and 2012 (political power shift).

According to Frontex, the asylum applications by Georgian nationals are likely to continue due to the following reasons<sup>85</sup>:

- asylum procedure is already established as an abused method of entry;
- opening-up of legal travel channels to previously non-eligible persons;
- reduction of travel costs to EU borders;
- existence of possibly marginalised minorities such as Yezidi-Kurds;

<sup>85</sup> Frontex input to the Assessment of Impacts, July 2014.

- long-term displacement of Georgian nationals from Georgia's breakaway regions of South Ossetia and Abkhazia; and
- possible use of Georgian biometric passports by residents of Georgia's breakaway regions of South-Ossetia and Abkhazia to travel to the EU and apply for asylum.

In the context of current flows, the most likely impact would be diversification of entry points and a possible shift in locations of filing asylum applications, that is, fewer applications would be submitted in Poland and more in destination countries.

## 3.2 ASSESSMENT OF SECURITY IMPACTS

### 3.2.1. Organised crime: trends and possible impacts of a visa-free travel

According to Europol, Georgian organised crime groups are already present and active in at least 12 EU Member States. They are particularly active in the following criminal activities: theft, assault, pick-pocketing, residential and commercial burglaries, robberies, fraud, drug trafficking, extortion, facilitation or illegal migration, trafficking in human beings, cigarette smuggling, euro counterfeiting, murder, and money laundering.

Georgian OCGs control a large proportion of the criminal markets in the countries of the former Soviet Union. The use of the Russian language and a common background facilitates their cooperation with other groups from the region.

According to Europol, the Kutaisi and Tbilisi clans are well-established in the EU and their business interests focus on important sectors such as energy and real estate. The horizontal network *thieves-in-law*, who manages criminal groups and receives shares from businesses (especially Russian businesses) for ensuring protection, has been affected by the 'Law on Organized Crime and Racketeering'; its implementation led to the confiscation of their properties and their detention.

Visa liberalisation may open up new opportunities for OCGs as they will be able to carry out their activities in a less controlled, at least from the visa perspective, environment.

### 3.2.2. Trafficking in human beings: trends and possible impacts of a visa-free travel

The legal and institutional framework against trafficking of human beings is in place. Georgia remains a place of origin, transit and destination country for victims of sexual exploitation, particularly women and, to a lesser extent, forced labour for men, women and children. In recent years, the main *modus operandi* has changed and includes now forms of non-physical forms of coercion such as deprivation of identity documents. Outside Georgia, Georgian victims of human trafficking are mostly exploited in Turkey and in the United Arab Emirates. Trafficking of women and men for the purpose of labour exploitation has been on the rise, with 33 such victims identified in 2009 (out of a total of 48 identified victims) and 12 in 2010 (out of a total of 19 victims).<sup>86</sup>

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<sup>86</sup>Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Georgia, 2011  
[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2011\\_24\\_FGR\\_GEO\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_24_FGR_GEO_en.pdf), p. 9.



According to Europol, EU Member States are not the main destination countries for Georgian victims in THB. Accordingly, a visa-free regime is unlikely to change that trend and increase exploitation of Georgian citizens.

### **3.2.3. Drug trafficking: trends and possible impacts of a visa-free travel**

Heroin seizures in Georgia (116 kg) in 2013-2014 illustrate that Caucasus is used as a traffic route to reach Europe.<sup>87</sup>

Data suggests that South Caucasus route is used for the trafficking of Afghan heroin. Ferry connections across the Black Sea, especially between Georgia and Ukraine, may offer smuggling opportunities for traffickers.

The fact that Georgia and the EU do not share a land or a sea borders mitigate some of the risks associated with trafficking of illicit goods such as drugs. However, a visa-free regime may reduce the probability of detection in case of air travel; OCGs might take advantage of people traveling from Georgia to the EU by relying on drug couriers.

### **3.2.4. Money laundering and terrorism financing: trends and possible impacts of a visa-free travel**

According to the International Monetary Fund, in Georgia the most common methods for money laundering are: the use of fictitious and offshore companies; fictitious directors and representatives; false contracts and documents in order to conceal and disguise illicit origins of proceeds of crime and transfer them through the banks of Georgia inside and outside of the country; intermingling of proceeds of crime with proceeds of legal businesses; and providing the responsible anti-money laundering bodies with false information regarding trade in goods and having businesses abroad in order to justify the movement of illicit money into and out of the country, misappropriation, embezzlement, tax evasion, etc.<sup>88</sup>

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<sup>87</sup> The illicit drug trade through South-Eastern Europe, March 2014, [http://www.unodc.org/documents/data-and-analysis/Studies/Illicit\\_DT\\_through\\_SEE\\_REPORT\\_2014\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_DT_through_SEE_REPORT_2014_web.pdf).

<sup>88</sup> Georgia: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism, January 2013, <http://www.imf.org/external/pubs/ft/scri/2013/cr1304.pdf>, p. 26.