

# Comparative Analysis of Consumer Protection Under the Law of Georgia on Private International Law and the Rome I Regulation

## 1. Introduction

---

Cross-border transactions between Georgia and the European Union (hereinafter, the “EU”) have intensified<sup>1</sup> since execution of the Association Agreement (hereinafter, the “Agreement”).<sup>2</sup> The Agreement presents a number of provisions aiming to enhance consumer protection standards existing in the Georgian legal framework.<sup>3</sup> Thus, the importance of establishing legal instruments to safeguard consumer interests under the national laws of Georgia is rising.<sup>4</sup> The present research paper describes Regulation (EC) No

---

\* LL.M., International Commercial Law.

<sup>1</sup> Trade > Policy > Countries and regions > Georgia’ (*European Commission*, 8 July 2016); <[ec.europa.eu/trade/policy/countries-and-regions/countries/georgia/](http://ec.europa.eu/trade/policy/countries-and-regions/countries/georgia/)> accessed 15 May 2018.

<sup>2</sup> Council Decision 2014/494/EU of 16 June 2014 on the signing, on behalf of the European Union, and Provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261.

<sup>3</sup> Michael Emerson and Tamara Kovziridze (eds), *Deepening EU- Georgian Relations. What Why and How?* (Roman & Littlefield International Ltd. 2016) 153-154.

<sup>4</sup> *Ibid*, 153.

593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (hereinafter, the “Rome I regulation”), in particular Article 6 and the consumer protection standard provided by it. A similar study was executed with regards to the Law of Georgia on Private International Law (hereinafter, the “GPIL”) and its respective article endeavoring to safeguard the interests of consumers. Such description aims to comprehend and compare the protection standards provided to consumers, being party to the international transactions, under the Rome I regulation and the GPIL. Consequently, the paper identifies the necessity of improving on the consumer protection standards established by the GPIL in light of the Agreement and the obligations imposed by it, in particular Articles 345, 346 and 347.

The Agreement reached between Georgia and the EU was signed on 27 June 2014<sup>5</sup> and came into force on 1 July 2016. Signing and executing such Agreements is one of the instruments of the EU’s neighborhood policy (hereinafter, the “ENP”) for integrating with its eastern neighbors; in the present case – Georgia.<sup>6</sup> The alignment of relevant Georgian national laws with EU principles and regulations outlined in the Agreement, inter alia, the consumer protection standard, results from execution of said Agreement.

## 2. Consumer Protection under the Agreement

---

Article 345 of the Agreement states the following: “the parties shall cooperate in order to ensure a high level of consumer protection and to achieve compatibility between their systems of consumer protection.” Article 345 establishes a general commitment to achieving such compatibility with regard to consumer protection standards. The aforesaid Article influences the revision of the relevant acts existing in the Georgian legal framework in order

---

<sup>5</sup> Trade > Policy > Countries and regions > Georgia’ (*European Commission*, 8 July 2016); <[ec.europa.eu/trade/policy/countries-and-regions/countries/georgia/](http://ec.europa.eu/trade/policy/countries-and-regions/countries/georgia/)> accessed 31 May 2018.

<sup>6</sup> Pieter Jan Kuiper, Jan Wouters, Frank Hoffmiester, Geert De Baere and Tomas Ramopoulos, *The Law of EU External Relations: Cases Materials and Commentaries on the EU as an international Legal Actor* (2<sup>nd</sup> edn, Oxford University Press) 556.

to achieve such compatibility.<sup>7</sup> In addition, the approximation of consumer legislation is instructed under Article 346 of the Agreement, which states the following:

“In order to achieve these objectives the cooperation may comprise, when appropriate:

- (a) aiming at approximation of consumer legislation while avoiding barriers to trade;
- (b) promotion exchange of information on consumer protection systems, including consumer legislation enforcement, consumer product safety information exchange systems, consumer education/awareness and empowerment, and consumer redress;
- (c) training activities for administration officials and other consumer interest representatives, and
- (d) fostering the activity of independent consumer associations and contacts between consumer representatives.”

Moreover, Article 347 refers to Annex XXIX of the Agreement which lists the respective EU “acts and international instruments” to which Georgia undertook the obligation to approximate its laws. Said alignment process is to be conducted in a gradual manner within the period of time given in the relevant provisions of the Agreement.<sup>8</sup> The aforesaid Articles of the Agreement, as well as Annex XXIX, make no reference to the Rome I regulation, including Article 6. However, as the Rome I regulation is one of the most important instruments establishing conflict rules,<sup>9</sup> including consumer contracts established in Article 6,<sup>10</sup> comparing and reviewing the need of enhancing the relevant provision – Article 38 of the GPIL – with Article 6 of the Rome I regulation is crucial for fulfilling the obligations set out in Articles 345, 346 and 347 and approximating the other legal instruments listed in Annex XXIX.

---

<sup>7</sup> Michael Emerson and Tamara Kovziridze (eds), *Deepening EU- Georgian Relations. What Why and How?* (Roman & Littlefield International Ltd. 2016) 153.

<sup>8</sup> *Ibid*, 153.

<sup>9</sup> Michael Bogdan, *Concise Introduction to EU Private International Law* (2<sup>nd</sup> edn, Europa Law Publishing 2012) 117.

<sup>10</sup> *Ibid*, 130-131.

Thus, the present research aims at better understanding the protection standard established by Article 6 of the Rome I regulation and Article 38 of the GIPL in order to identify any incompatibility, if any, “... between their systems of consumer protection”.<sup>11</sup>

## 3. Rome I Regulation

---

### 3.1. Scope of Application

The Rome I regulation introduces the most important conflict rules regarding contractual obligations in civil and commercial matters.<sup>12</sup> According to Article 1(1), the Rome I regulation is applicable “*in situations of a conflict of laws, to contractual obligations in civil and commercial matters*”. The term “*civil and commercial matters*” takes an autonomous meaning in the regulation. Article 1(1) constitutes the substantive scope of applicability of the Rome I regulation. Besides Article 1(1), the requirements of Article 2 and 28 must be fulfilled in order for the Rome I regulation to be applicable; the first requirement being “*universal application*” and the second being “*application in time*.”<sup>13</sup> The Rome I regulation adopts the principle of “*universal application*” which allows application of the law of any state, even if reciprocity is not present<sup>14</sup>. Pursuant to Article 28 of the Rome I regulation “*this Regulation shall apply to contracts concluded as from 17 December 2009.*” If the scope of application is fulfilled, the relevant provisions of the Rome I regulation will designate the applicable law to the contract unless the parties have chosen the applicable law in accordance with Article 3. Party autonomy to choose the law applicable to their contract is the dominant principle under the Rome

---

<sup>11</sup> Council Decision 2014/494/EU of 16 June 2014 on the signing, on behalf of the European Union, and Provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261 Article 345.

<sup>12</sup> Michael Bogdan, *Concise Introduction to EU Private International Law* (2<sup>nd</sup> edition, Europa Law Publishing 2012) 117.

<sup>13</sup> *Ibid*, 118.

<sup>14</sup> Petar Sarcevic, Andrea Bonomi and Paul Volken, *Yearbook of Private International Law*. Vol. X (Swiss Institute of Comparative Law 2008) 165–168.

I regulation.<sup>15</sup> Despite the fact that the parties have autonomy with respect to determining the applicable law, Article 9 – which aims to safeguard the application of mandatory EU law – was introduced.<sup>16</sup>

### 3.2. Consumer Protection

Party autonomy to choose the applicable law is further limited in “*weaker-party contracts*.”<sup>17</sup> The aim of consumer protection is to afford consumers the possibility to apply a system of law that is familiar to them to their contracts.<sup>18</sup> Article 6(2) sets out the restrictions for such a choice, which will be discussed further here. Consumers are considered to hold weaker positions in comparison to firms and are mandatorily protected in the European Private International Law.<sup>19</sup>

Article 6(1) of Rome I regulation sets out the following: “[...] *a contract concluded by a natural person for a purpose which can be regarded as being outside his trade or profession (the consumer) with another person acting in the exercise of his trade or profession (the professional) shall be governed by the law of the country where the consumer has his habitual residence, provided that the professional:*

- (a) pursues his commercial or professional activities in the country where the consumer has his habitual residence, or*
- (b) by any means, directs such activities to that country or to several countries including that country.”*

The notion of the “*consumer*” is provided in Article 6 of the Rome I regulation in its first sentence, as given above. The notion does not include legal persons and only applies to “*natural*” persons “*for the purpose that can be regarded as being*

---

<sup>15</sup> Christopher Bisping, ‘Mandatorily Protected: The Consumer in the European Conflict of Laws’ 22(4) (2014) (European Review Law) 513, 517.

<sup>16</sup> Ibid, 172.

<sup>17</sup> Council Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, Recital 23.

<sup>18</sup> Christopher Bisping, ‘Mandatorily Protected: The Consumer in the European Conflict of Laws’ 22(4) (2014) (European Review Law) 513, 514-515.

<sup>19</sup> Zheng Sophia Tang, ‘Review Article Private International Law in Consumer Contracts: European Perspective’ (2010) 6 (Journal of Private International Law) 225, 226.

*outside his trade or profession*<sup>20</sup>. The latter approach also applies to non-profit associations having non-business activities as their scope of work.<sup>21</sup> Moreover, “*mobile consumer*” is not protected under Article 6 and in cases when “*mobile consumer*” is presented, the applicable law is determined by the general rules of the Rome I regulation.<sup>22</sup> Article 6(1) limits the scope of its application by imposing the requirements set forth in (a) and (b). In addition, it is deemed necessary that “[...] a contract must also be concluded within the framework of [...]” the commercial or professional activities of a professional.<sup>23</sup> Article 6 of the Rome I regulation is considered to take into account the habitual residence of a consumer at the time of concluding the contract.<sup>24</sup> Said article also defines a “*professional*” who must act in the course of its business activities.<sup>25</sup>

Article 6(1) is invoked if the parties have not made the choice of applicable law in accordance to Article 6(2) of the Rome I regulation<sup>26</sup>. If the parties to a consumer contract fit the aforesaid definitions and meet the requirements set forth in sections (a) or (b), the law applicable to the contract will be “*the law of the country where the consumer has his habitual residence.*”<sup>27</sup> The concept of “*habitual residence*” is autonomously “*defined by material or factual elements.*”<sup>28</sup> Otherwise, according to Article 6(3), the law applicable to the contract will be determined by the general rules of the Rome I regulation.<sup>29</sup>

---

<sup>20</sup> Council Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, Article 6 (1).

<sup>21</sup> Jana Valant, ‘Consumer Protection in the EU Policy Review’ (2015) European Parliamentary Research Service, 4 <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS\\_IDA\(2015\)565904\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf)> accessed 25 May 2018.

<sup>22</sup> Commission (EC) *on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernization* (Green Paper Cm 654, 2003) 28.

<sup>23</sup> Council Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, Recital 24, 25.

<sup>24</sup> Michael Bogdan, *Concise Introduction to EU Private International Law* (2<sup>nd</sup> edn, Europa Law Publishing 2012) 131.

<sup>25</sup> *Ibid.*, 130.

<sup>26</sup> Petar Sarcevic, Andrea Bonomi and Paul Volken, *Yearbook of Private International Law* Vol. X (Swiss Institute of Comparative Law 2008) 186.

<sup>27</sup> Michael Bogdan, *Concise Introduction to EU Private International Law* (2<sup>nd</sup> edition, Europa Law Publishing 2012) 131.

<sup>28</sup> Garcimartin Alferez, Francisco J. ‘The Rome I Regulation: Much ado about nothing?’, *European Legal Forum*, 61, 1–74 <<http://www.simons-law.com/library/pdf/e/884.pdf>> accessed 20 May 2018.

<sup>29</sup> For the list of contracts see: Council Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, Article 6(4).

Article 6(2) imposes the following condition on the choice of law in a consumer contract: *“such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.”* A large number of EC directives provide protection for consumers throughout the EU. However, these directives cover only certain aspects of legal rules. Different rules with regards to consumer protection exist in the EU Member States. Therefore, even within the EU, consumer protection can still vary.<sup>30</sup> Article 6(2) introduces *“the principle of most favorable law”*, which retains the protections afforded the consumer by virtue of applicable laws by default, even if the choice of law is present.<sup>31</sup> The comparison is performed by analyzing the overall view of the protections afforded the consumer in the specific claim. The possibility of joint reference or *“cherry-picking”* is not granted.<sup>32</sup>

Article 6(4) lists the exceptions where the consumer is not afforded the protections set forth in Article (1) and (2).<sup>33</sup>

## 4. Law of Georgia on Private International Law

---

### 4.1. Scope of Application

According to Article 1 of the GPIL *“this law determines which legal order is applied when there are factual circumstances of a case related to a foreign law, as well as the rules of procedural law that are applied during*

---

<sup>30</sup> Commission (EC) *on the conversion of the Rome Convention of 1980 on the law applicable to contractual obligations into a Community instrument and its modernization* (Green Paper Cm 654, 2003) 29.

<sup>31</sup> Garcimartin Alferez, Francisco J. ‘The Rome I Regulation: Much ado about nothing?’, *European Legal Forum*, 61, 1-74 <<http://www.simons-law.com/library/pdf/e/884.pdf>> accessed 20 May 2018.

<sup>32</sup> Maria Campo Comba, ‘Week 5: Comparative Private International Law’ [lecture notes], *Consumer Contracts*, University of Groningen, delivered 24 November 2015, accessed April 2018.

<sup>33</sup> For the list of contracts see: Council Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) [2008] OJ L177/6, Article 6(4)(a), (b), (c), (d), (e).

*these proceedings.*”<sup>34</sup> The scope of application of the GPIL is not limited to civil and commercial matters – the act also applies to other legal relations.<sup>35</sup> Hence, the scope of applicability of the GPIL in comparison to the Rome I regulation is wider. Article 1 provides the substantive and formal scope of applicability of the GPIL. The limitation of the scope is set out in Article 2, according to which “*the rules under international agreements shall prevail over the rules...*” of the GPIL. Therefore, if an issue at hand falls under the scope of an international agreement as well as under the GPIL, the rules of the former will prevail over the latter.<sup>36</sup> The GPIL upholds party autonomy to choose the law applicable to a contract.<sup>37</sup> Similar to the Rome I regulation, the GPIL also safeguards its public order and fundamental principles under Article 5. Article 5 restrains application of the norms of foreign law which abrogates the “*order public*” of Georgia.<sup>38</sup>

## 4.2. Consumer Protection

The importance of consumer protection is recognized by the GPIL. Article 38 sets out the following: “*the choice of law shall be considered void if it disregards the imperative rules that are adopted to protect the customers<sup>39</sup> and employees from discrimination. This rule shall also apply to the delivery and financing of movable property, labour or service contracts if they are agreed upon or concluded in a country in which the customers and employees have their place of residence and where these protective rules operate.*” The wording of the first sentence of Article 38 demonstrates party autonomy regarding the choice of applicable law, including with regards to consumer

---

<sup>34</sup> All the relevant articles of the GPIL are translated by the Legislative Herald of Georgia: <<https://matsne.gov.ge/en/document/view/93712?publication=2>>, Law of Georgia on Private International Law 1998, Article 1.

<sup>35</sup> Tengiz Liluashvili, *Saertashoris Kerdzo Samartali* [Private International Law] (GCI 2001) 18.

<sup>36</sup> Giorgi Svanadze ‘Jurisdiction Clauses and the Recognition and Enforcement of Foreign Judgments in Georgia (Brief Comment on recent developments in Georgian Supreme Court case law)’ (Max-Planck-Institut für ausländisches und internationales Privatrecht 2009) <[https://www.mpipriv.de/files/pdf4/2016\\_05\\_23.pdf](https://www.mpipriv.de/files/pdf4/2016_05_23.pdf)> accessed 18 May 2018, 13-14.

<sup>37</sup> Law of Georgia on Private International Law 1998, Article 35.

<sup>38</sup> Zviad Gabisonia, *Kartuli Saertashoris Kerdzo Samartali* [Georgian Private International Law] (Meridiani, 2011) 117.

<sup>39</sup> Definition of a ‘Customer’: the party that uses or is affected by a companies’ product, Black’s Law Online Dictionary, 2<sup>nd</sup> ed.



contracts. Nevertheless, similar to the Rome I regulation, certain restrictions apply to such a choice.

The first sentence of Article 38 aims to protect the “*customer*” from any discriminatory treatment. Therefore, any choice of law resulting in discrimination against customers will be considered void and national norms will instead apply to the contract.<sup>40</sup> The second sentence of Article 38 specifies certain types of contracts to which the aforesaid rule can be applied. The requirement imposed for invalidating the listed contracts is connected with the habitual residence of the customer. As stated above, these agreements have to be “[...] *agreed upon or concluded in a country in which the customers and employees have their place of residence and where these protective rules operate.*”

Despite the fact that Georgian legislators seek to provide mandatory protective rules for customers, Article 38 may not be sufficient for fulfilling that aim.<sup>41</sup> The consumer protection afforded by the aforesaid article only covers discriminatory treatment against consumers, while consumer interest is not limited to the abovementioned treatment. Therefore, the reference to discrimination narrows the scope of applicability of Article 38 and consequently the protection provided by it.

Article 38 aims to guard the fundamental interests of employees and customers in the same provision, which as a consequence results in a lack of certainty and predictability regarding the provision. Consumer and employment relations are complex and sensitive legal matters. Therefore, the respective protective measures have to be drafted and executed deliberately.<sup>42</sup> Moreover, the absence of a definition of customer contracts as well as the absence of a definition of parties obscures the applicability of Article 38.

---

<sup>40</sup> Zviad Gabisonia, *Kartuli Saertashoriso Kerdzo Samartali* [Georgian Private International Law] (Meridiani, 2011) 301-302.

<sup>41</sup> *Ibid.*, 302.

<sup>42</sup> *Ibid.*, 303.

## 5. Conclusion

---

The brief description of Article 6 of the Rome I regulation provided in this paper aimed to better understand the consumer protection standard it provides. The purpose of describing Article 38 of the GPIL was to identify any existing incompatibility with the protection standard afforded “*weaker parties*” under the Rome I regulation. Such description is beneficial for determining whether the need for revising Article 38 of the GPIL is currently presented.

Articles 345, 346 and 347 of the Agreement impose the obligation to approximate Georgia’s consumer protection law with the relevant EU directives in order to sufficiently protect the interest of consumers.<sup>43</sup> The fulfillment of said obligations imposed under the Agreement, discussed at length in this paper, constitutes a prerequisite for the successful development of consumer protection standards currently established in Georgia’s legal framework as well as for Georgia’s successful approximation with the EU. The legal instruments set forth in Annex XXIX safeguard consumer interests and, therefore, alignment with the given instruments aims to “*ensure a high level consumer protection*”<sup>44</sup>. Notwithstanding the fact that Articles 345, 346 and 347 and Annex XXIX of the Agreement do not refer to the Rome I regulation, enhancing Article 38 of the GPIL is crucial to establishing a fully-viable legal framework that guarantees consumer protection. Articles 345, 346 and 347 of the Agreement also implicitly necessitate developing consumer protection standards under the respective Private International Law act, in particular, the GIPL. ■

---

<sup>43</sup> Michael Emerson and Tamara Kovziridze (eds), *Deepening EU-Georgian Relations. What Why and How?* (Roman & Littlefield International Ltd. 2016) 153-155.

<sup>44</sup> Council Decision 2014/494/EU of 16 June 2014 on the signing, on behalf of the European Union, and Provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part [2014] OJ L261, Article 345.