



Progress in Implementation of Three Priority Areas of ENP EU-Georgia Action Plan in Georgia

Sustainable Development and Environmental Protection, Regional Cooperation, Transport and Energy

January – October 2009

Introduction

This document provides information on implementation of ENP EU-Georgia Action Plan in Georgia; specifically it shortly describes progress in implementation of following three priority areas defined under the action plan:

Priority area 3: ***Promote sustainable development including the protection of the environment***
Encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment; further convergence of economic legislation and administrative practices

Priority area 5: ***Strengthen regional cooperation***

Priority area 8: ***Transport and energy***
Take into consideration the transit potential of Georgia as well as its interconnection with the transport and energy networks of the European Union in order to ensure effective cooperation in the areas of energy and transport between the EU and the states in the Black Sea and Caspian regions in the framework of the “Baku Initiative”.

This document is logical continuation of Green Alternative’s monitoring work conducted during 2007-2008¹. The document covers period between January – October 2009.

Priority Area 3 Sustainable Development and Environmental Protection

❖ Developing plans and programmes for the environment

During 2007-2008 a number of strategies, plans and programmes were developed in certain areas, though none of them have been formally adopted (approved) as yet. Their role in the planning system for the country’s development is still not clear.

The fate of the second National Environmental Action Plan for 2008-2012 was not clear until now, though it was completed in 2007. In July 2009 the Ministry of Environmental Protection and Natural Resources (MEPNR) stated that the document will not be adopted formally and that ministry will prepare another one with the help of the Dutch government.

¹ For the monitoring report on progress in implementation of ENP AP in Georgia during 2007-2008, visit: http://www.greenalt.org/webmill/data/file/publications/ENP_Eng.pdf

In 2009 the project coordinated by the MEPNR and implemented by the Georgian non-governmental organization Center for Strategic Research and Development of Georgia was completed. The project involved updating a national chemicals management profile, development of a national SAICM (Strategic Approach to International Chemicals Management) capacity assessment, and with the involvement of stakeholders setting priorities for SAICM implementation in Georgia. The project did not envisage development of a national chemicals management programme or plan, however works conducted under the mentioned project establishes solid foundation for elaboration of such programme/plan.

❖ Promoting the adoption of environmental legislation

In general, during January-October 2009 environmental legislation did not undergo major changes. Efforts have not been made in the direction of legal regulation of the **waste management** in the country. A framework law on waste that would provide waste classification, define major principles and assign roles and responsibilities to the authorities at all levels has still not been adopted.

Situation has not changed in **water sector**, though some steps were undertaken for the improvement of legislation in this area. Specifically, concept paper for new water law and water sector convergence plan for Georgia were developed under the EU supported project "Environmental Collaboration for the Black Sea".

Ambitious initiative of the Ministry of Environment Protection and Natural Resources to develop an all-inclusive **Environmental Code** should also be noted. The code should include legal norms regulating various areas of the environmental protection. The first working version of the code should become available for public in October². It is also known that public consultations will apparently last for six months. At this stage there some problematic issues in respect of this initiative; more specifically:

- It is still unclear what particular advantages the codification may have under current circumstances, against the development and improvement of sectoral legislative acts.
- Although it is already late at this stage, it would have been desirable and more practical, before starting to work over the norms of the code, to develop a concept paper, which would have reflected the key principles and approaches.
- Improvement of environmental legislation is certainly an urgent issue for Georgia, but "improvement" should envisage not only the eradication of ambiguities, gaps and legal collisions, but first of all, the strengthening those instruments and procedures that provide sustainable development, environmental protection and sustainable use of natural resources (especially those that were either abolished or significantly weakened after 2003). For this to happen there should be a strong political will which is unfortunately missing in the Georgian government. Moreover, the experience of previous years and the Georgian President's recent initiative, so called "Economic Freedom Act"³ submitted to the Parliament on October 6, 2009 does not provide any ground for optimism. The measures envisaged by the President's act, which should provide favourable environment for investments and "turn Georgia into a real flagship of the world's liberal economic ideology," will apparently trigger further weakening of environmental regulations.
- Against the background of the above-mentioned and the established practice of frequent reshuffle of governmental officials, it could be the case that the development and adoption of the environmental code will no more be a priority in the near future. In this case, the resources spent on the development of the code will prove ineffective.

Against the background of the above mentioned problematic issues, it is nevertheless necessary to start and/or continue working over the improvement of the current legislation (including in the spheres of water and waste management) in parallel with working on the environmental code. Working on the environmental code should in no way become an excuse for refraining from making legislative amendments, improvement or introduction of new regulations.

² The relevant statements were made at the meeting held at the Ministry of Environmental Protection and Natural Resources on August 14, 2009.

³ See the Georgian President's official website: <http://www.president.gov.ge/?l=G&m=0&sm=3&id=3052>

In August 2009 quite important changes were made in the forest use regulating legislation in terms of strengthening environmental safeguards and introducing mechanisms for public participation while auctioning the forest use licenses⁴. It should be noted that these legislative amendments were made through public consultations that is an exception in the practice of last years.

We should definitely note about an opposite process against the background of these positive experience. On September 3, 2009 very important amendments to the current Forest Code of Georgia were submitted by the Ministry of Environmental Protection and Natural Resources to the Parliament. In accordance with this legislative initiative, “while implementing the projects of special state importance”, it is allowed to cut forest without any restrictions on the slopes with inclination at about 35 degrees; any restrictions on cutting forest on the slopes with inclination at 30-35 degrees are also cancelled. It should be noted that the Ministry has not discussed these amendments with the parties concerned. It is also important that these legislative amendments are initiated because of one particular project – The Black Sea Regional Energy Transmission Project, to remove “barriers” for its implementation⁵.

❖ **Ratifying international environmental conventions and protocols**

The Georgian parliament ratified only one international agreement, the Cartagena Protocol (on 25 September 2008) after signing the ENP Action Plan. It should also be mentioned that protocol ratification was one of the EC’s preconditions for grant prolongation of GSP+ to Georgia, as Georgia already enjoys Privileged Nation Status and uses the EU preferences system. It should be mentioned that to this day measures have not been implemented to transpose requirements of the Cartagena Protocol into the national legislation.

As it is stated in the progress report of the Georgian government, the government is taking certain preparatory steps for ratification of some of the UN ECE conventions and this should certainly be welcomed.

❖ **Strengthening administrative structures and procedures**

In January-October 2009 the administrative structures and procedures have neither strengthened nor weakened unlike previous years, when it was permanently taking place. This can be explained by the fact that the last Minister of Environmental Protection and Natural Resources retained his position for comparatively a long time. Accordingly, no major management staff changes were carried out in the Ministry. The Minister himself tries to popularize the environmental protection through various PR technologies. The Ministry still faces the lack of strategic vision and planning for better implementation of its functions; lack of resources (human, technical) is still an issue for the ministry.

❖ **Improving permitting and enforcement structures**

The situation concerning the unit of the MEPNR responsible for environmental permitting did not improve since January 2009, especially in terms of the allocation of human and financial resources. The enforcement structure (the Inspectorate for Environmental Protection of the same ministry) was in a somewhat better position; here progress was noticeable during 2007-2008, though problems with the allocation of resources still remained. It should be noted that at the end of 2008 management team and part of the staff was changed at the inspectorate; this has influenced activities and plans of the inspectorate.

❖ **Reinforcing structures and procedures to carry out EIA**

The legislation regulating EIA system in Georgia remains one of the weakest parts of environmental legislation. No efforts have been made to improve legislation and procedures, neither to strengthen structures.

⁴ The amendments made on August 19, 2009 to the regulation “On the Rules and Terms of Issuing Licenses on Forest Use” approved by decree 132 of the Government of Georgia dated August 11, 2005.

⁵ This project is also discussed below in the section on cooperation in energy sector

It is promising to read in the governmental progress report that the Dutch government may provide assistance in implementation of the project directed at improvement of EIA system in Georgia. The progress report considers the project as a preparatory instrument for ratification of UNECE Convention on Environmental Impact Assessment in Transboundary Context.

❖ **Improving public information and participation**

Compared with 2007-2008, the situation has not practically changed for better in the field of public access to information and public participation during 2009. Public participation in the decision-making process is still sporadic and inconsistent; no efforts have been made and no formal procedures/rules have been established to provide public access to information and participation in the decision-making process.

Moreover, despite the commitments undertaken under the action plan, in summer 2009 the representatives of the parliamentary majority submitted a new legislative initiative to the Parliament, which significantly restricts the current formal procedures of public participation. Here we mean the legislative package, which gives a new shape to the current Law on Normative Acts (the title of the draft law submitted to the Parliament is the same as of the current one) and also envisages the amendments to other active legislative acts, including the amendments to the General Administrative Code of Georgia. This legislative package will abolish those provisions of the General Administrative Code (chapter 15), which provide public participation in the process of adoption of normative administrative-legal acts⁶ by the state agencies through using the public administrative proceedings.

By these legislative amendments Georgia abolishes already existing legislative requirements, thus violating the requirements of articles 8 (Public participation during the preparation of executive regulations and/or generally applicable legally binding normative instruments) and paragraphs 5 and 6 of Article 3 of the Aarhus Convention. Despite the NGO efforts not to allow the adoption of the above mentioned legislative initiative, the Parliament of Georgia supported the initiative and has already approved the legislative package with first and second hearings at its autumn session. The Parliament is likely to approve the legislative package with its third (final) hearing without “additional discussions” and the President will sign it, although this package will abolish the particular existing democratic procedures that could provide framework “public dialogue” towards which the Georgian President is constantly calling both the legislative and executive authorities.

❖ **Ensuring integration of environmental aspects in other policy sectors**

No significant changes have been made in this direction during January-October 2009. Neither any step has been taken towards the development of the national sustainable development strategy.

Certain steps are being made for integration of environmental issues in other sectors. Specifically, in the process of development of the regional development strategy of Georgia, the commission secretariat has elaborated a diagnostic report on Georgia’s regional development, which includes such issues as “Environmental Protection and International Cooperation of Regions” (attention is focused on the problems of using “a subsidiary principle” in environmental regulation), while the chapter “Municipal Development and Infrastructure” waste management issues are paid particular attention. Presently the regional development strategy is being developed.

❖ **Progress in cooperation with International Financial Institutions**

The Georgian Government in its ENP AP progress report of 2009 stressed that it has achieved significant progress in cooperation with International Financial Institutions, after Russia’s military incursion into Georgia in August 2008.

⁶ Any normative act except for the constitution, international agreement and law

Georgia is not a party of Paris Declaration on Aid Effectiveness and post-conflict aid totalling USD 4.55 billion pledged by number of the international financial institutions and donor countries, represents the challenge with regard of efficiency and transparency.

For instance, the civil society was not given a voice in the donors' conference in Brussels and the Joint Needs Assessment (JNA) document prepared by UN and World Bank⁷. Besides, the document (albeit incomplete and edited) became available only one day before the conference⁸. In fact, to the frustration of the civil society, only governmental officials participated in the preparation of the document. Despite the untransparency of process, the EBRD President Thomas Mirow relates in a letter⁹ sent to Green Alternative that the EBRD, along with other international financial institutions, continues participation in discussions with civil society groups, as for example in the case of the JNA preparation.

It should be noted that later the Georgian government has carried out certain actions in terms of increasing transparency; for example, the Finance Ministry has posted a database on its website, which reflects the funds approved and transferred as a result of the Brussels conference; the Ministry has also posted those international agreements, which envisage budgetary aid. Notably, in March 2009, the European Commission published those conditions under which the Georgian government will receive increased assistance.

Since a significant part of international aid for Georgia comes for infrastructure and energy projects, it is essential that international financial institutions and the Georgian government hold an extensive dialogue with society and the local population to avoid related negative impacts and potential conflicts. Unfortunately, problems related to the transparency of international aid, public involvement and independent monitoring still persist in respect of particular projects¹⁰.

Some Georgian line ministries are more open to cooperation and inclusion of stakeholders in the planning process, for instance, the office of the State Minister for European Integration; However, in other ministries the level of transparency and willingness to include stakeholders in the development of priorities and the planning and implementation process is much lower.

As it was emphasised in the draft 2009-2013 National Indicative Programme¹¹, the Georgian government's understanding of good governance and sustainable cooperation is not consistent with European Commission's principles. That is why the EC recommended that Georgia joins the Paris Declaration on Aid Effectiveness. The recommendation is vital to ensure transparency and effectiveness of the international aid, while supporting to establish the culture of mutual accountability (participation, distribution of information, transparency and joint assessment of progress).

Priority Area 5 Regional Cooperation

As the major areas for the regional cooperation, government considers energy and transport sectors to enhance Georgia's transit function in Black Sea region in order to deliver much needed Caspian energy resources to Europe.

⁷ www.worldbank.org

⁸ The full text of the document has not been published yet. Only a limited 46-page version is available at present. The limited document does not include forecasts in relation to unemployment, assessment of the impact of the war on economy, social problem, anti-poverty measures, and data on the bank sector. According to the World Bank officials, this information was removed at the request of the Georgian government. The government also insisted that the document be confidential and available only to the conference participants.

⁹ EBRD president's letter to Green Alternative, sent on July 29, 2009, related to energy sector projects.

¹⁰ For instance, local population is against the EBRD financed project for establishment of sanitary landfill in Adjara due to the problematic suggested location

¹¹ available for consultation at the EC delegation web-site

Such projects usually lay foundation for government's PR and advertisement strategy and as a result each energy and transport project that Georgia may become part, gains overestimated economic as well as political importance. For instance, with regard to the Nabucco gas pipeline, the majority of Georgian citizens believe that pipeline construction works will also take place on the territory of Georgia and therefore people are waiting for some economic or financial benefits and increased employment. To avoid the false expectations, it is necessary to provide public with objective information regarding the economic, financial and political importance of this type of regional projects, as well as the potential negative impacts.

It should be underlined that regional cooperation in environmental sector, including elaboration of documents, information exchange, meetings at different levels, equipping laboratories and rehabilitation/upgrading monitoring networks, usually takes places within the scope of international projects. Frequently, there is no follow up to the documents elaborated within the international projects; they are not reviewed and/or approved at the governmental level. Unfortunately, the same apply to other South Caucasus countries (Azerbaijan and Armenia). This is from the one hand is due to the fact that Georgia is not a party to a number of international conventions, and from another side, the low level of implementation of already ratified ones.

Priority Area 8 Transport and Energy

❖ Cooperation in transport sector

Unfortunately, there was no progress in improving sustainability in the transport sector after the adoption of the EU-Georgia AP. There were no steps undertaken towards elaboration of sustainable transport policy. There is certain progress towards the improvement of road safety – the Ministry of Interior prepared a draft Georgian National Road Safety Strategy which, inter alia, defines road standards.

The issue of negative impacts of transportation on environment and human health unfortunately has yet to be taken by central and/or local authorities, while the scope of negative impact of transport sector is practically unknown.

Unfortunately, the projects of construction/rehabilitation of inner city roads are approved without EIAs, as well as often without any preliminary economic assessment and consultations with the affected public and other stakeholders (for example, construction of highway road in the capital city from Varazis Khevi to race course (hippodrome) through popular green recreational area). Such practices are causing irreversible impact on city's recreational and green zones.

❖ Cooperation in energy sector

The EU-Georgia Action Plan openly requires “energy policy convergence towards EU energy policy objectives” through elaboration and implementation of “a coherent long-term energy policy converging gradually with the EU energy policy objectives including security of energy supply. We consider that undertaken activities towards deregulation of the sector is not enough to create free and competitive electricity and gas supply markets, to ensure low costs for facilitating industrial competition with the aim of pursuing broad socio-political goals.

During the 2009 no steps have been made in order to satisfy one of the major principles of the European free market – disband generation and distribution functions. As a result, there are number of operating companies in Georgia that combine both functions.

According the ministry of Energy, the deregulation of small hydro power plants (HPPs), creation of preferable conditions and the national programme „Renewable Energy 2008“, will support construction of 78 small and medium size HPPs. It should be noted however that, these initiatives are promoted in conjunction with the

promotion of a number of large Greenfield hydro generation projects, without considering to what extent such project will contribute to the enhancement of the Georgia's energy security¹² (to say nothing of considering project related environmental and social costs). This is quite controversial position, as when the construction of major hydro power plants (even one) is initiated, financing of small and medium hydro-power plants is significantly complicated. According to researches, "without incentives and special status for these projects, renewable projects would hardly find their place in the future development of Georgian power system".

One recent proposed investment in the Georgian energy sector, to receive the support of the EBRD, KfW and the EIB, involves the construction of a 500 kV transmission line, from Azerbaijan through Georgia to Turkey, that would increase the stability of Georgia's energy system, as well as ensure the export of existing extra electricity to Turkey. The Black Sea Energy Transmission Project documentation specifies that it is closely connected with the construction of a number of Greenfield dams in Georgia, in order to export the high volumes of electricity to Turkey and to ensure tax income generation for the Georgian government. The preliminary environmental and social studies are financed from the EU Neighbourhood Investment Facility (NIF).

The project is planned in a way that in case of the one of the proposed alternatives, the transmission line will cross the Borjomi-Kharagauli National Park in a 11.5-kilometer forest-covered section; in case of the second alternative – in a 4.7-kilometer non-forest section. Hence, the second alternative will cause the least impact on the national park. However, the Georgian Energy Ministry is attempting to exert pressure on the Ministry of Environmental Protection and Natural Resources and, through harsh violation of the legislation, to use the alternative that is the cheapest, but that may have the greatest impact on the national park.

Georgian government's decisions regarding construction of the Oni and Khudoni hydro power plants have been negatively assessed by local people. The communities of both regions (in Upper Svaneti and Racha) have already endured grave experiences and are aware of the negative impacts of the big dams, thanks to the Enguri hydropower plant in Svaneti and the Shaori reservoir in Racha. They know how micro-climates change and how this affects their health and everyday life, to say nothing about the damage caused to their cultural heritage. People are also concerned about the seismic and geological stability of the two proposed dams. While Georgia is located in a highly seismic zone, the Racha-Dzjava earthquake (Ms=7) that occurred on 29 April, 1991 was the biggest disaster ever recorded in the region, stronger than the Spitak earthquake (Ms=6.9) in 1998.¹³ It should be noted that during the recent earthquake (MS=6.2, 8 September, 2009), the epicentre was registered in Oni district (Racha).

In order to ensure the sustainability of Georgia's energy sector, the international donors should assist Georgia in the developing of a strategic assessment and development plans for Georgia's power sector that would be based on participative processes.

In the energy sector, the action plan specifically requires "the adoption of legislation addressing energy efficiency and renewable energy," however little has been done in this direction. There is no formulated state vision or strategy in energy efficiency improvement and development of renewable energy. In July 2008, the work on energy efficiency law, as well as law on renewable energy, supported by the USAID and conducted with the participation of the Ministry of Energy, was stopped and postponed for an uncertain period of time. At the same time, attempts to introduce provisions on energy efficiency into the Construction Code failed due to strong resistance from certain businesses and politicians.

Ministry of Energy considers the introduction of "step by step tariff" as an important tool to ensure the energy efficiency; ministry assumes that such tariff system helps to ensure that "consumer is stimulated effectively use the energy and conserve it". Equipment of households with individual electricity metering and significant growth gasified ones in different regions of Georgia is considered as another important step towards promoting energy efficiency.

¹² For instance, the Khudoni HPP plant, in accordance with Strategic Environmental Assessment study prepared under the auspices of the World Bank does not represent best choice for Georgia's energy security. See: www.minenergy.gov.ge

¹³ Power's promise: electricity reforms in Eastern Europe and Central Asia By Julian A. Lampietti, World Bank, 2004

With regard to above mentioned, it should be noted that as far back as in 2002, the World Bank study noted that “household electricity consumption is close to basic minimum needs, sufficient only for lighting and refrigeration (a refrigerator (manual defrost), 5–15 years old) consumes about 95 kWh a month and 3 incandescent light bulbs another 30 kWh a month)”. The research points out following conclusions: “First, the welfare losses from a price increase are high for households with very low electricity consumption. Second, there may now be little scope for efficiency gains from the household sector in Georgia. The decline in household incomes associated with transition also added to the decline in electricity use. If the price of electricity increases further, there will only be a small reduction in household energy consumption”. It is also noteworthy to mention that according to Georgian experts, if state support would be in place, just „replacement of ordinary light bulbs with efficient fluorescent bulbs can save about 350 GWh of electricity in Georgia annually and can offset the need for construction of a large hydro plant¹⁴ (e.g. Paravani HPP).

The lack of a sound and reliable legal framework for renewable and energy efficiency, as well as state strategy and plans for energy sector development also undermines the efforts of different international organizations and significantly delays the implementation of projects in the field of renewable energy and energy efficiency. The amendments made in the Law on Gas and Electricity does not provide enough support for renewable energy development. It is essential for Georgia to have a policy and framework law on renewable energy, as well as established indicator targets (MW or %), measures to achieve targets, provision of funding for low-cost loans and grants.

¹⁴ See: www.weg.ge