Assessment of the Convergence of Georgian Legislation with the EU Law

Horizontal Environmental Legislation

2013

The assessment was conducted within the framework of Green Alternative's project titled: "Strengthening civil society participation in ENP processes". Green Alternative gratefully acknowledges the financial assistance of the European Union.

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1. Introduction

1.1 Context and need for the study

Shortly after Georgia gained its independence, the country declared the approximation with the European Union and finally joining it as its key priority. Since the early nineties Georgia has been actively cooperating with the European Union. The EU-Georgia Partnership and Cooperation Agreement came into effect in 1999; it defined the key trends of the EU-Georgia relations[1]. In 2006 the EU-Georgia European Neighbourhood Policy Action Plan was adopted, which sets out the strategy and priority trends of cooperation until 2013. The talks on Association Agreement with Georgia were launched in 2010 and completed in March 2013. Presently, the work is underway over initialing the agreement. Under the agreement, Georgia undertakes a commitment to carry out necessary reforms and ensure harmonization of its legislation with a number of the EU Directives, including in the sphere of environmental protection and sustainable development.

In this process, the convergence of Georgian legislation (including in environmental sphere) with the EU law is one of the major tasks. However, although Georgia has already started the process of approximation of its environmental legislation with the EU legislation, a number of problems have been revealed, which hamper the work in this direction. In particular:

(1) No analysis of current state of the convergence with the EU environmental legislation as well as public participation tools are available;

(2) Environmental non-governmental organizations and other stakeholders do not have in-depth knowledge about the process of promoting convergence with the EU environmental legislation;

(3) There is no cooperation and regular dialogue between the parties involved in the process of promoting convergence with the EU environmental policy;

(4) No priority areas have been developed to promote convergence with the EU environmental policy.

Based on the above mentioned, it is essential to study and analyze the situation in the sphere of convergence of Georgian environmental legislation with that of the EU.

1.2 Scope of the study

The key goal of the study is to assess the convergence of Georgian national legislation with the EU horizontal environmental legislation. It should be noted however that the report does not involve the analysis of fulfillment of the legislation. There already exist several interesting studies related to the fulfillment of Georgian environmental legislation, which also reflect the key principles and provisions established in the EU horizontal environmental legislation[2].

The horizontal sector comprises environmental legislation on subjects that cut across other environmental legislation and the environmental media such as water, air or soil. In contrast to the media-related legislation, the horizontal legislation is procedural in character and provides for methods and mechanisms aimed at improving decision-making, legislative development and implementation[3][4].

The EU's horizontal environmental legislation comprises five EU directives:

1. Directive providing for public participation in EIA 2003/35/EC[5];
2. Access to Information Directive 2003/4/EC[6];

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[1] Article 57 of the agreement is related to environmental aspects and calls on the parties to develop and strengthen their cooperation on environment and human health.

[2] Green Alternative, 2012
Green Alternative, 2011
Institute for Development of Freedom of Information, 2012

[3] European Commission, 2007

[4] Green Alternative, 2012

[5] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC; available in EUR-Lex database: http://eur-lex.europa.eu/

[6] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003on public access to environmental information and repealing Council Directive 90/313/EEC. Available in EUR-Lex database: http://eur-lex.europa.eu/

3. Reporting Directive 91/692/EEC[7];
4. Environmental Impact Assessment Directive 85/337/EEC[8];
5. Strategic Environmental Assessment Directive 2001/42/EC[9].

Finally, it is important to explain the difference between the approximation and the convergence of national legislation with that of the EU. Approximation is an obligation to fully align national laws, regulations, rules and procedures with those of the European Union. Convergence is a somewhat different process. It means bringing two legal systems closer together rather than the full alignment required by approximation[10].

1.3 Survey methodology

The survey is based on the analysis of the EU horizontal environmental legislation and relevant national legislation. Besides analyzing the documents, laws and relevant studies, several interviews were also conducted in the process of preparation of the present study with the persons working over the discussed issues.

1.4 Structure of the study

The first part of the study gives an overview of the EU horizontal environmental legislation. In particular, it describes those five directives, which are parts of the EU horizontal environmental legislation. Afterwards document also reviews the national environmental legislation. The description of the national legislation is built on those five key issues, which are regulated by the relevant EU directives. In particular, it discusses legal norms related to access to environmental information, environmental impact assessment, strategic environmental assessment, public participation as well as reporting norms. The final part of the report provides the analysis of the convergence of Georgian environmental legislation with EU horizontal environmental legislation.

[7] Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment; available in EUR-Lex database: http://eur-lex.europa.eu/

[8] Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (85/337/EEC; available in EUR-Lex database: http://eur-lex.europa.eu/

[9] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment; available in EUR-Lex database: http://eur-lex.europa.eu/

[10] Asser Institute, 2003

2. The EU horizontal environmental legislation

2.1 Public access to environmental information directive

(Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003)

The Access to Information Directive was adopted by the EU in order to implement the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) signed in 1998, in particular the pillar related to access to environmental information. The aim of the Access to Information Directive is to set out those minimum conditions and norms, which will ensure access to environmental information. The Directive sets out to whom public authorities must make what information relating to the environment (such as water quality or air pollution data, or information about issuing licenses and permits, etc.) available and which public authorities are obliged to do so. To ensure that all the stakeholders participate in the decision making process and make a contribution to the discussions on environmental issues, it is vital to make environmental information available to the public. Based on the above mentioned, Access to Environmental Information Directive regulates a number of issues related to proactive (without request) dissemination of environmental information by public authorities as well as the procedures of providing environmental information upon the request[11].

2.2 Environmental Impact Assessment directive

(Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011)

The European Union adopted Environmental Impact Assessment Directive in 1985[12]. The Environmental Impact Assessment (hereinafter – EIA) seeks to reveal and analyze possible environmental impacts; identify possible harms before launching the activities; ensure that resources are used appropriately and efficiently. The Directive lays down rules for the EIA procedure. The following is a description of the stages of an EIA[13]:

1. **Screening**: In the screening phase, the competent authority has to decide whether an EIA is required or not. Annexes 1 and 2 of the Directive compile projects for which an EIA is either compulsory or voluntary, based on individual Member State decisions. Projects listed in Annex 1 require an EIA. Projects listed in Annex 2 can be subjected to an EIA based on individual Member State decisions.

2. **Scoping**: The scoping phase serves to identify potential significant environmental impacts that need to be analyzed in detail. The scoping exercise is to be undertaken by the project developer.

3. **Environmental Impact Statement** (EIS): The environmental impact statement is to be prepared by the developer who may subcontract this task. The environmental impact statement includes:

   (a) A description of the project;

   (b) An outline of the main alternatives;

   (c) A description of aspects of the environment likely to be significantly affected by the project (needs to include human beings, fauna, flora, soil, water, etc.);

   (d) A description of the likely effects of the project on the environment resulting from the existence of the project;

   (e) A description of potential mitigation efforts;

   (f) A non-technical summary;

   (g) An indication of unknowns or difficulties (if any).

4. **Consultation**: Member States have to consult with relevant environmental authorities and with the public. Information on the development consent, the decision for requiring an EIA, and EIA reports have to be made available to the public.

5. **Decision-making**: In this phase the competent authorities have to evaluate the application for development consent, taking into account the EIS as well as the outcome of public commentary[14].

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[11] European Commission, 2007

[12] The directive was adopted in 1985 and it was amended three times – in 1997, 2003 and 2009. Finally the directive and its three amendments were codified by Directive 2011/92/EU of 13 December 2011 - Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification); available at EUR-Lex database: http://ec.europa.eu/environment/eia/eia-legalcontext.htm

[13] European Commission, 2007

[14] European Commission, 2007

2.3 Strategic Environmental Assessment directive

(Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001)

The European Union adopted Strategic Environmental Assessment (SEA) Directive in 2001. The SEA Directive lays down the procedure for undertaking an environmental assessment of plans and programmes. Its objective is to provide for a high level of protection of the environment by requiring assessing the environmental consequences of certain plans and programmes being likely to have significant effects on the environment. The SEA Directive allows for the identification and possible prevention of adverse environmental impacts throughout the formal decision-making process and unlike the EIA aims to also consider alternative options to the suggested one[15].

The main procedural requirements of an SEA are as follows:

(a) **Screening**: Since the Directive does not give a one-stop definition of plans and programmes, the given country first has to determine the types of plans and programmes that will be subjected to SEAs. Though a list of plans and programmes is explicitly named in Article 3(2) of the Directive also other plans and programmes may be subjected to SEA. Whether an SEA has to be carried out then can either be determined on a case-by-case basis or with help of the criteria provided in Article 3(5) and Annex II of the Directive. This is the so-called screening. Note that plans and programmes as addressed by the Directive do not necessarily have to be called "plan" or "programme."

(b) **Scoping**: The purpose of this provision is to ensure that the relevant environmental issues are identified so that they can be addressed appropriately in the Environmental Report. This includes the identification of the physical/ regional limits, the impacts to be addressed and the alternative actions that need to be assessed.

(c) **Environmental Report**: The Environmental Report is at the heart of the SEA process. It sets out the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objective and the geographical scope of the plan or programme are identified, described, and evaluated.

(d) **Consultations**: As the Directive aims for a high level of transparency, it prescribes consultation with relevant authorities (including other States if transboundary issues arise) and the public. This includes the right to be informed about the plan and programme, the right to comment and the right to be informed about the adoption of the plan and the extent to which their comments have to be considered.

(e) **Decision-making**: The decision on adopting the plan or programme needs to take into account the opinions expressed in consultations.

(f) **Information on the decision**: A final SEA statement summarizing how environmental considerations have been integrated into the plan has to be made public for the relevant authorities and the public.

(g) **Monitoring**: The Directive requires monitoring of the significant environmental effects of the implementation of plans in order to identify, at an early stage, unforeseen adverse effects[16].

2.4 Directive for providing for public participation in respect of EIA

(Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003)

This Directive is part of implementing the Aarhus Convention, in particular the second pillar on public participation in decision-making. It applies to certain plans and programmes as well as situations addressed by the EIA and IPPC (Integrated Pollution Prevention and Control) Directives. The consultations envisaged by these two directives are underway in accordance with the rule set by the Directive for providing for public participation in respect of EIA[17].

2.5 Reporting directive

(Directive 91/692/EEC of the Council of Europe of 23 December 1991)

The Directive requires Member States to send information to the Commission on implementation of the Directives listed in Annexes I to VI of the Directive within specified time limits. Although the EU Directives already contain a reporting obligation, the Directive aims at improving those reporting procedures, which are related to sectoral environmental legislation[18]. In particular, it concerns the improvement of reporting practice about the quality of various environmental elements, for example about the quality of surface and underground waters and their protection against pollution, quality of ambient air pollution, pollution of the environment with various hazardous and toxic substances.

[15] European Commission, 2007

[16] European Commission, 2007

[17] European Commission, 2007

[18] European Commission, 2007

3. Review of Georgian legislation

3.1 Access to environmental information

Access to environmental information is the right secured by the Georgian Constitution. According to article 41 of the Georgian Constitution, "every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in state institutions as well as official documents existing there unless they contain state, professional or commercial secret." According to paragraph 5, article 37 of the Constitution, "a person shall have the right to receive complete, objective and timely information about the state of his/her working and living environment."

Freedom of information as a fundamental right is also recognized by the Council of Europe Convention on Access to Official Documents adopted in 2008. Georgia has also joined the Convention. At the same time, as a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, according to article 10 of the Convention, Georgia has to ensure access to information kept at public agencies[19].

According to article 5 of the Law of Georgia on Environmental Protection, ensuring access to environmental information is recognized as one of the basic principle of environmental protection. Article 6 of the same law explains that a citizen is entitled "to enter the civic environmental organizations" and "obtain the full, objective and timely information on the state of the environment, where he/she lives or works."

- **Definition of environmental information**

Current Georgian laws and bylaws do not give any definitions about environmental information. However, the Aarhus Convention ratified by Georgia provides this definition (see article 2). The General Administrative Code of Georgia (hereinafter – GAC) defines a concept of public information. According to subparagraph "l", paragraph 1, article 2 of the GAC, "public information" means an official document (including chart, model, plan, diagram, photograph, electronic information, and video and audio records), i.e. information held by a public agency, or that received, processed, created, or sent by a public agency or a public servant in connection with official activities". According to article 28 of GAC, "public information shall be open, unless otherwise prescribed by the law, or except for information that constitutes state, commercial, or personal secret". According to article 36 of the same code, "a public agency shall designate a public servant who will be responsible for ensuring the accessibility of public information".

It should be noted that article 42 of GAC lists the information that shall not be classified. The list contains information concerning "environment and the hazard that constitutes a threat to life and health".

- **Environmental information that should regularly be published by public agency**

The Law of Georgia on Environmental Protection obliges the Ministry of Environmental Protection to submit the national report on the state of the environment to the President of Georgia once every three years (article 14). Preparation of the State of Environment report aims at informing the public. Moreover, publication of national report is necessary in order to fulfill the principle of availability of information to the public. The costs necessary for the publication of national report and for disseminating information shall be covered from the state budget.

- **Ways of dissemination of environmental information, including through electronic technologies and computer communications**

According to article 35 of the GAC, all public information kept by a public agency shall be entered into the public register. Moreover, reference to public information shall be entered into the public register within two days after it was received, created, processed or made public.

According to article 49 of GAC, every year, on December 10, a public agency shall report to the Parliament and President of Georgia regarding acquisition and publicizing of public information.

- **Terms of release of environmental information by a public agency**

According to article 40 of GAC, a public agency shall release public information immediately, or no later than ten days. During this period a public agency shall be obliged to submit the requested public information to an applicant.

- **Format of release of environmental information by a public agency**

According to article 37 of GAC, public information can be requested by submitting a written application. At the same time, an applicant shall not be required to specify grounds or purpose for requesting the information. According to

[19] Institute for Development of Freedom of Information, 2011

the same article, everyone may request public information irrespective of its physical form or the condition of storage. Everyone may choose the form of receipt of public information, if there are various forms of its receipt, and gain access to the original of information.

It should be noted concerning the format of dissemination of environmental information that the Law of Georgia on the Creation of the Legal Entity of Public Law (LEPL) - Data Exchange Agency was adopted in 2009. According to this law, a unified data system was created aimed "to link databases and information technologies (systems) in public sector, as well as to ensure sanctioned external (civil society) access to these information resources" (article 3). Moreover, the Agency should create a unified system based on electronic management principles, develop information technologies (systems) and information security policy and promote its implementation (article 5). The Agency shall be authorized to create a unified data exchange system and ensure access to information resources (subparagraph 6 of article 6).

- **Denying access to public information by a public agency**

According to article 41 of GAC, an applicant shall be immediately informed of the denial of a public agency to release public information. In particular, if access to public information was denied, the agency shall provide an applicant with information concerning his rights and procedures for filing a complaint within three days after the decision is rendered. The agency shall also specify those subdivisions or public agencies, which provided their suggestions regarding the decision.

- **Fees for distributing environmental information to an applicant by public agency**

According to article 38 of GAC, no fees shall be charged for distributing public information, except for copying costs. Moreover, article 38 obliges public agencies to provide access to the copies of public information.

The fees for duplicating public information copies and the rule of their payment are regulated by the Law of Georgia on Fees for Duplicating Public Information Copies adopted in 2005. Fees can be paid by means of both cash and non-cash payments. Public information shall become available as soon as an applicant submits a cheque as proof of payment (article 8). Moreover, if information is delivered through writing it on a floppy disk or a CD provided by an applicant or through sending it by e-mail, no fee shall be paid (article 7).

- **Access to justice in case of inadequate release of information to an applicant**

If an applicant considers that public information was not delivered to him/her satisfactorily, according to article 47 of GAC, he/she has the right to appeal to a court and demand compensation for damages. GAC defines the list of those cases, when a person can be granted such a right; at the same time, article 47 of GAC specifies that the burden of proof shall rest with the public agency or public servant that acts as a defendant in a court.

It should be noted that before 2007 an applicant could have appealed directly to a court or use the rule of inner appeal (in case of this latter, a citizen was exempted from a state excise). In December 2007 an amendment was made to article 2.5 of GAC. Respectively, presently a claimant is obliged to file an administrative lawsuit to the administrative agency before submitting a lawsuit to the court[20]. In particular, article 2.5 of the GAC explains: "The court shall not accept a lawsuit with respect to an administrative agency, if a claimant has not used the possibility of one-time filing of administrative lawsuit as set out by GAC". An exception can be made in case if the request for releasing public information is undersigned by a public servant, who has no superior official, for example, a minister[21].

The above mentioned amendment has deprived a claimant of the right to make a choice – either to appeal directly to court or to use the rule of inner appeal. In addition, because of mandatory submitting an administrative complaint, the duration of disputes related to inadequate release of information has increased by two months, on average[22]. This circumstance hampers timely and full reception of requested information. Frequently, the requested information loses its importance after a certain period of time.

Besides the fact that discussion of a lawsuit may last for several months, filing of a lawsuit and discussion of disputes are connected with significant expenses. According to article 39 of Civil Procedure Code of Georgia, in case of non-property disputes, the state excise for the cases of first instance is GEL 100. Taking into consideration the current social and economic situation in the country, many citizens find it rather difficult to pay this excise. Non-governmental organizations have to pay GEL 100 for each dispute that is connected with significant expenses stemming from the number of disputes. In addition, it should be noted that GEL 100 is a minimum state excise for legal entities in the courts of first instance, while a maximum state excise amounts to GEL 5 000[23].

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[20] Green Alternative, 2011

[21] Institute for Development of Freedom of Information, 2012

[22] Green Alternative, 2011

[23] Article 39 of Civil Procedure Code of Georgia

3.2 Principles of Environmental Impact Assessment and its stages

In Georgia, the principles of EIA, which are defined by Order 14 of the Minister of Environmental Protection of Georgia "On Approval of the Regulations on Environmental Impact Assessment", envisage the following (article 2):

(a) Comprehensive discussion of technical, technological, ecological, social and economic parameters of planned project design;

(b) Discussion of alternative options of project design to ensure the fulfillment of environmental requirements;

(c) Giving due consideration to local factors;

(d) Publicity and public participation;

(e) Validity of the methods used in the process of EIA; impartiality and validity of obtained information, as well as conclusions.

The law also defines the rule of public informing and participation in the process of EIA as well as the rule of making a decision on permit issuance.

The stages of EIA system are discussed below:

- **Screening**

Screening is the process by which a decision is taken on whether or not EIA is required for a particular activity. Article 4 of the Law of Georgia on Environmental Impact Permit lists the activities subject to ecological expertise that require environmental permits. Those activities, which are not included in this list, should be regulated by compulsory environmental technical regulations (generally binding rules). Environmental technical regulations of the activity are approved by the Minister's bylaw "On Environmental Technical Regulations" (article 5).

It should be noted that as a result of legislative amendments approved over the last years, the list of activities subject to ecological expertise is extremely limited and does not involve the activities, which are likely to have significant adverse and irreversible effects on the environment or human health. Furthermore, the Law on Environmental Impact Permit does not define those criteria, which will enable to discuss activities individually and make a decision on the need of EIA.

According to article 11 of the Law of Georgia on Environmental Impact Permit, the activity may be exempted from an obligation to carry out EIA, "if national interests require immediate commencement of the activity and making timely decision in this regard." It is not interpreted what can be regarded as of "national interest." A special Council for Environmental Impact develops relevant proposals in connection with such decisions, while the final decision is made by the Minister of Environmental Protection (article 5). The rule of activity of the special council is regulated by Order #23 of the Minister of Environmental Protection of Georgia approved on 15 June 2011. According to this order, the composition of the council shall be approved by the Minister of Environmental Protection, while the members shall be selected from the Ministry's staff.

Moreover, over the last years Georgian legislation has gone even farther in terms of making exceptions. In particular, EIA is compulsory for those activities, which are carried out by private persons; in case of the state projects, carrying out EIA is not compulsory (Law on Licenses and Permits). Furthermore, the Law on State Support of Investments makes it possible to avoid carrying out EIA and obtaining environmental permits even in case of private projects on condition that this obligation will be fulfilled in future.

- **Scoping**

The current Georgian legislation does not recognize the stage of scoping. Scoping is an important initial stage of the EIA process, since the scope of EIA is defined in this process. Moreover, it is the process of identifying the content and extent of the environmental information under the EIA processes.

- **EIA report**

The stages of preparing an EIA report are defined by Order #14 of the Minister of Environment Protection of Georgia "On Approval of Regulations on Environmental Impact" (article 5). According to the order, an EIA report shall be prepared by passing through seven interlinked stages. In particular:

1. The first stage involves collection and analysis of information about the state of the environment (for example, information about the amount of possible emissions, waste, research of environmental components, analysis of the existing social-economic situation);

2. The second stage involves assessment of the options (alternatives) of implementation of the planned activities;

3. The third stage involves identification of the magnitude and significance of environmental impact;

4. The fourth stage envisages risk identification and assessment with respect to possible emergency situations;

5. The fifth stage involves the development of possibilities for impact reduction, introduction of the best available technologies, minimization of all types of emissions and waste, management and utilization means and proposed compensation measures.

6. The sixth stage involves identification of possible consequences of the project implementation that may have adverse effects on the population's living environment and health, as well as separate environmental components and social-economic situation.

7. The last, seventh stage involves the development of impact control and monitoring methods, elaboration of a plan on mitigation and avoiding possible negative impacts on the environment and establishment of an environmental strategy for all stages of the project implementation.

Article 8 of the Law of Georgia on Environmental Impact Permit defines a list of documents that should be submitted to the Ministry of Environmental Protection in case of project implementation. As for the contents of EIA report and the list of attached documents, they are defined by Order #14 of the Minister of Environment Protection of Georgia "On Approval of Regulations on Environmental Impact" (article 6).

- **Access to information and public participation**

According to Georgian legislation, a developer is obliged to ensure access to information and public participation, before the commencement of procedures on environmental impact permit issuance (during EIA studies). According to article 6 of the Law on Environmental Impact Permit, a developer is obliged to hold public discussion on EIA report before submitting the EIA report to the administrative agency (i.e. prior to commencement of administrative procedures). Thus, the administrative agency issuing an environmental impact permit is not obliged to release a notification about the launch of administrative procedures or making a decision (this latter provision has been amended since May 2012 and the administrative agency is now obliged to publish its decision), to provide documents for public availability, to accept opinions and remarks from all stakeholders and organize a public discussion. As we have already mentioned above, all these obligations are within the competence of a developer (applicant), but only at the stage, when EIA report is still in the process of preparation (for detailed discussion see subchapter 3.4).

It should also be noted that the process of access to information and public participation at an early stage of environmental impact permit issuance is hampered by the fact that the list of activities subject to compulsory ecological expertise is extremely limited and Georgian legislation does not envisage the stage of scoping.

- **Decision-making**

Environmental impact permit shall be issued under the rule of simplified administrative procedure within 20 days after registration. The permit shall be issued in case of existence of positive conclusion of ecological expertise[24]. If the relevant Georgian legislation (for example, the Law on Licenses and Permits) has been violated or a negative conclusion of ecological expertise has been issued, no permit will be granted[25]. However, according to the Law on Environmental Impact Permit, in case of refusal to issue a permit, this decision can be appealed at a higher administrative body or court (article 14). It should also be noted that an ecological expertise conclusion is prepared by the commission consisting of the representatives from the Ministry with possible involvement of independent experts. Based on this conclusion, the Ministry of Environmental Protection shall prepare an ecological expertise conclusion, which is approved by the Minister's order. Thus, it is unclear what the statuses of these two conclusions are – the conclusion prepared by the commission and the conclusion prepared by the Service for Licenses and Permits at the Ministry[26].

The rights and obligations of the National Environmental Agency in the process of EIA are also quite interesting. According to the order issued in 2008[27], the Environmental Pollution Monitoring Department of the National Environmental Agency was authorized to participate in carrying out an ecological expertise into the activity subject to ecological expertise (article 4, paragraph 2, subparagraph "g.i"). The above mentioned order was abolished by the order issued by the Minister of Environment Protection of Georgia in 2011[28], according to which the National Environmental Agency was no more authorized to participate in carrying out ecological expertise; however, it could prepare an EIA report "within

[24] Article 9 of the Law on Environmental Impact Permit

[25] Article 13 of the Law on Environmental Impact Permit

[26] Green Alternative, 2011

[27] Order #611 of the Minister of Environment Protection and Natural Resources dated 29 August 2008 "On Approval of Regulations of the Legal Entity of Public Law – National Environmental Agency"

[28] Order #7 of the Minister of Environment Protection and Natural Resources dated 13 April 2011 "On Approval of Regulations of the Legal Entity of Public Law – National Environmental Agency"

its competence (article 2, subparagraph "f"). According to the order[29] issued on May 10, 2013, the National Environmental Agency is no more authorized to prepare EIA report.

In case of permit issuance, a permit issuing agency should publish information about the issued permit, as well as about any amendments made to it or its abolition within a term of 10 days[30]. A permit issuing agency should also enter this information in a license/permit registry[31].

- **Monitoring**

Before May 2013, the Ministry of Environmental Protection of Georgia and the Agency of Natural Resources at the Ministry of Energy of Georgia were entrusted to monitor the fulfillment of environmental impact permit conditions. According to the Law on Licenses and Permits, a permit issuing agency shall be authorized to monitor only the fulfillment of permit conditions (article 33). In addition, a permit issuer can conduct monitoring only once during a calendar year[32]. Failure to fulfill permit conditions set by the law by the permit holder shall cause penalization of permit holder as per the rule prescribed by the legislation. Permit issuer shall set the reasonable time period for satisfying the permit conditions. If a permit holder fails to fulfill permit conditions within the set timeframes, the penalty imposed on him will be tripled. If permit conditions are not complied again, already tripled penalty will be tripled again. If despite imposition of the liability, permit holder fails to ensure compliance permit conditions, permit issuer shall adopt a decision on cancellation of permit[33].

As we have already mentioned, the compliance to environmental impact permit conditions was monitored by the Inspection Service of the Ministry of Environmental Protection as well as the Agency of Natural Resources at the Ministry of Energy and Natural Resources. Thus, duplication of functions between these two state agencies was quite obvious. It should be noted that the resources available at the Inspection Service of the Ministry of Environmental Protection and the Agency of Natural Resources significantly differed from each other. 175 employees worked at the Agency of National Resources, while the Inspection Service had only nine employees[34].

A number of structural changes were implemented in the sphere of environmental protection in 2013. As a result of reorganization, the Ministry of Environmental Protection regained its obligation to carry out state management and control over the use of natural resources. Respectively, it was renamed. Presently, the Department of Environmental Supervision at the Ministry of Environmental Protection carries out control in the sphere of environmental protection; furthermore, the functions of the Agency of Natural Resources at the Ministry of Energy and Natural Resources were returned to the Ministry of Environmental Protection. The powers of this agency have been distributed among the following agencies under the Ministry of Environmental Protection and Natural Resources – the Department of Environmental Supervision, the Forestry Agency and the National Environmental Agency[35].

Another important legislative aspect with respect to the fulfillment of permit conditions is the amendments to the Law on Environmental Impact Permit approved in 2010, according to which it is possible to amend permit conditions on initiative of a permit holder. After receiving a relevant application, the Ministry will set up a commission that will develop relevant recommendations. In case of a positive recommendation, the issue will be submitted to the Government of Georgia and if this latter gives its consent, the Minister of Environmental Protection will issue an order on amending permit conditions. This process does not envisage public participation or access to information[36].

3.3 Strategic Environmental Assessment

Georgian legislation does not contain any concept of "strategic environmental assessment" and respectively, the obligation to carry out any such assessment does not apply to the implementation of various programs, plans and policy documents. The issues of planning environmental protection are regulated by the Law of Georgia on Environmental Protection (article 15). In particular, according to the law, "the system of planning environmental protection includes a long-term strategic plan (sustainable development strategy), five-year plan (national environmental action program) and environmental management plan for the objects of activities". The law also notes that the national environmental action program is based on the sustainable development strategy, which should be developed with public participation.

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[29] Order #2 of the Minister of Environment Protection and Natural Resources dated 10 May 2013 "On Approval of Regulations of the Legal Entity of Public Law – National Environmental Agency"

[30] Article 29 of the Law of Georgia on Licenses and Permits

[31] Article 36 of the Law of Georgia on Licenses and Permits

[32] Article 33 of the Law of Georgia on Licenses and Permits

[33] Article 34 of the Law of Georgia on Licenses and Permits

[34] Green Alternative, 2012

[35] Ministry of Environmental Protection and Natural Resources of Georgia, 2013

[36] Green Alternative, 2011

3.4 Public participation

Public participation in a decision-making process is recognized as one of the key environmental principles in Georgia. In particular, article 5 of the Law of Georgia on Environmental Protection defines that "the principle of public participation in the decision-making process means that public participation in the process of making important decisions related to the implementation of the activity is ensured". According to article 6 of the same law, any citizen shall have the right "to participate in the process of discussing and making important decisions in environmental sphere." It should also be noted that the public participation principle recognized by the Framework Law on Environmental Protection is not secured by concrete mechanisms (procedures).

A definition of "interested party" is quite interesting in the context of public participation. Article 2 of the GAC defines that "an interested party is any individual or legal entity, administrative agency that is affected by an administrative act issued with regard to it and whose legally protected interests are directly influenced by an administrative or legal act". The Aarhus Convention gives a definition of "the public concerned." In particular, according to article 2 of the Convention, "the public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest".

As for public participation in EIA process, Georgian legislation does not provide for any possibility of public participation in the process of making decisions about the activities envisaged by the law. In exchange, article 6 of the Law of Georgia on Environmental Impact Permit obliges a developer to hold public discussion on EIA report before submitting it to the administrative agency (i.e. prior to commencement of formal administrative procedures). For this purpose, a developer has to publish information in central and local media (where the implementation of the activity is planned) about the planned activities, dates of public discussions and providing opinions. 45 days after publishing this information, a developer is obliged to receive and discuss remarks and opinion from the public, as well as to hold a public discussion no earlier than 50 days and no later than 60 days after publishing the information. In addition, a public discussion should be held in the administrative center of that self-governing unit, where the implementation of the activity is planned. A developer has also to invite the representatives of local self-government bodies, interested ministries and other administrative agencies to the public discussion.

According to article 7 of the Law of Georgia on Environmental Impact Permit, within 5 days after holding a public discussion, a developer has to finalize a protocol on the results of public discussions, "which should involve the remarks and opinions expressed during the public discussion of EIA report" (article 7 (1)). The developer should get acquainted with both verbal and written opinions and take them into consideration while preparing a final option of the EIA report. If the developer does not take some of these remarks into consideration, he is obliged to substantiate in writing why these remarks were not taken into consideration and send this document to the author of the remark. In addition, the developer has to send this written substantiation to the permit issuing agency together with the EIA report and the protocol on public discussion.

Order #14 of the Minister of Environmental Protection of Georgia "On Approval of Regulations on Environmental Impact" defines a compulsory content of EIA report and the list of attached documents. According to the mentioned order, EIA report should involve the analysis of public access to information and public opinion (article 6 (2)); furthermore, the materials about the results of public participation in the EIA process, as well as the description of basic differences (if any such exist) should be attached to the EIA report, along with other documents (article 6 (3)).

Environmental impact permit is issued within 20 days after registration of an application under the rule of simplified administrative procedure (article 9 of the Law of Georgia on Environmental Impact Permit).

Chapter 4 of the GAC provides the types of administrative procedures. In particular, according to article 72 of the code, the types of administrative procedures are as follows: simplified administrative procedure, formal administrative procedure, and public administrative procedure. Unlike public administrative procedure, simplified administrative procedure does not envisage the participation of the public concerned in the process of issuing an individual administrative act. Thus, an administrative agency issuing an environmental impact permit is not obliged to release a notification about the launch of administrative procedure or making a decision, as well as to make documents available to the public, to receive any opinions and remarks from interested parties and organize any public discussion. As we have already mentioned above, all these obligations are within the competence of a developer (applicant), but only at the stage, when EIA report is still in the process of preparation.

In May 2012 amendments were made to the Law of Georgia on Licenses and Permits. According to the amendments (article 29), permit issuer shall within 10 days upon adoption of the decision publish information on the permit issued under simplified administrative procedure, amendment to it or its cancellation, as well as the information about permit containing state, commercial and/or private secrecy as per the rule prescribed under the GAC.

The Law on Making Amendments to Some Legislative Acts of Georgia adopted on March 20, 2012 is most important among the legislative amendments made over the past years in terms of public participation in the environmental decision making process. The law enabled an interested person to conclude an open-ended agreement with the

Ministry of Energy and Natural Resources of Georgia and in exchange for payment of compensation to the state, be exempted from the liability for the offences committed in the sphere of environmental protection and natural resources. It is important to note with respect to the issues discussed in the present document that the law, for example, enabled a developer not to meet the requirement for providing public access to information and holding public meetings. Moreover, a developer could neglect the EIA process as well as the need to obtain a permit from a competent authority. A developer could simply commit some offences and then be exempted from liability in exchange for paying a certain amount. The law did not provide for public participation in the process of making a decision on signing the agreement.

In March 2013 the above mentioned amendments were abolished. In particular, the Law on Making Amendments to the Law of Georgia on Environmental Protection was adopted on March 25, 2013[37]. The law came into effect on May 14, 2013; thus, signing of an agreement between a developer and the Ministry of Energy and Natural Resources will not be possible anymore.

3.5 Reporting procedures and requirements

Georgian legislation does not provide for any reporting procedure on the fulfillment of obligations envisaged by sectoral environmental legislation. For example, no such requirement is included in the Law on Ambient Air or the Law on Water. According to the Law of Georgia on Licenses and Permits, a license holder shall submit a report on the fulfillment of license conditions annually (article 21). However, this report involves only license conditions and does not cover other issues.

Accordingly, it is possible to obtain relatively complete information about the state of the environment and quality of its various elements from the national report on the state of the environment. The Ministry of Environmental Protection prepares such reports every three years.

The Law of Georgia on Environmental Protection establishes general norms of preparation, approval and ensuring public access to the national report on the state of the environment. In particular, under the law, before 2007 the Ministry of Environmental Protection had an obligation to prepare national reports on the state of the environment annually and submit them to the President of Georgia for approval. The content of the report and the rights of individual and legal entities, as well as the rights and obligations of administrative bodies and the competences of local self-governing bodies are approved by the President of Georgia[38]. In December 2007 an amendment was made to the Law on Environmental Protection, according to which the Ministry was entrusted to provide national report not annually, but every three years. In November 2011 another amendment was made to the same law – this time the rule of approval of the national report was amended. According to the amendment, a national report shall be approved not by the President of Georgia, but by the Minister of Environmental Protection. Thus, the President of Georgia is now authorized to approve the rule of making a national report.

Georgia has undertaken certain reporting obligations in frames of the implementation of the European Neighborhood Policy Action Plan. In particular, in order to improve environmental management, along with other actions, the country has to prepare reports on the state of the environment on a regular basis. Furthermore, Georgia also has to inform the European Commission on the implementation of action plan, while the European Commission, in turn, shall assess the fulfillment of action plan by Georgia annually and prepare a relevant report.

The report prepared by the United Nations Economic Commission for Europe provides assessment of the fulfillment of environmental legislation. Similar reports are periodically prepared by foreign and local experts. The 2nd Environmental Performance Review of Georgia was issued in 2010. Noteworthy that the report is non-binding and the countries do not have any obligation to fulfill the recommendations included in it[39].

[37] Articles 57^{10}, 57^{11} and 57^{12} were abolished by the May 25, 2013 law.

[38] Order #876 of the President of Georgia dated November 1, 2010 on making changes to Order No 389 of the President of Georgia dated June 25, 1999 "On the Rule of Making National Report on the State of the Environment".

[39] United Nations Economic Commission for Europe, 2010

4. Analysis

4.1 Access to environmental information

Current Georgian laws and bylaws do not provide any definition of "environmental information". However, the Aarhus Convention specifies what is meant under "environmental information". The GAC provides a definition of "public information" and states that public information is open and available to the public concerned. Besides this general provision, the GAC specifies that it is inadmissible to make environmental information secret. However, as we have mentioned above, the national legislation does not define what is meant under "environmental information."

As a result of structural changes carried out recently, environmental information is now held by several public authorities. National environmental legislation does not specify which public authority should hold, collect and disseminate what public environmental information. Such requirements are dispersed among various laws and bylaws. For example, the Ministry of Environmental Protection has to prepare and publish the national report on the state of the environment once every three years. Furthermore, according to order #14 of the Minister of Environment Protection, information provided in EIA report is public, whereas according to the Law of Georgia on Environmental Protection, the results of environmental audit as well as the data reflecting the results of environmental monitoring are public. It should be noted that the issues related to environmental audit are not actually regulated by Georgian legislation. Article 20 of the Law of Georgia on Environmental Protection generally explains the essence of environmental audit and indicates that the rule of carrying out an environmental audit is defined by Georgian legislation. However, no such law has been adopted so far.

Legal regulation for providing access to environmental information by public authorities is in line with the requirements of the relevant EU Directive. In particular, the requirements set in national legislation on the timeframes and format of providing access to public information as well as refusal to provide access to public information are actually in line with the EU Access to Information Directive. In addition, the fee for providing access to environmental information is also in line with the requirements of the EU Directive. According to GAC, no fees shall be charged for distributing public information, except for copying costs. Similarly, according to the EU Access to Information Directive, access to public registers and examination in situ has to be free of charge. Only a small fee can be imposed. In Georgia, the fee for duplicating copies of public information is small and is regulated by the Law of Georgia on Fees for Duplicating Public Information Copies[40].

It should be noted that recently great attention has been paid to dissemination of public information in an electronic format. This is substantiated by the Law of Georgia on the Creation of the Legal Entity of Public Law (LEPL) - Data Exchange Agency adopted in 2009. Moreover, according to the GAC, a public agency shall enter into public register the records available at this agency. Thus, a unified database of public information will be created at a public agency. It should also be noted that actually the public register does not fulfill the functions stipulated by law. Some administrative bodies do not have such registers at all, while others have not realized what the public register is and what particular functions it has to fulfill. For example, frequently only that information is released, which is entered into public register (i.e. the information which public agencies are obliged to enter into public register), while the information, which is not entered into public register, is not released, as a rule (although it may be public information that does not contain any secrecy)[41]. In terms of electronic transparency, it should be noted that there is no uniform standard for posting public information on the websites of public agencies. Therefore, it is up to the latter's goodwill to decide what should be published on the website of this or that agency[42].

A public agency is also obliged to report to the President of Georgia on December 10 of every year regarding acquisition and publicizing of public information. The current practice shows that preparation and submitting of a report on publicizing of public information is connected with a number of problems. A part of public agencies do not send such reports at all, whereas the submitted reports are frequently incomprehensive[43]. Although article 49 of GAC specifies what particular information should be reflected in the report, public agencies, as a rule, prepare reports with different formats and contents and do not guide themselves by this article of GAC. As a rule, neither the President, nor the Parliament react on such violations and do not pay due attention to the content and quality of submitted reports[44]. What is most important, for public agencies, it is a mere formality to submit reports and it does not aim at revealing and improving the existing shortcomings[45].

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[40] See detailed analysis about the fees for duplicating public information copies at: http://www.greenalt.org/webmill/data/file/publications/orhusis_angarishi_geo.pdf

[41] Institute for Development of Freedom of Information, 2012

[42] Institute for Development of Freedom of Information, 2011

[43] Georgian Young Lawyers Association, 2012

[44] Institute for Development of Freedom of Information, 2012

[45] Georgian Young Lawyers Association, 2012

It should be noted that the Ministry of the Environmental Protection took the initiative to create the Center for Environmental Information and Education. The Center will be set up under the Ministry and will have a status of a legal entity of public law. The law approved on March 25, 2013 stipulates the goals of the center, which among others involve "collection of environmental information and promotion of public access to this information" (article 27[46]).

Although Georgian legislation defines that in case of inadequate release of information by a public authority, an applicant can appeal to court, there are certain circumstances which need to be revised. For example, it is necessary to file an administrative complaint before filing a lawsuit to the court. Moreover, the duration of court disputes and their expenses create significant obstacles in terms of access to justice[47].

Table 1 provides a comparison of convergence between the key requirements and principles of the EU Access to Information Directive and Georgian laws and bylaws.

Table 1. Directive on Public Access to Environmental Information (2003/4/EC)

EU Directive	Georgian legislation	Convergence status	Comment
Definition of „environmental information"		Convergent	There is no explanation in the laws and bylaws, though the Aarhus Convention gives a definition of "environmental information". .
Article 3 (2). Environmental information shall be made available to an applicant, at the latest, within one month or within two months after the receipt of the request by the public authority if the volume and the complexity of the information is such that the one-month period cannot be complied with.	GAC, article 40	Convergent	
Article 3 (4). Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available[48].	GAC, article 37	Convergent	
Article 3 (5). Practical arrangements are to be defined for ensuring that the right of access to environmental information can be effectively exercised.	GAC, article 35, article 37, article 38, article 40, article 41 Law of Georgia on the Creation of the Legal Entity of Public Law (LEPL) - Data Exchange Agency, 2009 Law of Georgia on Fees for Duplicating Public Information Copies, 2005	Convergent	
Article 4. Reasons for a request for environmental information to be refused.	GAC, article 41	Convergent	

[46] The Law of Georgia dated March 25, 2013 On Making Amendments to the Law on Environmental Protection. The law came into effect on May 14, 2013.

[47] Green Alternative, 2011

[48] Unless it is already publicly available in another form or format or it is reasonable for the public authority to make it available in another form or format, in which case reasons shall be given for making it available in that form or format.

EU Directive	Georgian legislation	Convergence status	Comment
Article 5. Access to any public registers or lists and examination in situ of the information requested shall be free of charge. Public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount.	GAC, article 38 Law of Georgia on Fees for Duplicating Public Information Copies, 2005	Convergent	
Article 6. Access to justice in case of inadequate release of information to an applicant	GAC, article 2.5, article 47. Civil Code of Georgia, article 39	Partially convergent	Although Georgian legislation defines that in case of inadequate release of information by a public agency, an applicant can appeal to court, there are certain circumstances which need to be revised. For example, it is necessary to file an administrative complaint before filing a lawsuit to the court. Moreover, the duration of court disputes and their expenses create significant obstacles in terms of access to justice.
Article 7(1). Dissemination of environmental information in particular by means of computer telecommunication and/or electronic technology, where available.	GAC, article 35 and article 49 Law of Georgia on Licenses and Permits, article 5 Law of Georgia on the Creation of the Legal Entity of Public Law (LEPL) - Data Exchange Agency, 2009	Convergent	
Article 7(2). The information to be made available and disseminated shall be updated as appropriate (list).	Law of Georgia on Environmental Protection, article 14 Order #876 of the President of Georgia dated November 1, 2010 "On the Rule of Making National Report on the State of the Environment". Order #389 of the President of Georgia dated June 25, 1999 On Making Amendments.	Partially convergent	Georgian national legislation contains certain requirements for publicity of environmental information. Though, it does not specify clearly and comprehensively what type of environmental information should be available to the public and which public authority should hold, collect and disseminate what public environmental information.

4.2 Environmental Impact Assessment procedures

Current Georgian legislation does not recognize the screening and scoping phases. According to the EU Directive, these phases are extremely necessary to prepare an EIA report. It can be said that the screening phase, when the competent authority has to decide whether an EIA is required or not, is carried out through the Law of Georgia on Environmental Impact Permit. The law provides the list of those activities, which are subject to compulsory EIA. As a result of legislative amendments implemented over the past years, the mentioned list does not include a number of activities, which are likely to have significant adverse and irreversible effects on the environment or human health. Therefore, it can be said that the list of activities stipulated by national legislation only partially complies with the list of activities included in the EU Directive. Thus, the existing list is extremely inflexible and does not frequently specify the thresholds that may become a reason for dispute. Furthermore, Georgian legislation does not envisage individual discussion of those activities, which are not included in the list, but can have adverse effects on the environment. In addition, unlike the EU Directive, Georgian legislation does not define those criteria, which will define whether an EIA

is required. This issue is mostly connected with the absence of the above mentioned screening procedure, because just during this phase the need for EIA is defined.

Table 2 provides the comparison of activities subject to EIA under the EU Directive on Environmental Impact Assessment and under the Law of Georgia on Environmental Impact Permit. The first two columns of the table contain the list of those activities, which are listed in Annex 1 of the EU Directive on EIA and are subject to compulsory EIA[49].

As far as the scoping procedure is concerned, it is an important stage, because the scoping phase serves to identify the potential goals of EIA report, the issues to be covered by the report and the information to be collected during preparation of the report. The scoping phase also involves the development of environmental impact statement, which is at the heart of the whole process. Scoping is an early phase of EIA process, which largely serves to define the EIA quality. Just therefore, public participation in the scoping phase is especially important. However, since Georgian legislation does not envisage any scoping process, the public has no opportunity to participate in this process. This latter legal circumstance is quite important since the EU Directive calls on its member states to ensure the involvement of interested parties since the early EIA phases.

As far as an EIA report is concerned, this procedure is regulated by Order 14 of the Minister of Environmental Protection of Georgia "On Approval of the Regulations on Environmental Impact Assessment". The order specifies what particular issues should be studied and discussed in EIA report. The list is in line with paragraph 3 of article 5 of the EU Directive, which specifies what particular information should be presented by a developer to a relevant public authority.

The EU Directive on EIA states that the decision needs to take into account the opinions expressed by the public concerned. In addition, public consultations should be held at various phases of EIA process. Subchapter 4.4 provides a detailed discussion of those legal circumstances, which hinder public participation in EIA process. Therefore, we should only conclude here that the current legislation significantly obstructs timely and full public participation in a decision making process that turns specific legal procedures into a mere formality.

It should be noted that recent legislative and structural changes have significantly changed environmental impact permit regulation. Such changes have also applied to the name of the permit and now it is called "environmental impact permit." Before the changes it was called "environmental permit." This change, which seems quite insignificant at a glance (especially against the background of other institutional and legislative changes) points at the attitude towards environmental protection.

However, some positive changes have taken place. Before 2013 the National Environmental Agency (legal entity of public law under the Ministry of Environmental Protection) had been in charge of preparing EIA reports. Hence, one and the same agency, the Ministry of Environmental Protection, had been preparing EIA reports, carrying out their ecological expertise, adopting decisions and then controlling the fulfillment of permit conditions. Thus, conflict of interests was in place. In May 2013 the power of preparing EIA reports was seized from the National Environmental Agency.

As far as monitoring the compliance with permit conditions is concerned, the enforcement mechanism is extremely weak today. This is basically caused by abolition of the Inspection for Environmental Protection and creation of the Department for Ecological Expertise and Inspection, as well as distribution of state control powers over the National Environmental Agency that, as we have already mentioned above, caused conflict of interests. The Inspection for Environmental Protection was set up in 2005 and during its six-year existence it acquired certain experience in the field of environmental enforcement. It should also be noted that the Inspection for Environmental Protection had 300 employees throughout Georgia, while the Department for Ecological Expertise and Inspection, which replaced the Inspection, has only 9 employees. It is quite clear that nine employees would have failed to carry out comprehensive monitoring over the fulfillment of environmental impact permits[50]. In May 2013 the Department of Environmental Supervision was set up[51]. The Department is in charge of imposing state control over the sphere of environmental protection and utilization of natural resources. It is also in charge of controlling the fulfillment of conditions of issued permits and licenses. The newly created Department incorporates a number of structural subdivisions and territorial bodies. It can be said that the state agency, which was established in 2005-2011 and abolished in 2011, is now being re-established, instead of being strengthened.

[49] The Directive also discusses those activities, which may be subject to EIA, if any such decision is adopted (the list of these activities is provided in Annex 2 of the Directive). These activities should be discussed on an individual basis using those criteria, which are listed in Annex 3 of the Directive.

[50] Green Alternative, 2011

[51] Order #26 of the Minister of Environmental Protection of Georgia dated May 10, 2013 on Approval of the Regulation of the Department of Environmental Supervision.

Table 2. Lists of activities defined by EU Directive and Georgian legislation

EIA Directive, Annex I	Law of Georgia on Environmental Impact Permit, article 4.1
1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day.	(g) Production of any capacity related to coal gasification, liquidation, coking and briquetting; (s) Oil processing and gas processing industries (over 500 tonnes per day);
2. (a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; (b) Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (1) (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).	(l) ... thermal power station with a heat output of 10 megawatts or more;
3. (a) Installations for the reprocessing of irradiated nuclear fuel; (b) Installations designed: (i) for the production or enrichment of nuclear fuel; (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste; (iii) for the final disposal of irradiated nuclear fuel; (iv) solely for the final disposal of radioactive waste; (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.	
4. (a) Integrated works for the initial smelting of cast iron and steel; (b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.	(a) Processing of minerals (processing of construction (including inert) materials not subject to ecological expertise, except of those listed in subparagraph "g" of this paragraph; (t) Any metallurgical production (with a capacity of over 1 ton of production) except of cold rolling of metals and jewelry manufacturing;
5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20 000 tonnes of finished products, for friction material, with an annual production of more than 50 tonnes of finished products, and for other uses of asbestos, utilization of more than 200 tonnes per year.	(b) Any industrial technology, where asbestos will be used;
7. Integrated chemical installations, i.e. those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are: (a) for the production of basic organic chemicals; (b) for the production of basic inorganic chemicals; (c) for the production of phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers); (d) for the production of basic plant health products and of biocides; (e) for the production of basic pharmaceutical products using a chemical or biological process; (f) for the production of explosives.	(r) Chemical industry, in particular: chemical processing of intermediate goods and production of chemical substances; production and processing of pesticides, mineral fertilizers, chemical paints, varnishes, peroxides and elastic materials (rubber or plastic materials); production of gunpowder and other explosives; production of accumulators; production of graphite electrodes;

EIA Directive, Annex I	Law of Georgia on Environmental Impact Permit, article 4.1
7. (a) Construction of lines for long-distance railway traffic and of airports (1) with a basic runway length of 2 100 m or more; (b) Construction of motorways and express roads (2); (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road or realigned and/or widened section of road would be 10 km or more in a continuous length.	(j) Construction of motorways of international and local importance, railways, bridges, tunnels, as well as engineering installations aimed to protect motorways, railway and their territories; (p) Construction of airdrome, airport, railway station and sea port;
8. (a) Inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes; (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes.	(p) Construction of airdrome, airport, railway station and sea port;
9. Waste disposal installations for the incineration, chemical treatment as defined in Annex I to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (3) under heading D9, or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive.	(f) Toxic and other hazardous waste disposal, construction of their landfills and/or processing and treatment of this waste;
10. Waste disposal installations for the incineration or chemical treatment as defined in Annex I to Directive 2008/98/EC under heading D9 of non-hazardous waste with a capacity exceeding 100 tonnes per day.	(e) Solid waste management (including waste incineration plants) and/or construction of landfills;
11. Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.	
12. (a) Works for the transfer of water resources between river basins where that transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres/year; (b) In all other cases, works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/ year and where the amount of water transferred exceeds 5 % of that flow. In both cases transfers of piped drinking water are excluded.	
13. Waste water treatment plants with a capacity exceeding 150 000 population equivalent as defined in point 6 of Article 2 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment.	(o) Construction of waste water treatment plants (with a capacity of 1000 cubic meters and more per day), as well as sewage collector;
14. Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes/ day in the case of petroleum and 500 000 cubic metres/day in the case of gas.	
15. Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.	(q) Construction of dams, ports, docks and other installations; (n) Arrangement of water reservoir (with a capacity of 10 000 cubic meters and more);

EIA Directive, Annex I	Law of Georgia on Environmental Impact Permit, article 4.1
16. Pipelines with a diameter of more than 800 mm and a length of more than 40 km: (a) for the transport of gas, oil, chemicals; (b) for the transport of carbon dioxide (CO 2) streams for the purposes of geological storage, including associated booster stations.	(h) Construction of oil and gas trunk pipelines;
17. Installations for the intensive rearing of poultry or pigs with more than: (a) 85 000 places for broilers, 60 000 places for hens; (b) 3 000 places for production pigs (over 30 kg); or (c) 900 places for sows.	
18. Industrial plants for the production of: (a) pulp from timber or similar fibrous materials; (b) paper and board with a production capacity exceeding 200 tonnes per day.	
19. Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares.	
20. Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.	(k) Construction of high voltage (35 kWh and more) aerial and cable power transmission lines and substations (110 kWh and more);
21. Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200 000 tonnes or more.	(i) Installations for storage of petroleum and oil products, as well as liquid and natural gas, construction of terminals containing the tanks with the capacity of over 1000 cubic meters;
22. Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (1).	(u) Storage sites for toxic and other hazardous substances;
23. Installations for the capture of CO 2 streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Annex, or where the total yearly capture of CO 2 is 1,5 megatonnes or more.	
24. Any change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.	
	(c) Production of cement, asphalt, lime, chalk, gypsum and brick;
	(d) Production of glass and glass products;
	(m) Construction of subway;
	(l) Construction of hydro power plant (with the capacity of 2 megawatts and more);

Georgian legislation provides for exempting an activity from an obligation of carrying out an EIA. The similar provision is included in the EU Directive too; however, the difference is that this definition is extremely general in Georgian legislation and enables interpretation. In particular, the question is about the projects which may be related to "state interests". The EU Directive specifies that it may be appropriate in exceptional cases to exempt a specific project (completely or partially) from the assessment procedures and if this happens, the public should be informed about the reasons of making exceptions; furthermore, the possibility of carrying out other assessments should be discussed. Georgian legislation does not provide any such requirements. It should be noted that the possibility of conflict of interests is quite obvious, because the decision on exempting the activity from EIA procedure is made by the Minister of Environment Protection, while the proposals related to the decision are developed by a special council, members of which are again approved by the Minister of Environment Protection out of the ministry's staff.

A precedent of making exceptions in the process of issuing permits, including environmental impact permits, is created by the Law of Georgia on State Promotion of Investments, according to which an investor shall be entitled to request the issuance of any license/permit (including preliminary license/permit) via the National Investment Agency of Georgia (article 4). Preliminary issuance of a permit or license means that an investor will be able to launch activities without carrying out EIA procedure and obtaining a permit on condition that he will meet the requirements set out in the law in future.

The EU Directive largely focuses on EIA in case of possible transboundary impacts on the environment. Georgian legislation does not regulate this issue and thus it is not in line with the requirements set out in the EU Directive. It should also be noted that Georgia has not yet ratified the Convention on Environmental Impact Assessment in a Transboundary Context. There are bilateral agreements with Azerbaijan and Armenia on cooperation in the sphere of environmental protection, where the parties express their readiness for cooperation to avoid negative transboundary impacts in case of technogenic and natural disasters.

Table 3 below provides an assessment of convergence between the key requirements and principles of the EU Directive on Environmental Impact Assessment and Georgian laws and bylaws.

Table 3. EU Directive on Environmental Impact Assessment

EU Directive	Georgian legislation	Assessment of convergence	Comment
Screening		Divergent	Current Georgian legislation does not recognize the screening phase. It can be said that the screening phase, when the competent authority has to decide whether an EIA is required or not, is carried out through the Law of Georgia on Environmental Impact Permit. The law provides the list of those activities, which are subject to compulsory EIA. However, this list needs a serious revision. Georgian legislation does not envisage individual discussion of those activities, which are not included in the list, but can have adverse effects on the environment. This latter circumstance is not in line with the EU Directive, which clearly defines those criteria under which the screening procedure should be carried out with respect to those activities, which are not subject to compulsory EIA.
Scoping		Divergent	Current Georgian legislation does not recognize the stage of scoping either. Scoping is an important phase as it involves the preparation of environmental impact statement, which is at the heart of the whole process. Scoping is an early phase of EIA process, which largely serves to define the EIA quality. Just therefore, public participation in the scoping phase is especially important.

EU Directive	Georgian legislation	Assessment of convergence	Comment
Preparation of EIA report	Order 14 of the Minister of Environmental Protection of Georgia "On Approval of the Regulations on Environmental Impact Assessment"	Convergent	
Consultation and decision making		Divergent	The EU Directive on EIA states that the decision needs to take into account the opinions expressed by the public concerned. In addition, public consultations should be held at various phases of EIA process. Current legislation significantly obstructs timely and full public participation in a decision making process.
Providing a competent authority with environmental information necessary for decision making	Law on Environmental Impact Permit Order 14 of the Minister of Environment Protection of Georgia "On Approval of the Regulations on Environmental Impact Assessment"	Convergent	
List of activities subject to EIA	Law on Environmental Impact Permit Law on State Promotion of Investments Law on Making Amendments to Some Legislative Acts of Georgia	Partially convergent	The list of activities stipulated by national legislation only partially complies with the list of activities provided in the Annex of EU Directive. Georgian legislation does not establish those criteria, which should define whether an activity is subject to EIA procedure. Moreover, the law can set out a number of exceptions to simplify EIA procedure or exempt an activity from EIA procedure.
Reason for exempting an activity from EIA procedure	Law on Environmental Impact Permit Law on State Promotion of Investments Law on Making Amendments to Some Legislative Acts of Georgia	Divergent	Georgian legislation provides for exempting an activity from an obligation of carrying out an EIA. The similar provision is included in the EU Directive too; however, the difference is that this definition is extremely general in Georgian legislation and enables interpretation. It should be noted that the possibility of conflict of interests is quite obvious, because the decision on exempting the activity from EIA procedure is made by the Minister of Environment Protection, while the proposals related to the decision are developed by a special council, members of which are again approved by the Minister of Environment Protection out of the ministry's staff. A precedent of making exceptions in the process of issuing permits, including environmental impact permits, is created by the Law of Georgia on State Promotion of Investments, according to which an investor shall be entitled to request the issuance of any license/permit (including preliminary license/ permit) via the National Investment Agency of Georgia (article 4).
EIA procedure in case of transboundary impacts on the environment		Divergent	

4.3 Strategic Environmental Assessment procedures

In terms of Strategic Environmental Assessment procedures, Georgian national legislation does not ensure convergence with the relevant EU Directive. Presently, Georgian legislation does not envisage Strategic Environmental Assessment while developing various plans, programs and policy documents. Respectively, public participation in this process is not regulated. It should be noted that before 2006, under the Law on Environmental Permits, various plans and programs were subject to EIA procedure and accordingly, they ensured public participation in the process of developing these documents (although this provision has never been put in practice). As a result of legislative amendments introduced in 2006, the mentioned plans and programs were removed from the list of activities subject to EIA procedure. Thus, today there is no legal mechanism available to enable the public concerned to participate in the process of developing plans, programs and policy documents.

Table 4 provides the key requirements of the Directive on Strategic Environmental Assessment and points out the absence of relevant national legislation.

Table 4. Directive on Strategic Environmental Assessment

EU Directive	Georgian legislation	Assessment of convergence	Comment
SEA procedure Scope of SEA procedure (particular activities/ sectors covered by SEA procedure).		Divergent	
Consultations with the representatives of the public and other stakeholders (including transboundary consultations).		Divergent	

4.4 Public participation

Unlike the EU Directive providing for public participation in EIA, Georgian environmental laws and bylaws do not provide definitions of "public" and "public concerned". However, these definitions are provided in the Aarhus Convention; moreover, article 2 of the GAC also provides a definition of "interested party." Thus, it can be said that a definition of "interested party" provided in GAC, which applies not only to environmental sphere, as well as the definitions of "public" and "public concerned" provided in the Aarhus Convention are in line with the EU definitions.

It should be noted that the EU Directive calls on the member states to promote the participation of non-governmental organizations, associations and groups, thus emphasizing the role of non-governmental organizations in environmental decision making. No such provision is met in Georgian environmental legislation. In GAC, a definition "interested party" concerns both individual and legal entities and we may suppose that it also applies to non-governmental organizations. However, such definition covers this issue only indirectly; actually, Georgian environmental legislation does not contain any declaration about the importance and necessity of participation of environmental non-governmental organizations, associations and groups.

In terms of principles and declared provisions, Georgian legislation recognizes public participation in environmental decision making as one of the key environmental principles (see Framework Law on Environmental Protection). However, declared principles are not reflected in specific procedures. In this respect, let us focus on several legal circumstances, which significantly hinder public participation in the decision-making processes.

In particular, most of the licenses and permits are issued under the rule of simplified administrative procedure that rules out active public participation in a decision-making process. In addition, a developer is in charge of providing for public participation in the EIA process/system (entire cycle is meant – from screening to implementation of the activity). This latter circumstance is especially important as it does not comply with the requirements declared in the EU horizontal legislation, according to which a public authority, rather than a private person, is obliged to provide for public participation. Furthermore, a public authority, and not any investor, is obliged to fulfill the key principles declared in Georgian legislation.

Since providing for public participation is an obligation of a developer, according to the procedures envisaged by law, the representatives of the public cannot apply to a decision-making authority and submit their remarks and opinions. In addition, public participation is restricted at the very initial stage of administrative procedure of decision-making. For example, after an investor submits an application for obtaining an environmental impact permit, the Ministry of

Environmental Protection has no obligation to inform public on commencement of permitting procedure[52]. In addition, since Georgian legislation does not envisage scoping and screening phases, respectively there is no legal requirement for providing for public participation in these early stages of EIA process.

In terms of providing for public participation, we should focus on the list of activities, which are subject to ecological expertise and respectively, to the rule of public discussion. As we have mentioned above, according to current legislation, this list is extremely limited (see table 2). For example, some activities, such as paper production or extraction of minerals are not subject to EIA procedure. It means that the process of planning and implementation of such projects does not envisage any consultations and cooperation with the public concerned, as well as providing its access to information. Noteworthy that starting from 2006, EIA procedures do not apply to a number of environmental plans and programs, such as urban planning programs or the plans on protection and utilization of natural resources. Accordingly, the legislation does not provide for public participation in the development of these important documents. Restriction of public participation is also related to the legislative amendment adopted in 2005, according to which EIA procedure does not apply to those projects, which are implemented by the state and are compulsory only if the activity is carried out by an individual.

Finally, we should also focus on the Law on Making Amendments to Some Legislative Acts of Georgia adopted in 2012, the implementation of which has significantly hampered the publicity of environmental decisions. This law enabled the implementation of activities with possible significant adverse effects on the environment on the basis of a simplified agreement, without any licenses and permits. Thus, public participation was restricted not only during the stage of planning the activities, but also in the process of concluding an agreement. Since a developer was provided an opportunity to launch activities without any permits or licenses (because under the law, he would be exempted from relevant liability after paying a compensation), it was impossible to provide for public participation at the stages of studying and discussing the planned projects. Such amendment also hampered access to environmental information, because decision was made beyond a public space[53]. Furthermore, the law did not provide for public participation in the process of concluding an agreement. Hence, the process of defining the terms and conditions of the agreement was not transparent; moreover, no established criteria were used in this process. It should be noted that not only public participation was restricted, but even the Ministry of Environmental Protection did not participate in the process of concluding an agreement. And finally, it should be noted that the law did not enable the public to appeal against this or that agreement[54].

Since March 2012 three companies have concluded similar agreements with the Ministry of Energy and Natural Resources[5556]. For example, in May 2012 the Ministry of Energy and Natural Resources signed an agreement with Madneuli JSC and Kvartsiti Ltd. Under the agreement, Madneuli JSC and Kvartsiti Ltd were exempted from civil and/or administrative liabilities for the actions committed in the sphere of environmental protection and utilization of natural resources in exchange for paying GEL 13 million to the state budget. In particular, according to paragraph 2 of article 1 of the agreement, any actions committed by Madneuli JSC and Kvartsiti Ltd from April 1, 1994 to May 14, 2012 in the sphere of environmental protection and utilization of natural resources shall be considered legal[5758].

The above mentioned amendments were abolished in March 2013. In particular, the Law on Making Amendments to the Law on Environmental Protection[59] was adopted on March 25, 2013. The law came into effect on May 14, 2013. Thus, it is no more possible to sign an agreement between a developer and the Ministry of Energy and Natural Resources.

Table 5 provides a comparison of convergence between the key requirements and principles of the EU Directive providing for public participation in EIA and Georgian laws and bylaws.

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[52] According to Article 76 of GAC, the grounds for commencing an administrative proceeding shall include: (a) the application of an interested party, and (b) the statutory obligation of an administrative agency to issue an administrative act. 2. In cases provided in Subparagraph (a) of Paragraph 1 of this Article, an administrative proceeding shall commence after the registration of the application.

[53] See analysis of mentioned law at http://www.greenalt.org/webmill/data/file/publications/policy_brief_EU.pdf

[54] Barbakadze, 2012

[55] Besides Madneuli JSC, similar agreements have been concluded with Saknakhshiri Ltd and Turkish company Polat Yol Yapi Sanayi Ve Ticaret A.S.

[56] Magaldadze, 2013

[57] Order #624 of the Prime Minister of Georgia dated May 14, 2012 on Concluding an Agreement in the Sphere of Environmental Protection and Utilization of Natural Resources.

[58] For details see http://greenalt.org/wp-content/uploads/2013/03/garemos_winaagmdeg_dadebuli_shetanxmebebi_REPORT_2013.pdf

[59] The law dated May 25, 2013 has abolished articles 57^{10}, 57^{11} and 57^{12}.

Table 5. Directive on providing for public participation in EIA

EU Directive	Georgian legislation	Assessment of convergence	Comment
Participation of organizations, associations and groups in decision-making in environmental matters	GAC, article 2	Partially convergent	We can suppose that a concept of "interested party" as defined by GAC concerns environmental non-governmental organizations; however, specifically national environmental legislation does not emphasize the importance and necessity of participation of organizations, associations and groups.
Timely informing the public	Law on Environmental Impact Permit, article 6	Partially convergent	Although the Law on Environmental Impact Permit obliges a developer to ensure public discussion of EIA report before launching the activities, public participation at early stages of EIA process is not envisaged by law. Since Georgian legislation does not envisage scoping and screening phases, respectively there is no legal requirement providing for public involvement in these early stages of EIA process.
The public concerned shall be entitled to express comments and opinions to the competent authority before a decision is taken (includes certain timeframes)	Law on Environmental Impact Permit, article 6	Divergent	
Informing the public about whether their comments and remarks have been taken into consideration or not	Law on Environmental Impact Permit, article 7 Order #14 of the Minister of Environment Protection on Environmental Impact, article 6(3)	Divergent	
Public participation in strategic environmental assessment (SEA)		Divergent	

EU Directive	Georgian legislation	Assessment of convergence	Comment
Public participation in EIA	Law on Environmental Impact Permit, article 6	Partially convergent	Georgian legislation regulates the rule of public discussion of environmental impact report. However, simultaneously public participation is significantly restricted because of the following legal circumstances: • Georgian legislation does not cover screening and scoping phases and respectively, the public is not able to participate in these early stages of EIA process. • A number of activities, which may have significant adverse effects on the environment and human health, are not subject to ecological expertise that rules out public participation in a decision-making process. • A developer is obliged to ensure public participation. Thus, the public concerned is not able to get involved in a decision-making process upon the commencement of administrative procedure as well as to directly get in touch with a decision-making authority. • Implementation of the Law on Making Amendments to Some Legislative Acts of Georgia creates significant obstacles in terms of providing for public participation.

4.5 Reporting procedures and requirements

The EU Reporting Directive obliges the member states to report on the status of implementation of certain sectoral directives. For example, the EU member states are obliged to prepare reports at intervals of three years on the fulfillment of the Directive on the protection of groundwater against pollution caused by certain dangerous substances (80/68/EEC), the Directive on drinking water (80/778/EEC), the Directive on the prevention and reduction of environmental pollution by asbestos (87/217/EEC) (a full list of directives is provided in the Annexes of the EU Reporting Directive). Similar reporting procedure, which would reflect the fulfillment of obligations envisaged by sectoral environmental legislation, is actually absent in Georgia. For example, there are no such requirements in the Law on Ambient Air or in the Law on Water. Assessment of the fulfillment of sectoral environmental legislation is important as it enables to reveal the shortcomings in terms of fulfillment of legislation as well as to identify the ways of their eradication. Thus, it is important not only to have a reporting mechanism, but also to react on these reports and implement relevant measures.

It should be noted that the National Environmental Agency prepares "a Short Review of Environmental Pollution" on a monthly basis, involving pollution parameters in ambient air, surface waters, atmospheric precipitation as well as the state of radioactive pollution. According to the Regulation of the National Environmental Agency[60], the Department of Pollution Monitoring is entitled to provide public authorities and interested parties with information about environmental pollution, as well as to prepare yearbooks, bulletins, reviews, notes and other materials consisting of actual information on environmental pollution (article 5(2). Thus, we can link the preparation of monthly reviews on environmental pollution with this legislative obligation.

Relatively comprehensive information about the state of the environment and the quality of its various elements can be obtained from the national report on the state of the environment. Such reports are prepared by the Ministry of Environmental Protection once every three years.

Noteworthy that Order #389 of the President of Georgia dated June 25, 1999 "On the Rule of Making National Report on the State of the Environment" envisaged the existence of a dynamic database on the state of the environment (article 16). However, as a result of amendments made to this normative act in 2010, such obligation was seized from the Ministry

[60] Order #27 of the Minister of Environment Protection and Natural Resources of Georgia dated May 10, 2013 on Approval of the Regulation of the National Environmental Agency, a legal entity of public law.

(the article was removed). Today, not a single public authority is in charge of creating a unified and renewable database, which should become the basis for the national report on the state of the environment[61]. Moreover, the data and information exchange system is also faulty. The current practice is based on particular needs rather than on institutionally adjusted procedures and rules. As a rule, administrative bodies exchange information only when it is required by law[62].

It should also be noted that the new administration of the Ministry of Environmental Protection announced that the Ministry has started to work over the national report on the state of the environment, which covers 2010-2012 years. According to the Minister of Environment Protection, the Ministry plans to improve monitoring of the state of the environment, as well as to establish closer cooperation with the National Statistics Office of Georgia over the statistical data on the state of the environment[63].

Georgia has undertaken some reporting obligations under international conventions and European Neighborhood Policy Action Plan (this latter does not contain any legal obligation). For example, as the Party to the Aarhus Convention, Georgia is obliged to prepare annual reports on the fulfillment of requirements envisaged by the Aarhus Convention. Noteworthy that such report is prepared by both the Ministry of Environmental Protection and non-governmental organizations.

It can be said that in Georgia the reporting system is not developed in terms of fulfillment of requirements envisaged by law. Besides the fact that the legislation does not regulate reporting procedures, lack of relevant experience and knowledge is quite obvious at a practical level, while at a political level, the importance of effective reporting practice is not fully realized.

Table 6 provides the key requirements of the EU Reporting Directive and points out the absence of relevant national legislation.

Table 6. EU Reporting Directive (91/692/EEC)

EU Directive	Georgian legislation	Assessment of Convergence	Comment
The EU Directive obliges the EU member states to periodically submit reports on the fulfillment of those directives, which are listed in Annex I-IV of the Directive.		Divergent	National environmental legislation does not envisage reporting procedure on the issues discussed in sectoral environmental legislation.

[61] Green Alternative, 2011

[62] Green Alternative, 2011

[63] Magaldadze, 2013

5. Conclusions

1. Current Georgian laws and bylaws do not contain any definition about "environmental information." Although such definition is provided in the Aarhus Convention, this circumstance creates certain obstacles. In particular, the legislation does not define which particular agency should possess and disseminate what particular environmental information. Therefore, an interested party may find it difficult to search this or that environmental information. It will be expedient if the legislation defines clearly what "environmental information" is and how this information is distributed among various public authorities.

2. The EIA procedures need significant improvement. Although Georgian environmental legislation involves EIA principle and separate procedural requirements are in line with the EU Directive, the existing regulatory framework for issuing licenses and permits needs revision and amendments. For example, it is expedient to add screening and scoping stages to the EIA procedure and to provide for public participation at these stages, as well as to complement the list of activities subject to EIA with those activities, which are currently removed and are not subject to this requirement; to provide legal regulation of EIA process in a transboundary context.

3. Georgian legislation does not contain any concept of Strategic Environmental Assessment and its procedural regulation. Along with EIA legislation, it is also important to introduce legal regulation of Strategic Environmental Assessment. Such change will provide for the integration of environmental issues into a long-term planning process as well as for public participation in the development of various plans and programs.

4. It should be noted that compared to previous years, legal means for participation have been restricted significantly because of legislative amendments approved during last years. In particular, a developer, rather than a public authority, is obliged to provide for public participation in EIA system/procedure (not in administrative decision-making process). Furthermore, the list of those activities, which are subject to EIA, has been reduced significantly. No such requirement applies to the projects initiated by the state, whereas current legislation enables the activities to be subject to simplified EIA procedure or simply be exempted from it. It should also be noted that there is no legal tool providing for public participation in the process of development of large-scale plans and programs. Public involvement in this process depends only on goodwill of an agency implementing these plans and programs.

5. Reporting is one of the major principles in the EU legislation. The EU horizontal environmental legislation defines the reporting requirements in terms of fulfillment of sectoral environmental directives. Georgian legislation does not contain similar obligations. To ensure convergence of Georgian environmental legislation with the EU laws, it is expedient to establish and introduce reporting procedures.

And finally, it should be noted that despite the convergence of certain legal procedures with the EU horizontal legislation, Georgian environmental legislation needs significant amendments. Not only the legislative amendments implemented over the past years have not approximated, but they have significantly distanced Georgian environmental legislation from the EU environmental principles and key priorities. As a result of the mentioned legislative and institutional changes, the influence of the Ministry of Environmental Protection over the sphere of environmental protection and natural resource management has significantly decreased. Following the 2012 parliamentary elections, the new administration of the Ministry of Environmental Protection announced about its plans to carry out a number of institutional and legislative changes that is quite promising. Finally, we can talk about separate recommendations and improvement of particular legal regulations. However, until the state policy in environmental protection does not undergo root changes, we should not expect any important results.

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Association Green Alternative is a non-governmental, non-profit organization founded in 2000. The mission of Green Alternative is to protect the environment, biological and cultural heritage of Georgia through promoting economically sound and socially acceptable alternatives, establishing the principles of environmental and social justice and upholding public access to information and decision-making processes.

We organize our work around six thematic and five cross-cutting areas. Thematic priority areas include: energy – extractive industry – climate change; transport sector and environment; privatization and environment; biodiversity conservation; waste management; water management. Cross-cutting priority areas include: environmental governance; public access to information, decision-making and justice; instruments for environmental management and sustainable development; European Neighbourhood Policy, monitoring of the lending of the international financial institutions and international financial flow in Georgia.

Green Alternative cooperates with non-governmental organizations both inside and outside Georgia. In 2001 Green Alternative, along with other local and international non-governmental organizations, founded a network of observers devoted to monitoring of development of a poverty reduction strategy in Georgia. Since 2002 Green Alternative has been monitoring implementation of the Baku-Tbilisi-Ceyhan oil pipeline project, its compliance with the policies and guidelines of the international financial institutions, the project's impacts on the local population and the environment. Since 2005 the organization has been a member of the Monitoring Coalition of the ENP (European Neighbourhood Policy) Action Plan. In 2006 Green Alternative founded an independent forest monitoring network. Since establishment Green Alternative is a member of CEE Bankwatch Network - one of the strongest networks of environmental NGOs in Central and Eastern Europe. Green Alternative closely cooperates with various international and national organizations and networks working on environmental, social and human rights issues; Green Alternative is a member of the Coalition Transparent Foreign Aid to Georgia founded in 2008. In 2010 Georgian Green Network was established on the initiative of Green Alternative. This is informal association of civil society organizations and experts dedicated to protecting environment, promoting sustainable development and fostering principles of environmental and social justice in Georgia.

In 2004 Green Alternative received the Goldman Environmental Prize as the recognition of organization's incredible work for environmental protection, social justice and equity.

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