

Green Alternative's Policy Briefs are short analyses on some of the challenges to country's sustainable development. They are part of the broader Green Alternative's analytical works; some complement or summarize reports, while others combine analysis from the research with consultation around a pressing issue. The purpose is to convey urgent public policy problems and promote debate on courses of action to resolve them.

This policy brief is intended for public policy makers and practitioners; it will also be useful for those groups and individuals seeking to influence the policymaking processes.

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Convergence of Georgian Legislation with the EU Law

Horizontal Environmental Legislation

1. Why convergence?

Shortly after Georgia gained its independence, the country declared the approximation with the European Union (hereinafter - EU) 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. 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. At the end of November 2013 the association agreement was initialed at the Eastern Partnership Vilnius Summit. The agreement will enter into force upon signature and ratification of the agreement by Georgia and all 28 EU member states.

Association Agreement aims at setting up an all-embracing framework to conduct bilateral relations. In certain cases, the Association Agreements prepare for future membership of the EU; i.e. Association Agreement cannot be considered as a precondition for future membership, either institutionally or formally, though it does not excludes membership.

Association Agreement is a key instrument of the EU to ensure approximation of standards and norms of the Eastern Partnership countries with those of the EU. With signing such agreements, the countries commit themselves to adopt certain rules in different areas, including trade, consumers' rights, environmental protection, etc.

2. Horizontal environmental legislation

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. 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:

- No analysis of current state of the convergence with the EU environmental legislation as well as public participation tools are available;
- Environmental non-governmental organizations and other stakeholders do not have in-depth knowledge about the process of promoting convergence with the EU environmental legislation;
- There is no cooperation and regular dialogue between the parties involved in the process of promoting convergence with the EU environmental policy;
- No priority areas have been developed to promote convergence with the EU environmental policy.

In order to ensure convergence with the EU environmental legislation, firstly it is important to have a clear picture of the current situation. Therefore, Green Alternative decided to assess the status of compliance of the Georgian environmental legislation with that of the EU and draw a roadmap to ensure compliance in one specific area defined under the Association Agreement – this is horizontal environmental legislation¹. 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.

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

1. Access to Environmental Information Directive 2003/4/EC²;
2. Environmental Impact Assessment Directive 85/337/EEC³;
3. Strategic Environmental Assessment Directive 2001/42/EC⁴;

1 Other areas of include: air quality; water quality and resource management, including flood risk management, water scarcity and droughts as well as marine environment; waste management; nature protection, including forestry and conservation of biological diversity; industrial pollution and industrial hazards; chemicals management; climate change.

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

3 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/>

4. Directive providing for public participation in EIA 2003/35/EC⁵;

5. Reporting Directive 91/692/EEC⁶.

This policy brief shortly reviews the status of compliance of Georgian legislation with the directives listed above and provides for recommendations on the measures to be implemented to ensure convergence. This policy brief is based on the detailed assessment study and the roadmap developed by Green Alternative in 2013⁷.

3. The state of convergence and the way ahead

Public access to environmental information

The analysis showed that the Georgian legislation is largely convergent to the EU law when it comes to the issues regulated under the Access to Environmental Information Directive 2003/4/EC.

4 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/>

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 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/>

7 Both, the study (Assessment of the Convergence of Georgian Legislation with the EU Law: Horizontal Environmental Legislation – in English) and the roadmap (The roadmap for the convergence of Georgian legislation with the EU Law – in Georgian) are available at Green Alternative's web-site: www.greenalt.org

For instance, 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 Environmental Information Directive. In addition, the fee for providing access to environmental information is also in line with the requirements of the EU Directive.

As to incompliance, one of the major incompliance is that current Georgian laws and bylaws do not contain any definition about "environmental information." Although such definition is provided in the Aarhus Convention (in force in Georgia since 2001), 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.

Another problematic area is the access to justice in case of inadequate release of information to an applicant. 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.

To ensure convergence with the Access to Environmental Information Directive 2003/4/EC, in addition to the legal changes, following measures would be helpful for effective implementation of the legal norms: (a) Technical capacity building of public agencies, especially Ministry of Protection of Environment and Natural Resources in processing of information and proactive publication; (b) Training of public servants in application of the tools for information communication.

Environmental Impact Assessment (EIA)

The analysis showed that national legislation is largely divergent from Environmental Impact Assessment Directive 85/337/EEC.

Current Georgian legislation does not recognize the screening and scoping phases, while according to the EU directive, these phases are of utmost importance for preparation of an EIA report.

The list of activities that mandatorily requires EIA under the Georgian legislation is also incompliant with the list of activities defined under the EU directive. 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. 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.

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. Furthermore, unlike EU directive, Georgian legislation does not provide for timely access to information and public participation in the decision-making.

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. Unlike EU directive, the current Georgian legislation makes impossible timely and full public participation in a decision-making processes (please, see also paragraphs of public participation below).

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.

To ensure convergence with the Environmental Impact Assessment Directive 85/337/EEC, in addition to the legal changes, following measures would be helpful for effective implementation of the legal norms: (a) Preparation of guidelines on different stages of EIA (screening, scoping, etc.); (b) Preparation of sectoral guidelines on EIA (for different types of projects); (c) Capacity development of units/agencies responsible for environmental enforcement, especially in EIA, including in post-decision making monitoring and control.

Strategic Environmental Assessment (SEA)

In terms of Strategic Environmental Assessment procedures, Georgian national legislation is in total non-compliance with the relevant EU directive. Presently, Georgian legislation does not envisage Strategic Environmental Assessment while developing various plans, programs and policies. Respectively, public participation in this process is not regulated either.

To ensure convergence with the Strategic Environmental Assessment Directive 2001/42/EC, in addition to the legal changes, following measures would be helpful for effective implementation of the legal norms: (a) development of SEA guidelines for public servants and other stakeholder groups; (b) implementation of pilot SEAs for different types of plans and programmes.

Public participation

The analysis showed that Georgian legislation is divergent from Directive providing for public participation in EIA 2003/35/EC. In terms of principles and declarations, Georgian legislation recognizes public participation in environmental decision making as one of the key environmental principles. However, declared principles are not translated into specific procedures.

Georgian legislation includes numerous norms which significantly hinder public participation in the decision-making processes; to mention some of

them: most of the licenses and permits are issued under the rule of simplified administrative procedure that rules out public access to information and public participation in the decision-making processes. Furthermore, Georgian legislation obliges project developers to ensure public participation during preparation of EIA reports, i.e. to consult public outside the public agency (and exempts public agency from ensuring public participation). This latter circumstance is especially important as it does not comply with the requirements declared in the EU law (and the Aarhus Convention), 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 company, is obliged to fulfill the key principles declared in Georgian legislation.

Unlike the EU directive, Georgian legislation does not provide any opportunity for the public to be informed about the planned decisions and to contribute to the decision-making through submitting comments and opinions.

To ensure convergence with the Directive providing for public participation in EIA 2003/35/EC and for effective implementation of the legal norms, in addition to the legal changes, it would be helpful to develop public participation guidelines for civil servants and project developers.

Reporting procedures and requirements

Reporting is one of the major principles in the EU legislation. The EU Reporting Directive obliges the member states to report on the status of implementation of certain sectoral environmental directives. Georgian legislation does not contain similar obligations, therefore Georgian legislation is in total non-compliance with the relevant EU 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. To ensure convergence of Georgian legislation with the EU law, it is important to introduce reporting procedures.

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