

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.

This policy brief is also available in Georgian.

Assessing the Fulfillment of Environmental Commitments under Georgia's Association Agenda for 2014-2015

The EU-Georgia Association Agreement was signed on June 27, 2014. The agreement establishes the framework for cooperation between Georgia and the European Union. Under the agreement, Georgia undertakes to implement reforms and to progressively approximate its legislation in the relevant sectors with about 300 legal acts of the European Union (gradually, in compliance with the time schedules set out in the Association Agreement), including in the sphere of environmental protection and sustainable development.

The goal of the present report is to assess the fulfillment of commitments under the Association Agreement and the Association Agenda in view of implementing environmental reforms as well as to evaluate the related working process.

The report is based on a number of documents, involving the Georgian Government's national action plans for 2014 and 2015 on implementation of the Association Agreement and relevant reports on their fulfillment; the Road Map on Approximation with the European Union in a field of environmental protection and climate change¹; as well as public information received from relevant government agencies in response to the information request; analysis of relevant laws and draft laws, expert conclusions and reports, and official statements made by various stakeholders.

The report provides the results of monitoring of activities carried out in the field of the environmental protection and sustainable development, addressing the key challenges existing in terms of harmonization with the EU legislation and practices in the following sectors²;

- Public participation;
- Environmental governance and horizontal issues;
- Air quality;
- Water quality and water resource management;
- Protection of biodiversity;
- Issues related to the forest sector.

General Assessment

In 2015 the Ministry of Environment and Natural Resources Protection of Georgia, with the help of EU experts, developed the roadmap for the

1. http://moe.gov.ge/files/news_img/2015/ivnisi/sagzao_ruka/AA-DCFTA_Roadmap_GEO.pdf

2. Green Alternative will periodically publish the reports on both the monitoring of implementation and the effectiveness of implementation.

convergence of Georgian legislation with the EU Law in the field of the environmental protection and climate change.

Unlike the environmental part of National Action Plans for 2014³ and 2015 of the Association Agenda, the roadmap actually outlines the activities with time schedules, with the purpose of implementing reforms in this or that sector. In addition, for each activity the roadmap identifies the difficulties existing in the sector and the criteria for prioritization⁴, as well as a particular responsible authority (service/agency); it also defines interim and final indicators and relevant dates. Unlike the National Action Plan, the roadmap provides much more opportunities for evaluation and monitoring.

Problems Related to Working Process

The analysis of fulfillment of the environmental part of the 2014-2015 National Action Plans and the Roadmap for the implementation of the Association Agreement with EU shows that the work has been launched to harmonize the environmental legislation both in horizontal and sectoral (air, water, biodiversity, forest, etc.) directions. At the same time, not a single draft law has been approved, including the laws, which, according to the plan, should have been already approved or, at least, submitted to the Parliament for consideration. The postponement of processes was anticipated. Environmental protection is a challenging sector involving a lot of stakeholders and respectively, it is difficult to reach a consensus. Just therefore, it is important for the ministry to undertake the following recommendations related to the working process. According to the roadmap, the priorities were defined under the following criteria:

- Time schedules set out by the Annexes of the Association Agreement and other sources;
- Information about potential or presently available funding from international donors;
- Some activities were declared a priority proceeding from the environmental needs or because they, if possible, should be implemented along with the measures that need to be implemented duly.

It should be underlined that donor assistance is needed to implement the major part of the activities described in the roadmap. Hence, the importance of donor coordination becomes crucial.

It is important that Ministry of Environment and Natural Resources Protection will create the comprehensive register of donor-funded projects and make available all the documents prepared in frames of these projects. The register should be open fully for public access. This will increase the opportunities for sharing the knowledge and experience existing in the sector, while decreases the problems of overlapping.

The register should also contain detailed information about those organizations, through which any consultation service or technical assistance is provided that will ultimately increase service quality.

The monitoring has shown that in a number of cases (for example, Water Framework Law; Environmental Assessment Code), the implementation of activities was postponed, though the donor-funded project has been completed and /or is in its final phase.

Therefore, to avoid any misunderstanding its important, that during the elaboration of the draft laws, the delays and/or postponing of the process should be clearly explained to the public. All together, it is important that society has precise and updated information on the timeframes and the entire process. For example, a public hearing regarding the draft Environmental Assessment Code was planned on November 12, 2015. A few days before the hearing was announced that

³ The National Action Plan for 2014 on implementation of the Association Agenda was approved by Decree No 1516 of the Government of Georgia dated September 3, 2014.

⁴ However, it should be noted that the presence of donor-supported and/or planned project represents one of the main criteria in almost all the spheres.

event will be postponed. The Ministry did not make an official statement either about the date of a new discussion or about a new schedule of development of the law.

Public Participation in the Process of Development of Environmental Law

The practice related to public participation in the process of fulfilling the commitments undertaken under the Association Agreement was inconsistent. On the one hand, the process was rather open in some cases and the opinions of non-governmental organizations, experts and interested public were reflected in the corresponding texts; on the other hand, in some cases the legislative process were closed.

For example, as a result of the amendments made to the Forest Code of Georgia in 2010, the forest sector is regulated by four bylaws approved by the resolution of the Georgian government⁵, which frequently undergoes changes (for example, over 60 amendments were made to government resolution No 242, which is the key tool of forest management) and only in exceptional cases these amendments were discussed publicly. It should be noted that according to the requirements of the Aarhus Convention⁶, public participation in the development of similar normative acts is obligatory.

In December 2015 the Ministry of Environment and Natural Resources Protection of Georgia published a draft law “the Forest Code of Georgia”, which offers a new system of forest classification in Georgia. During the elaboration of the code, the Ministry used the document developed by Green Alternative – “Classification of Georgian Forest and Forest Lands. “According to the draft code, after its approval the regulation on the rule of forest classification should be developed, which will be approved by the government resolution. It will also reflect the norms offered by the above mentioned document prepared by Green Alternative.

The development of the website by the Environmental Information and Education Center under the Ministry of Environment and Natural Resources Protection is a step ahead in terms of raising public awareness and involvement. The website has e-notification services and a web map “Environmental Impact Permits Map/Register”. The Ministry and the Center noted in the report on implementation of the 2015 National Action Plan that an amendment to the Law on Environmental Protection was developed in 2015, that will ensure that definition of the environmental information reflected in national legislation. According to the report, the draft law will be submitted to the Parliament for consideration by spring 2016; however, the draft law has not been made public so far and no preliminary meetings have been held with the interested public that represents a violation of the requirements of both Georgian legislation and the Aarhus Convention. Obviously, definition of the environmental information has a huge practical importance. Therefore, transparency of the process of developing the draft law and public participation are especially important.

According to the 2015 National Action Plan, the Environmental Information and Education Center and the Ministry of Environment and Natural Resources Protection should ensure “preparation of the ground for the development of efficient legal procedures, which will simplify appealing by a citizen against the decision related to environmental information.” The report on implementation of the 2015 National Action Plan explains that “the adequacy of a fee related to environmental information was analyzed in terms of a citizen’s access to justice. It was ascertained that the fee does not represent a hampering factor.”

⁵ Government Resolution “On establishing boundaries of state forest fund” – No. 240, 13 August 2010; Government Resolution “On general care and reforestation” – No.241, 13 August 2010; Government Resolution “On approval of the rules of forest use” – No. 242, 20 August 2010; Government Resolution “On the rule of forest registration, planning and monitoring” – No 179, 17 July 2013.

⁶ Article 8. Public Participation during the Preparation of Executive Regulations and /or Generally Applicable Legally Binding Normative Instrument. The Aarhus Convention

According to the report on the 2015 National Action Plan, “the fee related to environmental information is adequate”⁷. It should be noted that the fee is adequate only in case of availability of information electronically. Meanwhile, the number of government agencies still provide information on paper.

In addition, the complaints related to environmental information are associated not only with the information fee, but also with court fees and delayed trials, legal services and other expenses. Therefore, it was important that the study covered all the problems that non-governmental organizations and citizens have in terms of access to justice.

Based on the above-mentioned, we deem it important to improve the process of public participation⁸ in the development of draft laws, as well as bylaws and to ensure a good practice of public involvement.

To ensure approximation to the EU legislation in environmental sector, the Association Agreement (Annex XXVI, “Environment”) initially points out those acts, which are intended to promote environmental governance and integration of environment into other policy areas – so called ‘horizontal environmental legislation’⁹. Three out of five directives provided in this section are about the procedures of assessment of the effects of planned projects, plans and programs on the environment and ensuring public participation in the decision-making. Those directives are listed below:

- 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);
- 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;
- 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.

To ensure approximation to the above mentioned acts, the Ministry of Environment and Natural Resources Protection of Georgia has developed a new draft legislative act – Environmental Assessment Code. A part of mechanisms proposed by the draft code (for example, Environmental Impact Assessment (EIA) and public participation in decision-making on the activities having significant environmental impacts) are already regulated by current Georgian legislation (since 1996) and therefore, in this case, current norms need to be approximated to the above mentioned EU Directives.

The second part of the issues regulated by the draft law is absolutely new to Georgian legislation; these new instruments are: Strategic Environmental Assessment (SEA) and Transboundary EIA and SEA. It should be noted that one more mechanism has been introduced by the draft law (permitting procedures granting an applicant the right to continue an “ongoing activity”) that has nothing in common with the requirements of the EU legislation. Georgian legislation includes similar mechanism since June 1, 2015 and actually, it has simply been copied in the new draft code.

As already mentioned above, the EIA instrument has existed in Georgia for almost 20 years, since 1996 and it had not undergone any dramatic changes till 2005-2006. As surprising as it may sound, the EIA system existing in 1996-2005 years was much more in line with the requirements of the European Union’s EIA directives than the EIA system, which underwent changes as a result of 2005 reforms and which is still active today. Of course, the system existing in 1996-2005 had some shortcomings, which needed to be eradicated. In addition, there were some weakly regulated aspects, which needed improvement and specification. Despite it, it can be said resolutely that in terms of general principles and approaches, the EIA system existing before the 2005-2006 reforms was much more in line with the EU requirements than the current system established as a result of these reforms. The existing shortcomings were not eradicated as a result of

⁷ Green Alternative has requested the study from the Environmental Information and Education Center and we are waiting for the response.

⁸ From procedural point of view

⁹ 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 deregulation and liberalization reforms implemented in 2005-2006 (which further depended in the following years); moreover, not only the EIA system did not improve, but it even worsened and further distanced from the relevant EU requirements. For example:

- The activities (according to the scale, significance and nature of environmental impact) are no more divided into four categories (the scale of environmental assessment and public participation, as well as decision-making procedures and hierarchy differed according to the categories); as a result of reforms implemented in 2005-2006, today there is only one, quite limited list of activities subject to EIA. The list does not cover the activities (i.e. EIA is no more compulsory for conducting the activities), such as extraction of mineral resources, agricultural and food, timber processing, paper, leather and textile industry, some types of infrastructure projects and other activities having significant impacts on the environment and human health.
- As a result of the reform, the activities are subject to EIA in case they are planned by private persons/companies; if projects are planned by state entities, EIA is not compulsory any more. Moreover, even in case of implementation of private projects, the legislation allows for avoiding EIA and obtaining a permit on condition that this obligation will be fulfilled sometime in the future.
- The opportunities for public to participate in decision-making were most severely affected by the reforms. Before the 2005-2006 reform, decisions on planned activities were made under public administrative procedures (it means that a permitting authority was obliged to publish, within reasonable terms before issuing a permit, an EIA report for commenting; then to hold a public discussion and make a final decision taking into account public opinions). As a result of the reform, the rule of making decisions on planned activities was changed. Until now, decisions are made through simple, rather than public administrative procedures that practically rules out opportunities for public to participate in the decision-making processes. In addition, the decision-making period has sharply decreased (from three months to 20 days).

In order to eradicate the shortcomings in the EIA system and bring it in line with the EU legislation and international requirements (including the Aarhus Convention¹⁰), donor assistance has been rendered to Georgia since 2002¹¹. A series of trainings, workshops, discussions, educational tours were held with the help of donors in European countries; sector-specific EIA guidelines were developed; a new draft law was elaborated in 2005-2006 (which, unfortunately, failed to reach even the stage of inter-agency discussion). Despite all these initiatives, neither executive, nor legislative authorities made any efforts to improve the virtually destroyed and profane EIA system. Although the uselessness of this system has actually been recognized at all levels, the only argument cited as a counterbalance to the need of improving this system is that the state regulation of activities and public participation in decision-making hampers investments. Thus, “regulation” and “participation” should either be weak, or do not exist at all. It especially concerns the environmental, social and occupational safety spheres. It can be said that ultimately, all donor efforts directed to the improvement of EIA system came across a wider problem, such as (though quite an opposite was declared formally) the absence of political will within the government to establish democratic institutions and procedures. The new political force, which came to power as a result of the 2012 parliamentary elections, promised, like the previous one, to implement democratic reforms. Thus, this is now the task of this political force to implement real reforms and establish transparency and accountability instruments in Georgia typical for democratic systems. The draft Environmental Assessment Code discussed in the present policy brief is undoubtedly a step ahead for the fulfillment of this task; however, we all, including non-governmental and donor organizations, should pay more attention and make efforts to ensure that the draft law, at least, “reaches” the Parliament, certainly in a form, which will be in line with Georgia’s commitments to the European Union and other international commitments. It can be said boldly that the Environmental Assessment Code will become a litmus test for demonstrating real wishes of the ruling political force.

¹⁰ Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention); Georgia ratified the Convention in 2000. It has been in force in the country since October 30, 2001

¹¹ It should be noted that the very first laws regulating the EIA system, which were adopted in late 1996, were also prepared with donor assistance

1. Considering the fact that current legislation in fact provides no opportunities for public participation in the decision-making process (including on the activities having significant adverse impacts on the environment), the mechanism of public participation provided by the draft code is undoubtedly a step ahead in terms of improving the EIA system and meeting the requirements of the Aarhus Convention and relevant EU directives. It is especially welcomed that an obligation to ensure public participation was returned to the state/state entity and that public access to information and decision-making processes is ensured at various stages of EIA system. Although there are many positive changes introduced by the draft law, there are still several issues that should be considered to ensure that public is duly informed and public is effectively involved in the decision-making processes. Although the draft code envisages public participation at the scoping stage and the EIA report reviewing stage, we are deeply confident that involvement at the screening stage will make the entire EIA process much more effective and efficient.

2. The draft code provides no linkages between the environmental permitting procedures and other permitting and licensing procedures necessary for commencement of the activities.

3. It is not clear from the draft code how the activities included in Annex II will be regulated if the screening procedure ascertains that an activity does not require EIA.

4. One important part of the draft code, is so-called “ongoing activities”. The draft code does not explain what “ongoing activities” mean and we think that it has been omitted deliberately because this entire part of the draft code is actually about legalization of illegal activities/projects and offers the mechanism for it (current EIA legislation already contains such unjustified mechanism since June 1, 2015). This article should be completely removed from the draft code, since it is biased towards non-abiding entrepreneurs and unfair towards abiding entrepreneurs; it also creates wide opportunities for making corrupt deals. Below are the arguments to substantiate this position.

As mentioned above the draft code does not provide a definition of the term “ongoing activity”, though it defines term “a decision to continue an ongoing activity”. In particular, according to the draft law, “a decision to continue an ongoing activity” is “an order issued by the ministry, which entitles a developer of ongoing activity to continue ongoing activity”

These norms will undoubtedly be used with respect to large polluters operating since the Soviet period, which had over 25 years to bring their activities in line with modern norms (adopted since the country gained its independence, in the second half of the 1990s). During past 25 years these enterprises were constantly hiding behind the terms of bringing their activities in line with legislation (which were being postponed constantly), or else were paying fines and continuing operation. This mechanism of “legalization of illegality” envisaged by the proposed draft code (which is also envisaged by current legislation for already six months) still enables similar enterprises to continue their activities forever so that to cause irreversible damage to the environment and local communities affected by their activities.

5. The draft law introduces a new instrument in Georgian legislation – Strategic Environmental Assessment (SEA). This initiative will undoubtedly be welcomed. In addition, it should be taken into consideration that Georgian legislation does not grant any status to strategic documents (for example, plans, programs, strategies) and therefore, to ensure comprehensive enactment of this part of the draft law, it is essential to define the role and place of strategic documents in the system of planning the country’s development, including in budgetary planning.

Activities ongoing in water sector

Georgia-EU Association Agenda in a field of the environment and climate change, regarding the water resources management identifies following priorities:

- the Development and implementation of national legislation;
- the Determination of the competent authorities, including the following areas: water policy and management of natural resources, including issues related to quality of water intended for human consumption, urban waste water;
- the data collection and exchange between various ministries,

- the public access to environmental information and full implementation of 2012-2016 of the National Environmental Action Program.

It should be noted that the elaboration of draft law has started in 2009¹². During the process the major challenge for water resources management was revealed - the setting up of institutional structure, particularly in relation to the river basin management system. After signature of the Association Agreement, was decided that the water Framework Directive and other major issues will be fully integrated in water framework law.

Since mid 2014, the comments and proposals has been reflected in the draft text of the law. The public hearings around the third version of the law was organized, included participation of NGOs and local authorities. However, the process revealed variety of issues, that is still under discussion; including, issues related to municipal sewage, irrigation, energy sector related water intake and discharge permits, the taxes for consumption of surface water resources timelines and conditions, that is closely connected with ongoing infrastructural projects in that fields. The different vision of government agencies regarding the legislation leads to slowdown of the process.

According to the road map, at the end of 2015, "Water Resources Management" law was supposed to be presented for Parliament for approval. However, the draft law was not introduced to Parliament for consideration due to the prolonged discussions among the governmental agencies. It plan that the law will be introduced to Parliament in first half of 2016.

The ministry of environment during 2014-2015 prepares six bylaw¹³, that will enter in a forces after approval the water framework law”

- the water resources monitoring planning and implementation¹⁴;
- The technical provisions for discharges with effluents discharged pollutants substances maximum permissible
- discharge calculation to surface water bodies¹⁵;
- "the rule on water bodies and the identification of the boundaries¹⁶;
- "about river basin management plans, the review and approval procedure ¹⁷“;
- "about the approval of integrated river basin management in river basin areas of the borders¹⁸;
- "the regulations for creation and approval of basin management consulting and coordinating councils¹⁹.

In addition to the above activities, in a line proposed by the roadmap, the ministry of environment implements number of activities, including:

- Development of bilateral agreement transboundary Kura river basin water resources protection and sustainable use²⁰. According to the road map it was envisaged that agreement will be reached by the end of 2015. However, as a result of consultations, the article 10, that sets the water flow regulation issues is still not agreed by parties.
- The final document for the establishing of the preparedness model/ early warning system on the river Rioni in order to protect vulnerable communities²¹.

¹² Since 2012 the process was supported by water management national dialogue project supported by UN ECE.

¹³ These bylaws were prepared under the frames of the UNECE supported project on by water management national dialogue and EU project on International rivers environmental program (EPIRB).

¹⁴ Association Agreement, article 306; annex XXVI; environmental protection; Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy as amended by Decision No 2455/2001/EC.

¹⁵ Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment as amended by Directive 98/15/EC and Regulation (EC) No 1882/2003

¹⁶ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy as amended by Decision No 2455/2001/EC.

¹⁷ IBID

¹⁸ IBID

¹⁹ IBID

²⁰ The process is undertaken under the process of OSCE environment and security initiative (ENVSEC)

²¹ The document was prepared under the UNDP project http://www.gundp.org/content/gundp/home/qa/qa-environment_and_energy/food/

- The changes and amendments to the Maritime Code, in particular, adding environmental protection charter²². According to the Roadmap, the changes in Parliament should be adopted by the beginning of 2017. At the moment, the changes were prepared. However, it is possible that the chapter will be added not to the maritime code, but other environmental legislation, like Environmental law, or the relevant bylaw will be prepared²³.
- The river Chorokhi –Adjariskali pilot basin management plan²⁴. According to the roadmap the plan supposed to be adopted in 2016. Nowadays, there is ongoing public hearings with CSOs and local communities. The plan elaboration faces number of the challenges that is considered in detailed in below charter.

Challenges in water sector

The Chorokhi-Adjaristskali River Basin Management pilot draft plan elaboration process shows number of dangerous tendencies that should be highlighted to the avoid the problems in future.

A long-term objective of the plan is to protect surface and ground waters of the Chorokhi-Adjaristskali River Basin District against risks that undermine its ecological status by reducing risk factors and/or where possible, eradicating them.

According to the draft, the Chorokhi-Adjaristskali River Basin, including its surface waters, ground waters and coastal waters, was considered a "river basin district", a territorial unit within which environmental and chemical status of the water bodies has to be determined, environmental objectives set, and an action plan developed and implemented, with further monitoring and evaluation.

The plan focuses on the pollution of surface waters from industrial and urban wastewater discharge, municipal waste and sand and gravel extraction. In order to reduce pollution from these sources, the plan defines structural and demonstrative measures (for example, the restoration of the drainage system, installation of autonomous fecal matter cleaning systems), as well as non-structural measures (the improvement of legislative-regulatory and law enforcement measures). The only hydropower plant for which the plan defined an environmental objective is the 16MW HPP on the Adjaristskali River. According to the plan, ecological flow and fish passage should be defined and arranged for the HPP.

Given that construction works are planned or ongoing on eight medium and large hydropower plants²⁵ on the Georgian section of the Chorokhi-Adjaristskali River Basin, it is clear that these facilities alone represent the major threat for the pilot river basin. Add to that the 8 HPPs on the Turkish section²⁶ of Chorokhi river and the threat is even greater. Thus one of the main priorities of the present pilot plan should have been the ongoing and planned hydropower projects in the pilot river basin and first and foremost, setting environmental objectives and tasks for these plants. Regretfully, the river basin management plan calls these plants exceptions.

Since the draft plan names them as "an important hindering factor for achieving a good status in the pilot river basin"²⁷, no environmental objectives have been defined for them. Making such exceptions represents rough violation of the requirements of the Water Framework Directive²⁸ and generally questions the reliability of the planning process. An important shortcoming of the pilot river basin management plan is the fact that interested parties were insufficiently involved in the planning process. The issue becomes especially important since the present document is an EU-funded pilot project, which should be the basis for other river basin management plans in Georgia.

²² Association Agreement, article 306, annex XXVI; Environment protection – water quality and water resources, including the marine environment; Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for Community action in the field of marine environmental policy.

²³ The activity is ongoing under the EU and UNDP supported project on improvement of the Black Sea environmental monitoring (EMBLAS).

²⁴ The elaboration is part of the EU project on International Rivers Environmental program (EPIRB).

²⁵ http://www.energy.gov.ge/investor.php?id_pages=53&lang=geo

²⁶ Construction of a total of 10 hydropower plants is planned on the Turkish section of the River Chorokhi, www.unece.org/fileadmin/DAM/env/water/mee0ngs/Assessment/Tbilisi%20workshop/Presentations/Basin%20presentation%20pdfs/presentation_Tbilisi_Dec2009_Sezer_TR_Chorokhi-Coruh.pdf

²⁷ Chorokhi-Adjaristskali River Basin Management plan; chapter 5.5. "Exceptions

²⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2000L0060:20090625:EN:PDF>

Activities ongoing in ambient air protection sector

According to the commitments undertaken under the Association Agreement, the priority obligation in 2016 is to adopt national legislation and designate competent authorities, in line with the EU Directive on reduction of sulphur content of certain liquid fuels.

According to the roadmap developed by the Ministry, the priorities for 2015 in a field of air quality were defined in accordance with environmental urgencies, which, first of all, involved the issues included in the EU Directive on reduction of sulphur content of certain liquid fuels.

Therefore, according to Decree No 229 of the Government of Georgia dated May 27, 2015, amendments were made to Decree No 124 of the Government of Georgia dated December 31, 2004 on Motor Fuel Quality Standards²⁹.

Table. Amendments to Decree No 124 of the Government of Georgia dated December 31, 2004 on Motor Fuel Quality Standards

Parameter	Time period		
	1.01.2015-1.01.2016	1.01-2016-1.01.2017	From 01.01.2017
Maximum lead content g/l	0.005	0.005	0.005
Maximum benzine content %	3	1	1
Aromatic hydrocarbon %	42	35	35
Sulphur mg/kg	50	50	10

Moreover, the Ministry has started to work on several decrees/regulations, which are supposed to be enacted by late 2016. In particular, the Ministry is working on:

- The draft governmental decree on the approval of technical regulations on ambient air quality standards;
- Introduction of electronic system of accounting for emissions from stationary sources and air quality assessment modeling;
- Development of the draft governmental decree on the approval of technical regulations of the quality standards of some liquid fuel, methods of analysis and measures of their introduction.

The work over the Georgian Law on Ambient Air Protection began in 2015. It should reflect all the measures defined by the EU-Georgia Association Agreement in the sphere of air quality protection. A legislative amendments package to the Law of Georgia on Ambient Air Protection was registered in the Parliament of Georgia on December 15, 2015. The issue is now undergoing the stage of committee hearings and will apparently be approved in the first quarter of 2016³⁰.

The amendments provided in the draft law aim to fulfill the international commitments undertaken by Georgia in frame of the Montreal Protocol on Substances that Deplete the Ozone Layer and the requirements of the EU-Georgia Association Agreement.

According to the draft law, one of the amendments addresses the threshold limit value for concentration of harmful substances in ambient air. According to current legislation, environmental quality standards (involving air, water, soil quality standards) are defined once in 5 years by the regulations on environmental quality standards, which is developed and approved by the Ministry of Labor, Health and Social Affairs of Georgia through the agreement with the Ministry of Environment and Natural Resources Protection of Georgia.

²⁹ <https://matsne.gov.ge/ka/document/view/285381>

³⁰ <http://www.parliament.ge/ge/law/11123/28068>

According to the draft law, threshold limit value for concentration of harmful substances in ambient air named to be an ambient air quality standard and represents a component of environmental quality standards. It is approved by the Government of Georgia in a form of technical regulation – the ambient air quality standard.

The same draft law envisages setting of the ambient air quality standards under the rules and legal requirements set by the EU legislation; The threshold limit value for concentration of harmful substances in the ambient air are determined on the basis of Directive 2008/50/EC of the European Parliament and of the Council of May 21, 2008 on ambient air quality and cleaner air for Europe, as well as Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

In 2014 the Government of Georgia approved a number of technical regulations, that were not reflected in the Law of Georgia on Ambient Air Protection. Correspondingly, the draft law is directed to reflect the developed technical regulations in the Law of Georgia on Ambient Air Protection. These technical regulations are following:

- Technical regulations on exploitation of gas and dust trapping devices, approved by Decree No 21 of the Government of Georgia dated January 3, 2014;
- Technical regulations on ambient air protection under unfavorable meteorological conditions, approved by Decree No 8 of the Government of Georgia dated January 3, 2014;
- Technical regulations on inventory of stationary sources of ambient air pollution, approved by Decree No 42 of the Government of Georgia dated January 6, 2014;
- Technical regulations on self-monitoring and accounting for emission of harmful substances from stationary sources of pollution, approved by Decree No 413 of the Government of Georgia dated December 31, 2013;
- Technical regulations on an instrumental method for determining the actual amount of emissions into ambient air from stationary sources of pollution; standard list of measurement devices for determining the actual amount of emissions into ambient air from stationary sources of pollution and accounting methods for calculation of actual amount of emissions from stationary sources of pollution according to technological processes, approved by Decree No 435 of the Government of Georgia dated December 31, 2013;
- Technical regulations on the values of the index of ambient air pollution by harmful substances, for extremely polluted, highly polluted, polluted and non-polluted categories of regions according to the levels of ambient air pollution with harmful substances, and the pollution index calculation procedure, approved by Decree No 448 of the Government of Georgia dated December 31, 2013;
- Technical regulations on calculation of threshold limit values of emission of harmful substances in ambient air approved by Decree No 408 of the Government of Georgia dated December 31, 2013.

The draft law also envisages some amendments, that also involves the development of new technical regulations and the obligation of their approval by the Government of Georgia. Among those are:

- Technical regulations on ambient air quality standard;
- Technical regulations on minimum standard number, placement and rules of operation for the ambient air pollution level observation points/stations, and a list of standard methods for measuring pollution levels;
- Technical regulations on the introduction of limit values of emissions (exhaust gases) from different types of vehicles and other mobile and mechanical means polluting ambient air by harmful substances envisaged by the EU legislation on the territory of Georgia;
- Technical regulations on the approval of environmental measures against industrial disasters at hazardous industrial facilities;
- Technical regulations on keeping a registration book for refrigeration equipment services;

- Technical regulations on issuing permit on import, export, re-export and transit of ozone depleting substances and distributing annual import quotas.

Challenges facing the field of Ambient Air Protection

The National Environmental Agency were responsible for the assessment and monitoring of ambient air quality in 2015. It should be noted that monitoring of ambient air pollution was conducted in five cities: Tbilisi, Rustavi, Zestaponi, Kutaisi and Batumi. The only automated station is located in Vashlijvari, Tbilisi.

In 2015, the National Environmental Agency conducted indicator measurements to assess the ambient air quality. The mentioned measurements were conducted in two stages: at the first stage, in late September, the indicator tubes were installed, and at the second stage – in the first decade of November (in both cases, with 14-day duration). The ambient air was measured in 58 points of nine Georgian cities, including 26 points of Tbilisi. The Nitrogen and sulphur dioxides, as well as ozone and benzene concentrations were measured. The tests were sent to the British accredited laboratory.

Based on the measurement results, the National Environmental Agency submitted two reports and a relevant interactive map of the measurements.³¹³²³³ The map contains measurement points, air pollution index at each measurement point (figure and explanation), as well as concentration of pollution ingredients in mkg/m³.

The questions, which were raised in connection with the mentioned indicator measurements and submitted results, are as follows:

- How the measurement points were selected? Do the data received from the selected areas reflect a common picture? How the air pollution index was identified? Do the mentioned data based on: any EU Directive or a normative document of any country?

According to the National Environmental Agency, the results of indicator measurements were assessed in line with the EU norms with a relevant scale presented in Table 1.

Table 1. Values of concentration of harmful substances in ambient air in line with the EU norms and relevant air quality indices

We suppose that the mentioned “air quality related indexes” represents “Air Quality Health Index”, which are used in various countries (Canada, Great Britain, etc.). According to the mentioned index, the population are given instructions how to act in this or that case. The scheme was used in the European Commission funded project Air Quality Management, which was implemented in Georgia by the Caucasus Environmental NGO Network (CENN) through close cooperation with the Ministry of Environment and Natural Resources Protection. The project aim developing of ambient air quality monitoring system in Georgia in line with the European standards. However, data processing through the used indicator method and adequate presentation of the results raise some questions.

According to the technical regulations acting in Georgia, Air Pollution Index is a complex indicator, which is calculated according to average annual parameters of minimum 5 harmful substances, received on the basis of daily fourfold measurement. According to the pollution index, research territories are categorized as follows: extremely polluted, highly polluted, polluted and non-polluted. Hence, calculation of air pollution index as a result of two-week indicator measurements loses any sense.

³¹ https://www.google.com/maps/d/viewer?mid=zFoqx_U3i7ZI.kq2RDzkYIY_Y

³² <http://nea.gov.ge/uploads/slides/565c3ff59033f.pdf>

³³ <http://nea.gov.ge/uploads/slides/5690e012716d8.pdf>

Table 2. Air quality standard according to the EU Directives as of 2015

Average period	Marginal value
Sulphur dioxide- SO₂	
One hour	350 mkg/m ³ , exceeding not more than 24 cases in a calendar year
One day (24 hours)	125 mkg/m ³ , exceeding not more than 3 cases in a calendar year
Nitrogen dioxide - NO₂	
One hour	200 mkg/m ³ , exceeding not more than 18 cases in a calendar year
Calendar year	40 mkg/m ³
Benzene - C₆H₆	
Calendar year	5 mkg/m ³
Carbonic monoxide - CO	
Maximum 8 hours a day	10 mkg/m ³
Lead - Pb	
Calendar year	0,5 mkg/m ³
PM₁₀	
One day (24 hours)	50 mkg/m ³ , exceeding not more than 35 cases in a calendar year
Calendar year	40 mkg/m ³
PM_{2.5}	
Calendar year	25 mkg/m ³
Ozone - O₃	
Maximum 8 hours a day	120 mkg/m ³
Arsenic - As	
Calendar year	6 ng/m ³
Cadmium - Cd	
Calendar year	5 ng/m ³
Nickel - Ni	
Calendar year	20 ng/m ³
Polycyclic aromatic hydrocarbons (according to Benzo[a]pyrene)	
Calendar year	1 ng/m ³

According to the EU Directives on air quality (see Table 2. Air quality standards in the European Union), the Common Air Quality Index is used for various time intervals: hourly, daily and annual indices. Each of these indices has its relevant method of calculation, which is based on the data of a powerful and well-organized monitoring system.

If we compare the data of the above two tables (Table 1 and Table 2), it is clear that “average” index (index-4) means exceeding the air quality standard operating in the European Union that means that air quality has aggravated and the situation is unfavorable.

According to the EU Directive on ambient air quality and cleaner air for Europe, committed to be implemented under the Association Agreement, it is extremely important to ensure correct data interpretation and usage of adequate methods for air quality assessment.

The activities ongoing in the field of the biodiversity protection

Fulfillment of Biodiversity Strategy and Action Plan represents one of the conditions of the Association Agreement, under the article 233 of chapter 13 (Trade and Sustainable Development), that requires that country recognizes the importance to ensure the conservation and the sustainable management of forests.

In 2013-2014, Georgian authorities approved the number of documents defining the national policy related to biodiversity protection and sustainable use, including National Forest Concept for Georgia³⁴ and National Biodiversity Strategy and Action Plan for 2014-2020³⁵.

The above strategy papers describe the problems related to biodiversity protection and forest sector management, as well as the presenting the ways for solution. These documents also focus on negative impacts of infrastructure/economic projects on ecosystems (including forests). Georgia commits that within two years after the Association Agreement become effective, it has to harmonize the national legislation in line with the EU Directives on the conservation of wild birds (2009/147/EC) and on the conservation of natural habitats and of wild fauna and flora (92/43/EEC), as well as to develop a new forest code in order to fulfill the commitments undertaken in Article 233.

By the end of 2015, the Ministry of Environment and Natural Resources Protection of Georgia released the draft laws on Georgia's biological diversity and forest code and invites public for comments and further discussions.

The above mentioned laws should ensure the protection and sustainable use of ecosystems and habitats. These draft laws should replace the current Law on Wildlife (1996); Forest Code (1999); Law on the Red List and the Red Book (2003); Law on Environmental Impact Permit (2007); Law on Ecological Expertise (2007); Law on Forest Fund Management (2010).

Biodiversity

The key objective of draft Law on Biological Diversity released by the Ministry of Environment and Natural Resources Protection in November 2015 is to harmonize Georgian national legislation with the relevant EU Directives.

The present draft law contains lots of the shortcomings, because it does not addresses all threats related to biodiversity conservation and use defined under National Biodiversity Strategy and Action Plan for 2014-2020 (hereinafter NBSAP)³⁶, including such threats as habitat destruction, degradation (including as a result of environmental pollution) and fragmentation; spread of invasive species and diseases (especially with respect to plants).

The draft law actually does not discuss biosafety issues. In addition, public information and decision making processes neglects the legal mechanisms for public participation even in cases of high public interest.

The draft law, its transitional provisions and explanatory note don't explain how the issues of hunting and fishing (both amateur and commercial) will be regulated. It is also unclear whether the Law of Georgia on Wildlife (or any of its parts), as well as bylaws to it and the forest code, which regulate various issues related to biodiversity (for example, hunting, fishing, creation and functioning of hunting farms, etc.) will be abolished or stay in force as a result of adoption of the new law. It is unclear, whether the amendments will be made to the Law of Georgia on Licenses and Permits. In case of neglecting these issues at the initial stage of developing the draft law, we will receive more obscure and controversial legislation that will ultimately lead to biodiversity degradation.

The Association Agenda envisages the fulfillment of the national legislation and identification of competent authorities from 2017. However, the mentioned draft law does not define the procedures, how for the purpose of the habitat protection, the areas will designated the status of "territories included in Emerald Network" or the status of "Important Bird Area"; the legal mechanisms for public participation in this process are not defined either; it is unclear how management mechanisms will be defined for those areas.

³⁴ Georgian Parliament's resolution N1742-Ilb, 11.12.2013

³⁵ Georgian Government's resolution N343, 08.05.2014

³⁶ Approved by decree No 343 of the Government of Georgia from May 8, 2014

In addition, the draft law does not offer concrete mechanisms for the integration of biodiversity aspects into the decision making processes in economic sector, particularly through the strategic environmental assessment, environmental impact assessment or spatial planning instruments.

Activities Ongoing in the Forest Sector

Intensive activities were carried in the forest sector during 2014–2015. As a result, on December 24, 2015 the Government of Georgia released a new draft of the forest code for public consultations. At the beginning of 2016 the code was unofficially submitted to the Parliament, as well as presented to various interested groups in Georgian regions. The goal of exercise is to achieve broader consensus in relation to the forest sector management.

Alongside with the forest code, a number of pilot and legislative activities were intensively carried out in the sector. For example, the second version of the document on “National Criteria and Indicators for Sustainable Forest Management” was developed with the support of German Society for International Cooperation (GIZ). Unfortunately, it was not reflected further in the new forest code³⁷.

The World Wildlife Fund (WWF) developed the national criteria and indicators for sustainable forest management, which was prepared in line with the principles and criteria of Forest Stewardship Council (FSC). Currently, there is ongoing analysis of the potential of voluntary certification, the activity envisaged by the National Action Plan 2015. The WWF set up a working group consisting of all stakeholders, involving non-governmental organizations, the Ministry of Environment and Natural Resources Protection and business companies³⁸. The project is planned to be completed in July-August 2016 and then the results will be submitted to FSC for approval.

Regretfully, the establishment of a new forest monitoring system has been postponed. The World Resource Institute (WRI) has prepared a project Global Forest Watch, which aims to introduce GFW 2.0 technology in Georgia to reduce desertification, forest and land degradation and illegal cuttings as well as to protect biodiversity. The project will be supported by GEF/UNEP and its implementation envisaged to start from spring 2016.

New Forest Code and Existing Challenges

Below there is short review how the forest code developed by the Ministry of Environment and Natural Resources Protection resolves the problems of existing legislation, how it complies with strategic documents on environmental policy and relevant EU Directives.

It is important that forest code should explicitly recognize and rely upon “the principles of sustainable development” reflected in the final documents of Global Sustainable Development Program – Agenda 21 of the Rio Declaration on Environment and Development, and the Statement of Principles for the Sustainable Management of Forests³⁹. The chapter 13 of the Association Agreement completely relies upon the principles of the Rio Declaration and calls on Georgia to fulfill them.

One of the most problematic issues of the draft law is use of forest for special purposes. It has been completely copied from current legislation; it does not comply with the declared goals of forest and biodiversity protection, while opposes the EU horizontal legislation.

³⁷ “The second working version of the document on the Development of National Criteria and Indicators for Sustainable Forest Management was developed. In November 2015, with the support of the German Society for International Cooperation (GIZ), international experts paid a working visit to help improve national indicators for sustainable forest management” – Report on the Implementation of the 2015 National Action Plan.

³⁸ The entire process will be completed in July-August 2016 and then the project will be submitted to FSC for approval.

³⁹ Adopted by the United Nations Conference on Environment and Development in Rio de Janeiro in 1992

Currently, various economic/infrastructure projects are implemented in natural ecosystems (including in the areas covered by forests) through the regulations as “Use of State Forest Fund for Special Purposes” and/or “Removal from the Forest Fund”. This legislation is absolutely inconsistent and is far from sustainable development principles. The revision of its use in concrete cases reveals very problematic picture. As a result of usage of forests territories through this legislation, the rate of forest destruction and degradation has exceeded a number of traditional threats, such as unsustainable forest cutting and pasturing.

This form of forest use is practiced to carry out activities that cause irreversible degradation of biodiversity and environment, including: extraction of minerals and fossil fuels, construction of power plants, pipelines, roads and other linear infrastructure, urban development, etc.

The key shortcomings of the legislation related to the Use of State Forest Fund for Special Purposes are largely determined by the following:

- There is no legal mechanism to determine whether it is necessary to carry out this or that particular activity and whether it is essential to use regulation on use of forest for special purposes for this particular activity;
- It is not specified who will receive “important economic benefits” as a result of an activity – the state or private person/company;
- The procedure for evaluation and definition of Cost benefit analysis not determined;
- The decision on the use of state forest fund for special purposes taken by the Ministry or the Government through a simple administrative procedure that rules out informing of the interested public and its participation in decision making process;
- There is no procedure/mechanism to assess the issue of compliance of an activity with environmental legislation; compensation mechanism is also undefined. The legislation envisages compensation for the losses incurred to the environment as a result of an activity without even discussing the possibilities of prevention and mitigation of environmental impacts (including alternatives of location and/or technological ones, etc.). In case of violation of the hierarchy - harm prevention-reduction-compensation- biodiversity degradation will be irreversible.

It should be noted new draft Forest Code worsens the existing rule, that requires that before announcing an auction on forest use, decisions on the areas available for licensing are made through public administrative procedures. The offered wording of the draft code returns us to the period, when numerous long-term timber processing licenses were issued without public participation, without taking into consideration environmental, social and economic risks. It should be noted that the publicly the ministry of Environment and Natural Resources Protection of Georgia multiple times stated that it was a bad practice and it would reject this form of forest use in future.

According to article 39 of the draft law, “a natural or legal entity, as well as forest management agency shall be authorized to use forest for special purposes”. Article 40 reads that use of timber plants and its products as well as arrangements of forest plantations, for forest management purposes will be done by Forestry Management agencies without forest use documents. It means that “forest management agency” – the state-owned LLC will be simultaneously an agency that issues the forest use permits and controls the fulfillment of its conditions, as well as represents the monopolist user. Meanwhile the activity of forest management agency will remain actually uncontrolled. Similar regulations must not be allowed, since they contain high risk of corrupt deals.



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