

MONITORING REPORT ON IMPLEMENTATION OF ENVIRONMENTAL COMMITMENTS UNDER GEORGIA EU ASSOCIATION AGENDA

2014-2016

Green Alternative's report 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 report 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 report is also available in Georgian.

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;
- Chemical and Hazardous Substances;
- Water quality and water resource management;
- Protection of biodiversity;
- Forestry sector.

General Assessment and Recommendations

In 2015 the Ministry of Environment and Natural Resources Protection of Georgia, with the help of EU experts, developed the roadmap for the 2015 convergence of Georgian legislation with the EU Law in the field of the environmental protection and climate change.

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

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 prioritization, 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.

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 sectorial (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. Therefore, to avoid any misunderstanding it's important, that during the elaboration of the draft laws, the delays and/or postponing of the process is never clearly explained to the public. Altogether, it is important that society has precise and updated information on the timeframes and the entire process. In addition, the Ministry of Environment and Nature Resources Protection never explains why the particular public comments does not been incorporated in the legislation, while it represents the essential part of public participation.

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" (that includes the Environmental Impact assessment reports on particular projects and ministry decision regarding those projects).

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 nongovernmental 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, in case of a draft law "Forest Code of Georgia", which offers a new system of forest classification in Georgia? The Ministry of Environment and Natural Resources Protection of Georgia organizes the number of the public meetings, including Parliament and regions of Georgia, to get comments and ensure consensus on a number of the important issues. However, despite the some degree of the transparency, after the Forest Code has been discussed with the Georgian Orthodox Church, the number of clauses was added to the a text without discussions with other stakeholders.

The procedures that ensure the public participation in the decision making process on environmental matters should be elaborated both on national as well as local levels. The procedures should ensure the involvement of all stakeholders in the process and should not depend on concrete officials⁴. In addition, the common rule that will ensure rational period for submitting comments and views should be established⁵.

The causes for delays in elaboration of legislation as well as submission to the parliament should be clearly described for the public, as well as new timetable and process milestones. It's also important to establish the rule when in each concrete case, the ministry of environment and natural protection, will provide explanation to public why and how particular comments and views have been integrated or refused in final version. In addition, in number of cases, there is tendency during the drafting process to introduce fundamental changes without substantiation and meaningful discussion with stakeholders. As a result, public lose confidence and trust both towards institutions and processes.

It should be also stressed that it's important to ensure that the draft laws, at least, "reaches" the Parliament, certainly in a form, which will be in line with Georgia's commitments to the European Union. However, during the Parliamentary hearings

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 David Narmania, Mayor of Tbilisi, on Guerilla Gardening – I think that force whose main aim is to create obstacles for municipality activity should attend any type of meeting in municipality, <http://www.interpressnews.ge/ge/sazogadoeba/394759-davith-narmania-partizanul-mebagheobaze-ar-vthvli-rom-isethi-dzala-romlis-amocanac-saqmianobis-khesheshlaa-meriashi-raime-sakhis-shekhvedras-unda-estsrebodes.html>

⁵ In each case, concrete official decides what is the rational timeframe for commenting. E.g, in some cases its considered that 7 day is enough for commenting of draft law.

the draft laws may undergo the processes that would rather undermine the EU integration requirements. Therefore, it's important to pay more attention to the law elaboration progress in the Parliament, both from non-governmental as well as donor organisations side⁶.

As a conclusion, we consider, foremost importance to improve public participation both with regards of draft laws⁷, as well as regulations and acts, while ensuring the common and best practice of public involvement.

Environmental Governance

To ensure approximation to EU legislation in the 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. 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, since 2014 the Ministry of Environment and Natural Resources Protection of Georgia has developed a new draft legislative act – Environmental Assessment Code⁸ with participation of local and international experts.

The 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 Directives⁹. The second part of the issues regulated by the draft law is absolutely new to the Georgian legislation; these new instruments are: Strategic Environmental Assessment (SEA) and Transboundary EIA and SEA.

Concerns Related to new Environmental Assessment Code

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;

⁶ The all draft laws that has been reviewed by present document should be submitted to the Parliament elected on 8 October 2016. მ დოკუმენტში

⁷ The procedures for public participation should be elaborated and adopted.

⁸ „Green Economy in Eastern Neighborhood” (Eap GREEN) Second component has been supported financially by European Union and technically by UNECE

⁹ 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

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 nonabiding entrepreneurs and unfair towards abiding entrepreneurs; it also creates wide opportunities for making corrupt deals.

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 the 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 the 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.

The Process of Elaboration of Environmental Assessment Code

The elaboration of Environmental Assessment Code starts in 2014 and first draft become accessible for the public in May 2015. The second draft was published in September 2015 and public discussion held on 23-24 October. In October 12 another public discussion was planned. However, later it was canceled. Since then during the next nine months, there has been no information regarding the process around the project. The follow up version of the law was published only on 26 June 2016 and the commenting period was defined by 20th of July¹⁰. Meanwhile, the time frame for the adoption of the law, as it was stressed by roadmap developed by the ministry, was substantially delayed¹¹. As a result, in the best case scenario the law will be adopted during the next year.

Activities Undertaken in Water Resources Protection 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.

¹⁰ *It should be stressed that publication of the draft coincides with public debates on Environmental problems in legislation and practices organized by the Public Defender of Georgia*, goo.gl/Ff7w78,

¹¹ The last working session of the Parliament elected in 2012 will hold in mid September. As the law does not pass yet the hearings in committees it very problematic to judge when it will be adopted.

Association Agenda Implementation in Accordance of 2014-2016 National Action Plans

2014 National Action Plan¹² in the water resources management sector highlights the need of preparation of the framework law on water resources management and consultation with stakeholders¹³. 2015 National Action Plan¹⁴ envisaged following activities: 1) submission on framework law on water resources management in Parliament; 2) preparation of the bylaw on „the rule on water bodies and the identification of the boundaries“; 3) preparation of bylaw for rivers basin management plans preparation, review and adoption procedures. 4) preparation of the bylaw „water resources monitoring, planning and implementation. The framework law on water resources management was supposed to be submitted for adoption to the Parliament of Georgia in April 2015 and bylaws should be adopted in June-September 2015.

Since mid-2014, the comments and proposals have been reflected in the draft text of the law. The public hearings around the third version of the law were organized, included participation of NGOs and local authorities. However, the process revealed a 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. At the end the timeframe for law submission to the Parliament was postponed and was planned to introduce for spring sessions of 2016.

The draft law in November 2015 was uploaded in the electronic system of the Georgian government. The major concerns include the wastewater, irrigation, use of water of energy production, water intake and water discharge permits, the terms of fees for use of ground water resources. All comments were integrated in the final version of the law. However, the law was not introduced to the Parliament and still unknown when it will be done. The issue that is still open relates to the institutional arrangement for river basin management. In addition, the law considers options to delay the permitting of municipal water discharge till 2025, due to the fact, that rehabilitation of the facilities requires lots of the resources.

As a result, based on the recommendation of the Government administration, was decided to scrutinize the water resources management law under the Regulatory Impact assessment, to assess the priority issues and provide evidence based decision. Particularly, the assessment will assess the formation of river basin management administration bodies and allocation of financial resources for it, fees for ground water use and permitting for water intake and discharge. The assessment should be undertaken with support of donors, but it's not clear when the assessment will be held.

According to the updated Roadmap on convergence of Georgian legislation with the EU Law in the field of the environmental protection and climate change (2016), plans adoption of the water resources management law in mid-2017, while the by laws for the law by September 2017. It should be mentioned that in accordance with EU Georgia Association Agreement, by September 2018 Georgia should have the water resources management law.

The ministry of environment was proceeding with preparation of the bylaws¹⁵ in accordance of National Action Plan 2014-2016, that will enter in a forces after approval the water framework law:

- The water resources monitoring planning and implementation¹⁶;
- The technical provisions for discharges with effluents discharged pollutants substances maximum permissible discharge calculation to surface water bodies¹⁷;
- “The rule on water bodies and the identification of the boundaries¹⁸;

¹² National Action plan for implementation of Association Agenda 2014 was adopted by Government of Georgia decree 1516 at September 3rd 2014.

¹³ *Association Agreement, Article 306; Annex XXVI*; Environmental Protection – water quality and water resources, including marine environment management, 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

¹⁴ Adopted by decree of N59 Government of Georgia, 26 January, 2015

¹⁵ 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).

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 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

¹⁸ 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

- About river basin management plans, the review and approval procedure¹⁹;
- About the approval of integrated river basin management in river basin areas of the borders²⁰;
- The regulations for creation and approval of basin management consulting and coordinating councils²¹.

The National Action Plan 2016²² required development and adoption of the bylaw on “water quality ecological standards”. The draft law was prepared with the support of the UNECE, however, its not clear when the bylaw will be finalized and adopted, as it fully depends on adoption of the new law on Water resources management.

The action plan also envisages to prepare and submit to the government of Georgia the package of amendments regarding the coastal zone water management. With support of UNDP and EU project for improvement of the Black Sea environmental monitoring (EMBLAS), phase 2, the preemption review of Marine legislation was done and recommendations was drafted. The recommendations would lay the foundation to amendments for coastal zone water quality management in accordance of EU’s Marine strategic framework directive. In accordance with the roadmap developed by the ministry, the package will be prepared by the spring 2017.

Activities defined in Roadmap on Convergence of Georgian legislation with the EU Law in the field of the environmental protection and climate change.

The part of the activities in water sector, also been identified in the Roadmap. These includes, all 27 activities, where from 20 activities was planned in 2015-2016. During the drafting of the roadmap, 10 activities were already under implementation. Seven of these activities relates preparation of Water Resources Management law and six bylaws. As it was mentioned the preparation of final drafts has been delayed even from the roadmap defined deadlines. According to updated version of the Roadmap, the law will be adopted in mid of 2017 and bylaws in fall 2017.

- **The draft bilateral agreement between Azerbaijan and Georgia on the shared water resources of the Kura Basin** is still under negotiations. It was planned to sign by the end of 2015 according to the ministry’s roadmap²³. However, final text of the agreement is still not ready. After consultations among the parties, article 10 of the agreement that regulates the water discharge is still under the dispute. At the end, the agreement was reached to carry on additional studies on accessibility of water resources in Kura-Araks river Basin and form prediction for future water demand. The Terms of Reference for the study was done and sent to the Ministry of Environment for review. According to the updated roadmap, the finalisation of study is expected by the end 2016, while agreement with Azerbaijan supposed to be signed by the end of 2017.
- Establishment of Flood Forecasting and Early Warning System in the river Rioni Basin for protection of vulnerable communities^{24 25} is ongoing, through support of the UNDP project. According to the plan Early Warning system was supposed to be established and tested by the end of 2015. For now, the software for the system is ready and it undergoes testing. After the calibration of the program, system will be fully operated from the end of 2016.
- **The preparation of Chorokhi-Adjaristskali River Basin Management plan**²⁶ starts in 2014 with support of EU project International rivers environmental program (EPIRB). The final version of the plan was supposed to be submitted to the ministry December 2015. However, the draft published in September 2015, raise lots of the concern as not all relevant stakeholders were been involved in development of the plan²⁷. In addition, the plans for management of

¹⁹ IBID

²⁰ IBID

²¹ IBID

²² Georgian Government adopted by decree N382, at 7 March 2016,

²³ 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

²⁴ The process is ongoing under the UNDP project “Flood Management in the Rioni River Basin”

²⁵ EU Georgia Association Agreement, article 308 (b)

²⁶ 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, article 8

²⁷ It should be mentioned, that Green Alternative found out in 2015 river basin management plan, does not includes ongoing or planned construction of 8 hydropower plant on Georgian part of Chorokhi-adajriskali river, as well as 8 Hydropower plant on the Turkish Section, that represents additional threat for the river. Green Alternative sent its comments both to EC, as well as to the project team, stressed that the one of the main priorities of the present pilot plan

coastal zone waters and transition waters management plans decided to be prepared and integrated in the Chorokhi – Adjairksali River basin management plan. During the August 2016 the plan was open for stakeholders. According to the updated roadmap of the ministry the new plan will be presented to stakeholders in October 2016, while will be submitted to the government on spring 2017.

According to the 2015 roadmap, following activities was supposed to be started in 2016:

- 1) Integration in National legislation aspects related to water (nitrates) pollution from agricultural sources²⁸. Initially, 2015 roadmap plans to adopt the along stand bylaw for prevention of water pollution from agricultural sources. However, later, was decided to integrate the requirements of the directive in water legislation, that partly was implemented. E.g. the issues related identification and monitoring of the vulnerable territories to diffusion pollution from Agricultural sector was incorporated in water resources management law and other bylaws. However, integration of all directive requirements is still in the process. According to the updated roadmap, the required amendments will be prepared in spring 2017 and adopted later in the fall.
- 2) Preparation of the Handbook with thematic guidelines for river basin management plans preparation. The work on preparation of guidelines was not started yet. With support of USAID the handbook on the ground waters object is identification, reference status and classification system was prepared. It may be adopted by the minister. The updated road map (2016) aims to prepare guidelines on risk analyses on pressure, economic analysis and monitoring. The final report planned to be ready by mid-2017, while adoption by ministry by the end of 2017.
- 3) Preparation of water quality monitoring program (including nitrates). According to the roadmap implementation report the only monitoring program was prepared for Chorokhi-Adhairksali river basin under EPIRB. For all other river basins no activities have not been started yet. The programs should be prepared by the end 2019, while the underground water monitoring programs should be available by 2022.
- 4) The preliminary flood risk assessment and flood risk map preparation in the river Kura pilot basin²⁹. The activities to implement the given action have not started yet. It is expected that the project will be supported within the ENVSEC³⁰.
- 5) The preliminary flood risk assessment all around Georgia and preparation of flood risk maps³¹ should be finalized by the end of 2020. Therefore, the activities in this field is just starting. E.g. the flood risk assessment on river Alasani tributaries start in spring 2016 with support of the Polish government. The finalization of the activities is planned by the end of 2017. With support of UNDP, there is an ongoing assessment of river Vere, that will be finished in the fall of 2016. However, this is a tiny part of the activities to be implemented. According to the updated roadmap, the detailed assessment reports and flood risk assessment will be ready by the end of 2019

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.

should have been the on-going and planned hydropower projects in the pilot river basin and first and foremost, setting environmental objectives and tasks for these plants. Making such exceptions represents rough violation of the requirements of the Water Framework Directive 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.

²⁸ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources

²⁹ Directive 2007/60/EC on the assessment and management of flood risks, article 4-6

³⁰ According to the updated map the preliminary assessment should be done by 2017, detailed studies by 2018.

³¹ Directive 2007/60/EC on the assessment and management of flood risks, article 4-6

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 Standard³².

Table 1. 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 benzene content %	3	1	1
Aromatic hydrocarbon %	42	35	35
Sulphur mg/kg	50	50	10

The amendments were done in Georgian Administrative Code, that gives possibility to fine the operator that will import the fuel that does not apply to above mentioned standards. Namely the production of non-standard fuel and its distribution will be penalized.

The control done through the major state agencies Environmental Inspectorate of Ministry of Environment and Nature Resources Protection, Ministry of Energy and Revenue Income Service of Ministry of Finance. It's planned that the Environmental Inspectorate will monitor the fuel operators without any timetable and notification. Since May 2016, the inspection has been done twice and samples have been taken on fuel stations and analysed in State laboratory. According to the report, all samples taken have been compliant with legislation³³.

In addition, Ministry works 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 package on making amendments 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 2016³⁴.

The amendments provided in the draft law mostly aim at fulfilling the international commitments undertaken by Georgia in frames of the Montreal Protocol on Substances that Deplete the Ozone Layer and at implementing the requirements of the EU-Georgia Association Agreement.

According to the draft law, one of the amendments concerns threshold limit values of 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.

According to the draft law, threshold limit value of concentration of harmful substances in ambient air is believed 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 regulations – ambient air quality standard.

³² <https://matsne.gov.ge/ka/document/view/285381>

³³ It should be mentioned that itself report has not been published, and ministry made just statement regarding the issue. http://commsant.ge/?m=5&news_id=40048&cat_id=6

³⁴ <http://www.parliament.ge/ge/law/11123/28068>

EU legislation, taking into consideration legal requirements set by EU legislation: threshold limit values of concentration of harmful substances in 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 and 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, which were not reflected in the Law of Georgia on Ambient Air Protection. Respectively, the draft law is directed towards reflecting the developed technical regulations in the Law of Georgia on Ambient Air Protection. These technical regulations are:

- 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, implementation of which involves the development of new technical regulations and the obligation of their approval by the Government of Georgia. Among them 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 Sphere of Ambient Air Protection

The National Environmental Agency is responsible for the assessment and monitoring of ambient air quality in 2015. It should be noted that monitoring of ambient air pollution is conducted in five cities: Tbilisi, Rustavi, Zestaponi, Kutaisi and Batumi. Since August 2016 four automated stations is functioned in Tbilisi, and one in Abastumani.

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

In 2015-2016, the National Environmental Agency conducted indicator measurements to assess ambient air quality on three stages³⁵. Ambient air was measured in 58 points of nine Georgian cities, including in 26 points of Tbilisi³⁶. Based on the indicative measurements the National Environmental Agency prepared two reports and the interactive map. Based on the received information, the National Environmental Agency submitted two reports and a relevant interactive map of measurements^{37,38,39}. The map contains measurement points and air pollution index is indicated at each measurement point (figure and explanation), as well as concentration of pollution ingredients in mkg/m^3 .

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

- How was the measurement points selected? Do the data received from the selected areas reflect a common picture? How was an air pollution index identified? What are 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 3.

Table 3. Values of concentration of harmful substances in ambient air in line with the EU norms and relevant air quality indices

Five air pollutants which can harm your health:						
Four bands of air quality:	Index (1-10):	Ozone	Nitrogen dioxide	Sulphur dioxide	PM _{2.5} particles	PM ₁₀ particles
		Running 8-hour mean ($\mu\text{g}/\text{m}^3$)	1-hour mean ($\mu\text{g}/\text{m}^3$)	1-hour mean ($\mu\text{g}/\text{m}^3$)	Running 24-hour mean ($\mu\text{g}/\text{m}^3$)	Running 24-hour mean ($\mu\text{g}/\text{m}^3$)
Good air quality	1	0-33	0-67	0-29	0-11	0-16
	2	34-65	68-134	30-59	12-23	17-33
	3	67-100	135-200	60-89	24-35	34-50
Fair air quality	4	101-120	201-267	90-119	36-41	51-58
	5	121-140	268-334	120-149	42-47	59-66
	6	141-160	335-400	150-179	48-53	67-75
Poor air quality	7	161-187	401-467	180-236	54-58	76-83
	8	188-213	468-534	237-295	59-64	84-91
	9	214-240	535-600	296-354	65-70	92-100
Very Poor air quality	10	241 or more	601 or more	355 or more	71 or more	101 or more

We suppose that the mentioned "air quality indices" represent "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. This scheme was used in the European Commission-funded project Air Quality Management, which was

³⁵ There is ongoing fourth stage

³⁶ The indicative measurements continues for 14 days, the samples were sent to Britain to accredited laboratory.

³⁷ https://www.google.com/maps/d/viewer?mid=zFqox_U3i7Zl.kq2RDzkYIY_Y

³⁸ <http://nea.gov.ge/uploads/slides/565c3ff59033f.pdf>

³⁹ <http://nea.gov.ge/uploads/slides/5690e012716d8.pdf>

implemented in Georgia by the Caucasus Environmental NGO Network (CENN) through close cooperation with the Ministry of Environment and Natural Resources Protection. The project aimed at developing 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.

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 2 and Table 3) and compare it with the findings of the NEA⁴⁰ 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, the fulfillment of which is obligatory under the Association Agreement, it is extremely important to pay huge attention to correct data interpretation and using adequate methods of air quality assessment.

It should be stressed that according to the data of National Environmental Agency, in number of cases the air quality in terms of PM_{2,5} and PM₁₀ composition is quite allarming both in Vashlijvari as well as in Abastumani background stations⁴¹.

Vashlijvari automated air quality monitoring station data 2015⁴².

	January	February	March	April	May	June	July	August	September	October	November	December
PM _{2,5}	49,63	40,58	29,03	14,81	14,04	15,94	15,99	11,60	21,90	30,12	23,70	27,01
PM ₁₀	72,34	69,84	53,92	31,30	34,29	43,90	38,04	32,46	52,90	52,32	45,68	43,21

Abastumani, PM₁₀

	I quarter	II quarter	III quarter	IV quarter
2014	22,47	44,60	31,62	47,99
2015	–	24,04	38,51	38,62

⁴⁰ <http://energynews.ge/haeris-dabindzurebis-machvenebeli-tbilisis-quchebis-mikhedvit-2/>

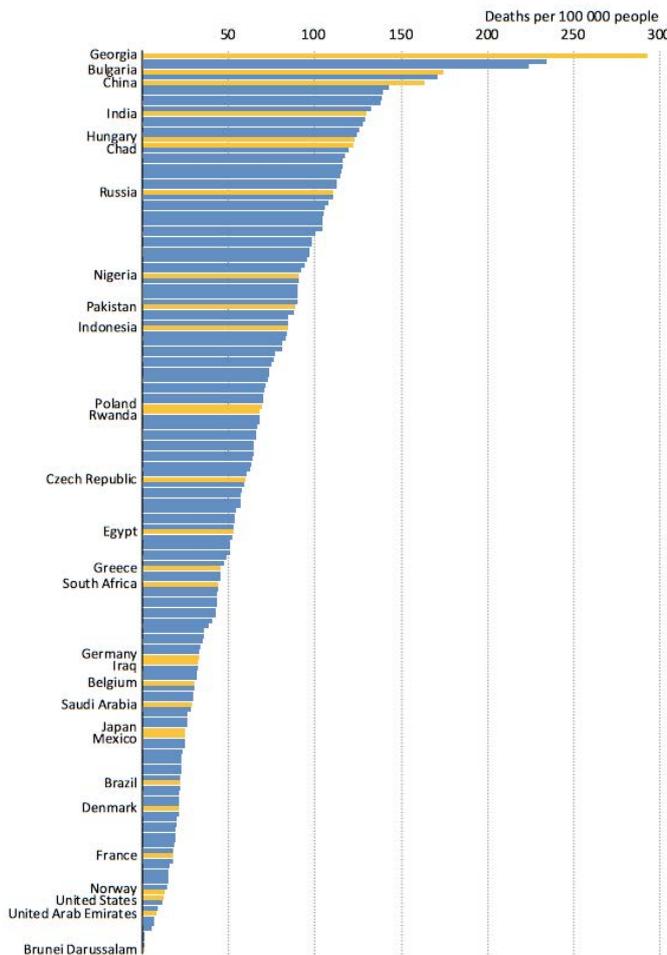
⁴¹ Station to monitor background concentration levels of air polluting substances that are significant for a given region or for the globe as a whole. Regional stations are located far enough away from industry and urban areas in order not to pick up day-by-day fluctuations in pollution levels. The purpose is to measure long-term changes in the composition of the atmosphere. United Nations. Glossary of environment statistics, http://glossary.eea.europa.eu/terminology_sources_html

⁴² Provided by National Environmental Agency, 03.08.2016;

According to the National Environmental Agency, the dust amount in air in Georgia often exceed the norm 2-3 time. It should be mentioned, that according to the different fractions of the dust, Georgia uses the following norms⁴³, as Pm10 – 48 µg/m³ annual mean, while Pm2.5 - 25 µg/m³ annual mean, that is higher than the recommendations set by WHO standards⁴⁴.

According to the information of World Health organisation May 2016, Georgia defined as number one in the world, due to the mortality rate attributed to the air pollution (indoor and outdoor) and it is 292 person per 100 000. The research were strongly challenged and hotly discussed by Georgian Government.

Figure 1.8 Mortality rate attributed to air pollution (household and outdoor) by country, 2012



Note: Only a selection of countries are highlighted.
Sources: WHO (2016b) and IEA analysis.

On the facebook page of the Ministry of Environment and Natural Resources Protection was published the statement, that reads „ Information about Georgia provided by WHO in “World’s Health Statistic 2016”, that itself established on data from 2012. According to the WHO report on Urban Ambient Air pollution 2016 (that is established on 2014 data -[j.mp/whooutdoor](#)) air pollution in Tbilisi corresponds the median rate of Eastern Europe’s medium and low middle income countries, that does not gives the foundation for the conclusions provided by the EIA report. It should be mentioned, that there is no methodologies in the international practices that would unequivocally will connect atmospheric air pollution with death alone from other factors (indoor air pollution, amount of smokers⁴⁵; While in Georgia’s Health System despite the

⁴³ PM 2,5 and PM 10 are Particulate Matters, with size of less than micrometers 10 or 2,5. They are small enough to invade even the smallest airways, therefore the high concentration in air poses the risk for people’s health.

⁴⁴ World Health Organisation recommendations on concentration of PM10 or PM 2,5 in air:

PM_{2,5}	PM₁₀
10 µg/m ³ annual mean	20 µg/m ³ annual mean
25 µg/m ³ 24-hour mean	50 µg/m ³ 24-hour mean

⁴⁵ From this statement it’s clear that Ministry of Environment does not takes responsibility on indoor pollution

number of the reforms the unite information database, that would ensure management of data related to Environmental Health and provide this type of conclusions does not exist. In addition, the National Environmental Agency with periodically carries indicative measurements to establish the composition of Nitrogen and Sulphur dioxides, Ozone and Benzol. The results comparison with EU norms does not gives any picture of high deviation⁴⁶.

The Ministry of Health, Labor and Social Protection urgently invites the WHO mission in Georgia. After exchange of information, it appears that WHO study contains some inaccuracy, “particularly, from three components for one the data from 2003-2005 was used. That means that in case of ambient air pollution Georgia is not in first place in the world. The new data will be available soon⁴⁷”. However, mission express its concerns related to outdoor air pollution and the Georgia’s stand with cardiovascular diseases. It stressed that Georgia corresponds the average air pollution⁴⁸ of Eastern Europe, that does not create the optimistic ground.

Therefore, in new report Georgia would not be the number one in the world regarding the mortality rate attributed to air pollution. This based on the fact, that in 2012-2016 in comparison with 2003-2005 the solid fuel utilization for cooking and heating was decreased, that is the major source for indoor pollution.

However, taking into account the fact, that in Georgia the ambient air pollution is very high, especially in case of the Pm10 and Pm2.5, that is well seen from the reports of the National Environmental Agency data, its important that country elaborates and adopted the National Strategy and Plan for Air quality control and protection, the document obligatory for all state agencies. It would be also welcomed, if the ministries of Health and Environment, with same operatives will ask all relevant donors to support government of Georgia to establish the comprehensive air monitoring system and activities for improvement of air quality in 2017.

Chemical and Hasardous Substances

In 2014 Georgian government adopted “Chemical, Biological, Radiological and Nuclear Threats Reduction National Strategy”⁸ under which main directions, such as prevention, revealing, preparedness and response were defined. On the basis of this document action plans in each sector shall be developed.

Within implementation of the commitments under the Association Agreement, “Waste Management Code”, developed by the Ministry of Environment and Natural Resources Protection, was adopted. In 2016 the 2016-2030 waste management national strategy and 2016-2020 action plan were approved under the governmental resolution. Besides, in 2015-2016 number of bylaws – technical regulations – were passed, which define the rules and terms of landfills management, and waste transportation, collection, processing, registration, classification storage and registration.

Also in 2016 amendments were introduced to a number of laws, including the laws of Georgia “On the Import and Transit of Waste on the territory of Georgia” and “On Air Protection” with a view of their harmonization with international law.

Georgia has made some progress with the financial support by Multilateral Fund for the Implementation of the Montreal Protocol, inter alia, expedited withdraw of major ozone-depleting substances, including halons, and disuse of chlorofluorocarbons. Ozone-depleting substances import/export permission system has been established, which increased the capacities of customs authorities, the customs technical equipment in terms of fighting against smuggling ozone-depleting substances (ODS) was reinforced. Two recycling centers have been established in the country, where the utilized refrigerants are being renovated for the reuse, thus reducing the demand for new refrigerants. About 1000 technicians for refrigeration and air conditioning devices have been retrained and acquainted with the modern practice.

At the same time ODS waste has been moved out of the country and safely disposed in Europe. It is noteworthy that in 2015 Georgia achieved 10% reduction in hydrogen-chlorofluorocarbons consumption, and in 2016 permanently discontinued the use of one of the hydrogen chlorofluorocarbons (1-clorine-1, 1 difluoromethane (HCFC-142b)).

⁴⁶ http://meteo.gov.ge/radiation_pdf/69.pdf

⁴⁷ <http://jandacva.ge/jandacvis-msoflio-organizaciis-eqspertebi-saqartveloshi-imyofebian>

⁴⁸ <http://jandacva.ge/jandacvis-msoflio-organizaciis-eqspertebi-saqartveloshi-imyofebian/>

According to chemicals management road-map developed by the Ministry of Environment and Natural Resources Protection within the EU-Georgia Association Agreement, the Ministry, in 2017-2019, shall draft a new law “On hazardous chemicals” and establish the “Hazardous chemicals national register”, develop the law and bylaws on classification, labeling and packaging substances and mixtures, as well as the bylaw on mercury⁴⁹. At the same time, provided the Law is adopted in time, the final success will depend on how adequate are the steps towards its efficient and full-fledged enactment.

It is worth mentioning two ongoing projects, that aim to clean up around 100 thousand tons of 04- 9% arsenic containing waste in Tsana and Uravi villages⁵⁰ and located them in safely in new constructed storing and prevent the river pollution.

Under GEF funded project UNDP organized the study and assessment of Iagluja pesticides landfill. 4 hectares of chemicals disposals were fenced, and three concepts were developed for ecological improvement and remediation of the site. In spring 2016, 208 tons of POP obsolete pesticides stored at the “Iagluja” dumpsite were collected, packed, transported, and safely disposed in France⁵¹. Under the same project the identification and inventory of obsolete pesticides takes place all over Georgia. Awareness raising activities also conducted for local population and farmers on use of pesticides.

Activities related to the protection of biodiversity

Comprehensive fulfillment of Biodiversity Strategy and Action Plan is one of the conditions of the Association Agreement, because according to article 233 of chapter 13 (Trade and Sustainable Development) the country recognizes the importance of ensuring the conservation and the sustainable management of forests.

In 2013-2014, Georgian authorities approved the documents defining the national policy related to biodiversity protection and sustainable use: National Forest Concept for Georgia⁵² and National Biodiversity Strategy and Action Plan for 2014-2020⁵³.

The mentioned strategic documents describe the problems related to biodiversity protection and forest sector management, as well as the ways of their solution. Along with other issues, these documents focus on negative impacts of infrastructure/economic projects on ecosystems (including forests). In the part of biodiversity, Georgia, within two years after coming the Association Agreement into effect, has to bring 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.

In late 2015, the Ministry of Environment and Natural Resources Protection of Georgia released the draft laws of Georgia on biological diversity and forest code for making comments and further discussion.

Just 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 a working version of the Law of Georgia 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 a lot of shortcomings, because it does not regulate all those threats related to biodiversity conservation and use, which are defined in the National Biodiversity Strategy and Action Plan for 2014-2020 (hereinafter

⁴⁹ There are two things that require mentioning: 1) Ministry of Labour, Health and Social Affairs is again appointed the responsible authority 2) In contrast with other sectors, mentioned in environment protection and climate change road map under the EU-Georgia Association Agreement, Ministry of Environment and Natural Resources Protection has not won the support of donors

⁵⁰ The project is funded by the Netherlands government with financing of Georgia’s government

⁵¹ <http://cbw.ge/georgia/hazardous-chemicals-leave-georgia/>

⁵² Georgian Parliament’s resolution N1742-1b, 11.12.2013

⁵³ Georgian Government’s resolution N343, 08.05.2014

NBSAP), 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 biodiversity issues. In addition, in the process of public informing and decision making, legal mechanisms of public participation are neglected in the process of regulating the issues of high public interest.

It is unclear from the main text of the draft law, its transitional provisions and explanatory note 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 of this law 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 this law. It is unclear, whether 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. But the mentioned draft law does not define the procedures on the basis of which, with the purpose of habitat protection, an area can be granted the status of Emerald Network of Areas of Special Conservation Interest or the status of Important Bird Area; legal mechanisms for public participation in this process are not defined either; it is unclear how management mechanisms should be defined for these areas.

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

It should be stressed that in six month implementation report of 2016 Action plan, claims that the updated version of the law that “incorporates international experts and NGOs comments and recommendations” is ready. However, this updated working draft is not accessible for public and therefore, it’s very difficult to understand which comments has been integrated and which one not. In addition, according to the verbal communication from the ministry the work on the fishery and hunting laws has been started, however, no public information was available.

According to the 2016 Action Plan government should ensure the implementation of 4th article of 92/43/EC directive through reappraising of the territories already included in emerald network, design the additional territories and put them on the map. It should be stressed that majority of sites chosen matches the territories of already existing protected areas. The designation of new territories for emerald network gets harsh resistance from the side of the Ministry of Energy.

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 working version of the forest code for public discussions. In early 2016 the code was unofficially submitted to the Parliament, as well as to various interested groups in Georgian regions. Its goal to achieve consensus over the forest sector as a result of broad public discussions can only be welcomed.

Besides 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 the Development of 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 in the new forest code⁵⁴.

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).

Presently, the potential of voluntary certification envisaged by the National Action Plan is also being analyzed. The World

⁵⁴ “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.

Wildlife Fund has set up a working group consisting of all stakeholders, involving non-governmental organizations, the Ministry of Environment and Natural Resources Protection and business companies⁵⁵. The project is planned to be completed in July-August 2016 and then it will be submitted to FSC for approval.

Regretfully, by reasons unrelated to the Georgian side, 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 at introducing GFW 2.0 technology in Georgia to reduce desertification, forest and land degradation and illegal cuttings as well as to protect biodiversity. The project supported by GEF/UNEP and its implementation supposed to start from spring 2016, but was delayed by other factors not depending on Georgia's side.

New Forest Code and Existing Challenges

We will review shortly how much the forest code developed by the Ministry of Environment and Natural Resources Protection settles the problems existing in current legislation, how well it complies with strategic documents on environmental policy and relevant EU Directives.

It is important for the forest code to 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 Forests . 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 forest use for special purposes. It has been completely copied from current legislation; it does not comply with the declared goals of forest and biodiversity protection and management and opposes the EU horizontal legislation.

Presently, various economic or infrastructure projects are being implemented in natural ecosystems (including in the areas covered by forests) using such regulations as “Use of State Forest Fund for Special Purposes” and “Removal from the Forest Fund”. This legislation is absolutely inconsistent and is far from sustainable development principles. Discussion of particular examples of its use in practice will reveal a very difficult picture. As a result of such use of forests, 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 such activities, which cause irreversible degradation of biodiversity and environment, among them: extraction of minerals, 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 circumstances:

- 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 forest for special purposes in order to carry out this activity;
- It is not specified who will receive “important economic benefits” as a result of an activity – the state or a private person carrying out this activity;
- The issue/procedure of evaluating and defining the significance of economic benefits is not determined;
- The decision on the use of state forest fund for special purposes is made by the Ministry or the Government through a simple administrative rule that rules out preliminary informing of the interested public and their participation in decision making;
- There is no procedure/mechanism to assess the issue of compliance of an activity with environmental legislation; compensation mechanism is also unregulated. 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 through the location or technological alternatives, etc.). In case of violation of this hierarchy (harm prevention-reduction-compensation), biodiversity degradation will be irreversible;

⁵⁵ The entire process will be completed in July-August 2016 and then the project will be submitted to FSC for approval.

- It should be noted that according to the new formulation of the Forest Code, the existing rule has further worsened; according to it, 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 tens of long-term timber processing licenses were issued without public participation, without taking into consideration environmental, social and economic risks. It should also be noted that the Ministry of Environment and Natural Resources Protection of Georgia has said for multiple times 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 woody plants and its products as well as construction of forest plantations, proceeding from the purposes of forest management, is allowed for forest management agencies without forest use documents. It means that “forest management agency” – the state-owned LLC is simultaneously an agency issuing forest use permits, controlling the fulfillment of their conditions and a monopolist user. In addition, its activity will actually remain uncontrolled. Similar regulations must not be allowed, since they contain high risk of corrupt deals.

It should be stressed, that according to the National Action Plan implementation report for first six months of 2016, there is ongoing work for laws and bylaws for Forestry Code. However, as the Code is not adopted by Parliament yet, it's quite risky to develop the subsequent legislation as it may not correspond the Code when it's adopted.



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