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

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Public participation in the decision-making on energy projects

Introduction

Over the past decade, in Georgia, in all areas where public had opportunity to participate in the decision-making on development projects, these opportunities were cancelled altogether, or altered in a way that the effective public participation has become impossible and public participation has been downgraded to complete formality. The energy sector also belongs to such areas.

In the last decade decisions on energy projects have been made without public participation, more specifically, without informing and involving the public affected by the projects. This, of course, caused dissatisfaction and often became a source of conflict between the authorities, projects' developer companies and the affected communities. There were occasions when the government even used police forces to suppress dissatisfaction of the communities (for example, in Adjara and Svaneti).

On June 1, 2017, the Environmental Assessment Code was adopted. The code established new rules for the assessment of likely impacts of the planned projects (activities) and for issuing an Environmental Decision (type of permitting document which grants a developer the right to implement the project) by the competent authority (the Ministry of Environmental Protection and Agriculture). The code also establishes the obligations of the ministry to ensure public participation in decision-making.

Adoption of these rules should certainly be welcomed, as during last decade, before adoption of the code, public had no opportunity to take part in the decision-making by the environmental authority. However, at the same time it is important to note that the Environmental Assessment Code concerns only assessment of the environmental impacts of the planned projects [with significant environmental impacts] and participation of the public in the process of making decisions by the Ministry of Environmental Protection and Agriculture. The code does not apply to decisions on energy projects by the sectoral authority - authority responsible for energy sector.

This policy brief reviews whether the decision-making on energy projects, in particular, power plant construction projects, has changed with the adoption of the Environmental Assessment Code; namely, whether the code influenced the opportunities of the public to participate in decision-making and if it did, how.

In the next chapter, the novelties introduced by the Environmental Assessment Code in the field of public participation in decision-making on projects with significant environmental impacts (including energy projects) are discussed. The subsequent chapter describes the decision-making procedures on energy projects by the agency responsible for energy sector, to determine if these procedures enable public participation. The last chapter summarizes the findings and provides recommendations.

1. Public participation in the decision-making on projects with significant environmental impacts

As noted in the introduction, on June 1, 2017, the Environmental Assessment Code was adopted. It is noteworthy that the code introduces five tools of environmental assessment and related decision-making; these instruments, according to the code, shall be gradually enforced. The table below shows the environmental assessment and decision-making tools introduced by the code, as well as the dates for their enactment.

Table 1. Environmental assessment and decision-making tools

#	Type of environmental assessment	Type of decision	Effective date
1	Environmental Impact Assessment (EIA) - EIA is obligatory for planned activities defined by the code.	Environmental Decision	Entered into force on January 1, 2018.
2	Transboundary Environmental Impact Assessment (TEIA) - TEIA is obligatory for planned activities defined by the code.	Environmental Decision	Shall enter into force after the entry into force of the Convention on Environmental Impact Assessment in the Transboundary Context and its protocol on Strategic Environmental Assessment for Georgia.
3	Strategic Environmental Assessment (SEA) - SIA is obligatory for the strategic documents defined by the code.	Recommendations	The part of the provisions shall enter into force on 1 July 2018, while another part – on 31 December 2018.
4	Transboundary SEA - it is obligatory for the strategic documents defined by the code.	Recommendations	Shall enter into force after the entry into force of the Convention on Environmental Impact Assessment in the Transboundary Context and its protocol on Strategic Environmental Assessment for Georgia.
5	Environmental audit - it is obligatory for the so called 'ongoing activities' defined by the article 47 of the code.	Decision on continuing ongoing activity	Entered into force on 21 June 2017 (upon official publication of the code).

As shown in the table, the rules for Environmental Impact Assessment (EIA) and decision-making on granting Environmental Decision have been effective since January 1, 2018; this assessment tool and relevant decision-making procedures are reviewed in this policy brief.

According to the Environmental Assessment Code, environmental decision is issued in three stages (screening, scoping and final decision) on activities that are subject to EIA; at each stage the decision is made through the use of public administrative procedure. This means that at all three stages:

- a. the information defined by the code should be made available to the public, prior to making decision;
- b. The public should have the opportunity to present their opinions; and
- c. Finally, public should have an access to the decisions made.

Table #2 below briefly describes decision-making stages on issuing the Environmental Decision (or more broadly – stages of EIA system)¹.

¹ This is a simplified scheme of EIA system; it does not describe in detail either procedures or the information that should be made public at each stage. For more information refer to Environmental Assessment Code: <http://bit.ly/2rRRDhI>

Table 2. Stages of EIA system in Georgia.

Screening	Screening is the step that determines whether or not EIA is required for a planned project. Activities listed in the Annex 1 to the Code shall be subject EIA; In case of the activities listed in the Annex 2 to the code, the Ministry of Environmental Protection and Agriculture shall make a decision on the necessity of conducting EIA (screening decision).
Scoping	Scoping is the procedure that identifies the key issues to be obtained and studied during EIA, as well as the ways the information should be presented in the EIA report. The project proponent shall submit scoping report to the ministry, while ministry shall take scoping decision.
EIA and preparation of EIA report	At this stage project proponent undertakes assessment of environmental impacts of the planned project and reports on the findings in the EIA report.
Environmental Decision	After project proponent submits EIA report to the ministry, ministry shall take final decision – Environmental Decision. Environmental Decision is a compulsory prerequisite for carrying out activities; It is illegal to implement activities without Environmental Decision.
Monitoring and control	The project proponent is obliged to monitor implementation of the project ("further analysis of activity"), while the ministry is obliged to control compliance to the Environmental Decision and requirements of the Georgian legislation.

As indicated in the table above, at the first – screening - stage, it is necessary to determine if the planned project is subject to EIA. The activities listed in Annex 1 to the Environmental Assessment Code shall be unconditionally subject to EIA. The following power projects (activities) are listed in the Annex 1 to the code:

- Thermal power stations and other combustion installations with the installed capacity of 10 megawatts or more;
- Nuclear power stations and other nuclear reactors including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials), whose maximum power does not exceed 1 kilowatt continuous thermal load;
- Works for the transfer of water resources between river basins where the multi-annual average flow of the basin of abstraction exceeds 2 000 million cubic metres/year and where the amount of water transferred exceeds 5 percent of that flow;
- Dams and other installations designed for the holding back or permanent storage of water, where amount of water held back or stored exceeds 50 thousand cubic metres.
- Construction and operation of hydropower plant with the capacity of 5 megawatts and more;
- Construction of overhead and/or underground electrical power lines with a voltage of 220 kV or more and a length of more than 15 km.

Annex 2 to the Environmental Assessment Code lists those projects which are subject to EIA if Ministry of Environmental Protection and Agriculture decides so. The following power projects are listed in the Annex 2 to the code:

- Combustion installations with the capacity of 2 megawatts or more;
- Industrial installations for the production of steam and hot water (with the exception of production of steam and hot water for oil and gas operations), whereas area exceeds 0.5 hectares and installed capacity exceeds 50 megawatts;
- Pipelines for carrying gas, steam and hot water a length of 5 km and more;

- Construction of overhead and/or underground electrical power lines with a voltage of 36 kV or more, voltage substation of 110 kV and more;
- Installations for aboveground or underground storage of fossil fuel, liquefied and/or natural gas with a capacity of 100 cubic meters or more;
- Industrial briquetting of coal and lignite;
- Installations for the processing and storage of radioactive waste;
- Construction and operation of plants for hydroelectric energy production of 2 to 5 megawatt installed capacity;
- Installations for the harnessing of wind and/or sea wave power for energy production.

As mentioned earlier, screening, scoping and final – Environmental Decision – all are made through public administrative procedures. It is also noteworthy that in addition to ensuring public participation in decision-making, the Ministry of Environment Protection and Agriculture is obliged to proactively publish certain type of information at the post decision-making stage (when permitted activities are being implemented).

Table 3 below indicates the requirements of the code for ensuring public participation at screening, scoping and final decision making stages. The last row shows what kind of information should be made public after granting the Environmental Decision and actual implementation of the activity.

As shown in the table, at the first - screening phase – public can comment only in writing; public consultation meeting is not held at this stage. As for the second and the third (scoping and final decision-making) stages, the public is given opportunity to present the opinions both in writing and in oral at the public consultation meetings.

Table 3. Access to information and decision-making at different stages of EIA system in Georgia.

Screening decision	<ul style="list-style-type: none"> • Within 3 days after the registration of the screening application, the Ministry is obliged to publish it in accordance with the procedure established by the code. • The public has 7 days to submit opinions and comments to the Ministry. • The Ministry is obliged to review opinions and comments presented by the public and in case of appropriate grounds, take them into consideration in screening decision. • Within 5 days after completion of the screening procedure, the Ministry is obliged to publish a reasonable screening decision in accordance with the procedure prescribed by the code.
Scoping decision	<ul style="list-style-type: none"> • Within three days after the registration of the scoping application, the Ministry is obliged to publish it (and attached documents) as defined by the code. • The public has 15 days to submit opinions and comments to the Ministry. • No earlier than 10th day and no later than the 15th day from the scoping application the Ministry is obliged to conduct a public consultation meeting on the scoping report. Information about public consultation meeting should be published no later than 10 days before the public hearing. • Public hearing is open and any representative of the public has the right to participate. • The Ministry is obliged to review and in case of appropriate grounds, take into consideration the opinions and comments presented by the public at the scoping decision-making. • Within 5 days after taking the scoping decision, the Ministry is obliged to publish it, along with scoping report, in accordance with the rules defined by the code.

Environmental decision	<ul style="list-style-type: none"> • Within three days after the registration of the application, the Ministry is obliged to publish it (and attached documents, including EIA report) as defined by the code. • The public has 40 days to submit opinions and comments to the Ministry. • No earlier than 25th day and no later than the 30th day from the application the Ministry is obliged to conduct a public consultation meeting. Information about public consultation meeting should be published no later than 20 days before the public hearing. • Public hearing is open and any representative of the public has the right to participate. • The Ministry is obliged to review and in case of appropriate grounds, take into account the opinions and comments presented by the public in the decision-making. • The Ministry is obliged to include information on the outcomes public participation and whether public comments were taken into account or not. • Within 5 days after taking the environmental decision, the ministry is obliged to publish EIA report, conclusion of expertise, environmental decision and information on the outcomes of public participation.
Monitoring & Control	<ul style="list-style-type: none"> • The Ministry is obliged to publish the self-monitoring report submitted by the project developer on its official website within 3 days after receiving this information.

During last ten years, until the introduction of the three-stage decision-making procedures described above, the decisions were made through a single-stage simple administrative procedure (this procedural rule does not enable public to participate in the decision-making). Thus, this innovation introduced by the Environmental Assessment Code could be considered as a breakthrough, if not the following fact: the Environmental Assessment Code allows the change of environmental decision (as well as screening and scoping decisions) by the initiative of the Ministry or upon the request of the project developer, but changes to the decisions should be made through simple administrative procedure. The code defines procedures for initiating the changes into the decisions; however, it does not say a word about informing public and ensuring public participation in decision-making when decisions are changed.

Allowing alteration of decisions without public participation, completely underestimates the importance of the progressive approach introduced by the code.

2. Public participation in the decision-making on energy projects by the agency responsible for energy sector

In December 2017, the Government of Georgia undergone serious structural changes; some of the ministries have been annulled, and some have assumed the functions of the annulled ministries². As a result of the reform the Ministry of Energy was abolished. The Ministry of Economy and Sustainable Development assumed its functions. Thus, the functions of the Ministry of Economy and Sustainable Development now include³:

- Development, implementation and monitoring of national policy, strategy and programs in the energy sector;
- Attracting investments in energy sector;
- Implementation of the activities aimed at ensuring country's energy independence, security of energy-system, its normal functioning and development;
- Implementation of measures to enhance effectiveness in energy sector.

² The Law of Georgia of December 7, 2017 amending the Law of Georgia on the Structure, Authority and Rules of Operation of the Government of Georgia. Available in Georgian at website of Legislative Herald in Georgian: <https://matsne.gov.ge>

³ Decree # 70 of the Government of the Government of February 11, 2016 on Approval of the Statute of the Ministry of Economy and Sustainable Development of Georgia. Available in Georgian at website of Legislative Herald in Georgian: <https://matsne.gov.ge>

With assuming the functions listed above, it was necessary to allocate a unit within the ministry responsible for this sector. Hence, two additional divisions were established within the Ministry – both responsible for the energy sector, but each supervised by two different deputies of minister⁴. These divisions are:

- Department of energy policy, and
- Department of energy reforms and projects.

The general functions of these two departments are determined by the statute of the Ministry of Economy and Sustainable Development. The functions have to be further specified in the statutes of the departments themselves⁵. For the aim of this policy brief, it is not necessary to review all the functions of these departments; only functions related to decision-making on energy (specifically, power production) projects and public participation are specified below.

According to the statute of the ministry, the functions of the Department of energy policy include:

- Reviewing documents related to designing, construction, installation, rehabilitation and reconstruction of energy facilities, ensuring implementation and monitoring;
- Monitoring of agreements and facilitation of their implementation.

The functions of the Department of energy reforms and projects include:

- Attracting investments in energy sector and coordinating relations of the ministry with other organizations in this area;
- Coordination of participation of international donor organizations and investors in current and planned investment projects, participation in negotiations and legal cooperation with the involvement of the legal department;
- Development of attractive investment proposals and offering them to investors;
- Analysis of information received on investment proposals and submitted documentation, preparation of appropriate proposals and recommendations;
- Preparation of drafts of investment contracts with the involvement of the legal department, participation in negotiations, signing of the contracts and implementation and coordination of other actions envisaged by the legislation;
- Monitoring of investment projects and concluded investment agreements, and promoting their implementation.

The roles of these departments in the decision-making on energy projects, including power projects, are not completely clear from the aforementioned; however, it is still possible to conclude that both departments of Ministry Economy and Sustainable Development are involved in initiation, development and implementation of power projects, attraction of investments, concluding agreements with investors, implementation of agreements and general requirements of the legislation (or “promoting implementation” – as often stated in the statute), and monitoring of implementation.

The detailed procedures for the implementation of the functions listed above are not of course provided (and could not have been provided) in the statute of the ministry, but there are no other acts that would have defined such procedures. For the power project, specifically, there are two legal acts that describe decision-making procedures; those are:

- Decree #214 of the Government of Georgia of 21st of August 2013 approving the rule for expression of interests to conduct feasibility study, to build, own and operate hydropower plants to be constructed in Georgia (hereinafter – governmental decree); and
- Order #40 of the Minister of Energy of Georgia of April 10th of 2014 approving the terms and conditions for submission and review of the proposals about feasibility study, construction, ownership and operation of those

4 Energy policy Department is supervised by deputy minister Romeo Mikautadze, while Department of the energy reforms and projects is supervised by deputy minister Giorgi Chikovani (source: website of Ministry of Economy and Sustainable Development <https://bit.ly/2Nje3Oc>)

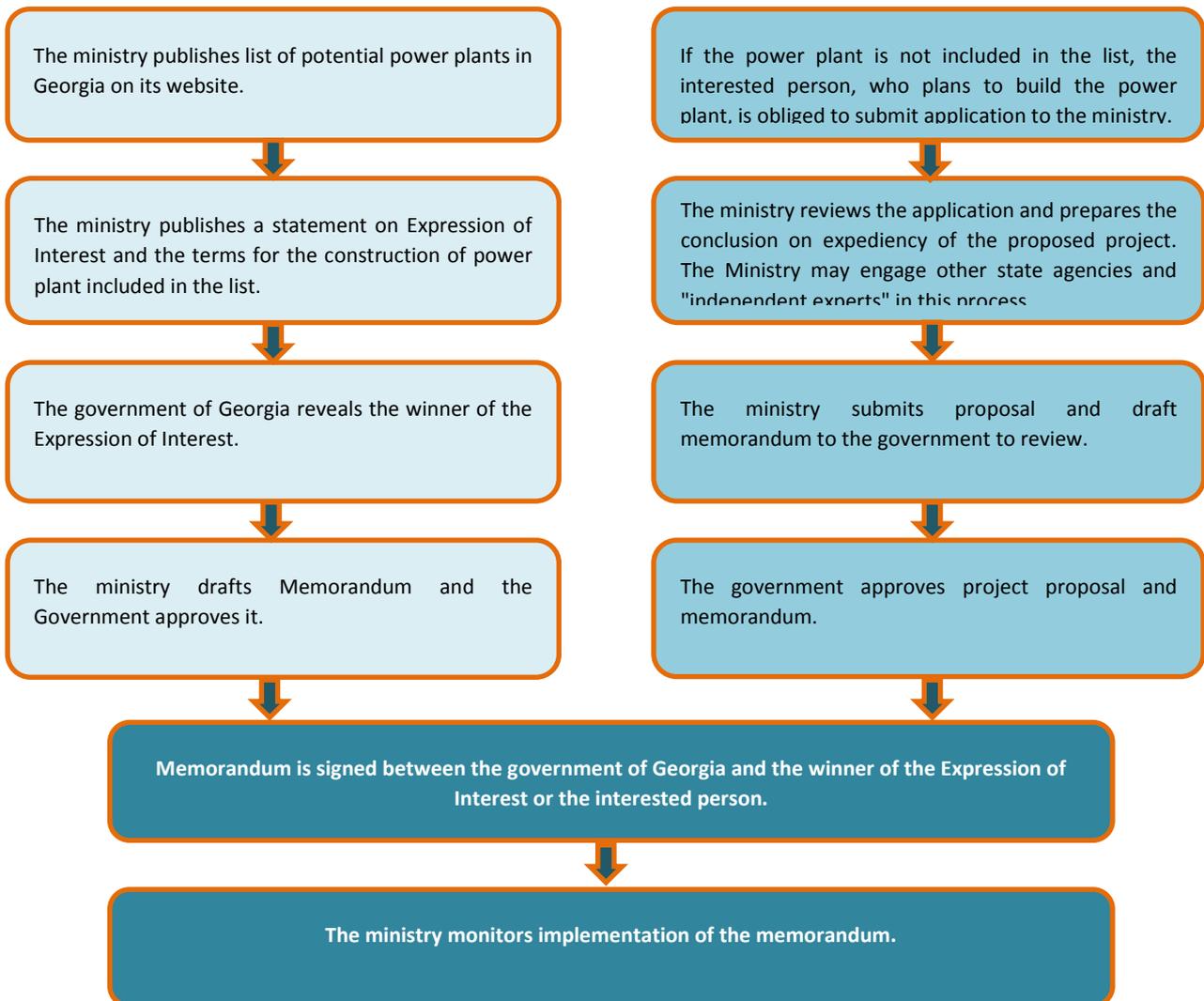
5 Statutes of the departments are not published at the website of Legislative Herald.

hydro power plants to the Ministry of Energy of Georgia, which are not included in the list of potential power plants in Georgia (hereinafter – order of minister of energy). This order approves two separate rules - for hydro power plants and for wind power plants.

The procedures set out in these acts are discussed below, to determine if the public has the opportunity to take part in decision-making processes on power projects.

Figure 1 below illustrates the decision-making chain. As shown in the figure, there are two types of decision-making for implementation of power plant construction projects: The first rule (on the left) applies to cases where the state offers the investor a potential power plant project with the predetermined estimated technical specifications. The second rule applies to the cases when the investor plans all the characteristics of the project (type, location, capacity, etc.) and seeks to obtain the state's consent to implement the planned project. In both cases, the final decision of the government – consent to the development of the project – is formed as a memorandum.

Figure #1. Decision-making procedures on power plant construction projects in Georgia.



Following should be specified in regard to the decision-making procedure described in the figure above:

- At the stage of Expression of Interest (in the statement of the ministry), the estimated location of the planned plant, estimated scheme and basic technical parameters are already established; the term for commencement of construction and commissioning of power plant are also established at this stage.
- According to the government's decree, the memorandum is a cooperation agreement between the parties⁶, which, along with other conditions, determines the terms for commencement and completion of construction works and the fines that will be imposed in case of violation of these terms. According to the abovementioned governmental decree, the memorandum divides obligations for pre-construction phase and construction phase. The pre-construction obligations include:
 - Completion of feasibility study (it seems to mean (though it is not written) that feasibility study has already begun and person interested in implementation of the project should compete it);
 - "Preparation of Environmental Impact Assessment of the project".

These stages in the memorandum are not explicitly defined in the ministerial order (second type of decision-making procedure); however, it also obliges developer to conduct feasibility study and Environmental Impact Assessment.

- It is noteworthy that in the first case (procedures defined under the governmental decree), the procedure begins with the publication of the ready-made decision - the ministry publishes the list of potential power plants in Georgia. It remains unknown what is happening before publication of this list, or how the decision on inclusion of the power plant is made.

The procedures for decision-making on power projects described above raises numerous questions, since they are not detailed either in the governmental decree or the ministerial order. Nonetheless, one thing is clear about both rules – none of them consider any form of public participation at any stage of decision-making; none require public participation in the decision-making.

Conclusion and recommendations

To summarize, as it is clear from the first chapter, the new Environmental Assessment Code has significantly altered the decision-making processes led by environmental authority on the projects with significant environmental impacts (including the power plants), and established opportunities for public to participate in the decision-making of such projects. From the second chapter of this policy brief it is also clear that the decisions made by the authority responsible for the energy sector on implementation of power project precedes the EIA and environmental decision-making, and this is very problematic.

The EIA study is undertaken and the environmental decision with public participation is made when a strategic decision to implement the power plant project has already been taken - the memorandum has been signed to implement the project and the basic design of the power plant has already been defined. Hence, the public is not able to influence sectoral decision-making by the authority responsible for energy sector and the government of Georgia, through participation in environmental decision-making.

To resolve this problem, it is necessary that the environmental decision-making on energy projects precedes decision-making by the authority responsible for energy sector (and the government).

Moreover, it is crucial to open up to the public the decision-making processes on energy projects by the authority responsible for energy sector itself. It is necessary to determine detailed, transparent procedures for decision-making on energy projects; the public should be given the opportunity to be involved in the decision-making process from the early stages.

6 Memorandum is referred in a following manner in the order of the minister of energy "memorandum (treaty/agreement)".

The study also showed that the Environmental Assessment Code has a significant shortcoming that should urgently be addressed. Although the decision on granting an Environmental Decision is adopted through public administrative procedure at all three stages, the code allows amendment of these decisions by the initiative of the Ministry or upon request of the project developer, but through the simple administrative proceedings; in other words, it allows alteration of decisions made through public participation, without public participation.

This shortcoming of the Environmental Assessment Code should be rectified in the shortest possible time: the decision on amendment should be taken in the same manner as the initial decision was made, i.e. through public administrative procedure.

This policy brief reviews whether the decision-making on energy projects, in particular, power plant construction projects, has changed with the adoption of the Environmental Assessment Code on June 1, 2017; namely, whether the code influenced the opportunities of the public to participate in decision-making.

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