



EU EIA and SEA Directives and Conventions and Georgia's Needs

2015

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In accordance with the **EU-Georgia Association Agreement** (June 2014) Georgia undertakes an obligation to gradually approximate its legislation to the specific EU legislation (including main environmental EU Directives) and international instruments (listed in the Annexes to the Association Agreement) within the stipulated timeframes. According to its Association Agreement with the EU, Georgia among others is obliged to fulfill the requirements of the Directive 2011/92/EU of the European Parliament and the Council of 13 December 2011 on the assessment of the impact of certain public and private projects on the environment (**EIA Directive**) and Directive 2001/42/EC of 27 June 2001 on the assessment of the impact of certain plans and programmes on the environment (**SEA Directive**).

With EU technical support the Ministry of Environment and Natural Resources Protection of Georgia (MENRP), has developed specific Roadmaps for the implementation of the EU-Georgia Association Agreement (AA) in the fields of environment and climate change. These roadmaps enable the Ministry to implement legal approximation, develop relevant policy instruments and make other similar steps towards the specific activities in environment and climate change fields for the fulfillment of the requirements of AA and its Annexes as well as all relevant provisions of the DCFTA.

Nine sector-specific roadmaps have been produced in accordance with the structure of the AA. Introduction to Roadmaps specifically mentions three pieces of legislation which will significantly influence the functioning of environmental legislation in Georgia. These are: EIA, Environmental Liability and framework Law on Environmental Protection.

Under Roadmap No (1) Environmental Governance, the very first (prioritized) item the list of activities is with regard to the following:

Activity	The reason of the activity	Deadline	Final results (and date)	Donor assistance (ongoing/requested)
1.1.				
Develop a new draft law on EIA and SEA (including development of draft amendments to all relevant by-laws	to bring into compliance with EIA and SEA Directives envisaged by AA requirements	EIA and SEA legislation requirements shall be implemented by 01.09.2017	developed draft - Law is published in Official Journal (end of 2015)	Actual support is provided through EaP GREEN project (EU / UNECE) and is completed by the end of 2016.

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

Two further specific actions directly connected with this issues:

Activity	The reason of the activity	Deadline	Final results (and date)	Donor assistance (ongoing/requested)
1.2.				
Develop seven sectorial EIA scoping and reporting guidelines	to support proper implementation of AA requirements from EIA Directive	EIA legislation requirements shall be implemented by 01.09.2017	Final guidelines on scoping and EIA reports posted at the Ministry's website (end of 2015)	Dutch government and GIZ – assessment on cumulative EIA for hydropower projects
1.5				
Develop relevant by-laws to the Draft-Law on EIA and SEA	to ensure implementation of AA requirements from EIA and SEA Directives	EIA and SEA legislation requirements shall be implemented by 01.09.2017	By-laws are adopted and published in Official Journal (end of 2015 - together with Law under activity 1.1)	Actual support through EaP GREEN project (EU/ UNECE) finishing in 2016.

Several studies are underway in Georgia today to support the EIA and SEA approximation process. These studies identified a group of problematic issues for both of these governance instruments (EIA/SEA) to be improved so that to make the country's legislation compatible with European requirements under AA.

The following main sources were used in this document:

Review of legislation on environmental impact assessment of Georgia with regard to implementation of the Espoo Convention, Final Report, 19 January 2014, UNECE, EaP-GREEN.

Report on analysis of the existing elements and gaps in the national legislation of Georgia related to implementation of the Protocol on Strategic Environmental Assessment to the Espoo Convention October 2014. UNECE, EaP-GREEN.

This brief note is therefore mostly based on the UNECE studies which comprise certain proposals. Consideration presented below is relevantly a brief review to what extent EU EIA and SEA Directives are applicable in Georgia. Then there are given the key summaries and recommendations in both of these directions.

EU EIA Directive and Georgia

Current EU law on EIA is governed by the EIA Directive, originally adopted in 1985 and amended three times, in 1997, 2003 and 2009. The

initial Directive of 1985 and its three amendments have been codified as Directive 2011/92/EU of 13 December 2011. The Directive is under a further process of review and amendment, with the changes expected to come into force in 2016.

In accordance with the Association Agreement with the EU Georgia is striving to harmonize its legislation with the EU, including the EIA Directive. Georgia-EU Association Agreement requires harmonization of Georgia's legislation with the Directive. Georgia thus refers to the provisions of the EU's EIA Directive as a basis for drafting a new law or amending the existing law on Environmental Impact Assessment with respect to its domestic EIA procedures, and ensure that the law incorporates or is fully linked with the legal and procedural requirements of EIA Directive.

EIA issues and recommendations for Georgia

- The list of activities that mandatorily requires EIA under Georgian legislation is not compliant with the list of activities defined under the EU EIA and SEA directives (and respective international conventions, see below). Many activities with significant potential adverse impacts on the environment (construction of radiation or nuclear facilities for instance) do not require EIA and ecological examination under the present legislation of the country.
- The list of activities subject to EIA under Georgian legislation does not conform with the list of activities in Appendix I to the ESPOO Convention as well as the activities under Aarhus Convention.
- There is a strong need to introduce screening and scoping stages in EIA legislation.
- The screening (formally not mentioned as such in the legislation) in practice often is dependent on the proponent, while the scoping stage (also formally not mentioned as such in the legislation) takes place under the sole responsibility of the proponent (usually undertaken only by IFI supporter projects), without official involvement of public authorities or opportunities for public participation prior to the development of a full preliminary EIA.
- Since public authorities are not involved during the scoping stage there is no means of ensuring the implementation of a full alternatives analysis, including the no-action alternative, be undertaken in accordance with the legislative requirement. Authorities could potentially invalidate EIAs for shortcomings at a later stage, but at great cost of the proponent. Consequently, the alternatives analysis requirement tends to be ineffective, generally

- not described in practice even though required by law.
- Monitoring programs are required, but not management plans.
 - Non-technical summary in the former law has been replaced by the requirement to include a technical summary in the current law. While the non-technical summary is still required under the regulations issued by the Ministry it is not often used in practice.
 - While an alternatives analysis is included in Georgian law, the no-action alternative is not specifically mentioned.
 - The time periods under current legislation are not in line with the best international practice, e. g., would not allow for transboundary consultation (currently ecological examination must be conducted during a period of between 10 and 15 days following the commencement of the administrative process (i.e., when the EIA application is submitted to the Ministry).
 - It is questionable whether the 20 day time period for issuance of an environmental impact permit provides sufficient time for the environmental authorities to study and approve a project with major impacts, or with potential adverse transboundary effects.
 - The application of the “one window principle” has the effect of placing the EIA permitting process in an inferior position to the construction permit. It is unclear whether the authorities issuing construction permits respect and maintain inter-agency coordination principles. Even if this functions in some cases, the procedure may be misleading or confusing for project proponents.
 - In the current system the construction permitting authorities are in the front line of determining whether a proposed activity falls under the EIA requirements, and the involvement of the environmental authorities is entirely dependent on the will and decision of these authorities. New legislation should rectify this situation.
 - Post-project analysis is almost wholly dependent on the proponent. Inspection almost never occurs except for in response to public complaints.
 - Neither EU Directive nor the ESPOO Convention admits any exemption from EIA requirements on the basis of a project being carried out by public agencies. Georgia should eliminate the exemption for certain public agencies from the Law on Licenses and Permits and should fully integrate and harmonize its permitting and EIA system applying the same standards regardless of the proponent.
 - New EIA legislation must include full public participation in compliance with EU EIA Directive and Aarhus Convention.
 - New EIA and SEA legislation should ensure that the transboundary

EIA procedure contains clear mechanisms for notification, provision of information, consultation and public participation and all other international best practice requirements.

- EIA documentation must include a description of reasonable alternatives.
- No-action alternative must be required so that the comparative analysis of the state of environment is possible in the absence of the project implementation.
- Non-technical summary must be a mandatory element of the EIA documentation.
- Identification of gaps in knowledge and uncertainties encountered in compiling the required information is also a mandatory element of the EIA documentation.
- EIA documentation should include a separate chapter on potential transboundary impact and if such impact is confirmed planning of relevant activities shall be a mandatory requirement.
- Not only monitoring programs are required, but also management plans should be required and format for both clearly defined
- The implementation of monitoring plans and programs is an important element of post-project analysis. Georgia should introduce routine inspection and increase the capacities of its inspectorate.
- Full EIA should be subject to monitoring than only ecological examination conditions.
- New EIA legislation should clarify the distinctions between permitting processes for new construction and permitting for continued or amended activities.
- Currently there are no formal requirements that a private company responsible for the EIA preparation consultative service shall comply with. In practice, sometimes EIA reports do not even include the contact information or identity of the experts carrying it out. Georgia should consider the introduction of a certification system in order to improve the quality of EIA and the standards for companies performing EIA services
- Define the essence of conflict of interests for consultants
- Provide regulations on presentation of critical project design details as part of the EIA
- Significantly improve regulations and enforcement with regard to engineering design review in the permitting process. It is now much easier to obtain construction permit than to undertake EIA.
- Provide guidelines for environmental economic costs referred to in legislation, and taking into account the international best practice.
- Develop full set of sectoral guidelines and make them mandatory

for use in their EIA analysis by proponents (scoping can resolve those issues which are not applicable from general guidelines in a specific project).

EU SEA Directive and Georgia

In addition to Directive 2001/42/EC of the European Parliament and Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive), in accordance with the Association Agreement Georgia should also comply with relevant international agreements and conventions in the EIA/SEA field, such as ESPOO Convention and its SEA Protocol.

Georgia is not yet a Party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and its Protocol on Strategic Environmental Assessment (Protocol on SEA). To better prepare for accession to the treaty the country requires to undertake a number of steps and develop a national system to apply EIA and SEA procedures according to the provisions of the Espoo Convention and the Protocol on SEA, including improving its legislative and institutional framework to fully comply with the Convention and its Protocol.

Before reform of Licensing and Permitting system of Georgia (in 2005-2007) the following plans and programs were subject to environmental assessment and public participation procedures: urbanization and spatial planning programs; industry development programs; transport infrastructure development programs; land use schemes for administrative-territorial units (districts); long-term rehabilitation programs for protected areas; plans on the protection and use of water, forest, land, minerals and other natural resources; national, regional and local construction programs for the location of engineering facilities of all types designed to avoid negative consequences of possible natural disasters. According to the Law on Environmental Permit (1997), it was obligatory to conduct EIA/OVOS and to make decisions on issuing environmental permits through public participation before such plans and programs were adopted, approved or endorsed by the legislative or executive bodies. As a result of legislative reform such plans and programs are no more subject to the above mentioned procedures.

At present the Georgian legislation does not provide for the procedures for developing and adopting national, regional and/or sectoral strategies, plans and programmes. There is legislation on environmental assessment of specific activities (projects) that establishes the system of environmental impact assessment; however, Georgia has no particular legislation on

Strategic Environmental Assessment.

In order to ratify and implement the Protocol on SEA as well as to approximate the legislation to the EU EIA and SEA Directives it is recommended:

SEA issues and recommendations for Georgia

- To prioritize and determine the types of the strategic documents that should be covered by the suggested SEA legislation;
- To develop and adopt one new law on environmental assessment that shall cover both EIA and SEA procedures.
- To ensure compliance with the requirements of the SEA Protocol, the Espoo and Aarhus Conventions, as well as to transpose to the maximum extent the provisions of the EIA and SEA Directives;
- To elaborate the list of projects that require EIA based on Annex I and Annex II of the EIA Directive.
- To elaborate the list of legislation (including legislation that regulate issuance of relevant licenses and permits and development of strategic documents) and make legislative changes needed in order to ensure references to relevant EIA and SEA requirements;
- Ratify ESPOO and its protocols on transboundary assessment.

The views expressed in this publication belong to the experts.

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