GEORGIA'S NEW ENVIRONMENTAL IMPACT ASSESSMENT LEGISLATION: COSTS AND BENEFITS FOR THE BUSINESS ENVIRONMENT

by Marekh Merabishvili

LL.M. SHORT THESIS
COURSE: EU Law I
PROFESSOR: Jessica Charles Lawrence Ph.D.
Central European University
1051 Budapest, Nador utca 9
Hungary

Table of contents

ABSTRACT

Georgia undertakes the legal approximation obligation under the Association Agreement with the European Union and the European Atomic Energy Community and their Member States signed in June 2014. The Georgian Draft Law - Code of Environmental Assessment has been drafted to fulfill this obligation in relation to the Environmental Impact Assessment and the Strategic Environmental Assessment regulations. This thesis analyzes the costs and benefits of the draft law regarding its impact on the business environment in Georgia. The thesis finds that as compared to current Georgian regulation, the regulatory scope is enhanced under the new law through an increased list of activities subject to the Environmental Impacts Assessment and it affects more spheres of business activities. It also finds that the draft law places additional burdens on business in terms of increased timeframe of the environmental assessment procedures and raised expenses. Additional regulation is imposed on business through the increased scope of public participation and post-project analysis. The thesis also considers the nature of the unprepared local market and the business sector to highlight an existing gap between the draft law and practice.

Finally, the thesis briefly analyzes the Strategic Environmental Assessment and Transboundary Environmental Impact Assessment Procedures included in the draft law and finds they also place an increased burden on business. Despite these additional burdens, the draft law establishes increased legal certainty and clear procedures for business, which contributes to efficient planning of activities and improves the quality of environmental assessment. The draft law adopts the best international and European practice in environmental assessment, prepares Georgia for future development of this sphere, and plays an important role in environmental protection.

Introduction

The Association Agreement between the European Union and the European Atomic Energy Community and their Member States and Georgia (hereinafter referred to as Association Agreement) was signed in June 2014. Together with the Deep and Comprehensive Free Trade Area (DCFTA), the Association Agreement creates the basis for future cooperation and integration between the EU and Georgia in both the political and economic arenas. The process of legal approximation with the EU is one of the most important issues currently taking place in Georgian law, and this process is accompanied by many novelties for Georgian legislation.

Notwithstanding the fact that current Georgian environmental legislation is quite extensive, Georgia still faces numerous environmental problems, which are critical and need to be addressed as soon as effectively possible, including through legislative steps. Accordingly, the legislation needs to respond to international best practice. The reasons for the delay in implementing the best international practice of the Environmental Impact Assessment (hereinafter referred to as EIA) in Georgian legislation stem from the last decade when the main priority was economic development, which caused postponing implementation of environmental regulations.[1] While economic development is still one of the main goals of Georgia, the Association Agreement "[o]ffers an opportunity, although often complex and costly, to bring Georgia's environmental governance, legislation and implementation practice closer to international best practice".[2]

[1] Michael Emerson, Tamara Kovziridze (eds), *Deepening EU-Georgia Relations: What, why and how?* (CEPS Special report, Rowman & Littlefield International, London 2016) 139. <https://www.ceps.eu/system/files/Georgia%20e-version%20with%20covers.pdf> accessed 6 April 2017.
[2] ibid 139.

Under the Association Agreement, Georgia undertakes many obligations, including but not limited to legal approximation in environmental policy issues.[3] One of the most important and interesting topics within this area is the rules governing the EIA. While sources[4] define EIA differently, the fundamental idea is the same in each of them. The following definition summarizes the essence of the EIA, defining it as "an analytical process that systematically examines the possible environmental consequences of the implementation of projects, programmes and policies".[5] According to another definition, the EIA "assesses the impacts of planned activity on the environment in advance, thereby allowing avoidance measures to be taken: prevention is better than cure".[6] The EIA procedure is considered as an important measure "[f]or restoring, maintaining, and enhancing environmental quality".[7]

The EIA issue is currently regulated under the Georgian Law on Environment Impact Permit. However, the new law, in particular, Georgian Draft Law - Code of Environmental Assessment was elaborated in accordance with the Association Agreement to meet the approximation obligation with the EU legislation, in particular with Directive 2011/92/EU[8] and Directive

[3] Association Agreement between the European Union and the European Atomic Energy Community and their Member States and Georgia 27 June [2014] OJ L261/4 (Association Agreement) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:261:FULL&from=EN> accessed 6 April 2017.

[4] *e.g.* Law of Georgia on Environment Impact Permit, 14 December 2007, No 5602-ES <https://matsne.gov.ge/en/document/view/20206> accessed 6 April 2017.
Nicholas A. Robinson, 'International Trends in Environmental Impact Assessment' (1992), 19 Boston College Environmental Affairs Law Review, 591.
<http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1468&context=ealr > accessed 6 April 2017.

[5] OECD, Glossary of Statistical Terms <https://stats.oecd.org/glossary/detail.asp?ID=828> accessed 6 April 2017.

[6] John Glasson, Riki Therivel, Andrew Chadwick, *Introduction to environmental impact assessment*, (4th edition, Routledge 2013) x, 3, 4.

[7] Robinson (n 4) 604.

[8] 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 [2011] OJ L26/1 (EIA Directive) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:En:PDF> accessed 6 April 2017.

2001/42/EC.[9] The draft law also adjusts Georgian legislation to the Espoo Convention[10] and the Arhus Convention[11], however, the thesis does not refer to this context of the draft law. The proposed law is noteworthy as it regulates the EIA issues in a new manner and is likely to impact on the business sector and the environment in Georgia.

The aim of this thesis is to examine what should be expected from the new regulations, assessing their prospective impact on doing business in Georgia. This will involve, on the one hand, determining whether it will be the heavy burden for business. On the other hand, it will also involve examining the balance between costs and benefits of the new regulation.

It is worth mentioning that the adaptation process for new regulations is quite hard under any legal conditions, however, regulations connected to business pose specific risks and problems. If new regulations are not carefully considered and tailored, it can lead to a reluctance to do business in certain spheres and will have a direct impact on the economy.

It goes without saying that economic development is crucial for developing countries like Georgia. Business and entrepreneurs are key drivers of the economy. Therefore, it is of the utmost importance for the country to determine policy directions and draft legislative amendments corresponding to the needs of the economy and considering the particular needs

[9] Directive No. 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 [2001] OJ L197/30 (SEA Directive) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=en> accessed 6 April 2017.

[10] UN Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) – the 'Espoo' (EIA) Convention (adopted in 1991, entered into force on 10 September 1997) as published in 2015 ECE/MP.EIA/21 <https://www.unece.org/fileadmin/DAM/env/eia/Publications/2015/ECE.MP.EIA.21_Convention_on_Environmental_Impact_Assessment.pdf> accessed 6 April 2017.
Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (adopted in 2003) <http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/protocolenglish.pdf> accessed 6 April 2017.

[11] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), UNECE, (adopted in 1998) <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf> accessed 6 April 2017.

of the Georgian context in a way that will be most appropriate for improving the business and investment environment.

However, on the other hand, environmental issues are one of the pivotal challenges in the 21st century and are related to the different values of society and human rights, which makes the issue sensitive and worthwhile. Therefore, this process requires a reasonable approach from the government not to undermine the equilibrium between the economy and the environment either by overly heavy regulations of business on the environmental issues or lack of regulation, which can impact on the environment heavily and lead to serious problems and concerns.

The environmental regulation regime plays an important role for investors while determining the investment strategy.[12] When speaking about the impact on business, we should take into account the additional expenses businesses will incur related to acquainting themselves with the new regulations, but more importantly, related to performing an EIA for their projects. In addition to the expense, the adaptation process will also require additional time, as businesses must obtain an EIA before launching a project. Delay in operations at the end of the day affects the income of companies.

Therefore, taking into account the importance of this topic, the thesis will be focused on the legal approximation process of Georgian regulations on the EIA with that of the EU. The thesis will refer to the upcoming approximation and implementation process in Georgia, the transition period to the new law, and difficulties accompanying this process. It is worth paying attention to this process more critically, in order to foresee future challenges and make this process less 'painful', on the one hand, and achieve efficient legal approximation, on the other.

[12] David Annandale, Ross Taplin, 'Is environmental impact assessment regulation a 'burden' to private firms?' (2003) 23 Environmental Impact Assessment Review, (383-397), 383-84 <http://www.sciencedirect.com/science/article/pii/S0195925503000027> accessed 6 April 2017.

Additionally, the thesis will refer to the Strategic Environmental Assessment (hereinafter referred to as SEA) in brief, which is part of the new law as well, and is related to the assessment of strategic documents in specific sectors "[o]n the environmental and human health".[13]

The interrelation between the EIA and SEA is their connection to the environmental impact assessment, however, the former applies to the plans and programmes and is more specific, while the latter applies to strategic documents, and refers to "the wider strategic implications".[14] Whereas the procedure of both the EIA and SEA consists of almost the same steps and both are connected to assessment the impact on the environment, there is the difference in parties of those procedures and objects and scope of the assessment. The SEA resembles the EIA to a large extent, in terms of the procedure and the aims, however, the latter is based on private-public relationship, while the former is entirely connected to public authorities and private party is not participating in the process.[15] Though the extent is different in comparison to the EIA, the SEA procedure can impact on business as well. Therefore, the thesis will briefly refer to the SEA procedure in light of the prospective impact on business.

The first chapter gives a general overview of the EIA and SEA. This chapter refers to the current Georgian regulation on EIA, as well as environmental part of the Association Agreement. It also covers the EU legal instruments - Directives on the EIA and SEA, Georgia undertakes to approximate its environmental legislation with, as well as some procedural issues related to approximation process. Finally, the first chapter illustrates some divergences between current Georgian legislation and EU directives.

[13] Georgian Draft Law - Code of Environmental Assessment (2017) [07-2/47/9] (in Georgian) <http://info.parliament.ge/file/1/BillReviewContent/142830?> accessed 6 April 2017.
(For English translation (not final version) see,
<http://moe.gov.ge/res/images/file-manager/sajaro-ganxilva/garemosdacviti-shefasebis-kodeqsi.docx> accessed 6 April 2017).
[14] Simon Marsden, *Strategic Environmental Assessment in International and European law: a practitioner's guide*, (London Sterling VA: EARTHSCAN 2008) 239-240.
EIA Directive (n 8).
[15] SEA Directive (n 9).

The second chapter takes a close look at the Georgian draft law - Code of Environmental Assessment. It examines the main features of the new law, covering issues regarding the Environmental Decision and its issuing procedure, public authority in charge, types of projects and activities which require the EIA, and their criteria, screening procedure, exemption from the EIA, the decision challenging possibility and other issues. Additionally, the second chapter refers to the SEA, public participation in the decision-making process and the Transboundary Impact Assessment procedures. And finally, the second chapter briefly overviews the continuation issue of already existing projects.

As for the third chapter, it analyzes potential impact on business activities, focusing on both the positive and the negative influence, as well as, referring to the effects of the new law on the environmental protection issues. This chapter finds that the new law is burdensome for business as the proposed procedures are time-consuming and costly. Also, the chapter analyzes the increased scope of public participation and post-project analysis as an extra burden for business. The chapter highlights the unprepared market and the lack of expertise in the environmental assessment sphere among participants, as an obstacle to the efficient implementation of the law and the quality procedures. On the other hand, the chapter shows the benefits brought by the new law to business, such as, the possibility of an efficient planning of activities and expenses related to it, clear and transparent procedures, which is easy to follow, together with the possibility of avoiding future unexpected risks in the process of project implementation. Thus, this chapter assesses costs and benefits of the new law introduced in Georgia. And lastly, the conclusion will summarize the research results, identify positive and negative effects of the new regulation which are different from the current law and assess the impact of the proposed law on business and the environmental protection.

Chapter 1 - Environmental Impact Assessment and Strategic Environmental Assessment

The EIA is a decision-making procedure which aims to mitigate or prevent the adverse environmental effects of implementation of projects/programmes which are considered to be in the high-risk category according to the respective legislation. The importance of the EIA is growing worldwide. Its flexible nature contributes to this process, as it can be easily adjusted to the local "cultural, political and socioeconomic" conditions.[16] While the SEA procedure is an administrative procedure as well, it is focused on the assessment of the strategic documents created by the public authorities in light of the environmental impact.[17]

Within the EU-Georgian legal approximation process, Georgia has taken on the obligation to adjust Georgian EIA and SEA rules to Directive 2011/92/EU and Directive 2001/42/EC. The EIA procedure is part of the Georgian legislation, but it needs significant changes to correspond to the best international and European practices, while the SEA is not stipulated under it. Therefore, adopting new law is connected to the profound changes in the EIA rules, and also implements new procedures for the Georgian environmental legislation in terms of the SEA.

This chapter aims to compare current Georgian legislation and the EU legislation on the EIA and SEA to which Georgia undertakes to approximate its legislation with and highlights the main differences between Georgian and European regulations. The chapter will illustrate the current background in Georgian EIA legislation, and also gives an overview of the main aspects of the EIA and SEA rules of the EU, which is the model legislation for the proposed draft law in Georgia. This insight is carried out in order to create a better understanding of the issue,

[16] Robinson (n 4) 591, 593.
see also Neil Craik, *The international law of environmental impact assessment: process, substance and integration* (Vol. 196: Cambridge University Press, 2008) 44.
[17] SEA Directive (n 9).

background, and sources of the draft law and effectively analyze its impact on the business environment in Georgia.

1.1 Current Georgian Regulations of Environmental Impact Assessment

The EIA procedure is not a novelty for the Georgian environmental legislation. Currently, this issue is regulated under the legislation consisting of the Georgian law on Environment Impact Permit[18] and the Georgian law on Ecological Examination[19,] which have both been in force since December 2007.

The Georgian law on Environment Impact Permit enumerates the types of activities which are subject to ecological expertise.[20] It also includes rules about a public hearing and reflecting its results in a report.[21] Also, the current law involves the list of documents, which should be submitted by a developer. [22]

Under the law, the authority responsible for issuing of permits is the Ministry of Environment and Natural Resources Protection of Georgia. Before the issuance of a permit, the Ministry is responsible for conducting the ecological expertise based on the documents submitted by a developer, which is the precondition of issuing a permit. The Ministry issues a permit within 20 days after the registration of an application requesting an Environment Impact Permit.[23] Additionally, the law stipulates an exemption possibility based on a national interest.[24]

According to the law,

> The EIA is the definition of the nature and level of sources of all potential impacts on the environment during the course of creating documents that substantiate a planned activity and of making an environmental decision for this

[18] Law of Georgia on Environment Impact Permit (n 4).
[19] Law of Georgia on Ecological Examination, 14 December 2007, No 5603-ES <https://matsne.gov.ge/en/document/view/20212> accessed 6 April 2017.
[20] Law of Georgia on Environment Impact Permit (n 4) art 4.
[21] ibid 6-7.
[22] ibid art 8.
[23] ibid art 9.
[24] ibid art 11.

> activity. The EIA is also the assessment of ecological, social, and economic implications of the planned activity.[25]

So, under the current law, the EIA process consists of the preparation of the substantiating documents for the scheduled activities and determination of the character and intensity of any potential environmental impact of this activity, as well as, the evaluation of its ecological, social and economic results during the environmental decision-making process.[26]

An applicant seeking an Environmental Impact Permit is entitled under the law to appeal a decision of the issuing authority i.e. the Ministry refusing to issue the permit. The appeal procedure should be carried out at the administrative level – by the supervising administrative authority.[27]

Apart from the issues referred to above, the current law covers such issues as the rights and obligations of a developer and the permit issuing authorities, the grounds of denial to grant the permit and the possibility to appeal the decision, the control of adherence to and the liability for breaching conditions of the permit and termination of the permit. [28]

1.2 Association Agreement and EU Legal Instruments on EIA and SEA

The significant part of the process of association of Georgia with the EU – approximation of the legislation refers to almost every sphere of law, inter alia, the environmental law and more specifically the EIA and SEA.

Under the Association Agreement,

> The Parties shall develop and strengthen their cooperation on environmental issues, thereby contributing to the long-term objective of sustainable development and greening the economy. It is expected that enhanced environment protection will bring benefits to citizens and businesses in Georgia and in the EU, including through improved public health, preserved natural resources, increased economic and environmental efficiency, as well as use of

[25] ibid art 10(1).
[26] ibid art 10(1).
[27] ibid art 14.
[28] ibid arts 12-20.

> modern, cleaner technologies contributing to more sustainable production patterns. Cooperation shall be conducted considering the interests of the Parties on the basis of equality and mutual benefit, as well as taking into account the interdependence existing between the Parties in the field of environment protection, and multilateral agreements in the field.[29]

Thus, while the approximation process may prove to be costly and burdensome, it is still a good opportunity for Georgia to advance its environmental legislation to the international best practice and aims to bring benefits to the stakeholders[30].

While the environmental part of the Association Agreement is quite extensive, this thesis focuses on the environmental governance, which encompasses the EIA and SEA.[31]

Annex XXVI of the Association Agreement stipulates the gradual approximation of Georgian legislation to the directives on the environmental impact assessment. Two Directives are relevant in this regard.[32]

Firstly, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (hereinafter referred to as EIA Directive)[33] falls under the Association Agreement. The Association Agreement puts forward the approximation scope of Georgian EIA legislation with the Directive referring to the specific issues which should be implemented during this process.

The Association Agreement also indicates Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (hereinafter referred to as SEA Directive)[34] as relevant for the harmonization. The agreement accents the main issues of the SEA procedure which should be transposed in the Georgian legislation in accordance with this

[29] Association Agreement (n 3), art 301.
[30] Michael Emerson, Tamara Kovziridze (n 1) 139.
[31] ibid 136.
[32] Association Agreement (n 3), art 301.
[33] The draft law is based on the 2011 version of the EIA Directive (n 8), which is given in the Association Agreement. EIA Directive (n 8).
[34] SEA Directive (n 9).

Directive. Both the EIA Directive and the SEA Directive determine only a general framework of the EIA and SEA and leave enough possibility to maneuver for the Member States while implementing the Directives.

Importantly, as Georgia in not a Member of the EU, it is not obliged to directly transpose and incorporate Directives, but the aim is to approximate and get close to the EU legislation. This approach is apparent from the Association Agreement as well, which indicates specific provisions of the EIA and SEA directives which are relevant in the approximation process. In addition, as accepted international practice, Georgia can tailor EU regulations to adjust it with its environmental context.[35] Therefore, this process should be carried out considering the current Georgian legislative, business and environmental background.

1.2.1 The EIA Directive

The Association Agreement highlights the importance of the harmonization of Georgian legislation with that of the EU on some issues and procedures referred to in the EIA directive. The Association Agreement specifies:

> — adoption of national legislation and designation of competent authority/ies (Articles 2 and 3);
>
> — establishment of requirements that Annex I projects to be subject to environmental impact assessment and of a procedure to decide which Annex II projects require EIA (Article 4) […]
>
> — determination of the scope of the information to be provided by the developer (Article 5);
>
> — establishment of a procedure for consultation with environmental authorities and a public consultation procedure (Article 6);
>
> — establishment of arrangements for exchange of information and consultation with EU Member States whose environment is likely to be significantly affected by a project (Article 7);
>
> — adoption of national legislation and designation of competent authority/ies;

[35] Robinson (n 4) 593.

— establishment of measures for notifying the public of the outcome of decisions on applications for development consent (Article 9);

— establishment of effective, not prohibitively expensive and timely review procedures at administrative and judicial level involving the public and NGOs (Article 11). [36]

Implementation time of the mentioned issues is 3 years commencing from the entry into force of the Association Agreement.[37]

To start with, the approximation process aims to implement all required steps to ensure that certain projects will require development consent and will have to go through the assessment before approval.[38] An EIA is required where the project will have a significant impact on the environment due to its nature, size or location.[39] In addition, the process of the environmental impact assessment should take into a consideration the following factors in light of the direct or indirect impact of the project on:

- "human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the enumerated factors". [40]

However, there can be specific occasions where some exceptions are permissible and exceptions may refer to projects as a whole or some parts of it.[41]

The developer should provide, at least, the following information in the process of seeking an environmental impact assessment: the project description including the "site, design and size of the project", the description of the measures to prevent, mitigate or remedy significant

[36] Association Agreement (n 3);
EIA Directive (n 8).
[37] Association Agreement (n 3), Annex XXVI
[38] EIA Directive (n 8), art 2.
[39] ibid art 2.
[40] ibid art 3.
[41] ibid art 2(4).

negative effects, information in order to analyze prospective effects of the project on the environment, the outline of other possible alternatives examined by the developer indicating the arguments for his choice, "a non-technical summary" of the project description and an outline of the alternatives.[42] On the other hand, the authorities should provide access to the information they process, if developers need this information for submitting it for EIA.[43]

As for public participation in the decision-making process, it is stipulated that the public concerned should be given timely and effective notice so that they can take part in this process and state their opinions/make comments.[44] Additionally, when the competent authority makes a decision to grant or refuse to grant the development consent, the public concerned should be informed about this decision.[45]

Moreover, the right of access to the review procedure should be guaranteed. "The public concerned [should] have access to a review procedure before a court […] or another independent and impartial body [in order to] challenge the substantive or procedural legality of decisions, acts or omissions".[46] However, the right to access a court should not "exclude the possibility of a preliminary review procedure before an administrative body" prior to court proceedings.[47] Also, it is up to a State to decide the stage when it is possible to initiate the appeal procedure.[48] Importantly, all of the mentioned procedures should be "fair, equitable, timely" and should not entail unreasonable expenses.[49]

Apart from regulating the intrastate EIA procedures, the directive affects interstate relationships as well. In particular, when the planned project is likely to affect the environment

[42] ibid art 5(3)
[43] ibid art 5(4)
[44] ibid art 6
[45] ibid art 9
[46] ibid art 11(1)
[47] ibid art 11(4)
[48] ibid art 11(2)
[49] ibid art 11(4)

in another state, the state where the project is to be implemented should communicate with the affected state and provide a description of the project, its prospective transboundary effects and an information on the characteristic of the decision to be taken.[50] As the affected state may wish to participate in the decision-making process, it should be given reasonable time to express an interest regarding participation in the "environmental decision-making procedures".[51] If the affected state decides to participate in the mentioned procedure, the state where the project is carried out should provide it with the respective information. [52]

1.2.2 The SEA Directive

The EIA and SEA both are impact assessment procedures in light of the environment, however, key differences are related to the initiators of the procedure and object of the assessment. The EIA is initiated by a developer, private party, while the SEA procedure is commenced by a public authority. Moreover, the project or programme is assessed during the EIA procedure, while the SEA procedure is connected to a strategic document assessment in light of its environmental effects. The SEA is not related to a specific project/programme rather than assessing a potential impact of a strategic document in the future. In contrast, the EIA is related to the specific projects or programmes and their effects on the environment. It is noteworthy, the EIA procedure is likely to be a burden for the business, as it is their obligation to initiate it, while the SEA procedure is the responsibility of a public authority and is not imposing the direct burden to the business. [53] Considering its general nature, parties, and objective of the SEA, this issue is the topic of another research, however, still should be paid attention in light of any possible impact on business.

[50] ibid art 7(1).
[51] ibid art 7(1).
[52] ibid art 7(2).
[53] EIA Directive (n 8)
SEA Directive (n 9).

The Association Agreement's main emphasis among issues under the SEA directive is on provisions regarding the adoption of national legislation and determining competent authority/ies, which should be implemented within three years from the effective date.[54]

In addition, the Agreement refers to the following issues under that Directive to be implemented in Georgian legislation within four years from the effective date:

> — establishment of a procedure to decide which plans or programmes require strategic environmental assessment and of requirements that plans or programmes for which strategic environmental assessment is mandatory are subject to such an assessment (Article 3);
>
> — establishment of a procedure for consultation with environmental authorities and a public consultation procedure (Article 6);
>
> — establishment of arrangements with EU Member States whose environment is likely to be significantly affected by a project for exchange of information and consultation (Article 7).[55]

To start with, the SEA Directive refers to the scope of an environmental impact assessment and states that it should be "carried out for plans and programmes […] which are likely to have significant environmental effect".[56] The Directive enumerates certain types of plans and programmes which require an environmental assessment.[57]

However, plans/programmes which are connected to "small areas at local level and minor modifications to plans and programmes"[58] which require an environmental assessment, or "set the framework for future development consent of projects"[59], require an environmental assessment only where they are likely to have "significant environmental effects".[60]

[54] Association Agreement (n 3), Annex XXVI;
SEA Directive (n 9).
[55] ibid
[56] SEA Directive (n 9), art 3(1).
[57] ibid art 3(2).
[58] ibid art 3(3).
[59] ibid art 3(4).
[60] ibid art 3(4).

Additionally, "significant environmental effects should" be determined "either through case-by-case examination or by specifying types of plans and programmes or by combining both approaches".[61] This process also includes consultation procedures with designated authorities having respective environmental competence.[62]

It should be mentioned, that plans and programmes related to the "national defence or civil emergency", on the one hand, and "financial or budget plans and programmes", on the other, are not subject to the SEA Directive.[63]

One of the issues, which is also highlighted in the Association Agreement in light of the mentioned Directive is transboundary consultations. If there is the likelihood that a state plan or programme carried out on its territory might have the significant environmental impact on another state or the latter so requests, the implementing state should provide the draft plan/programme or the environmental report to the affected state, before adopting it or commencing the legislative procedure on it.[64] The latter may express the interest to enter into consultations regarding the prospective transboundary environmental effects of the realization of the plan or programme and the mitigation and elimination measures of such effects.[65]

1.3 Divergences Between Georgian Law and EU Directives on EIA and SEA

As it was mentioned above, the EIA is not the novelty for the Georgian legislation, however, there are still plenty of divergences as compared to the EU environmental regulations.

Firstly, the main similarities should be overviewed briefly before examining differences. In short, both the Georgian current law and the EIA Directive refer to a number of issues

[61] ibid art 3(5).
[62] ibid art 6(3).
[63] ibid art 3(8)
[64] ibid art 7(1).
[65] ibid art 7(2).

including: activities which fall under the EIA, public hearing of the EIA and taking into account the results of this hearing, necessary documentation for the EIA application, the permit issuance procedure, exemption from the EIA, the rights and obligations of developers and issuing authorities and refusal to grant a permit and provisions on an appeal procedure.[66]

However, the EIA regulation addresses the abovementioned issues in a more detailed way, setting the different procedural steps and on top of that, covers some issues which are not mentioned in the Georgian law.

Firstly, the EIA Directive stipulates that project/programme subject to the EIA should go through some scrutiny before an exemption from the EIA and this process should be transparent to the public in terms of providing information.[67] Moreover, under the EIA Directive, public participation is an important and mandatory procedure throughout the whole process of the EIA.[68] It is true that provisions on public participation are part of the current Georgian law[69], however, under the EU regulations, public participation is more intensive and of the high importance.

Moreover, the EIA Directive provides more guarantees in respect of the review procedure and highlights that it should be "[F]air, equitable, timely and not prohibitively expensive".[70] On top of that, the EU regulations specifically highlight the accessibility to administrative review procedures and court or "independent and impartial body".[71]

[66] EIA Directive (n 8), art 11.
Law of Georgia on Environment Impact Permit (n 4).
[67] EIA Directive (n 8), art 2(4).
[68] ibid arts 6(2)-6(6), art 8, art 9, art 11.
[69] Law of Georgia on Environment Impact Permit (n 4), arts 6 -7.
[70] EIA Directive (n 8), art 11.
[71] ibid art 11.

One of the most important differences is that the EIA directive contains regulations regarding interstate cooperation on environmental issues called as "transboundary environmental impact assessment procedure", which is not currently stipulated under the Georgian law.[72]

When it comes to the scope of application of the EIA, projects falling under the requirement of the EIA according to the EIA Directive are divided into two groups: projects, which require EIA mandatorily and projects where competent authorities should conduct screening to assess and decide whether the EIA is required. The main criteria of a decision whether the second group of activities require the EIA is the significant impact on the environment.[73] In contrast, there is no such division under the current Georgian law[74] and it stipulates projects which require ecological examination. However, the Georgian Law on Environment Impact Permit does not define the term "ecological examination" and refers to the Georgian law on Ecological Examination.[75] The latter defines the ecological examination as the "mandatory environmental measure implemented during decision-making process on issuing environmental impact or construction permits for activities".[76] According to the same law, the positive ecological examination report is a compulsory precondition for granting the environmental impact or construction permits for activities subject to it.[77]

The environmental assessment procedures – EIA and SEA, consists of several steps in the following order: "Screening, Scoping, Environmental Report, Consultation, Decision, Information on Decision, Monitoring".[78] Conversely, current Georgian law does not envisage such stages. Furthermore, current Georgian law does not clearly define steps which should be undertaken during the EIA procedure. However, such stages of the process are regulated under

[72] ibid art 7.
[73] ibid
[74] Law of Georgia on Environment Impact Permit (n 4).
[75] Law of Georgia on Ecological Examination (n 19).
[76] ibid art 1(1).
[77] ibid art 1(4).
[78] EIA Directive (n 8).

the "Regulation on the Environmental Impact Assessment", which is the subordinate normative act of the Minister of Environment and Natural Resources Protection of Georgia.[79] This regulation stipulates the following stages of the EIA procedure; Firstly, collecting information on the environment, study, and analysis of this information, as well as the socio-economic situation in the area of the activity in the context of the prospective impact. The second step is the identification of the sources, types, and objects of the prospective environmental impact caused by the implementation of the alternatives of intended activities based on the gathered information. The third step is intended to reveal the extent and the character of an impact based on different factors. The fourth step is related to the determination and assessment of the risks of the prospective emergency conditions. The fifth step aims to reveal possibilities to mitigate the prospective impact. And finally, the sixth and seventh steps are connected to the prospective results of project implementation and determination of impact controlling and monitoring methods.[80]

As for the SEA, this is an absolutely new sphere of regulation for Georgian legislation and every aspect is a novelty for Georgia. Although, as SEA procedure resembles the EIA procedure and they follow the same pattern of procedures and both have the same purpose of environmental protection, the parties of the SEA process differ from that of the EIA. The SEA procedure is carried out in relation to the strategic documents and a public authority commences it, while the EIA is connected to specific plans and projects and the procedure is initiated by the developer, which is a private party. Additionally, the transboundary environmental impact assessment procedure, stipulated under the EU legislation is also the novelty for Georgia.

[79] Regulation on the Environmental Impact Assessment, Order of the Minister of Environment and Natural Resources Protection of Georgia N31, 15 May 2013 <https://matsne.gov.ge/ka/document/view/1921646> accessed 6 April 2017.
[80] ibid art 5.

To summarize, both, Georgian and EU regulations target the same results, include the same principles and cover the same issues, however, are organized in a different manner in terms of procedure. It is true that there are some divergences between them and there are some regulations which are unknown to Georgian legislation, however, differences refer to some procedural issues and organization, rather than the substance.

And finally, to assess Georgian and EU regulations in light of doing business, it should be emphasized that current Georgian law is quite complicated, scattered and vague, while EU regulations are easier to follow and understand. From the business perspective, organized rules can be assessed positively. In contrast, EU regulation is detailed and broad, cover almost every sphere of business activity, which means that it might be more burdensome and costly for the business.

Chapter 2 – Georgian Draft Law - Code of Environmental Assessment

In April 2013, the Georgian authorities started drafting the Georgian law – Code of Environmental Assessment in close cooperation with local and international experts in order to fulfill obligation of legal approximation of Georgian legislation to the EU Directives, most importantly, to the EIA and SEA Directives, as well as, the Aarhus Convention and other international legal instruments.[81]

Since then the draft law was considered by relevant Ministries and public entities, as well as, being the subject of public hearings. As a result of this process, the draft law was modified several times.

Generally speaking, the current version of the draft law is detailed and brings a new approach to the EIA. Additionally, the draft law introduces a completely new feature for Georgian environmental legislation – Strategic Environmental Assessment (SEA).

Firstly, the draft law regulates the EIA procedural issues in detail. The draft law replaces the permit-based system of the EIA with the decision-based system and the procedural part consists of the several stages: "screening", "scoping", "environmental report", "consultation", "Decision", "information on decision" and "monitoring".[82] Importantly, the new law gives a possibility to apply for "screening" and "scoping" procedures simultaneously.[83] The newly introduced procedure is clearer and easy to follow as compared to the current regulations, but still, contains some complexity and bureaucracy for applicants.

[81] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (2017) [07-2/47/9] (in Georgian) 58, 76 <http://info.parliament.ge/file/1/BillReviewContent/142831?> accessed 6 April 2017.
[82] ibid 61.
[83] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 62.
European Commission, 'Guidance on EIA EIS Review' (June 2001) para A <http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-review-full-text.pdf> accessed 6 April 2017.

Moreover, the draft law concretizes specific grounds of refusal to carry out a project, as well as, grounds for exemption from EIA.[84] Furthermore, the draft law imposes upon to natural and legal persons along with administrative bodies and other entities an obligation to obtain EIA, leading to equality and unified environmental regulation.[85]

As for SEA, it is compulsory for strategic documents in specific sectors identified in the draft law. Importantly, issuing authorities of strategic documents are administrative bodies. The procedural parts of the EIA and SEA are similar and consist of almost the same stages. Also, the Ministry of Health, Labor and Social affairs of Georgia actively participates in the SEA procedure together with the Ministry of Environment and Natural Resources Protection of Georgia. The SEA has a recommendatory nature, but an administrative body should give arguments of non-compliance with recommendations of above two Ministries.[86]

According to the Georgian draft Law - Code of Environmental Assessment the Ministry of Environment and Natural Resources Protection of Georgia is the policymaking authority in the field of the EIA. However, the Government of Georgia and the Ministry of Health, Labor and Social Protection of Georgia are involved in these processes as well. [87]

Along with numerous positive effects of the draft law, it is accompanied by some burdens for business, such as an increased list of activities subject to the EIA, longer procedures, and some extra expenses.

This chapter focuses on the Georgian draft law – Code of Environmental Assessment and illustrates issues regulated under the draft law. The chapter refers to the types of projects requiring the EIA, procedural steps of the EIA including screening, also results of the EIA

[84] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 65.
[85] ibid 67.
[86] ibid 68.
[87] Georgian Draft Law - Code of Environmental Assessment (n 13), art 4.

procedure such as issuing Environment Decision or refusal to issue it. As the EIA regulation and its impact on business is the main topic of the thesis, considering the new rules is the initial step towards assessing the impact of those rules on the business environment.

2.1 Breaking Down 'Environmental Impact Assessment'

The EIA aims to study the direct or indirect influence of the activities stipulated under the draft law in light of its effects on the human health and safety, biodiversity, species of animals and plants, habitats, ecosystem, soil, water, air, landscape, climate, cultural heritage and interrelation among those factors.[88]

The EIA is criticized by scholars as "too expensive, too long, require overly long documentation which ironically kills trees, are overly technical and jargon-ridden, bureaucratic, sometimes address the wrong problems, do not focus on solutions and are highly negative" [89] and sometimes is even labeled as "anti-development".[90] Notwithstanding the fact that the EIA is considered as an effective mechanism to prevent the environmental harm of planned activities, there is also the opinion that it is unsuccessful in terms of achieving the sustainable development and even environmental protection. [91] From the developers perspective, "[l]engthy government approval process […] can be frustrating for businesses who, in trying to comply with […] regulatory requirements, can have their project and

[88] ibid art 5(4).
[89] Amoyaw-Osei, 'Environmental assessment mainstreaming—Promoting and facilitating investment, sustainable development and compliance' (2004) 24th Annual Conference, International Association for Impact Assessment, 24–30 April, Vancouver, Canada as cited by Hermann Lion, Jerome D. Donovan, Rowan E. Bedggood, 'Environmental impact assessments from a business perspective: Extending knowledge and guiding business practice' (2013) 117.4 Journal of business ethics (789-805) 791 <https://link.springer.com/article/10.1007/s10551-013-1721-3> accessed 6 April 2017.
[90] Robinson (n 4) 595.
[91] E. Rubio, M. Murak, 'Quitana Roo an Example of the EIA inefficiency' (2011) 31st Annual Meeting of the International Association for Impact Assessment, 28 May–4 June, Centro de Convenciones, Puebla, Mexico as cited by Lion, Donovan, Bedggood (n 89) 790-792.
See also L. Doran, 'From cost to benefit: Can sustainability breathe new life into impact assessment?'(2004) 24th Annual Conference, International Association for Impact Assessment, 24–30 April, Vancouver, Canada as cited by Lion, Donovan, Bedggood (n 89) 790-792.

resources diverted unnecessarily, with outcomes that may not serve the interests of sustainable development nor economic viability".[92]

The EIA procedure puts together different stages, which follow each other and lead to the Environmental decision or refusal to grant it. The procedure is quite time-consuming, as it takes about up to 100 days and requires to obtain and submit documents by a developer during the procedure.

This subchapter aims to refer to some important issues of the draft law, also go through the main stages of the EIA, in order to illustrate the procedural course and assess its costs and benefits for business carrying out activities subject to the EIA.

2.1.1 Type of Projects Requiring Environmental Impact Assessment

Under the draft law, the EIA projects are divided into two groups which are annexed to the draft law as two separate lists. The first list is exhaustive and consists of projects which are subject to the EIA without precondition. So, the EIA is mandatory for the first group of activities under the law (Annex I projects). However, it is at competent authorities' discretion to decide whether the second group of activities are subject to the EIA based on the screening procedure (Annex II projects). So, the screening procedure refers only to the Annex II projects, which are subject to the EIA only after the screening shows necessity. [93]

As was already mentioned above, projects subject to the EIA under the law are listed in Annex I of the draft law. The list is quite extensive, including but not limited to the activities related to the "crude-oil refineries", "construction and operation of thermal power stations or other nuclear reactors", "construction of nuclear stations or other nuclear reactors", "chemical

[92] R. Creasey, B. Beswick, 'Conducting impact assessment because it is the right thing to do: The Waterton Seismic Project 2003' (2004) 24th Annual Conference, International Association for Impact Assessment, 24–30 April, Vancouver, Canada as cited by Lion, Donovan, Bedggood (n 89) 791.
[93] Georgian Draft Law - Code of Environmental Assessment (n 13), art 5(1).

industry", "construction and operation of lines for long-distance railway traffic", "construction and operation of airports", "construction of international and inter-state roads", "construction and operation of dams", "construction and operation of hydropower stations", "construction and operation of pipelines", "open-cast mining", "construction of overhead and/or underground electrical power lines".[94]

When it comes to the other group of activities where screening procedure is carried out in order to find out necessity of the EIA, the list includes some activities referring to the "agriculture, silviculture and aquaculture", "extracting industry and drilling activities", "energy industry", "production and processing of metals", "mineral industry", "chemical industry", "food industry", "textile, leather and paper industry", "infrastructure projects", "tourism and leisure" and other projects related to waste management.[95]

Some activities are repeated in Annex I and Annex II, however, their threshold differs, which means that to some extent they are subject to the EIA under the law, while when the threshold is lower, they are subject to the screening procedure first.[96]

As compared to the current Georgian regulations, the activities subject to the EIA increases under the draft law. However, mostly, new activities are included in the Annex II list, which does not require the mandatory EIA procedure.

Based on the mentioned Annexes, almost every sector and industry may be subject to the EIA procedure. The first Annex activities are related to large-scale projects, which are almost always connected to investments, which means that it is directly related to the investment climate in Georgia. While the second Annex activities can affect as Foreign Direct Investment projects, as well as, local industries, which means that the draft law affects doing business as a

[94] ibid Annex I.
[95] ibid Annex II.
[96] ibid Annex I and Annex II.

whole. Thus, the draft law is likely to have an impact on more business sectors than the current set of rules, as the EIA scope broadens in terms of the types of activities subject to it.

2.1.2 Screening Procedure for Annex II Projects

Screening is a pre-EIA stage which is an effective medium for developers and public authorities to determine the necessity of conducting the comprehensive impact assessment procedure.[97] The screening procedure is a novel stage of the EIA. This procedure applies only to Annex II projects and aims to find out whether the EIA is required. The developer should address to the Ministry in the early stage of the project for conduction of the screening procedure and submit brief information on a planned activity including its characteristics, area, and prospective impact.[98]

The screening procedure is conducted based on the criteria listed in the draft law, according to which a three-step test is carried out: "characteristics of projects", "location of project", "characteristics of the potential impact".[99] It should be mentioned, that each of those three main criteria is broken down to several criteria, which makes the screening procedure quite detailed.

If it is likely that the project will have a significant environmental effect this means that the EIA is needed. However, here arises another issue, how to determine 'significance' of this effect. It should be considered based on a case-by-case basis and consider specification of the project.[100] However, this process can still be complicated and more clear and efficient test needs to be worked out. Current criteria and the test leaves lots of place for discretion and may lead to an inconsistent approach or even discrimination among projects.

[97] M. Elliott, I. Thomas, 'Environmental impact assessment in Australia: Theory and practice' (2009) Annandale, NSW: Federation Press as cited by Lion, Donovan, Bedggood (n 89) 793.
[98] Georgian Draft Law - Code of Environmental Assessment (n 13), arts 7(1)-7(2), 7(4).
[99] ibid art 7(6).
[100] Craik (n 16) 29
European Commission, 'Guidance on EIA Screening' para A3.1, 11 (June 2001) <http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-screening-full-text.pdf > accessed 6 April 2017.

In addition, the draft law offers an opportunity to a developer to submit a combined screening and scoping applications in relation to Annex II activities. In this occasion, after ascertainment that an activity is subject to the EIA based on screening, the Ministry commences the procedure for issuance of the scoping report with the same decision. Moreover, if a developer considers that planned Annex II activity requires the Environmental Decision, the draft law make it possible to submit scoping application directly without going through screening procedure.[101] The latter opportunity saves developer's time, as the screening procedure is omitted. [102]

The screening procedure has its pros and cons. Positively, it makes the whole EIA procedure effective, as at this stage is decided whether the EIA is necessary or not and there is no need to prepare complete EIA report or conduct the whole EIA procedure for activities which according to the screening procedure may not be subject to the EIA at all. In addition, the screening is the simple procedure, which lasts 10 to 15 days and does not require from a developer to prepare any report. A developer should only submit a short description of activity and area of activity.[103] This means, that it may avoid business some expenses. However, from the negative angle, it is related to some extra time and costs, but can also save time and cut costs for the future.

It is noteworthy, that if the EIA is conducted according to the Georgian law on Environment Impact Permit, which does not include screening procedure, the complete EIA should be conducted in order to find out whether it was needed.[104] As compared to the mentioned law, screening as a pre-EIA step, introduced by the draft law can be considered as a step forward, but the outcome among other factors to a large extent depends on the correct organization of the process and the level of expertise of participants.

[101] Georgian Draft Law - Code of Environmental Assessment (n 13), art 7(12)-7(13).
[102] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 62.
[103] ibid 63.
[104] Law of Georgia on Environment Impact Permit (n 4).

2.1.3 Environmental Decision and Its Issuing Procedure

The EIA procedure is carried out for Annex I activities, as well as, Annex II activities after the screening is conducted, which showed the necessity of the EIA. The EIA procedure consists of several main stages.

The first step of the EIA is the scoping procedure, which aims to define a framework of the information and examination, based on which the EIA report should be prepared. [105] So, during the scoping procedure, a decision-maker public authority should determine the most relevant environmental information and issues which should be covered by the EIA. [106] The failure of adequate scoping results in an inefficient expenditure of resources on conducting the EIA on activities having an insignificant effect on the environment. [107]

The scoping procedure consists of the following steps: submission of the scoping report by a developer, arrangement of the public hearing on a scoping report and issuance of the scoping opinion by the Ministry of Environment and Natural Resources Protection of Georgia.[108] A developer should submit a scoping application together with a scoping report in order to get scoping opinion from the Ministry. The scoping report covers brief information on planned activities, such as some technical data, potential impact on the environment, its significance and types and mitigation measures. The ministry considers submitted information and documentation and issues the scoping opinion with public participation in the process. It should be mentioned, that the ministry is responsible for organizing the public hearing and covers all

[105] Georgian Draft Law - Code of Environmental Assessment (n 13), art 6(1).
[106] Lion, Donovan, Bedggood (n 89) 795.
See also, Tim Snell, Richard Cowell, 'Scoping in environmental impact assessment: Balancing precaution and efficiency?' (2006) Environmental Impact Assessment Review 26.4 (359-376) 359-360 <http://faculty.mu.edu.sa/public/uploads/1338109775.5487EIA-18.pdf> accessed 6 April 2017.
European Commission, 'Guidance on EIA Scoping' para A1, 10 (June 2001) <http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-screening-full-text.pdf > accessed 6 April 2017.
[107] G. Wood, J. Glasson, J. Becker, 'EIA scoping in England and Wales: Practitioner approaches, perspectives and constraints' (2006) *26*(3) *Environmental Impact Assessment Review (*221–241) as cited by Lion, Donovan, Bedggood (n 89) 795.
See also, Craik (n 16) 29-30.
[108] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 64.

the expenses related to it. [109] In spite of the generally increased expenses of the EIA procedure for business, the fact that some expenses are shared by the state as well can be considered as a positive side of rules.

The ministry issues the scoping opinion within 26-30 days after registration of the application which defines the necessary examinations, the information which should be obtained, studied and included in the EIA report.[110]

The scoping procedure is important in several aspects. As a result, a developer will have exact information on the examinations need to be conducted in relation to the activity and information to be reflected in the EIA report. Thus, scoping makes the planning process easier, as the scoping opinion is a manual for a developer to carry out further steps. Respectively, as developers have exact information what examinations need to be conducted after the scoping procedure, they can also plan a budget accordingly and do not spend financial resources on research which is not needed for preparation of the EIA report. [111]

The scoping procedure is followed by the preparation of the EIA report, public participation, and consultation. Developers should have the EIA report prepared by the qualified expert or consultant and bear all of the expenses related to it. [112]

The Environmental Decision is the conclusive step of the EIA procedure, which grants or denies to grant developer the right to carry out the project. The issuing procedure of the Environmental Decision consists of several stages: submission of the EIA report by a developer to the Ministry, an arrangement of public hearing and issuing Environmental Decision. Also,

[109] Georgian Draft Law - Code of Environmental Assessment (n 13), arts 8-9.
[110] ibid art 9(4).
[111] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 64.
[112] Georgian Draft Law - Code of Environmental Assessment (n 13), art 10(1).

expertise and submission of comments and opinions process go simultaneously to those steps. The scoping procedure lasts from 51 to 55 days.[113]

The draft law defines 'Environmental Decision' as "an individual administrative legal act, issued by the Minister, which entitles a developer to implement a project subject to EIA".[114] In order to carry out the project, first Environmental Decision should be obtained.[115]

In order to receive the Environmental Decision, the developer should submit an application to the Ministry. In addition, the developer is allowed to submit the single application for obtaining the Environmental Decision for several interrelated projects.[116] The Environmental Decision among other issues include an area and type of activity, the information regarding environmental protection measures, also sets the environmental protection conditions. Apart from this, the Environmental Decision includes "the objective, scale and timing of post-project analysis", prevention requirements in relation to the impacts of industrial accidents and reflects results of public participation. [117]

The administrative procedure carried out for the issuance of the Environmental Decision includes expertise, public participation, and transboundary environmental impact assessment procedure. During this process, the Ministry assesses the EIA report and any other information provided by the developer or received during the process of public participation or consultation procedural steps and is followed by the expertise procedure. In the case of transboundary environmental impact, the special assessment procedure is carried out.[118]

[113] Georgian Draft Law - Code of Environmental Assessment (n 13), art 6(2), arts 11-12.
Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 64.
[114] Georgian Draft Law - Code of Environmental Assessment (n 13), art 3(2).
[115] ibid art 5(2).
[116] ibid art 11(1), art 11(4).
[117] ibid art 13.
[118] ibid arts 12(1)-12(7).

During this procedure, the EIA report is considered by the Expert Commission[119] set up by the Ministry. Importantly, all of the opinions and comments received during the EIA procedure, as well as results of consideration of the EIA report should be taken into account by the ministry in the process of making the Environmental Decision.[120]

According to the draft law the ministry refuses to grant a permit to carry out the project in the following circumstances: if it violates Georgian Laws, the activity is not reasonable considering its "characteristics, volume, location, nature of the impact and/or risks", due to the decision of court or arbitration. Also, the draft law guarantees the appeal procedure of this decision.[121] While according to the Georgian law on Environment Impact Permit, the ground of refusal to issue environmental impact permit are quite vague. [122] Thus, in this respect, the draft law has the advantage over the current law, as it makes the refusal grounds clear.

Additionally, it is worth to mention other issues in relation to the EIA, which are stipulated by the draft law. According to the draft law, the possible to transfer the Environmental Decision to the third party is retained, as such regulation is also stipulated under the current law.[123] However, the draft law gives the possibility to transfer it fully or partially if this transfer does not violate the law or contradict the substance of the project. [124]

Based on certain preconditions, specifically defined by the draft law, it is possible to exempt developer from conducting the EIA based on well-founded application. This decision is made by the government of Georgia based on the information presented by the Ministry. Those preconditions should be connected to the national security or civil emergency stemming from

[119] ibid arts 42-43.
[120] ibid art 12(7)
[121] ibid art 14.
[122] Law of Georgia on Environment Impact Permit (n 4), art 13.
[123] ibid art 18.
[124] Georgian Draft Law - Code of Environmental Assessment (n 13), art 15(1).

the force-majeure, as it is crucial to carry out activity in a limited time frame. Considering this, conducting the EIA procedure may endanger eradication of the mentioned conditions.[125]

It is noteworthy, that the current Georgian law regulates this issue as well.[126] Although, the rule is vague and gives the possibility to interpretation, which in practice leads to frequent exemption from the EIA. According to the Explanatory notes on Georgian Draft Law - Code of Environmental Assessment, the draft law regulates this issue specifically by defining occasions exhaustively when such exemption is possible and participation of the State Security Service of Georgia.[127]

In spite of the fact that conclusive step the EIA procedure is the Environmental Decision, the draft law stipulates also monitoring procedure, called as "post-project analysis", which monitors implementation process and studies effects of the Environmental Decision.[128] Apart from this, monitoring procedure has other purposes rather than assessment the results of the specific project. The monitoring stage is the analytical process, which helps Ministry to study whether the EIA procedure was correctly conducted for future use. In other words, it gives Ministry possibility to analyze "past project failures" and experience to take them into consideration during decision-making process in the future and improve the EIA quality.[129] Additionally, it helps the Ministry to "[d]etermine whether impact mitigation and minimization strategies are indeed working, and gain early warnings of emerging and potentially detrimental situations".[130]

[125] Georgian Draft Law - Code of Environmental Assessment (n 13), art. 16.
Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 65, 66.
[126] Law of Georgia on Environment Impact Permit (n 4), art 4.
[127] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 65, 66.
[128] Georgian Draft Law - Code of Environmental Assessment (n 13), art 17.
[129] Lion, Donovan, Bedggood (n 89) 799.
see also, Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 66, 67.
[130] B. Tonn, M. English, C. Travis, 'A framework for understanding and improving environmental decision making' (2000) *43*(2) *Journal of Environmental Planning and Management*,163–183 as cited by
Lion, Donovan, Bedggood (n 89) 798.

In addition to the monitoring procedure, the draft law stipulates control procedure. This procedure is conducted based on the selective inspection and aims to control compliance with conditions of the Environmental Decision.[131] This provision of the draft law is vague, as there is not any reference about the interrelation of the control and the monitoring procedures. It goes without saying that any vagueness in the legislation related to business makes it more burdensome for it.

It should be mentioned, that the draft law stipulates provisions regulating results of the non-compliance with the Environmental Decision, such as the administrative fine and the repealing or stay of the Environmental Decision. The draft law guarantees the appeal procedures on an administrative level and the court. [132]

Another issue, which is worth paying attention in light of the impact on business is that "if implementation of a project requires different kind of license and/or permit, the Environmental Decision constitutes a prerequisite for receiving such license and/or permit".[133] This means, that the EIA should proceed any other permits or licenses needed for carrying out the planned activity. This rule may cause serious problems and burdens for businesses. Firstly, there is no guarantee that another license or permit, following to the EIA will be issued. Therefore, business may go through the EIA, waste resources, especially, considering that the EIA is a quite expensive procedure, but subsequently, be denied from the other public authority to receive a permit or license. Secondly, it will cause prolongation of the procedure of receiving a permit, as a developer should first obtain the Environmental Decision and then address to other permit issuing authority, which has its own time frames. Thirdly, this rule is against "one-stop shop" principle, which is one of the implementation goals of the draft law.

[131] Georgian Draft Law - Code of Environmental Assessment (n 13), art 44.
[132] ibid art 45.
[133] ibid art 5(2).
The draft law makes the only exception in relation to the Mineral extraction license.

In contrast, the Georgian law on Environmental Impact Permit stipulates that in the mentioned situation "construction permit issuing [authority ensures] involvement of the Ministry in an administrative proceeding initiated for the issuance of a construction permit" and "ecological examination [is] issued at the second stage of a construction permit issuance". [134] Comparing current law and the draft law in this respect shows that current regulation is simpler, less burdensome and time-consuming, than proposed.

As the Explanatory notes on Georgian Draft Law mention, the rule that obligation of obtaining Environmental Decision is imposed on both individuals/legal persons – private parties and administrative bodies is the positive novelty, guaranteeing equality. It should be noted, that this argument does not seem convincing, as imposing equal burdens on business and public entities do not make a burden of business any less.

As overall assessment of the draft law, it should be mentioned, that the proposed procedure is more progressive, consistent and easy to follow as compared to current regulation. Unlike the current formal procedure, the proposed regulation responds to the environmental protection needs and is more promising. On the other hand, it requires higher activity and involvement from the developers in the whole process, which means that the procedure is more intense and demanding. This, on its part, means that business should be prepared for all of this, which considering Georgian situation is connected to time. This process depends on the public authorities as well, because they should facilitate this process in the process of introduction and implementation. Public authorities' role in facilitation process can be expressed in organizing info sessions, give consultations to business and most importantly, take measures to make Georgian market attractive for international environmental consultancies. However, even if all of the measures are taken, the new regulation is likely to be accelerated considering expenses.

[134] Law of Georgia on Environment Impact Permit (n 4), art 4(3), art 4(5).

The positive side of the draft law in the form of raised standards is accompanied by the drawback in the form of additional expenses, for which local business is not ready in the most of the cases. When it comes to investors, raised expenses may not be the significant obstacle, however, the unprepared market can cause refrain to invest in Georgia in projects subject to the EIA.

2.2 Strategic Environmental Assessment

The Strategic Environmental Assessment is a novelty for Georgian legislation, unlike the EIA which is just subject to changes in the legislation. According to the draft law, the SEA is defined as "a procedure to examine, on the basis of appropriate studies and research, a potential impact of strategic documents […], on the environmental and human health". [135]

The aim of the SEA is to assure minimization of negative effects on the human health and environment, public participation in the preparation of a strategic document and the decision-making process on it, taking into consideration environmental and human health issues while working on a strategic document and carry out the transboundary environmental impact assessment procedure.[136]

It is planning authority who commences the SEA procedure. Planning authority is "the public authority […] responsible for the preparation of the strategic document".[137] So, unlike the EIA, where the procedure is initiated by the developer – private party, in the case of the SEA, the public authority is the one commencing the process.

The SEA process includes similar stages as the EIA and is conducted in the same timeframes and based on the same principles.[138] Those stages consist of the scoping, preparation and

[135] Georgian Draft Law - Code of Environmental Assessment (n 13), art 3(22).
[136] ibid art 19.
[137] ibid art 3(7).
[138] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 67, 68.

consideration of the SEA report, public participation and consultations, taking into consideration all of the information reflected in the SEA report, as well as recommendation of the Ministries of Environment and Natural Resources Protection and Health, Labor and Social affairs of Georgia and results of the public participation.[139] In particular, the SEA stages are the following: public authority applies to the abovementioned Ministries which is followed by the scoping procedure. Afterwards, the public authority prepares the SEA report itself or through a consultant. Then the planning authority assesses the information received through the SEA report and public participation. Also, the transboundary impact assessment is conducted, if applicable, as well as public participation and issuance of a recommendation by the ministries.[140]

The strategic documents subject to the SEA include ones which "are likely to have the significant impact on human health and the environment".[141] The SEA is mandatory for strategic documents or for the amendments to the strategic documents which establish framework for the future development projects in the different sectors given in Annex I and II of the draft law, such as: "agriculture, forestry, fishery, energy, industry, transport, waste management, water management, electronic Communications, tourism, spatial planning". Strategic documents, which set a framework for activities other than mentioned in Annex I and II, or does not fall within abovementioned sectors may also be subjected to the SEA under the law. [142]

Some small/minor changes in strategic documents, also these documents related to the self-governing communities are subject to the SEA if they have the significant, long-run, irrevocable effects on the climate, the environment, human health, protected areas and cultural

[139] Georgian Draft Law - Code of Environmental Assessment (n 13), art. 18.
[140] ibid art. 22.
[141] ibid art 20(3).
[142] ibid art 20(4), art 20(7).

heritage. In this occasion, planning authorities are entitled to omit the screening step and submit the scoping application to the Ministries of Environment and Natural Resources Protection and Health, Labor and Social affairs of Georgia. However, if a planning authority considers that the SEA procedure is not necessary, it commences the screening procedure first.[143]

For strategic documents which do not require the SEA mandatorily the screening procedure is carried out in order to decide whether the SEA is needed. As was already mentioned above, the screening procedure is conducted in relation to the SEA when it comes to the small/minor changes in the strategic document plans and programmes and ones not listed in the Annexes. The planning authority submits an application to the Ministries including information on the "geographical area of the implementation of strategic document, nature of the potential impact on the environment and human health and the population likely to be affected".[144] The ministries decide the issue whether the strategic document is subject to the SEA based on "the characteristics of the strategic document" and the "nature of the effects and the characteristics of the area likely to be affected".[145]

However, there are some exceptions to the documents related to the national security, civil emergency stemming from the force majeure, or "financial and/or budgetary sphere" where the SEA procedure does not apply.[146]

The scoping procedure within the SEA process aims to define the scope of the prospective impact of implementation of the strategic document on human health and the environment. The planning authority submits an application together with the concept or draft of the strategic document to the ministries for the purposes of receiving the scoping opinion. The authority is

[143] ibid arts 20(5)-20(6).
[144] ibid arts 23(1)-23(3).
[145] ibid art 23(6).
[146] ibid art 21.

also allowed to submit both screening and scoping applications together. [147] The scoping opinions issued by the ministries list the information which should be obtained and analyzed and types of examinations need to be conducted for the purposes of preparing the SEA report.[148]

After the planning authority submits the application to the ministries including the SEA report and draft of the strategic document, the expert commission set up by the Ministry of Environment and Natural Resources Protection of Georgia reviews the SEA report. Also, the planning authority organizes a public hearing with the participation of the ministries. The Ministries issue recommendations regarding the strategic document and the SEA report within 51 to 55 days after registration of the application. [149]

The mentioned procedures are followed by the approval of the strategic document, which is only possible after issuing the recommendation by the ministries in relation to the draft strategic document and the SEA report. The planning authority should take into consideration recommendations of the ministries, as well as consultations and public opinions in the process of adoption the strategic document and results of the transboundary impact assessment procedure if that was conducted. Although those recommendations are not mandatory, but a planning authority should enclose argumentation on the decision of adoption of the strategic document stating reasons why recommendations are not reflected in it.[150] In addition, the Ministry of Environment and Natural Resources Protection of Georgia analyzes the significant environmental effects subsequent to the implementation of the strategic document and provides information to the public.[151]

[147] ibid art 24(1), art 24(6).
[148] ibid art 25(2).
[149] ibid arts 27(1)-27(7).
[150] Georgian Draft Law - Code of Environmental Assessment (n 13), art 28.
Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 68.
[151] Georgian Draft Law - Code of Environmental Assessment (n 13), art 29.

The introduction of the SEA procedure in Georgian environmental legislation aims to contribute the strategic planning of the country integrating the environmental and human health issues in this process. In other words, as strategic documents in most cases are connected to the sectors having the environment impact, the SEA procedure provides that the adoption process of those documents take into account prospective risks for the environment and human health.[152] According to the explanatory notes, the SEA aims to attain sustainable development in a long run through the smart planning and contribute to the investment climate in Georgia.[153]

As explanatory notes on Georgian draft law states, the SEA procedure can facilitate the sustainable development of the country through implementing the complex decision-making mechanism with public participation in the process. Apart from this, based on explanatory notes, implementation of the SEA procedure can contribute to the sustainable investment climate in the country, as strategic documents create a framework for activities which are subject to the EIA. Therefore, the positive recommendations on the strategic document create a sort of guarantee of the positive decision on connected activities subject to the EIA. [154]

However, explanatory notes fail to give strong arguments for those statements. Additionally, it is not clear how can positive recommendations on strategic documents create the guarantee for approving the activity subject to the EIA.

Additionally, the question of the interrelation between the EIA and SEA is interesting. This interrelation is not clearly defined under the draft law. As was already noted, the SEA procedure is general, not referring to specific projects or areas, unlike the EIA. According to the draft law, "carrying out SEA procedure is required in case of strategic documents and/or significant amendments to those strategic documents which set framework for future

[152] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 68.
[153] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 68. *see* Marsden (n 14) 14.
[154] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 68.

development projects listed in Annex 1 and Annex 2".[155] This gives rise to a question whether the EIA and SEA procedures can overlap.

Generally speaking, as the focus of the SEA is not on the specific plan or programme, there is no direct link with the EIA.[156] Taking into consideration the whole draft law and essence of SEA and EIA, it can be concluded, that the overlap between those procedures is a possibility in practice, but it does not make those procedures interdependent. In other words, if the application regarding the EIA is under consideration and simultaneously the SEA procedure is commenced on a strategic document which sets the framework for that activity of the EIA application, those two will not affect each other. Of course, if the SEA procedure proceeds the EIA it is easier to plan a project/programme subject to the EIA, but the SEA is not the necessary precondition for the EIA.[157] Moreover, based on the draft law, while there is not the specific norm on this issue, it can be inferred that simultaneous commencement of the SEA and EIA on the related subject matter does not stay any of those proceedings before the other is concluded. And finally, as the SEA is commenced by the public authority and refers to strategic documents and private parties does not take part in this process, it is likely to be less problematic for business as compared to the EIA except some specific spheres, however, this is the topic of another research.

[155] Georgian Draft Law - Code of Environmental Assessment (n 13), art 20(4).
[156] P. Cole, M. Broderick, 'Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA): an exploration of synergies through development of a Strategic Environmental Framework (SEF)' (2007) WIT Vol 102 Transactions on Ecology and the Environment (313-321), 319-320 <https://www.researchgate.net/profile/Martin_Broderick/publication/269030471_Environmental_Impact_Assessment_EIA_and_Strategic_Environmental_Assessment_SEA_an_exploration_of_synergies_through_development_of_a_Strategic_Environmental_Framework_SEF/links/57b56d6108aede8a665a6ae3.pdf> accessed 6 April 2017.
[157] ibid 319-320.

2.3 Public Participation in Decision-Making Process

As compared to the current law, the draft law guarantees high-level of public participation [158] in the whole process of EIA as well as the SEA and transboundary environmental impact assessment procedures.[159]

Public participation in ensured by imposing some responsibilities to the public authorities. Those responsibilities include providing early and efficient notification and participation of the public, access to the information, possibility to present public opinion and comments and taking public opinion into consideration. Additionally, public authorities should make sure that public receives information about the decision taken on the issue where public participation was provided.[160] The draft law stipulates some rules regarding making the information accessible – making public announcements and the content of those announcements and serves as a guarantee of "an effective public participation".[161]

The decision-making public authority is obliged to give a due regard to the public opinion and duly reflect it in the explanatory part of the decision.[162] Importantly, under the draft law, any representative of the public is entitled to appeal the decision of a public authority if the authority did not provide the participation in the decision-making process or otherwise violated the law.[163]

Public participation is deemed as key to successful and effective decision-making.[164] As Canadian example suggests, it pressures business to transparency in relation to their planned

[158] See, A. Cherp, 'EA legislation and practice in Central and Eastern Europe and the former USSR. A comparative analysis' (2001) 21 Environmental Impact Assessment Review (335-361) 345-346 <http://www.sciencedirect.com/science/article/pii/S0195925501000786> accessed 6 April 2017.
[159] Georgian Draft Law - Code of Environmental Assessment (n 13), art 30.
[160] ibid), art 31.
[161] ibid art 32.
[162] ibid art 35(1).
[163] ibid art 36.
[164] M. Norejko, 'Techniques for efficient implementation of public participation in Environmental Assessments' (2004) 24th Annual Conference, International Association for Impact Assessment, 24–30 April, Vancouver, Canada as cited by Lion, Donovan, Bedggood (n 89) 789-790.

projects.[165] This example suggests, that the extent of public participation introduced by the draft law is connected to additional time and burden for business. However, this stage gives business possibility to introduce the project to the public concerned and get their feedback at the outset of the project implementation. This stage is important in light of planning because it reduces the risk of discrepancies between a developer and public concerned at a later stage of the project, which may cause waste of time and financial resources. As for the expenses related to the organizing public participation, as the state bears all of the expenses related to it, it is not the additional burden for the business.

As for the effectiveness of the increased extent of the public participation, it should be assessed after the draft law is implemented and actually starts operation, as effectiveness depends on the extent of activity of the public concerned.

2.4 Transboundary Environmental Impact Assessment Procedures

Transboundary Environmental Impact Assessment is the procedure which is implemented to assess interstate environmental impact. According to scholars, transboundary EIA is part of the customary international law which aims to engage states in effective cooperation prior to launching projects with prospective impact on natural resources shared by states or environment of another state. This procedure is directed to avoid activities causing the interstate environmental harm.[166] Transboundary consultations in relation to the environmental impact is the novelty in Georgian environmental legislation.

[165] A.L. Booth, N.W. Skelton, 'Industry and government perspectives on First Nations' participation in the British Columbia environmental assessment process' (2011) 31 Environmental Impact Assessment Review (216–225) as cited by Lion, Donovan, Bedggood (n 89) 789-790.

[166] Robinson (n 4) 602.
See also, John H. Knox, 'The Myth and Reality of Transboundary Environmental Impact Assessment' (2002) vol 96 no 2 The American Journal of International Law, 291-295 <http://www.jstor.org/stable/pdf/2693925.pdf> accessed 6 April 2017

The activities subject to the EIA or SEA which are carried out in Georgia but may cause transboundary impact, or activities or strategic documents which are carried out outside of the Georgian borders but may affect the environment in Georgia are subject to the transboundary environmental impact assessment procedure. However, this procedure is implemented if there is an international or a bilateral treaty obligation on transboundary procedures. The Ministry of Environment and Natural Resources Protection of Georgia is responsible for conduction this procedure, as well as, making available the information and the documentation related to the procedure to the public. [167]

After the developer, planning authority, the Ministry or the country to be affected detects the likelihood of the impact, the government of Georgia issues individual administrative act based on the application of the Ministry starting the procedure. According to this administrative act, the developer or the planning authority submits translated and notary certified application together with the annexed documents. The mentioned package of documentations is sent to the impacted country with the help of the Ministry of Foreign Affairs of Georgia and sets the timeframe within which an affected country should express an intention to participate in the transboundary procedure. If any of the affected countries expressed interest in participation, the procedure is commenced with the decision of the Government of Georgia including information about forms of data-exchange, timeframes and stages of the procedure. Otherwise, the Minister of Environment and Natural Resources Protection of Georgia issues the decision which is approved by the Government on the cancelation of the procedure.[168]

Subsequent to the consultations with the third country the Ministry defined obligations of the developer or planning authority to reflect results of consultations in the scoping report, also the ministry takes the consultation results into account when making or issuing recommendations

[167] Georgian Draft Law - Code of Environmental Assessment (n 13), art 37.
[168] ibid art 38.

on a strategic document and so on. Also, the developer or planning authority provides a translation of the Environmental Decision or the recommendation on a strategic document, as well as, the monitoring or post-project analysis results to the affected country. [169]

On the other hand, the ministry takes part in the transboundary environmental impact assessment procedure based on the notification from the third country regarding the likelihood of impact on the environment in Georgia via carrying out of the project or the strategic document on Georgian territory. However, if such notification is not received and there is a possibility of an impact on Georgian territory through the implementation of the project or the strategic document of the third country, the Georgian government is entitled to initiate the procedure itself. This procedure includes conducting consultations with the third country where the project or strategic document is carried out and notifying the public about the results of consultations.[170]

As this procedure is not stipulated under the current Georgian environmental legislation, it is hard to assess its impact on the business. However, considering that businesses and developers in Georgia do not have such experience, it is likely to create some complexities for them in terms of administrative, procedural, as well as financial burdens. Additionally, the rules under the draft law regarding this issue is not clear, leaving some procedural and substantial issues unregulated. Moreover, the procedure is complex in terms of the third country involvement which creates the risk of prolonged procedures. Overall, the procedure is not clear and creates vagueness in terms of the conducting and outcome, which creates the risk that those rules will be formal and will not work properly in practice. Therefore, the likelihood of creating an additional burden for business is high. The public authorities in charge should take measures to help business through the process of implementation.

[169] ibid art 40.
[170] ibid art 41.

2.5 Existing Projects and Their Continuation

One of the most debatable issues included in the draft law is the decision-making procedure regarding already existed projects and the continuation their operation. This part of the draft law is not included within the approximation process and is not based on the Association Agreement or the EIA Directive. Interestingly, the similar provision is part of the Georgian law on Environment Impact Permit.[171] Also, while the whole draft law refers to the environmental impact assessment of planned projects and activities, there is only one provision on the ongoing activities.[172] This issue should be referred briefly considering debates and controversy on it.

The mentioned provision of the draft law regulates activities subject to the ecological expertise under the Georgian law on Environment Impact Permit, which are already commenced before enactment of the draft law but without the environmental impact permit. The developer commencing the activity should address the Ministry until 1 June 2019 for obtaining a permit in order to continue that activity. The developer should submit the report of the ecological audit and the plan of measures mitigating the environmental impact caused by this activity. The developer covers all of the expenses related to the ecological audit.[173]

Under the draft law, public participation is stipulated as a part of the decision-making procedure on the continuation of mentioned activities. On top of that, the Ministry sets up the expert commission and conducts the expertise procedure in order to decide the issue on the continuation of an activity. The Ministry decides this issue within 50-60 days after the registration of an application. [174]

[171] Law of Georgia on Environment Impact Permit (n 4), art 9^1.
[172] Green Alternative, *The Progress in Implementation of EU Georgia Association Agreement Environment and Sustainable Development*, (2016) Report, 17 <http://greenalt.org/wp-content/uploads/2016/12/Association_Agreement_Environment_and_Sustainable_Development_2016.pdf> accessed 6 April 2017
[173] Georgian Draft Law - Code of Environmental Assessment (n 13), arts 47(1)-47(5).
[174] ibid arts 47(6)-47(13).

If a developer who applies for the continuation of an activity fails to comply with the environmental regulations, the developer is obliged to meet the conditions set by the decision on the continuation of an activity. If those conditions are met within the timeframe set by the plan, the developer can address the Ministry for obtaining the Environmental Decision. However, obtaining the continuation decision does not discharge the developer from the obligation to compensate damages to the environment caused by the activity. Also, if a developer fails to comply with conditions of the decision, it may cause penalizing of a developer or repeal of the decision.[175]

The argument is given, that those rules do not contribute to the approximation to the EU legislation, but contradicts to this process.[176] Some reports[177] assess negatively the provision regarding "ongoing activities", as it implements the completely different type of permit which is not in line with the rest of the draft law. The following arguments are given against those rules, that it is unfair and biased, as makes possible for large polluters to avail themselves from the EIA regulations, creates corruption risk and legalizes the illegal activities. Also, it is noted the draft law does not define "ongoing activities", although it is possible to ascertain that those are activities subject to the EIA based on the current legislation. However, they were commenced without the permit, before the enactment of the current law. This non-compliance makes those activities illegal.[178]

[175] ibid arts 47(14)-47(20).
[176] The Progress in Implementation of EU Georgia Association Agreement Environment and Sustainable Development (n 172), 17.
[177] Green Alternative, Challenges of Approximation of Georgian Environmental Impact Assessment (EIA) system to relevant EU requirements, (2016) Policy Brief, 6-8, <http://greenalt.org/wp-content/uploads/2016/03/gzsh_reveiwing_proposed_EIA-SEA_regulations_eng_JAN2016-docx.pdf> accessed 6 April 2017
see also, The Progress in Implementation of EU Georgia Association Agreement Environment and Sustainable Development (n 172) 17.
[178] Challenges of Approximation of Georgian Environmental Impact Assessment (EIA) system to relevant EU requirements (n 177) 6-8

According to the explanatory notes to the draft law, the analogous provision[179] in the Georgian law on Environment Impact Permit stipulates the decision-making procedure for activities subject to the ecological expertise commenced without the permit. The same law[180] gives the possibility to developers to address the Ministry in order to obtain the permit for the continuation of activities until 1 June 2019. This rule aimed to set specific legal regime for those developers in order to subordinate their activities to the regulations. This group includes developers whose activities were of the national importance.[181] As the process is not finished and there are still developers who did not address the Ministry so far, the explanatory notes of the draft law justify this regulation based on the transition period to the new law. The explanatory notes also refer to the international established practice on the introduction of transition plans, which is also well accepted in Europe. Those plans aim gradual compliance of the ongoing activities to the environmental protection norms and standards. [182]

It should be noted, that this issue is quite complicated and subject of the independent research. However, considering that it is part of the draft law and also is related to the business, it should be assessed briefly.

It goes without saying, that developers and business who conduct ongoing activities should be given transition period for compliance with the new regulation, but this privilege should be fair for the developers and business who is planning to launch those activities. The draft law fails to set the clear regulation and give the reasoned purpose of the mentioned rule. It also fails to explain why the different regime to the ongoing activities is reasonable and proportionate for the goals it aims to attain.

[179] Law of Georgia on Environment Impact Permit (n 4), art 9.
[180] ibid art 22(2).
[181] Metro, Railway, Hydro-electric power stations, main gas/oil pipelines, etc.
Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 70.
[182] ibid 71, 72.

Chapter 3 – Analysis of the Draft Law: Impact on Business

The trade-off between doing business/investments and economic development, on one side and environmental protection, on the other, is the topic of debate. There is an opinion that those two are interdependent and economic growth effects environment negatively.[183] As the EIA procedure is part of the environmental protection legislation, it is part of this debate as well.

The discussion on the EIA comes down to two notions. The first reflects the view that the EIA as the "[g]overnment regulatory action on the economic performance of companies […] is a burden which can drive companies out of business or, if they are 'mobile', drive them to invest offshore in countries where environmental regulations are believed to be less onerous". According to the opposite view, the negative impact on business is not evidenced, vice versa, the EIA may even incentivize better financial results of business. [184] The balance between the development and the environmental policies facilitates economic development with minimal deterioration of an environmental quality.[185]

[183] Nick Mabey, Richard McNally, 'Foreign Direct Investment and the Environment: From Pollution Havens to Sustainable Development' (1999) Godalming, Surrey: WWF-UK, 17 <http://www.oecd.org/investment/mne/2089912.pdf> accessed 6 April 2017.

[184] Annandale, Taplin, (n 12) 384.

see P. Hancock, 'Green and Gold: Sustaining Mineral Wealth, Australians and Their environment' (1993) Centre for resource and environmental studies, Australian National University, Canberra, ACT.

M. Rayner, 'Uncertainty−risks in decision-making' (1992) Australian Mining Industry Council, Annual Seminar, Canberra.

P. Barnett, 'The penalties of political uncertainty' (1992) Australian Mining Industry Council, Annual Seminar, Canada.

B. Constantineau, 'A tale of two economies: Alberta charges ahead while high taxes weigh down B.C. business' (22 Oct 1996) Edmonton Journal.

C. Cattaneo, 'Canadian firms urged to seek foreign markets' (27 Mar 1995) Edmonton Journal.

M. Charlier, 'Going south: U.S. mining firms, unwelcome at home, flock to Latin America−citing environmental woes' (18 June 1993) Wall St. Journal A1.

H. Morgan, 'World heritage listings and the threat to sovereignty over land and its use' (17 (5) 1993) Mineral Review, 26‑28.

P. Armstrong, 'Miners question cash flight stance' (7 Jan 1995) The West Australian.

S. Smith, 'Mining profits down, offshore exploration up' (21 Dec 1994) The West Australian, 55.

N. Dyson, 'Compliance will beggar the economy' (26 Oct 2000) WA Business News.

[185] Rui Lin Jin, Liu Wen, 'Environmental Policy and Legislation in China' (1987) D. MACRAW ET AL., Proceedings of Conference on Chinese Environmental law, 163 as cited by Robinson (n 4) 602.

While the impact of the business activities on the environment is undeniable, they play important role in economic growth of the country.[186] Both, the environmental protection and economic growth are equally important for countries, however, the scope of regulation of those spheres needs to be decided carefully in order to attain efficiency. In addition, regulations of those spheres should not preclude or hinder the effectiveness and the development of one another, on the contrary, they should contribute to the balanced growth.

From the positive point of view, the EIA is assessed as useful and adjustable mechanism regardless of political system or the development stage of a state,[187] empowering the public to be part of the process having an impact on their environment, encouraging cooperation between developers and public authorities and providing all the necessary documentation.[188]

The approximation process of the EIA rules in Georgia aims to implement "the best international practice in environmental assessment procedures".[189] The EIA aims to attain important goals in the environmental protection and the management of "major accidents and/or natural disasters".[190] Notwithstanding the fact that the new legislation is introduced to fulfill Georgia's international obligations, the implementation process should be carried out in such a fashion to avoid significant negative impact on the private sector. The assessment of the prospective burden on the business and its development needs to be taken into consideration. Also, the burden imposed on business should be proportional to the harm caused to the environment by the planned activities.[191]

The introduction of the new EIA regulation in Georgian legislation has its benefits and drawbacks in light of its impact on business. Therefore, the analysis of the draft law at an earlier

[186] Lion, Donovan, Bedggood (n 89) 789-790.
[187] Craik (n 16) 51-52.
[188] Robinson (n 4) 591, 594-595.
[189] Georgian Draft Law - Code of Environmental Assessment (n 13), art 2(1)(d).
[190] ibid art 5(5).
[191] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 62.

stage gives the possibility to assess its impacts. This, for its part, makes it easier to prepare for challenges brought by the new regulation and at some point, even prevent the negative effects on the business environment.

All of the features of the draft law is directed to improve the quality and results of the EIA procedure, however, the new regulation is also connected to some burdens for business.[192] This chapter aims to assess the new EIA regulation in light of its positive and negative impacts on business sector taking into account the Georgian context.

3.1 Increased List of Activities Subject to the EIA; Screening Procedure

The first major change introduced by the draft law as compared to the current laws is the increased types of activities which need to go through the EIA procedure. The list of the projects subject to the EIA increases as compared to the Georgian law on Environmental Impact Permit and covers more spheres, which do not need the EIA under the current regulation. Although, new activities are part of the Annex II activities, which means that need of the EIA for those activities depends on the screening procedure.[193] Anyways, even the EIA is not mandatory for those activities and putting them in the list not necessarily means that the EIA procedure will be carried out, the increase of the types of activities subjected to the EIA increases the regulatory burden on the business.

Moreover, the list of activities is directly transposed from the EIA directive, which may create a gap between law and its practical operation. As was mentioned above, it is important to adjust the EIA to the state where it is implemented. This also refers to the activities. Therefore, the list of activities should be adjusted to the local context, considering the business climate goals

[192] *see* Helle Tegner Anker, 'Simplifying EU Environmental Legislation - Reviewing the EIA Directive?' (2014) Vol. 11, Issue 4, Journal for European Environmental & Planning Law (321-347), 322, <http://www.heinonline.org/HOL/Page?handle=hein.intyb/jeurenp0011&collection=intyb&id=331> accessed 6 April 2017.
[193] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 61, 62.

of Georgia. In contrast, the opinion advocating to increase Annex I activities based on environmental protection arguments [194] seems inexpedient. Considering the fact that the proposed activities are increased already as compared to the current regulation, it is not reasonable to further increase the list of those activities, at least at the moment. First, it should be tested how the proposed law works in the practice. If the experience shows the necessity of enhancing activities subject to the EIA, respective amendments can be carried out in the draft law.

In this respect, European example should be given due regard, as the EU legislation and practice is the best role model for Georgia during implementation and operation of the law, which is transposed from the EU Directives. As Anker proves, according to the CJEU practice, the EIA Directive and categories of activities are "subject to a wide interpretation" and not always express the "precise nature" of activities.[195] As European example shows, analogous rules in EU does not aim to regulate the issue in detail and the practice has enough room to adjust the law to the reality. This highlights the necessity to observe the operation of the draft law once it is implemented in practice to find out how efficient it is in Georgian legal and social context. The experience accumulated over time, including court practice will suggest further steps to be taken in this respect.

It can be considered, that increase of burden through increasing the list of activities subject to the EIA, at least subject to the screening is partially mitigated by means of the screening procedure itself. The screening procedure is the novelty for Georgian EIA regulations. Generally, it can be considered as a positive novelty, which aims to increase the quality of the EIA. Firstly, screening procedure helps business to find out whether the project or programme

[194] cf Challenges of approximation of Georgian Environmental Impact Assessment (EIA) system to relevant EU requirements (n 177) 5.
[195] Anker (n 192) 334.
cf Challenges of approximation of Georgian Environmental Impact Assessment (EIA) system to relevant EU requirements (n 177) 6.

is connected to the significant environmental impact and therefore is subject to the EIA procedure. The drawback of this procedure is connected to the carrying out costs, however, through this procedure developer can avoid future larger expenses. The purpose of the screening procedure is to find out whether the EIA procedure is needed. Thus, when incurring those costs developer will be informed about following steps of the project implementation and the possibility that need of new procedures will emerge at a later stage is minimal. Therefore, the screening procedure serves several purposes. It makes the process transparent and the planning easier for the developer. The procedure stipulated under the Georgian law on Environmental Impact Permit does not include the screening step. In practice, this leads to situations when some plans and programmes are subjected to the EIA, which if placed through the screening would not be subject to it.[196] Therefore, the screening procedure is the first step towards the better quality of the EIA. However, considering the EU Member States' experience, the implementation screening procedure into practice is related to some shortcomings. They are expressed either in the lax approach, when projects causing significant environmental impact evade the EIA procedure, or when the EIA is applied to projects not having such impact and raising the cost of a project and administrative burden for business.[197]

3.2 Increased Scope of Public Participation

The second significant change stipulated under the draft law is broadening public participation. The increased scope of public participation aims to introduce the effective mechanism of public involvement in the environmental decision-making processes. Under the draft law, public participation is the constituent part of every stage of the decision-making process, in particular during screening, scoping and issuing of the Environmental Decision. Also, during the

[196] Law of Georgia on Environment Impact Permit (n 4).
[197] Veronika Tomoszkova, 'Implementation of the EU Directive on Environmental Impact Assessment in the Czech Republic: How Long Can the Wolf Be Tricked?' (2015) 6.2 Washington and Lee Journal of Energy, Climate, and the Environment (451-508) 484 <http://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1094&context=jece > accessed 6 April 2017.

recommendation process on the strategic document. This means, that public should be given the possibility to be informed and present the opinion. This obliges the decision maker authority to give due regard and reflect the results of public participation in the reasoned decision. Moreover, a longer period is proposed for presenting public opinion and comments as compared to the current regulation.[198] In addition, public participation may be connected to some changes in the project through taking into consideration "comments and opinions submitted by the public".[199] However, enhancing the scope of public participation can also be assessed as the burden for the business, as it is related to extra procedures, which also increases the duration of the whole EIA process.

On the other hand, the Ministry bears expenses related to the public participation. Most important benefit of the increased scope of public participation is the guarantee to the developer that the project or programme is agreed to the public and there will not be any problems at a later stage when the project/programme is commenced. Otherwise, some public resistance after the start of the implementation process is likely to be connected to more expenses related to the correction of the project and in the worst situation termination of its implementation. In the latter situation, developers will waste more time and resources as compared to the increased time and burden of an enhanced public participation.

Moreover, the rule that not developers, but the Ministry is in charge to provide an information to the public and organize public hearings, as well as that it bears all of the expenses related to these procedures, is beneficial for developers. Importantly, the leading role of the Ministry in this process is likely to contribute to the efficient participation of the public.[200] Therefore, this rule avoids additional expenses and burdens to developers. Thus, increased scope of public

[198] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 68, 69.
[199] Georgian Draft Law - Code of Environmental Assessment (n 13), art 31(e).
[200] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 66, 67.

participation is burdensome for developers, requiring them to adjust the planned project or activity according to their opinion. This process is expected to be more burdensome for the developers implementing a project in the specific areas of the country, where the attitude of a local population is the conservative and sensitive in relation to massive projects having the environmental impact.

3.3 Monitoring Procedure

The third major new regulatory burden imposed by the draft law is "post-project analysis" - monitoring procedure, which includes:

a) Carrying out monitoring of the conditions and mitigation measures imposed by the Environmental Decision;
b) Analysis of the impacts on the environment caused by project implementation;
c) Assessment of changes of the environmental characteristics envisaged by the EIA report.[201]

This means that the EIA procedure and its impact on the business do not end by issuing the Environmental Decision, but the developer still should be ready for monitoring and checking compliance with the Environmental Decision. It imposes the obligation on a developer to submit "post-project analysis report",[202] which is additional burden and bureaucracy for business. Additionally, the article regulating this issue does not define the procedure of monitoring or its frequency and as stipulated under the draft law the Environmental Decision includes "the objective, scale and timing of post-project analysis".[203] This means that "the objective, scale and timing" is to be decided based on the case-by-case basis. From one angle, it makes the procedure flexible, but on the other hand, it gives discretion to the decision-making

[201] Georgian Draft Law - Code of Environmental Assessment (n 13), art 17(1).
[202] ibid art 17(2).
[203] ibid art 13(1)(d).

authority, which can lead to discrimination between developers. Therefore, more well-defined regulation is advisable.

On the other hand, this regulation is justified with the purpose of the productive EIA procedure, which contributes to its effectiveness. It also guarantees that the EIA process is not formal and assures that the project is in line with the regulation and results of the EIA. Additionally, it is also connected to the environmental protection and enforcement efficiency purposes, at the same time guarantees the responsibility of the developer.

In addition, the draft law stipulates also the control procedure which is conducted based on the selective inspection procedure. The rule of the control procedure is not clear and seems to overlap with the monitoring procedure, as the latter also controls compliance with conditions of the Environmental Decision as the control procedure.[204] Therefore, as the interrelation between those procedures is not clear, it creates complications for business.

And finally, it should be mentioned, that the explanatory notes of the draft law refer only to the analytical purposes of the monitoring procedure. It emphasizes its importance for the Ministry and public to analyze whether the EIA procedure was properly implemented, giving them the possibility to take those results into a consideration during the decision-making process on other projects and base their future assessments on this experience.[205]

3.4 Increased Expenses

Fourth, increased expense is one of the main drawbacks of the draft law. The costs of the EIA procedure rise as the quality of the reports and the whole process improves. Raise in quality is inevitably connected to the rise in costs. In contrast to the current formal procedure, the new regulation is connected to the more qualified procedures and the high standards. However, in

[204] ibid art 44.
[205] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 66.

this respect it should be taken into consideration, that operation of the new law will be connected to some practical problems. Firstly, local developers should keep up with the new trends of the regulated sphere, especially, considering the fact that new activities are proposed to be subject to the EIA. This means, that circle of developers who should keep up with the novel regulations increases. And second, the lack of highly qualified environmental consultancies in Georgia.[206] The latter issue will be discussed below. But it should be mentioned as related to the increased expenses of developers, that lack of local qualified consultancies urges business to contract international environmental consultancies outside the country, which is another hurdle for business in terms of time and financial resources, as well as requires more effort from developers.

Although from the positive perspective, it should also be mentioned, that to the certain extent expenses are reduced for the state's account, as the Ministry bears some expenses related to some stages of the EIA procedure.

From the point of view of the explanatory notes to the draft law, at first glance the new regulation increases costs for business, however, in a long run, it will cause a decrease in expenses for the private sector as well as the state and public. However, generally, this pattern is not so apparent at the outset of the project.[207] The explanatory notes explain this opinion based on the argumentation, that if business is aware from the outset that the activity may be related to some harm to the environment, they can anticipate results. Also, if they know what kind of measures should be taken to mitigate environmental harm, they can plan projects

[206] Green Alternative, 'Critical review and recommendations on the Draft Environmental Assessment Code of Georgia' (December 2015) 12, <http://greenalt.org/wp-content/uploads/2016/02/Critical_review_of_draft_Environmental_Assessment_GEOlaw_ENG_DEC2015.pdf> accessed 6 April 2017.
United Nations Economic Commission for Europe, 'Environmental Performance Reviews, Georgia' (2016) Third Review, Synopsis, 6, <http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/Synopsis/ECE_CEP_177_Georgia_Synopsis.pdf> accessed 6 April 2017.
[207] Robinson (n 4) 591, 594-595.

accordingly. In this way, they can avoid the obligation to compensate the harm to the environment gradually during the implementation of projects, which is related to much more expenses than planning at the commencement of a project. The explanatory notes also highlight that if it is clear that the prevention at the later stage is related to the higher expenses than environmental protection measures at a planning stage, no matter who bears those expenses – the state, business or public, the measures should be defined as mandatory for developers.[208]

Another important issue is the fee which developers should pay in order to obtain the Environmental Decision. The amount of fee [209] is the same as it is stipulated under the current law for the issuance of the environmental impact permit. So, the draft law does not increase the amount of fee paid for the EIA procedure. However, as the list of activities subject to the EIA increases under the draft law, this means that developers conducting Annex II activities should cover expenses related to the preparation of scoping and the EIA reports, as well as the mentioned fee which they do not pay according to the current law. Importantly, as the explanatory notes state, based on the international practice, the cost of the EIA documentation amounts to 10-12% of the whole planning cost of the project. [210] The draft law also stipulates administrative fine for non-compliance to the Environmental decision, which is subject to the triplication twice in case of the further failure of compliance.[211]

As the research shows, the EIA is perceived as a medium of avoiding future expenses arising from poorly planned projects through spending money in early planning by private firms in Australia and Canada.[212] While same is not true for Georgia, as private sector's awareness is

[208] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 62.
[209] 500 GEL, Georgian Draft Law - Code of Environmental Assessment (n 13), art 11(5).
[210] excluding investment, Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 75.
[211] Georgian Draft Law - Code of Environmental Assessment (n 13), art 45.
See also Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 74.
[212]Annandale, Taplin (n 12) 383.

still on its path of development. Therefore, the EIA is not perceived by them as an efficient mechanism in a long run through spending at the outset of the project.

3.5 Increased Timeframe

The increase of the duration of the EIA is another negative aspect of the new regulation. Time efficiency is one of the important factors for doing business and investors give much weight to the duration of administrative procedures when making a decision about investing in a project. According to the new regulation time span of the EIA procedure is increased and time is redistributed differently as compared to the current regulation. The argument in favor to the new regulation is an increase of efficiency. In other words, increased duration serves to more effective process. To illustrate the difference in duration, the time span of procedure and a decision-making is approximately 70-80 days according to the current regulation, while the draft law proposes procedural duration which is about 100 days on average. It should be noted, that this timeframe does not include time spent on the research and the preparation of reports. According to the EU example, additional expenses caused by the prolonged EIA procedure is the main discomfort indicated by business.[213]

Another issue related to the delay in the implementation of projects or activities is related to the proposed regulation, that the EIA proceeds other permits/licenses needed for implementation of the project or activity. This means, that the obtaining process of any permit/license in relation to the activities subject to the EIA may be delayed significantly, perhaps up to 100 days. For some activities, it may be the serious obstacle, apart from the incurred expenses of the EIA, which at the end of the day may not lead to the following permit issuance. The explanatory notes suggest developers to address both authorities, the Ministry and issuing authority of another permit/license simultaneously and after having the

[213] Tomoszkova (n 197), 484.

Environmental Decision obtain the subsequent permit in a short time.[214] However, this does not eliminate the risks of a waste of time and financial resources, on the contrary, it may lead to the situation that none of the applications is successful, causing the double loss for business. The screening and public participation parts of the proposed procedure are connected to increased timeframe as well, which is considered above.

3.6 Unprepared Market

The successful implementation and the integration of the draft law in Georgian context depend on the local market and its readiness. The main obstacle on the local market is the lack of highly qualified environmental consultancies, which results in the poor quality of the EIA reports.[215] As sources show, the shortcoming of expertise and capacity is common for developing and transitional countries limiting the quality of the EIA.[216] To refer to examples of Albania and Serbia, the lack of qualification of experts is one of the factors causing the insufficient quality of the EIA/SEA procedures.[217] This means, that notwithstanding the high standards and practices implemented via the draft law, there are obstacles to its efficient operation. The unprepared market and the lack of qualified environmental consultancies is likely to affect the quality of documentations and reports which are prepared during the EIA process.

It is true, that market responds to the demand and over time the EIA sphere, together with its participants will develop in response to the advanced standards in the EIA sphere. It is also worth considering, that new regulation in the form of the draft law gives better possibilities of the development towards the best international practices. However, the development process

[214] Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (n 81) 64, 65.
[215] Critical review and recommendations on the Draft Environmental Assessment Code of Georgia (n 206) 12. *see also* Environmental Performance Reviews, Georgia (n 206) 6.
[216] Craik (n 16) 43.
[217] Peter J. Nelson (Editor), 'EIA/SEA of Hydropower Projects in Southeast Europe – Meeting the EU standards' (October 2015) The World Wildlife Fund (WWF), SEE, SEP report,73-74, 93 <http://seechangenetwork.org/wp-content/uploads/2015/11/EIASEA-of-hydropower-projects-in-Southeast-Europe-%E2%80%93-Meeting-the-EU-standards.pdf> accessed 6 April 2017.

will take time and the draft law is unlikely to be successfully implemented in the Georgian reality from the first day of its operation, as the "context-sensitive" nature is lacking in terms of implementation background, which is referred to as a key to effective reforms in the environmental assessment context.[218] Although, from the positive perspective, the draft law gives more possibility and prepares grounds for development and improvement in light of the EIA. In other words, the new law will contribute to the development of the sector rather than hamper it, while current regulations do not respond to development purposes. However, before the development goal is reached, the concern related to the business impact of the new law is on the agenda. Importantly, the environmental issues are even more crucial and need to be resolved. Therefore, the necessity of the proposed law is not under consideration, but the issue whether it responds to the covered environmental concerns to such an extent to overbalance its impact on business.

[218] See, Cherp (n 158) 350.

Conclusion

The Georgian Draft Law - Code of Environmental Assessment proposed within the EU-Georgia legal approximation framework regulates EIA issues in a new manner, together with introducing novelty in terms of the SEA and transboundary environmental impact assessment procedures. The thesis analyzed the draft law in light of its positive and negative impact on the business environment and environmental protection in Georgia and found that the draft law risks having a negative impact on the business environment in Georgia. The enhanced regulatory impact of the draft law on business through increasing the circle of business sectors under the EIA regulation, as well as increased expenses, prolonged procedures, enhanced scope of public participation and post-project analysis procedure creates burden for the business sector. Additionally, the unprepared market factor establishes a gap between the law and its ability to be fully implemented in practice.

The impact of the draft law on business in Georgia can lead to reluctance of developers to launch new projects, especially, at the initial stage of implementation and adaptation to the new law due to uncertainty. This is of concern as large-scale projects fall under activities included in the EIA and are one of the driving forces of the Georgian economy. Therefore, the draft law may impact the intensity of the business activities, flow of investments and cause stagnation of development in the spheres subjected to the EIA. It may also lead to the relocation of some projects.

Despite these risks, the draft law would be beneficial for Georgian business in a long-term, as it contributes to the efficient planning of projects and activities, implements clear administrative procedures, and introduces some novelties such as screening and scoping which make the decision-making process easier for business, as well as for public authorities in charge. The legal certainty created by the draft law would also make new procedures more

transparent and easy to follow for businesses. Additionally, the proposed law gives businesses the possibility of avoiding future expenses arising from poorly planned projects by spending more during the early planning. This also makes project budget planning easier. The new law is determined to create efficiency for the business and environment sectors in a long-term and would increase the quality of Georgian environmental assessment procedures, which will create benefits for business and environmental protection.

Adopting this draft law will result in the implementation of the best international and European practices in environmental assessment and lay the foundation for future development of environmental protection in Georgia. This draft law will bring better environmental protection policy and achieve better environmental protection results. This is an issue of immediate importance considering the environmental concerns facing Georgia. Ignoring environmental problems for the sake of economic development may lead to irreparable results in the long run. The draft law can balance both the economy and environment while taking a step towards sustainable environmental planning and development.

Bibliography

BOOKS

Craik N, *The International Law of Environmental Impact Assessment: Process, Substance and Integration* (Vol. 196: Cambridge University Press 2008)

Emerson M, Kovziridze T (eds), *Deepening EU-Georgia Relations: What, Why and How?* (Rowman & Littlefield International, London 2016) <https://www.ceps.eu/system/files/Georgia%20e-version%20with%20covers.pdf> accessed 6 April 2017

Glasson J, Therivel R, Chadwick A, *Introduction to Environmental Impact Assessment* (4th edition, Routledge 2013)

Marsden S, *Strategic Environmental Assessment in International and European law: a Practitioner's Guide* (London Sterling VA: EARTHSCAN 2008)

ARTICLES

Robinson NA, 'International Trends in Environmental Impact Assessment' (1992) vol 19 issue 3 Boston College Environmental Affairs Law Review, <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1468&context=ealr > accessed 6 April 2017

Annandale D, Taplin R, 'Is Environmental Impact Assessment Regulation a 'Burden' to Private Firms?' (2003) vol 23 issue 3 Environmental Impact Assessment Review <http://www.sciencedirect.com/science/article/pii/S0195925503000027> accessed 6 April 2017

Lion H, Donovan JD, Bedggood RE, 'Environmental Impact Assessments from a Business Perspective: Extending Knowledge and Guiding Business Practice' (2013) vol 117 issue 4 Journal of Business ethics <https://link.springer.com/article/10.1007/s10551-013-1721-3> accessed 6 April 2017

Snell T, Cowell R, 'Scoping in Environmental Impact Assessment: Balancing Precaution and Efficiency?' (2006) vol 26 issue 4 Environmental Impact Assessment Review <http://faculty.mu.edu.sa/public/uploads/1338109775.5487EIA-18.pdf> accessed 6 April 2017.

Cole P, Broderick M, 'Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA): an Exploration of Synergies through Development of a Strategic Environmental Framework (SEF)' (2007) vol 102 WIT Transactions on Ecology and the Environment, <https://www.researchgate.net/profile/Martin_Broderick/publication/269030471_Environmental_Impact_Assessment_EIA_and_Strategic_Environmental_Assessment_SEA_an_exploration_of_synergies_through_development_of_a_Strategic_Environmental_Framework_SEF/links/57b56d6108aede8a665a6ae3.pdf> accessed 6 April 2017.

Cherp A, 'EA Legislation and Practice in Central and Eastern Europe and the Former USSR. A Comparative Analysis' (2001) vol 21 issue 4 Environmental Impact Assessment Review

<http://www.sciencedirect.com/science/article/pii/S0195925501000786> accessed 6 April 2017

Knox JH, 'The Myth and Reality of Transboundary Environmental Impact Assessment' (2002) vol. 96, no. 2 The American Journal of International Law <http://www.jstor.org/stable/pdf/2693925.pdf> accessed 6 April 2017

Mabey N, McNally R, 'Foreign Direct Investment and the Environment: From Pollution Havens to Sustainable Development' (1999) Godalming, Surrey: WWF-UK, <http://www.oecd.org/investment/mne/2089912.pdf> accessed 6 April 2017.

Anker HT, 'Simplifying EU Environmental Legislation - Reviewing the EIA Directive?' (2014) vol 11 issue 4 Journal for European Environmental & Planning Law <http://www.heinonline.org/HOL/Page?handle=hein.intyb/jeurenp0011&collection=intyb&id=331> accessed 6 April 2017

Tomoszkova V, 'Implementation of the EU Directive on Environmental Impact Assessment in the Czech Republic: How Long Can the Wolf Be Tricked?' (2015) vol 6 issue 2 Washington and Lee Journal of Energy, Climate, and the Environment <http://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1094&context=jece> accessed 6 April 2017

REPORTS

Green Alternative, 'The Progress in Implementation of EU Georgia Association Agreement Environment and Sustainable Development' (2016) Report <http://greenalt.org/wp-content/uploads/2016/12/Association_Agreement_Environment_and_Sustainable_Development_2016.pdf> accessed 6 April 2017

Green Alternative, 'Challenges of Approximation of Georgian Environmental Impact Assessment (EIA) system to relevant EU requirements' (2016) Policy Brief <http://greenalt.org/wp-content/uploads/2016/03/gzsh_reveiwing_proposed_EIA-SEA_regulations_eng_JAN2016-docx.pdf> accessed 6 April 2017

Green Alternative, 'Critical Review and Recommendations on the Draft Environmental Assessment Code of Georgia' (December 2015) <http://greenalt.org/wp-content/uploads/2016/02/Critical_review_of_draft_Environmental_Assessment_GEOlaw_ENG_DEC2015.pdf> accessed 6 April 2017.

United Nations Economic Commission for Europe, 'Environmental Performance Reviews, Georgia' (2016) Third Review, Synopsis <http://www.unece.org/fileadmin/DAM/env/epr/epr_studies/Synopsis/ECE_CEP_177_Georgia_Synopsis.pdf> accessed 6 April 2017.

Nelson PJ (Editor), 'EIA/SEA of Hydropower Projects in Southeast Europe – Meeting the EU Standards' (October, 2015) The World Wildlife Fund (WWF), SEE, SEP report <http://seechangenetwork.org/wp-content/uploads/2015/11/EIASEA-of-hydropower-projects-in-Southeast-Europe-%E2%80%93-Meeting-the-EU-standards.pdf> accessed 6 April 2017

GUIDELINES

European Commission, 'Guidance on EIA Screening' (June 2001) <http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-screening-full-text.pdf> accessed 6 April 2017

European Commission, 'Guidance on EIA Scoping' (June 2001) <http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-screening-full-text.pdf> accessed 6 April 2017

European Commission, 'Guidance on EIA EIS Review' (June 2001) <http://ec.europa.eu/environment/archives/eia/eia-guidelines/g-review-full-text.pdf> accessed 6 April 2017

TREATIES

Association Agreement between the European Union and the European Atomic Energy Community and their Member States and Georgia 27 June [2014] OJ L261/4 (Association Agreement) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:261:FULL&from=EN> accessed 6 April 2017

UN Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) – the 'Espoo' (EIA) Convention (adopted in 1991, entered into force on 10 September 1997) as published in 2015 ECE/MP.EIA/21 <https://www.unece.org/fileadmin/DAM/env/eia/Publications/2015/ECE.MP.EIA.21_Convention_on_Environmental_Impact_Assessment.pdf> accessed 6 April 2017

Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (adopted in 2003) <http://www.unece.org/fileadmin/DAM/env/eia/documents/legaltexts/protocolenglish.pdf> accessed 6 April 2017

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), UNECE, (adopted in 1998) <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf> accessed 6 April 2017

LEGISLATION

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 [2011] OJ L26/1 (EIA Directive) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:En:PDF> accessed 6 April 2017

Directive No. 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 [2001] OJ L197/30 (SEA Directive) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0042&from=en> accessed 6 April 2017

Law of Georgia on Environment Impact Permit, 14 December 2007, No 5602-ES <https://matsne.gov.ge/en/document/view/20206> accessed 6 April 2017

Law of Georgia on Ecological Examination, 14 December 2007, No 5603-ES <https://matsne.gov.ge/en/document/view/20212> accessed 6 April 2017

Regulation on the Environmental Impact Assessment, Order of the Minister of Environment and Natural Resources Protection of Georgia N31, 15 May 2013 <https://matsne.gov.ge/ka/document/view/1921646> accessed 6 April 2017.

Georgian Draft Law - Code of Environmental Assessment (2017) [07-2/47/9] (in Georgian) <http://info.parliament.ge/file/1/BillReviewContent/142830?> accessed 6 April 2017.
(For English translation (not final version) see, <http://moe.gov.ge/res/images/file-manager/sajaro-ganxilva/garemosdacviti-shefasebis-kodeqsi.docx> accessed 6 April 2017)

Explanatory notes to the Georgian Draft Law - Code of Environmental Assessment (2017) [07-2/47/9] (in Georgian) 58, 76 <http://info.parliament.ge/file/1/BillReviewContent/142831?> accessed 6 April 2017

OTHER ELECTRONIC SOURCES

OECD, Glossary of Statistical Terms <https://stats.oecd.org/glossary/detail.asp?ID=828> accessed 6 April 2017