

# Progress in Implementation of Certain Areas of ENP EU/Georgia Action Plan in Georgia

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January 18, 2007

This document provides information on implementation of ENP EU/Georgia Action Plan in Georgia; Specifically it shortly describes progress in implementation of priority area 3 (*encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment; further convergence of economic legislation and administrative practices*) and priority area 8 (*transport and energy*) and some of their complementing activities set forth in section 4 (General Objectives and Actions) of the Action Plan.

## Priority area 3:

*Encourage economic development and enhance poverty reduction efforts and social cohesion, promote sustainable development including the protection of the environment; further convergence of economic legislation and administrative practices.*

- ...
- Strengthen administrative structures and procedures to ensure strategic planning of environment issues and coordination between relevant actors.
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## 4.4 Economic and social reform, poverty reduction and sustainable development

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### *Promotion of sustainable development*

- Identify steps to establish and implement the national strategy on sustainable development;
- Ensure strategic planning of sustainable development and coordination between relevant actors;
- Take steps to improve integration of environmental considerations into other policy sectors.

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National Commission for Sustainable Development of Georgia was founded in 1996 with the primary goal to develop a strategy for sustainable development of Georgia. However, no strategy for sustainable development has been elaborated up to date, neither any plans for its elaboration are declared and known to public. The Georgian legislation of 1996 (the framework law on environmental protection) requires definition of detailed procedures for development of a strategy for sustainable development, national, regional, local and sectoral environmental action programmes and environmental management plans for enterprises. However, so far these procedures have not been specified by the Georgian legislation either.

There were certain measures directed at strengthening the planning system, for instance introducing Medium Term Expenditure Framework (MTEF) with the aim to linking strategic planning and budgeting, however, it is difficult to judge on integration of environment into the

planning process as usually strategies, policies or plans are not formulated (documented). The whole system of strategic planning is downsized to approval of a Government Programme by the parliament which is held as routine part of procedure for approval of a new composition of the government.<sup>1</sup>

Coordination among state agencies, state agencies and the parliament remains weak. One recent example could be brought to illustrate this: On 27 June 2007 the framework Law on Public Health was adopted by the Parliament of Georgia which sets general rules and functions of the state institutions in prevention of infectious and non-infectious diseases; some of the provisions of the law cover issues such as safe environment and environmental quality norms. As it was revealed after publication of the law, the final clause of the law requires that draft law on river basin management be prepared by the government and submitted to the parliament. Official representative of the Ministry of Environmental Protection and Natural Resources unofficially stated that the law was adopted without prior consultation with the ministry and that ministry was involved only at the final parliamentary committee hearing. The official also claimed that final clause of the law is complete surprise to the ministry as it was not included in the final draft of the law.

Probably, the institutional reforms carried out after the “Rose Revolution” (i.e. reducing the number of state agencies and consolidation of the ministries) should have resulted in improved coordination between closely related ministries, or even between the agencies operating under the umbrella of the same ministry (like, for instance, between central office of the Ministry of Environmental Protection and Natural Resources and its subordinate agencies Forestry Department and/or Department of Protected Areas), however, this cannot be asserted with full certainty at this stage.

As for the public participation and consultations with the stakeholders, this, mostly, did not happen at all or is bearing just an informative character. Public has no opportunity to contribute to and influence the strategic decisions.

<p><b>4.6 Cooperation in specific sectors: including transport, energy, environment, telecommunications, research and innovation</b></p> <p>.....</p> <p><b>4.6.3 Environment</b></p> <p><i>Take steps to ensure that conditions for good environmental governance are set and start implementing them</i></p> <ul style="list-style-type: none"><li>• Strengthen administrative structures and procedures to ensure strategic planning of environment issues and co-ordination between relevant actors;</li><li>• Adopt legislation and establish procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention;</li><li>• Continue preparing regular reports on the state-of-the-environment;</li><li>• Reinforce structures and procedures to carry out environmental impact assessments;</li><li>• Establish communication strategies on the benefits of environmental policy; support civil society actors and local authorities.</li></ul>
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1. The first five-year National Environmental Action Programme (NEAP) was adopted in 2000; Elaboration of the second NEAP for 2008 – 2012 was initiated in 2006 and the draft was finalized in mid 2007. In both cases decision-making framework was not clear as procedures are still not defined by the legislation. Elaboration of the second NEAP was financially supported by the UNDP and formally was carried out by the Ministry of Environmental Protection and Natural Resources; however, all works, including consultation with the public, was carried out by external

<sup>1</sup> Situation in environmental planning is discussed below

invited experts. As ministry showed little interest to the document, lack of ownership has led to low interest from the public. Till now the fate of the document is unclear. The activities envisaged under the NEAP had not been reflected neither in the budget for 2008, nor in MTEF. Even if NEAP is approved sometime, it remains moot how realistic, feasible and financially sustainable it will be, especially in light of cutting the ministry's environmental expenses from 0.2% to 0.1% of GDP in the Georgian Government's medium-term strategy for 2007-2010. The budget cut will be implemented by a) optimizing ministry's regulatory and monitoring functions, b) replacing infeasible environmental protection norms with feasible ones, and c) making businesses interested in rational resource management. Anticipated medium-term results are a) growing private sector activity in the mineral deposit development sector, b) efficient operation of the sector with minimum state intervention, and c) maximum conservation of environmental components. Though, no document specifies how much the state will invest in environmental protection measures or if it will do anything in this area at all.

In 2006 Ministry of Environmental Protection and Natural Resources (in partnership with the Netherlands Commission for Environmental Impact Assessment) implemented project on introduction of Strategic Environmental Assessment (SEA) in Georgia and established SEA task force at the ministry. The task force elaborated draft regulation on SEA, however ministry did not take further steps for its adoption as interest to this instrument has reduced. This is not surprising as for last years any assessment tools (especially those involving public participation in the decision-making) are increasingly seen as unnecessarily prolonging administrative procedures and therefore hindering investments in the country.

2. No actions were made to improve legislation and procedures on access to environmental information and public participation in the decision-making. Even though Georgia was among those first ratifying Aarhus convention, it has done little to reinforce legislation in light of the convention. Moreover, during last years the government gradually introduced changes substantially derogating 'access rights'. It should also be noted that despite the requirements of Aarhus Convention public access to draft laws and regulations is not ensured by the government; no efforts are made to involve public in law-making related to the environment and public has access to the normative acts only after the adoption. There were exceptional cases when public had access to drafts of legal acts (but only online) and was asked opinion, but this is only due to pressure of civil society groups.

3. Preparation and publication of national reports on the State of the Environment (SoE) is the obligation of the Ministry of Environmental Protection and Natural Resources under the Law on Environmental Protection of 1996. Informing the public through publication of the report is mandatory under law. National report must include information on quality of the environment, national industry's impact on the environment, regulatory measures applied by the government, prognosis and recommendations. So far the ministry has prepared reports for 2001, 2002, 2003, 2004 and 2005 with further endorsements by the President of Georgia. None of these reports has been published officially and made available for public (neither in print nor online) despite the fact that the primary goal of preparing the reports was to inform the public.<sup>2</sup> Moreover, according to the law, statutory acts, as well as the various documents approved by the statutory acts must be published in an official print. As far as the national reports are concerned, the official print published only the acts on approval of the national reports, but not the reports themselves. Besides, the reliability of information presented in the SoE reports is an issue in itself. Due to weak monitoring and enforcement, the information presented in the reports is not reliable, especially information on industrial pollution.

On December 14, 2007 the framework Law on Environmental Protection was amended. The amendment is related to the frequency of preparation on the SoE reports. The law originally obliged ministry to prepare and publish reports annually; now according to the amendment,

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<sup>2</sup> Only recently state of the environment reports were made available at the web-site of the project 'Aarhus Center in Georgia', the project implemented by the OSCE Mission to Georgia.

ministry is obliged to prepare reports once in three years. In the explanatory note to the amendment, ministry noted that information presented in the reports was incomplete and made impossible to use it in the environmental policy formulation or to take into account during decision-making related to the environment. Therefore, ministry increased time span for preparation of the SoE report. It should be noted however that no measures are implemented or planned to improve quality of the environmental data.

4. EIA system currently existing in Georgia is effective neither in terms of providing public with the information and ensuring public participation, nor in terms of helping decision-makers to take informed decisions on the activities that have adverse environmental effects, to say nothing of post decision-making monitoring and control. The Georgian EIA legislation<sup>3</sup> does not comply with the requirements of Aarhus convention, as well as to the relevant EU directives.<sup>4</sup> The areas of particular concern include:

- Applicability of EIA – EIA is applicable to private projects/activities listed in article 4 of the recently adopted Law on Permit for Impact on the Environment. Public (state-owned) projects are exempt from EIA, while the majority of the activities listed in the abovementioned article can in principle be implemented only by the public institutions. Furthermore, The Law on State Support to Investments makes possible for any person to start implementation of activity without conducting EIA and obtaining permit on condition that he/she will fulfill these obligations in the future.
- Type of activities subject to EIA/Screening – article 4 of the law gives exhaustive list of activities subject to EIA; the list does not include such activities/projects as for instance, mining, nuclear power stations, agricultural and food industries, wood, paper, leather and textile industries, certain types of infrastructural projects.<sup>5</sup> There is little screening of projects subject to the EIA process, putting an excessive burden on the Ministry of Environmental Protection and Natural Resources (authority responsible for reviewing EIA reports (state ecological expertise) and granting the permit for impact on the environment) and the developers of small and medium size projects which have no significant environmental impacts. The list of activities subject to EIA (article 4 of the law) does not comply with Annex I of the Council Directive 85/337/EEC and Annex I of Aarhus Convention. The law also does not include open-ended provision on activities that may be subject to EIA as it is foreseen under the Council Directive 85/337/EEC (Annex II activities).
- Scoping – scoping stage is absent in the legislation; That is why the EIA reports submitted for receiving the ministerial consent are of extremely low quality. Nevertheless this does not deter ministry from their approval anyway.
- Public participation – The Ministry is neither obliged nor entitled to ensure public participation in the decision-making on granting the permit for impact on the environment. Instead the project developers are obliged to inform and consult public on the draft EIA report, i.e. before application to the ministry. Ministry is also not obliged to inform public on the decisions on granting the permits. As Netherlands Commission on Environmental Impact Assessment

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<sup>3</sup> The Law on Licenses and Permits of 2005 (sets general procedural framework for granting all types of licenses and permits, including permit for impact on the environment; the permit is granted based on the environmental impact assessment); The Law on the Permit for Impact on the Environment of December 14, 2007 (the law sets detailed rules of decision-making on granting the permit for impact on the environment) – the law virtually reiterates provisions of so called temporary regulation of September 1, 2005 on the permit for impact on the environment. The regulation was adopted to enforce the Law on Licenses and Permits and remained in force till the adoption of the Law on the Permit for Impact on the Environment.

<sup>4</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment; Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC of June 1985 on the assessment of the effects of certain public and private projects on the environment; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC

<sup>5</sup> These activities used to be subject to EIA till the adoption of the Law on Licenses and Permits in 2005 and subsequent approval of 'temporary regulation' mentioned above.

noted in its advisory report of 2006,<sup>6</sup> commission is not aware of any country in which the project developer is responsible for organizing the public hearing and for considering of the comments made by the public as well as for informing the public what has been done with their comments. Commission underlines that usually these are responsibilities of the competent authorities.

5. No measures were implemented to establish communication strategies on the benefits of environmental policy. Till now communication strategies are focused on the benefits of extraction of natural resources of Georgia and the revenues to the state budget from mining and logging royalties.

*Take action for prevention of deterioration of the environment, protection of human health and achievement of rational use of natural resources in line with the commitments of Johannesburg Summit*

- Develop framework legislation and basic procedures and ensure planning for key environmental sectors, air quality, water quality, waste management, nature protection;
- Enhance administrative capacities, including for the issuing of permits as well as for enforcement and inspection;
- Implement existing national plans and programmes (e.g. on integrated coastal zone management, forest management, and water management);
- Take measures to strengthen control of all types of radioactive sources.

To foster economic development of the country, government chose the “fast economic modernization/growing practice” which envisages full minimization of state intervention through complete deregulation and liberalization in a number of the sectors. Unfortunately, there are sectors in which liberalization and deregulation reforms and minimization of state control put at risk health and safety of Georgian population and the quality of the environment. Georgian decision-makers have compounded these problems by simply marginalizing health and environmental concerns in their development models. It could be asserted that pollution prevention and control is not a priority for the government at this stage. On the other hand, pollution and environmental degradation is clearly a critical issue for Georgia; however understanding of the problem and the solutions are either missing or balanced by other conceivably more pressing concerns, such as for instance, resolution of conflicts or ensuring fast economic growth. There is also clearly the tendency of moving Georgia’s economy towards heavy dependence on large-scale exploitation of natural resources without assessing economic, environmental and social consequences of such approach, especially impacts on poor communities, as they rely more heavily on natural resources for subsistence and income.<sup>7</sup>

The above is clearly demonstrated in the last Governmental Programme titled ‘United and Strong Georgia’ (adopted 7 September 2007) where environment is simply missing and the foremost priorities are declared to be: inclusion of natural (among them forest) resources in economic transactions; diversification of forms of use of natural resources and introduction of system of watershed (river basin) management.

For last two years the government considers introduction of principles of integrated river basin management in the country. There were two concept papers on water policy, one initiated by the Ministry of Environmental Protection and Natural Resources (with the support of USAID water programme) and another by the State Minister in Coordination of Reforms; both concept papers

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<sup>6</sup> In June 2006 at the request of Minister of Environmental Protection and Natural Resources the commission reviewed the draft law on the permit for impact on the environment and provided ministry with the advisory report. The version reviewed by the commission does not differ much from the final version adopted in December 2007. Unfortunately recommendations of the commission were not taken into account during formulation of the law. The advisory report of the commission is available at: [http://www.commissiemer.nl/ncea/pdfs/adv\\_scr2006-04.pdf](http://www.commissiemer.nl/ncea/pdfs/adv_scr2006-04.pdf)

<sup>7</sup> Results of forest sector reform conducted in this manner have shown up this year when communities were basically left without access to fuelwood in cold winter and secondary forest products for domestic use.

have different understanding of integrated river basin management and its tools. Both papers are still draft and none of them were subject to public hearings. In addition, ministry is drafting the new law on water, which among other issues touches upon the integrated river basin management; the understanding of the issue is again different from those of the concept papers. Meanwhile, by the latest amendment in the Law on Licenses and Permits (14 December 2007) licenses for water discharge in and water intake from water bodies were abolished without any substantiation (to say nothing of consultations with the stakeholders) and suggesting any other instruments for regulating water pollution and access to water resources.

Attention should also be paid to another media specific policy – forest policy – which is still not adopted at the moment, though claimed to be approved by the government.<sup>8</sup> It should be underlined that the policy paper was elaborated and became a subject of public consultations only owing to strong pressure from civil society groups and lobbying, including protest actions and requesting the World Bank to stop financing Forest Development Project implemented in Georgia since 2002. New forest legislation is being elaborated at the moment by the staff of the ministry not having any relevant knowledge and experience. It is expected that the draft legislation will be subject to consultations.

Establishment of environmental inspectorate in Georgia is clearly the step forward towards improving enforcement. It is to be noted however that inspection actions are mainly directed to the detection of cases of illegal logging or mining and less attention is paid to the pollution prevention and control, waste management, biodiversity considerations etc. Last year with the support of the OECD strategy and action plan of environmental inspectorate for 2007-2010 was elaborated and approved. The documents were made public and consultations were held with the non-governmental organizations. Comments were submitted by the NGOs part of which has been taken into account; however the fundamental comments were rejected and the arguments for rejection were never provided.

*Enhance co-operation on environmental issues*

- Implement provisions under the Kyoto Protocol and the UN Framework Convention on Climate Change including through the active cooperation under the Clean Development Mechanism;
- Participate actively in the Danube – Black Sea Task Force and the Black Sea Commission to implement a trans-boundary approach to water management; ensure active participation in the Eastern European, Caucasus and Central Asia component of the EU Water Initiative;
- Ratify relevant UN-ECE Conventions on the environment;
- Identify possibilities with neighbouring countries for enhanced regional co-operation, in particular with regard to water issues;
- Possible participation in selected European Environment Agency activities.

Ratification of relevant UN-ECE Conventions on the environment: No activities in this direction has been undertaken

In May 2003 Georgia signed the protocol of Aarhus Convention on Pollutants Release and Transfer Registers; however, the Georgian authorities refrain from ratifying the protocol. Until recent amendment, the Law on Ambient Air Protection of 1999 obliged ministry to control pollution and register releases of pollutants from facilities. The register should have been made available to public. This requirement of the law has never been followed by the ministry, as ministry explains, due to contradicting requirements of environmental legislation and legislation regulating control of enterprises, which makes impossible to inspect facilities and check compliance with relevant environmental requirements. It shall be noted that ministry did not take any measures to eradicate contradiction and make it possible to check compliance status of facilities. Instead, according to the amendment of 14 December 2007 to the Law on Ambient Air

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<sup>8</sup> The Ministry of Environmental Protection and Natural Resources states that policy paper was approved by the government, but there is no official document proving this.

Protection ministry is not obliged anymore to keep register of pollutants. Till now there is a certain system of informing the Ministry of Environmental Protection and Natural Resources on releases of pollutants by the entrepreneurs (through the Department of Statistics which in turn operates under the Ministry of Economic Reforms) solely based on unverified self-monitoring data of facilities.

#### **Priority area 8: Transport and Energy**

Take into consideration the transit potential of Georgia as well as its interconnection with the transport and energy networks of the European Union in order to ensure effective cooperation in the areas of energy and transport between the EU and the states in the Black Sea and Caspian regions in the framework of the "Baku Initiative".

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##### *Energy*

- Continue cooperation on Caspian and Black Sea regional energy issues ( oil, gas, electricity) in the context of the follow up to the EU-Black Sea-Caspian Basin energy Ministerial Conference of November 2004 as well as INOGATE.
- With a view to regional integration and progressive integration with the EU energy market and system and Georgia's role as energy transit country, encourage the development of diversified infrastructure connected to development of Caspian energy resources and facilitate transit.

#### **4.6 Cooperation in specific sectors: including transport, energy, environment, telecommunications, research and innovation**

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##### *4.6.2 Energy*

###### *Energy policy convergence towards EU energy policy objectives*

- Elaborate and implement a coherent long-term energy policy converging gradually with the EU energy policy objectives including security of energy supply;
- Explore the medium-term possibility for participation in the Intelligent Energy-Europe programme.

The energy sector is an area which in best way illustrates difficulties in integration of environment and sustainable development issues in different sector. Even after ten years of reforms, only the supply security-related issues are emphasized by the government. Integration of environmental issues is not a concern for the sector's management. Accordingly, the process of reforms in the Georgian energy sector is not headed towards a sustainable energy system and this will turn into a major burden for both the population and the environment in the nearest future.

It is unfortunate that the "Main directions of Georgian State Energy Policy" approved in 2006 is considered as a document which will bring Georgia's energy policy closer to that of the European Union. The goal of the policy – gradual replacement of natural gas with hydroelectric power is a step in the right direction. However, a) the idea of building large-scale hydroelectric power stations is quite detached from the principles of sustainable development; given that at least four major hydroelectric stations are to be built in 2007- 2010, a conflict is imminent with the principles of sustainable development; b) taking steps towards energy efficiency still remains a prerogative of the Ministry of Environmental Protection and Natural Resources, while in the next five years the Ministry of Energy plans to draft only a law and an action plan; and c) lack of human resources (both analytical and decision-making) and the sheer number of plans to be implemented in the energy sector raise doubts that the decisions will be based on modern best practice standards.

It should also be underlined that the planning for development of the Georgia's energy sector lacks consistency and is based more on subjective decisions, rather than objective data based on energy balance (still missing) and least cost development plan of Georgian sector. To compare, government plans development of a number of major hydropower plants<sup>9</sup> (underlined in government's detailed ENP implementation matrix<sup>10</sup>), but at the same time Ministry of Energy expressed interest in construction of 800 MW coal power station near Tbilisi in summer 2007. It should be also noted that in parallel ministry tries to promote construction of a number of small and medium-size hydroes and wind energy projects, in the situation when according to the policy documents the conventional and renewable energy sources should be developed.

*Gradual convergence towards the principles of the EU internal electricity and gas markets*

- Establish a list of measures for gradual legal and regulatory convergence towards the principles of the EU internal electricity and gas markets, accompanied by time schedules and a financing plan;
- Work towards the progressive elimination of energy price distortions; and improve bill collection rates;
- Further develop the National Energy Regulatory Commission in line with the principles of the Electricity and Gas Directives 2003/54 and 2003/55;
- Complete restructuring the electricity (including hydropower), gas and heat sectors, ensure their financial viability.

The government's most recent energy tender (the largest in scale) that aimed to foster the rehabilitation of the existing assets, involved *the sale of six hydropower stations and three distribution companies to a Czech company Energo-Pro* in 2006 (The largest of the three privatized distributors, United Distribution Company (UDC), supplies some 70 percent of Georgia's electricity).

According to the government's bundling of generation and distribution functions in the tender package is also at odds with current EU trends. While the bundling of energy management and generation and distribution functions is currently illegal in the European Union (which is gradually unbundling), the Georgian government decided to privatize both as a package. Given the government's commitment to increase political and economic integration with Europe in the long-term, this decision is somewhat surprising. Indeed, the ENP Action Plan establishes as an explicit goal Georgia's gradual legal and regulatory convergence with the principles of the EU internal electricity and gas markets.

*Progress on energy efficiency and the use of renewable energy sources*

- Take steps to develop an action plan including a financial plan for improving energy efficiency and enhancing the use of renewable energy;
- Adopt legislation addressing energy efficiency and renewable energy;
- Reinforce the institutions dealing with energy efficiency and renewable energy sources;
- Implement a set of measures in this area.

According to the detailed action plan-matrix for 2007-2010,<sup>11</sup> elaborated under the guidance of the Office of the State Minister for European and Euro-Atlantic Integration, the Ministry of Energy plans to start elaboration of "a working document in order to refine the extant legislative and regulatory base" and to prepare "relevant legislative initiatives." Neither plan-matrix, nor 2007

<sup>9</sup> E.g. Khudoni dam 658 MW, Namakvani 540MW , Pharavani 120 MW

<sup>10</sup> The document was prepared by state ministry on European Integration, based on provided plans from ministries at the end of 2006, but has not been adopted by government as very detailed document.

<sup>11</sup> The detailed action plan-matrix was prepared for the implementation of the European Neighborhood Policy by the Office of State Minister for European and Euro-Atlantic Integration in January 2007. The document was based upon the action plans received from each ministry. The government of Georgia has reviewed the document twice but afterwards refused to approve it. "The main remarks were that the plan was very detailed and the government of Georgia would not be able to implement it, while excessive regulations in the plan would hinder formation of a free market." (Georgia and the European Neighborhood Policy, perspectives and challenges, Policy Paper No. 8, OSGF, Tbilisi, 2007)

strategy for implementing the European Neighborhood Policy says any word on elaboration of an action plan on energy efficiency and renewable energy sources.

The aforementioned is not really surprising since the government thinks that practical measures, including implementation of pilot projects are “matters of the market”, and the market itself will regulate and develop energy efficiency and renewable energy. If we take into account the Policy Document’s phrase that “use of traditional and alternative energy source should be placed in equal conditions” and that energy efficiency is in fact not considered as a component of the energy sector, it is not clear what incentive will remain for the private sector to develop these two directions.

It should be noted that in 2007, during ratification of the second loan agreement of rehabilitation of Enguri hydropower plant, Parliament of Georgia took a commitment that by January 1, 2008 Georgia would have a complete legislative package on energy efficiency and renewable energy sources.<sup>12</sup> Despite of this, the public is not aware of any efforts made in this direction.

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<sup>12</sup> Resolution of Georgian Parliament No. 4457 of March 15, 2007 on “Ratification of the Second Loan Agreement of the European Bank for Reconstruction and Development.”