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GUIDELINES ON PRACTICAL APPLICATION OF ENVIRONMENTAL IMPACT ASSESSMENT IN GEORGIA

EIA



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Disclaimer

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01 Introduction

1.1 PURPOSE AND AIMS OF THE GUIDELINES

Guidelines on Practical Application of Environmental Impact Assessment (EIA) in Georgia (hereafter referred to as the EIA Guidelines) aim at supporting implementation of the Environmental Impact Assessment (EIA) procedure as stipulated by the draft Environmental Assessment Code of Georgia (EAC). It purports to clarify the roles and responsibilities of the main actors to be involved in EIA processes, namely, the Ministry of Environment and Natural Resources Protection of Georgia (hereafter the Ministry)¹ as well as developers, EIA consultants and the public. The Guidelines attempts also to explain, in a plain language, the meaning of respective provisions of the Code in the context of Georgian administrative and legal framework. Where appropriate, the Guidelines provides case examples to illustrate possible approaches or methods recommended to be applied in EIA practice in Georgia. Annexed are some practical tools to be used for certain EIA stages (e.g. criteria to be used for determining transboundary impact or templates for screening and scoping and for the justification of the decision).

1. The EAC refers to the Ministry of Environment and Natural Resources Protection of Georgia as the Ministry in the text of the code.

02 Background to EIA

2.1 WHAT IS EIA

Environmental impact assessment (EIA) is one of the forms of environmental assessment, which is an internationally recognised instrument of preventive environmental policy aiming at examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.

EIA is a procedural tool used during the decision-making related to authorisation of the proposed projects, which may have significant impact on the environment. Its main role is to evaluate the likely environmental impacts of a proposed project taking into account inter-related socio-economic, cultural and human-health impacts, both beneficial and adverse. In order to be effective, EIA is conducted within formalized procedure, which includes public participation and preparation of the environmental impact assessment documentation meeting certain specific requirements.

2.2. INTERNATIONAL FRAMEWORK

The institution of environmental assessment, as it is known currently, originates from the United States where the U.S National Environmental Policy Act (NEPA) of 1969 introduced the requirement that all major federal actions, which may significantly affect the environment, are subject to assessment regarding their likely impact. The US scheme covered a broad range of activities, including concrete individual projects and strategic documents (plans, programs, policies, etc.), and included elaborated procedures and requirements for screening activities subject to assessment, determining scope of the assessment, content of the assessment reports, public participation, etc.

The above concept of environmental assessment has proven to be extremely useful as a tool of preventive environmental policy and has been widely followed all over the world. In Europe however originally this concept was introduced only partially. In 1985 the European Community adopted Council Directive 85/337/EEC of 27 June 1985 on the assessment of certain public and private projects on the environment (so called EIA Directive), which set certain standard of environmental assessment widely followed in Europe. The EIA Directive however, as opposed to NEPA, limited the application of environmental assessment to certain individual projects only. Thus, strategic documents like plans, programs, policies and legislative proposals were originally not made subject to assess-

ment in Europe. That was the reason why the scope of application of the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context signed in Espoo in 1991 was also predominantly limited to individual projects only. In late 1990s it became apparent in Europe that the assessment in order to be effective must cover - as it is in the US - also strategic decisions. This led to adoption of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (SEA Directive). This in turn paved the way to initiate negotiations leading to adoption of the Protocol on Strategic Environmental Assessment (Protocol on SEA) under the Espoo Convention in Kiev in 2003.

All the above legal instruments require public participation. Detailed rules in this respect are included in the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters signed in Aarhus in 1998 (Aarhus Convention).

2.2.1 Espoo Convention

Short description of the aims

The Convention on Environmental Impact Assessment in a Transboundary Context was adopted in 1991 in Espoo, Finland (hence the Espoo Convention). It entered into force in 1997 and had two amendments. The first amendment opened the Convention to accession by UN Member States that are not members of the UNECE and entered into force in 2014. The second amendment was adopted in 2004 and once in force, it will revise the Appendix I (list of activities), allow, as appropriate, affected Parties to participate in scoping, require reviews of compliance and make other minor changes to the original text of the Convention.

The Convention requires that EIA is carried out for certain types of activity planned usually by one Party, which are likely to have a significant environmental impact within an area under the jurisdiction of another Party. It lays down the obligation of countries to notify and consult each other and the public. It requires that all comments received from the public and authorities, as well as the findings of the assessment, are taken into account when deciding on the planned activity.

Key procedural steps

The actual procedure under the Espoo Convention consists of determining whether proposed projects may have significant transboundary impacts, notification of possibly affected Parties, preparation of EIA Documentation, transboundary consultation on the basis of EIA Documentation, decision-making, and post-project analysis.

The Convention defines 'impact' as any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors. It also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.

Determining whether proposed projects may have significant transboundary impacts

The Party of origin shall ensure that an environmental impact assessment is undertaken for proposed activities listed in Appendix I that are likely to cause a significant adverse transboundary impact. The first task is thus to determine whether an activity may have significant impacts across borders. This step is often called screening.

The Convention also allows the concerned parties to discuss whether one or more proposed activities not listed in Appendix I are likely to cause a significant adverse transboundary impact and thus be subject to transboundary consultations. General guidance for identifying criteria to determine significant adverse impact is set forth in Appendix III while the meeting of the Signatories to the Convention in 1995 has adopted a guidance document on determining the significance of a transboundary impact.

Notification of possibly affected Parties

When a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin has to notify any potentially affected Parties about that proposed activity. This notification should be done as early as possible and no later than when informing its own public and it shall contain:

1. Information on the proposed activity, including any available information on its possible transboundary impact,
2. The nature of the possible decision, and
3. An indication of a reasonable time within which responses from the potentially affected Parties is needed on the proposed activity.
4. When any of the potentially affected Parties indicate their desire to participate in the environmental impact assessment procedure, the Party of origin shall provide them with:
5. Relevant information regarding the environmental impact assessment procedure, including an indication of the time schedule for transmittal of comments,
6. Relevant information on the proposed activity and its possible significant adverse transboundary impact.

The public of the affected Party in the areas likely to be affected must be informed of the proposed activity and be provided with possibilities for making comments or objections on it.

EIA Documentation

The environmental impact assessment documentation for activities falling under the Espoo Conventions should contain at least:

1. A description of the proposed activity and its purpose,
2. A description, where appropriate, of reasonable alternatives (for example, locational or technological) to the proposed activity and also the no-action alternative,

3. A description of the environment likely to be significantly affected by the proposed activity and its alternatives,
4. A description of the potential environmental impact of the proposed activity and its alternatives and an estimation of its significance,
5. A description of mitigation measures to keep adverse environmental impact to a minimum,
6. An explicit indication of predictive methods and underlying assumptions as well as the relevant environmental data used)
7. An identification of gaps in knowledge and uncertainties encountered in compiling the required information,
8. Where appropriate, an outline for monitoring and management programmes and any plans for post-project analysis), and
9. A non-technical summary including a visual presentation as appropriate (maps, graphs, etc.).

The concerned Parties shall arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments to the competent authority of the Party of origin.

Transboundary consultation on the basis of EIA Documentation

After completion of the EIA documentation, the concerned Parties shall start consultations about the potential transboundary impact of the proposed activity and about possible measures to reduce or eliminate its impact. Consultations may relate to:

1. Possible alternatives to the proposed activity, including the no-action alternative and possible measures to mitigate significant adverse transboundary impact and to monitor the effects of such measures at the expense of the Party of origin,
2. Other forms of possible mutual assistance in reducing any significant adverse transboundary impact of the proposed activity, and
3. Any other appropriate matters relating to the proposed activity.

Decision-making

The Parties shall ensure that, in the final decision on the proposed activity, due account is taken of the outcome of the EIA documentation, as well as the comments received from the public and through transboundary consultations.

The Party of origin shall provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.

If additional important information on the significant transboundary impact of a proposed activity which was not available at the time a decision becomes available before work on that activity begins, that Party shall immediately inform each other and may initiate consultations on whether the decision made needs to be revised.

Post-project analysis

The concerned Parties, at the request of any such Party, shall determine whether, and if so to what extent, a post-project analysis shall be carried out. The monitoring should include:

1. Monitoring compliance with the conditions as set out in the authorization or approval of the activity and the effectiveness of mitigation measures,
2. Review of an impact for proper management and in order to cope with uncertainties,
3. Verification of past predictions in order to transfer experience to future activities of the same type.

When, as a result of post-project analysis provide reasonable grounds for concluding that there is a significant adverse transboundary impact or factors have been discovered which may result in such an impact, it shall immediately inform the other Party. The concerned Parties shall then consult on necessary measures to reduce or eliminate the impact.

2.2.2 EIA Directive

Short description of the aims and role of the EIA Directive

This Directive defines the basic rules of the assessment of the environmental effects of those public and private projects, which are likely to have significant effects on the environment. The initial Directive of 1985 has been amended three times and these changes have been codified by Directive 2011/92/EU of 13 December 2011. Directive 2011/92/EU has been amended in 2014 by Directive 2014/52/EU. An informal consolidated version of the current text of the EIA Directive is available on the website of the European Commission¹.

Key procedural steps

The actual EIA procedure consists of screening, elaboration of EIA report, consultation with relevant authorities, public participation, transboundary consultations, decision-making and monitoring.

Determining which projects require assessment under the EIA Directive

The EIA Directive applies to a wide range of public and private projects, which are defined in Annexes I and II.

All projects listed in Annex I are considered as having significant effects on the environment and require an EIA (e.g. long-distance railway lines, motorways and express roads, airports with a basic runway length ≥ 2100 m, installations for the disposal of hazardous waste, installations for the disposal of non-hazardous waste > 100 tonnes/day, waste water treatment plants > 150.000 p.e.).

For projects listed in Annex II, the national authorities have to decide whether an EIA is needed.

1. <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

The projects listed in Annex II are in general those not included in Annex I (railways, roads waste disposal installations, waste water treatment plants), but also other types such as urban development projects, flood-relief works, changes of Annex I and II existing project). This is done by the “screening procedure”, which determines the effects of projects on the basis of thresholds/criteria or a case by case examination. However, the national authorities must take into account the criteria laid down in Annex III of the EIA Directive.

Scoping

When an EIA is required, the developer shall prepare EIA report. If the developer requests so – or if the members states so decide - the competent authorities need to issue an opinion on the scope of the EIA Reports. In this process the competent authorities shall consult other environmental authorities before they give scoping opinion.

EIA Report

The environmental impact assessment shall identify, describe and assess in an appropriate manner the direct and indirect significant effects of a project. Of direct relevance to this guidance is the requirement that the EIA Report includes the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

An EIA Report need to include the following information that may reasonably be required for reaching a reasoned conclusion on the significant effects of the project on the environment:

1. Characteristics of projects

- ▶ a description of the location of the project;
- ▶ a description of the physical characteristics of the whole project, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- ▶ a description of the main characteristics of the operational phase of the project (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- ▶ an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the project as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis

of the availability of environmental information and scientific knowledge.

4. A description of the factors likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the project on the environment resulting from, inter alia:

- ▶ the construction and existence of the project, including, where relevant, demolition works;
- ▶ the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- ▶ the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- ▶ the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- ▶ the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- ▶ the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
- ▶ the technologies and the substances used.

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment.

8. A description of the expected significant adverse effects of the project on the environment deriving from the vulnerability of the project to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary.

Consultation with relevant authorities

Authorities likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences must give an opportunity to express their opinion on the EIA report, information supplied by the developer and on the request for development consent. Member states can designate the authorities to be consulted either in general terms or on a case-by-case basis.

Public participation

In order to ensure the effective participation of the public concerned the public shall be informed electronically and by public notices or by other appropriate means about:

- ▶ the request for development consent;
- ▶ the fact that the project is subject to an EIA procedure and, where transboundary consultations (if applicable);
- ▶ details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- ▶ the nature of possible decisions or the draft decision;
- ▶ availability of EIA Report;
- ▶ an indication of the times and places at which, and the means by which, the relevant information will be made available;
- ▶ detailed arrangements for public participation.

Each member state needs to determine the detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers), and for consulting the public concerned (for example by written submissions or by way of a public inquiry). Member states are required to take the necessary measures to ensure that the relevant information is electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level.

Transboundary consultations

Where EU member state becomes aware that a project is likely to have significant effects on the environment in another EU member state or when the likely affected member state so requests, a procedure of exchange of basic documents for transboundary consultations begins. The detailed arrangements for transboundary consultations correspond with the requirements of the Espoo Convention.

Decision-making

The results of EIA Report and outcomes of consultations with the relevant authorities, with public and with possibly affected EU member states (if undertaken) must be taken into account in the development consent procedure. The decision to grant development consent shall incor-

porate at least (a) reasoned conclusion by the competent authority on the significant effects of the project on the environment and (b) any environmental conditions attached to the decision, mitigation and compensation measures and any applicable monitoring arrangements.

Monitoring

Member States must ensure that the features of the project and/or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are implemented by the developer, and shall determine the procedures regarding the monitoring of significant adverse effects on the environment. The type of parameters to be monitored and the duration of the monitoring shall be proportionate to the nature, location and size of the project and the significance of its effects on the environment. In order to avoiding duplication of monitoring, existing monitoring arrangements resulting from EU legislation and from national legislation may be used if appropriate.

2.3 NATIONAL FRAMEWORK - INCLUDING DIFFERENCE BETWEEN NEW AND OLD EIA SCHEME

International obligations

Georgia is currently not a Party to the Espoo Convention and its Protocol on SEA. It has signed, but not ratified the SEA Protocol. Georgia is a Party to the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention).

Georgia in June 2014 signed the Association Agreement with the European Union and ratified it on July 18, 2014. The Association Agreement, inter alia, obliges Georgia to gradually approximate its legislation to the EU legislation (including EU EIA directive) and international instruments (listed in the Annexes to the Association Agreement) within the stipulated timeframes.

Georgia already has quite elaborated legal framework for EIA and several years of practical experience in this respect. The current legal framework for EIA is not compatible however with the international and EU standards in this respect. There is practically neither a legal framework nor any experience with SEA.

Therefore, in order to fulfil the above political commitments the Ministry of Environment Protection of Georgia in cooperation with the UNECE Secretariat and the European Union has undertaken to develop a national system to apply EIA and SEA procedures according to the provisions of the Convention and the Protocol, including drafting a new law on EIA and SEA harmonised with the respective EU Directives. Following this a draft Environmental Assessment Code of Georgia (EAC) was prepared and subjected to legislative procedure.

Chapter II of the EAC is devoted to EIA. In addition, some EIA-related provisions are included in other chapters. Of special importance are certain definitions in Chapter I, which define some key terms for the EIA legal framework.

Development of EIA system in Georgia

EIA system in Georgia was first introduced in 1997 and since then it has undergone significant changes several times. The major changes were implemented in 2005 with reforming the licensing and permitting system, resulting in a new bylaw on “rules and conditions for issuance of environmental impact permit” that was translated into the Law on Environmental Impact Permit in 2007. The Law on Environmental Impact Permit defined the list of projects subject to mandatory ecological expertise and outlined procedures for permit issuance, ecological expertise and public information and public participation in EIA decision-making, while a separate law - Law on Ecological Expertise (2007) defined specific rules for conducting ecological expertise that served as an essential ground for issuing a permit.

Environmental Assessment Code (EAC) adopted in 2016 replaces these two laws. The Code introduces new EIA procedures harmonized with international standards and EU legislation resulting in a substantial improvement of the previous EIA system. Below are described major differences in EIA procedures before and after introducing the new Code.

Need for EIA

The 2016 Law – Environmental Assessment Code, similarly to EIA Directive, defines two lists of development projects included in Annex I and Annex II of the Law. Annex I activities, based on Annex I to EIA Directive, are explicitly subject to EIA, while Annex II activities, based on Annex II to EIA Directive need to undergo screening procedure, on the basis of which need in EIA will be established. The 2007 Law on Environmental Impact Permit defined included only one list of development projects, which were subject to mandatory ecological expertise (EE). These projects were automatically subject to mandatory EIA. There was no further screening procedure envisaged. This resulted in a rigid system where some of the activities, heaving significant effects on the environment were not subject to EIA, while at the same time, due to absence of more detailed specifications and/or thresholds and non-existence of screening, often projects that would normally not require EIA were falling under the mandatory EIA list. For example, list of activities subject to mandatory EE according to the 2007 law, does not cover number of EAC Annex I projects subject to mandatory EIA (e.g. farms for the intensive rearing of poultry or pigs, production of pulp, open-cast mining, peat extraction etc.) and many of the EAC Annex II projects subject to screening (e.g. urban development projects, projects from the sectors of agriculture, silviculture and aquaculture, food industry, textile, leather and paper industries, tourism and leisure, and others). At the same time, while for some EAC Annex II projects under a certain size/capacity threshold screening is not required, according to the 2007 law the same projects require mandatory EIA despite their size/capacity. E.g. Construction and operation of airports, with a basic runway length of less than 1200 m would not require EIA according to the EAC, while the same project would be subject to mandatory EIA based on the 2007 law.

Exemption from EIA

The 2016 Environmental Assessment Code clearly defines the conditions for exemption from EIA. Specifically, the project can be granted an exemption 1) in case sole purpose of the project

is to serve national defense; 2) in case project is related to urgent measures arising from force majeure. According to the 2007 Law on Environmental Impact Permit, project could have been exempted from EIA if 'general state interests' would require timely decision-making on initiation of the project. No further explanation was provided what might have been considered to be a 'state interest'. As a result, often exemption was granted to regular projects such as e.g. construction of motorways on the ground of limited time frames for project implementation.

Another difference introduced by the new Law is that the decision on exemption is made by the Government of Georgia on the basis of solicitation by the Ministry and not the Ministry itself as before, since exemption from EIA due to matters of national defense or force majeure exceeds the competences of environmental decision-making. In addition, State Security Service of Georgia will be involved when project serves purposes of national defense.

Screening

As mentioned, the EAC introduces a screening procedure on the basis of which need in EIA is established for Annex II projects. Screening does not require substantial resources and time, so that there is no need to undertake environmental assessment studies or prepare a report. On the other side, in case screening establishes that EIA is not required, further assessments will not be needed and resources for preparation of EIA will be saved.

In addition, the EAC entitles the developer to request a screening decision and scoping opinion for Annex II projects in one application - see below.

Scoping

The EAC introduces a scoping procedure that is aimed to define the frames of the information to be collected and studies to be undertaken in EIA for each particular project on a case-by-case basis. Scoping gives possibility to focus on important aspects of the assessment and to avoid spending resources on unimportant issues. Unlikely, the 2007 Law on Environmental Impact Permit did not envisage the scoping procedure. Instead, typical requirements to EIA report, defined in a bylaw on environmental impact assessment, was applied to all projects. This would mean that formally all types of projects needed to follow the similar outline and to address all types of different environmental issues despite their relevance to a particular project.

In addition, as mentioned above, the EAC entitles the developer to request a screening decision and scoping opinion for Annex II projects in one application, which can speed up the EIA process so that the overall time needed for these two procedures will be reduced.

Environmental Decision versus the old Permit system

The EAC abolished the old environmental impact permit system. Instead of permit, environmental decision will be issued based on EIA. The whole procedure, starting from registration of the application, takes 51-55 days. Developer submits EIA report to the Ministry. The Ministry informs the public, receives comments, conducts public hearing, consults other competent authorities as needed, and as a result of Expertize, taking due account of all received comments, issues

environmental decision. Environmental decision defines conditions that are obligatory for the developer to observe during implementation of the project.

Important novelty is that with the new Law, EIA procedure became completely detached from other permits/licenses and moreover, it precedes all other permits/licenses that can be required for implementing a project. In addition, no other license and/or permit can establish conditions that may differ from the environmental decision.

Expert commission

According to the EAC, the Ministry establishes the expert commission within 5 working days after registering the application on obtaining the environmental decision. The expert commission provides their conclusion upon EIA review (conclusion of Expertize) within 40 days after its establishment. Thus, Expertize is stretched through the EIA procedure, providing the experts with the sufficient time for preparing the conclusion, unlike the Ecological Expertize procedure in the previous system, when experts were given less than 20 days to issue the conclusion. In addition, the EAC entitles the experts to access the project site and to obtain any relevant information from a developer that gives them more power and resources to develop a well-justified conclusion.

Another important difference is that according to the 2007 Law, the conclusion of ecological expertize was an essential ground for issuing the environmental impact permit. According to the EAC, the conclusion of Expertize is a strong recommendation for issuing the Environmental Decision, while the responsibility for decision-making stays with the Ministry and not experts.

Decision on rejection of the project

The EAC defines clear grounds for rejection of the project. The decision can be made not only as a result of EIA review (expertise), but also as early as screening and scoping stages. According to the EAC, Ministry can reject the project if its implementation will cause violation of the requirements of the Georgian legislation; or implementation of the project is not reasonable due to its characteristics, capacity, location, nature of impacts and/or risks; or there is the enacted Court/ Arbitration decision which excludes possibility to accept the request. In these cases, Ministry issues the individual administrative legal act on rejection of the project. The old environmental permit system did not provide clear grounds for rejecting the project. In addition, rejection was only possible after reviewing the full EIA study.

Public participation

The EAC ensures public participation in accordance with the Aarhus Convention at all stages of EIA procedure – screening, scoping and issuance of environmental decision. This involves informing the public and providing opportunity to submit comments and to participate in public hearings. Public hearings are held at the stage of scoping and expertise that results in environmental decision. Important difference with the previous system is that the Ministry, and not the developer as before, is responsible for ensuring public participation. For this, the Ministry

publishes the information on its website and on the notice boards of the local self-governance units and organizes public hearings. Ministry is obliged to publish screening, scoping and environmental decisions, which was never required in the previous system. In addition, the Ministry is responsible for taking due account of all received comments and reflecting them in a justified decision.

Transboundary EIA procedure

The EAC introduces a transboundary environmental impact assessment procedure that was not present in the previous legislation. It is based on the requirements of Espoo Convention and takes place if the given foreign country has a commitment related to transboundary EIA under an international agreement like Espoo Convention or a bilateral agreement. Transboundary EIA procedure implies involvement of a foreign country in issuing the environmental decision in case the project subject to EIA implemented in Georgia may cause a significant transboundary environmental impact to the given country. Transboundary EIA applies also when the project that is implemented in a foreign country may cause a significant transboundary environmental impact on the environment in Georgia.

Monitoring implementation and compliance

The EAC introduces provisions on post-project analysis that is also new to the EIA system in Georgia. Namely, developer is responsible for reporting to the Ministry on implementation of the conditions and mitigation measures defined in the Environmental Decision, in accordance with the requirements and timing indicated in the Environmental Decision. While in the previous system the Ministry did not have any information about implementation of permit conditions except the information received as a result of very limited inspection cases, the post-project analysis will ensure full accountability of a developer for implementing the required conditions and also, will give possibility to the Ministry as well as the public, to analyze the assumptions made during assessment of the project and to use the given experience in further EIA processes of the future projects.

2.3 EIA AND SEA

Environmental impact assessment (EIA) and strategic environmental assessment (SEA) are both forms of environmental assessment. They are procedural instruments of preventive environmental policy and as such have similar goals and a lot of similar features, in particular as far as the procedural elements are concerned. They differ however significantly as regards to the type of the activities covered by the assessment and the scope of the assessment.

EIA under the Espoo Convention and the EU EIA Directive cover specific activities i.e. concrete individual projects planned to be undertaken by developers (regardless of whether they are private or public) and subjected to the decision of a competent public authority on whether to authorize them. Thus EIA covers activities planned by developers regardless of whether they are individual persons, private companies or public bodies responsible for developing infrastructure projects.

SEA under Protocol on SEA and the EU SEA Directive cover strategic documents, such as plans or programmes, prepared by public authorities, which, unlike developers under the EIA scheme, do not need to seek a decision from any other authorities to authorize their strategic documents. The SEA scheme under the Protocol on SEA and the SEA Directive does not cover strategic documents prepared by private persons or companies.

The assessment in EIA focuses on the physical impact of the project on the environment while the assessment in SEA, bearing in mind the larger scale and less precise data, focuses rather on the impact on the achievement of relevant environmental objectives.

The above differences between EIA and SEA are reflected in slightly different requirements regarding the procedure and the respective documentation (reports) to be prepared in either EIA or SEA procedure. Also, the role of authorities competent for EIA and SEA is different.

Another key difference between EIA and SEA is the fact that EIA is a quite well established concept and in most countries there is more or less developed legislation as well as practical experience related to EIA; while SEA is a relatively new concept and in many countries there is no or very little experience in SEA.

03 Definitions and key terms

1. **NON-TECHNICAL SUMMARY** – a brief description of environmental impact assessment report or strategic environmental assessment report, which includes information on planning authority/developer, place of implementation of strategic document/projects and other aspects of the report, is made up in technical language and includes graphic and visual illustrations.
2. **ENVIRONMENTAL DECISION** – an individual administrative legal act, issued by the Minister, which entitles a developer to implement a project subject to EIA. If implementation of a project requires other kind of license and/or permit, the Environmental Decision constitutes a prerequisite for receiving such license and/or permit, except for the case envisaged by Article 5, Paragraph 2 of the EAC.
3. **ENVIRONMENTAL IMPACT** – any effect caused by implementation of a proposed project on the environment, including the following factors: human health and safety, biodiversity and its elements, water, air, soil, land climate, landscape and protected areas. It also includes effects on cultural heritage or socio-economic factors resulting from alteration of these factors.
4. **ENVIRONMENTAL IMPACT ASSESSMENT (EIA)** – a procedure to examine, on the basis of appropriate studies and research, a potential environmental impact of a proposed project, which may have significant environmental impact and is listed in Annex I and based on the screening decision, in Annex II of the EAC. EIA process includes scoping, preparation of an environmental impact assessment report, carrying out public participation and consultations with the competent authorities and making a reasoned conclusion from examination of their results, taking them and any other information into account in issuing Environmental Decision envisaged by the EAC and/or in issuing a relevant authorizing administrative legal act envisaged by the existing legislation, which entitles to proceed with the project.
5. **ENVIRONMENTAL IMPACT ASSESSMENT REPORT (EIA REPORT)** – a document prepared by the developer and/or by the consultant for the developer during the environmental impact assessment process and containing the information required by the EAC.

6. **PUBLIC CONCERNED** – the public affected or likely to be affected by, or having an interest of the decision related to the implementation of a specific project. For the purposes of this definition a non-entrepreneur (non-commercial) legal person registered under the national legislation and promoting environmental protection deemed to have an interest as well.
7. **EXPERTIZE** – scientific research measures implemented by the expert commission set up under the rules of the EAC, in order to prepare expertize conclusion.
8. **CONSULTANT** – a person having the relevant qualification as well as scientific, technical and methodological skills for preparing environmental impact assessment reports.
9. **DECISION TO CONTINUE THE EXISTING PROJECT** – the order issued by the Minister, which entitles the developer to continue the existing project.
10. **THE MINISTER** – the Minister of Environment and Natural Resources Protection of Georgia.
11. **THE PUBLIC** – one or more natural or legal persons as well as other organization unite envisaged by national legislation, which is not a legal person.
12. **THE MINISTRY** – the Ministry of Environment and Natural Resources Protection of Georgia.
13. **DAY** – working day envisaged by existing legislation.
14. **PROJECT** – the execution of construction works or of other installations or schemes, or other interventions determined by the EAC including the extraction/processing of mineral resources, which causes effects on the environment.
15. **DEVELOPER** – Any person, public authority, as well as other organizational unit envisaged by the existing legislation, which is not a legal person and is willing to implement a project listed in Annex I and/or II of the EAC or continue the existing project.
16. **SCOPING** – a procedure to determine the type of information to be gathered and examined during environmental impact assessment and the ways of presenting abovementioned information in environmental impact assessment report.
17. **SCOPING REPORT** – a document prepared by the developer, the planning authority and/or the consultant concluding the scoping results based on which the Ministry issues a scoping opinion.
18. **SCREENING** – a procedure when the decision is made on the need to perform environmental impact assessment after applying to the Ministry with such request.
19. **TRANSBOUNDARY IMPACT** – any impact on the environment of Georgian or of a foreign country, which is caused, totally or partially, by implementation of the project or strategic document on the territory of Georgia or on a foreign country.
20. **FORCE MAJEURE** – Natural disaster on specific territory (earthquake, land slide, flood or other similar cases), also, crisis circumstances, such as violation of normal living conditions of citizens, caused by a disaster, big scale industrial accident and/or fire.

04 Key actors and their respective roles

- **DEVELOPERS +** – any person, public authority, as well as other organizational unit envisaged by the existing legislation, which is not a legal person and is willing to implement a project listed in Annex I and/or II of the EAC or continue the existing project.
- **THE MINISTRY** – the Ministry of Environment and Natural Resources Protection of Georgia (MENRP) has the key role in administration of the EIA and issuing Environmental decision.
- **EXPERT COMMISSION** is set at the final stage of EIA by the Minister of Environment and Natural Resource Protection as its advisory body to prepare expert conclusions on the draft SEA report.
- **PUBLIC** is defined in the EAC as one or more physical or legal persons and their associations, organizations or groups. Public has to have an early, timely and effective opportunities to participate in SEA process when all options are open and comments provided should be considered in the EIA.
- **PUBLIC CONCERNED** – the public affected or likely to be affected by, or having an interest of the decision related to the implementation of a specific project. For the purposes of this definition a non-entrepreneur (non-commercial) legal person registered under the national legislation and promoting environmental protection deemed to have an interest as well.
- **CONSULTANT**, is defined in the EAC is a person having the relevant qualification as well as scientific, technical and methodological skills for preparing environmental impact assessment reports. Individual consultant and/or consulting company might be hired by developers to prepare environmental assessment report and scoping report; and even the screening report.
- **FOREIGN COUNTRIES** should be involved in EIA process in case a certain project is likely to have transboundary effects.

05 Projects subject to EIA scheme and exemptions from EIA

5.1 NEED FOR EIA

EIA is required for public or private projects that are likely to have significant effects on the environment. EIA is mandatory for projects listed in EAC Annex I, which are considered as having significant effects on the environment. These projects include for example: long-distance railway lines, international and interstate roads, hydro-power stations with a capacity of 50 megawatts and more, thermal power stations with a heat output of 10 megawatts or more, open-cast mining, where the surface of the site exceeds 25 hectares, disposal incineration and/or chemical treatment of hazardous waste or non-hazardous waste with a capacity exceeding 100 tones per day, urban wastewater treatment plants with a capacity exceeding 50,000 population equivalent etc. Other projects, listed in EAC Annex II, need to undergo a screening procedure, based on which, it will be decided whether EIA is required or not. This may be determined according to the thresholds or criteria (e.g. size, scale), site-specific information (location, sensitive ecological areas) and potential impacts. Annex II projects include: hydropower stations with a capacity of 2 megawatts and more, open-cast mining where the surface of the site exceeds 10 hectares, underground mining and/or production (except from oil and natural gas, or groundwater for personal consumption), waste disposal activities not included in Annex I, waste recovery, except from pretreatment of non-hazardous waste, pretreatment of hazardous waste, storage of more than 10 tones of hazardous waste, wastewater treatment plants not included in Annex I, urban development projects where the area of the development exceeds 10 hectares and other.

Development projects listed in Annex I and projects listed in Annex II that on the basis of screening decision become subject to EIA, can be implemented only after the Ministry issues environmental decision.

5.2 EXEMPTION FROM EIA

Article 16 of the EAC allows for exemption of a particular project from EIA in exceptional cases: when the sole purpose of the project is to serve national defense, or if it aims at implementation of urgent measures arising from force majeure, meaning disaster such as earthquake, landslide, flood and similar events, also, crisis that is characterized with deterioration of normal living conditions of citizens caused by a disaster, large scale industrial accident and/or fire.

In order to be granted an exemption from EIA, the developer shall submit the justified application to the Ministry, indicating that EIA procedure will have an adverse effect on national defense

Application for exemption from EIA shall include:

- a) The name of the administrative body to which the application is submitted (Ministry)
- b) Name and address of the applicant
- c) The title of the planned project and name of the developer
- d) The location of the planned project, including GIS coordinates in shape files
- e) Approximate starting and termination dates of the project
- f) Objectives of the project
- g) Justified request for exemption from EIA
- h) Date of submission of application and signature of the applicant
- i) List of documents attached to the application, if any

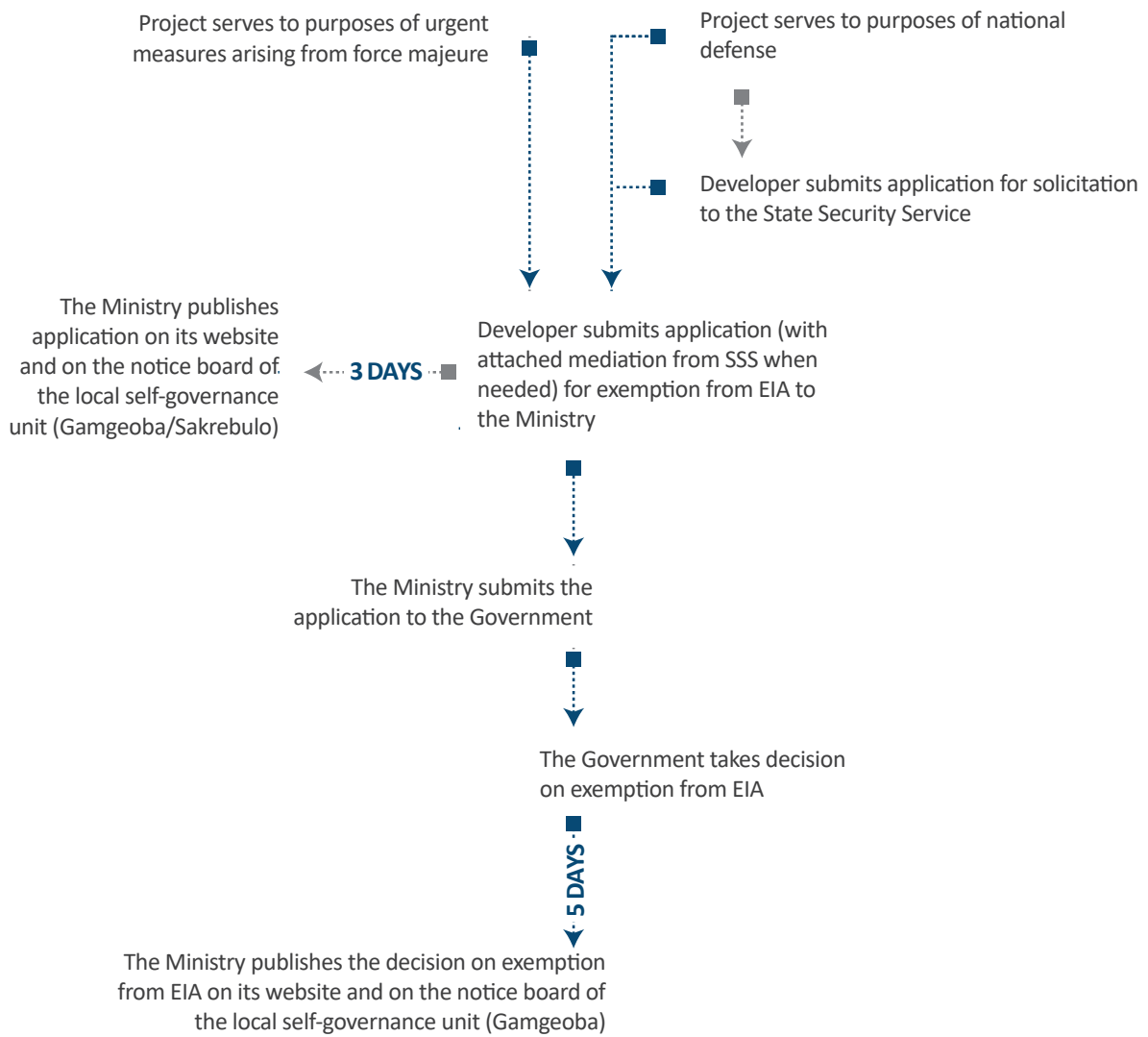
The applicant may also submit to the Ministry any other document that can become a ground for issuing a decision on exemption from EIA.

EAC, Article 16, General Administrative Code of Georgia, Article 78

Box 1 - requirements to the application for exemption from EIA

or timely response measures to be carried out due to force majeure, providing that there is an urgent necessity in implementing the proposed measures that might be undermined by EIA procedure. The decision on exemption is issued by the Government of Georgia on the basis of solicitation by the Ministry. Exemption could be granted to the projects e.g. if the emergency which gave rise to the project could not have been foreseen, or if it could have been foreseen but the project could not have been undertaken earlier.

In case the project is to serve purposes of national defense, the application shall also be attached by the solicitation of the State Security Service of Georgia.



Graph 1 - Procedure for exemption from EIA

06 General obligations and role of Environmental Decision

According to the EAC, environmental decision is an individual administrative legal act issued by the Minister, which entitles a developer to implement a project subject to EIA. Environmental decision is a prerequisite for obtaining any other permits/licenses, e.g. construction permit, that might be required for implementing a specific project by the Law on Licenses and Permits. The only exception are licenses that are issued via auctioning, specifically the license for mining envisaged by Article 7, paragraph 1 of the Law on Licenses and Permits. In such case, if project subject to a mining license requires mandatory EIA or screening, license is issued prior to issuing Environmental Decision under a condition that the license will become effective only after the Environmental Decision is issued and in case there is a discrepancy between the conditions set forth by the license and the Environmental Decision, the conditions of the Environmental Decision will prevail. In addition, no other license and/or permit can establish conditions that may differ from the Environmental Decision.

Environmental Decision is issued as a result of a procedure involving assessment of the project subject to EIA in terms of direct and indirect effects on human health and safety, biodiversity and their habitats, ecosystems, soil, water, air, landscape and climate, cultural heritage and material assets. The procedure includes: identification of need in EIA – screening, defining scopes of EIA – scoping, environmental impact assessment of the project resulting in EIA report, and review of assessment results upon which the justified conclusion and Environmental Decision is issued. Public information and public participation is ensured at different stages throughout the procedure.

07 Screening

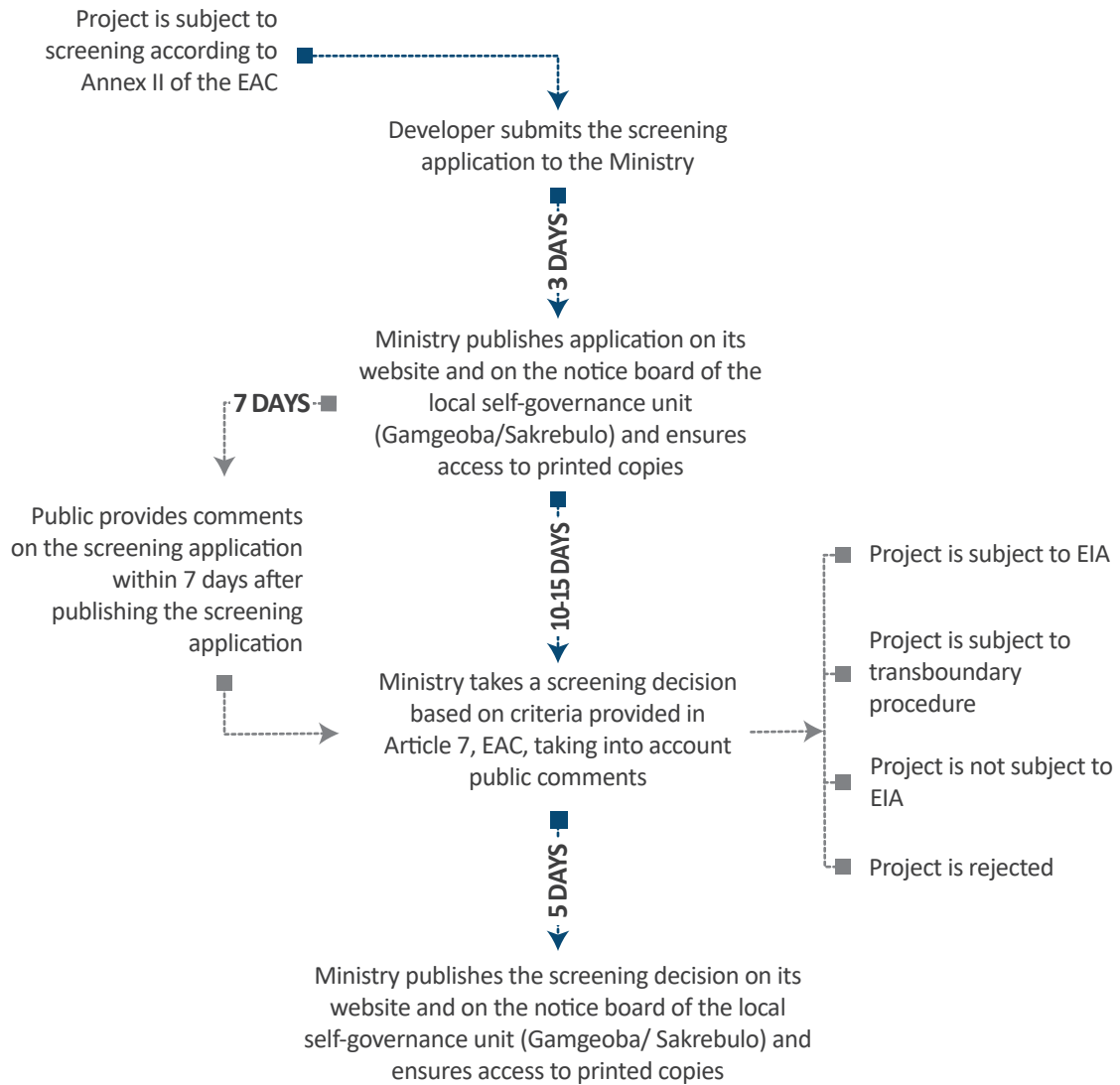
7.1 ROLE

According to EAC, screening is a procedure by which decision is taken on whether or not EIA is required for a particular project. While projects included in Annex I are explicitly subject to EIA, Annex II projects need to undergo further screening procedure that determines need in EIA on a case-by-case basis. The purpose of screening is to determine whether a proposed project is likely to have significant effects on the environment that would require further comprehensive analysis of impacts on the environment and human health, on the basis of which formal decision can be made whether the project should proceed or not. While Annex I covers projects that would inevitably cause significant effects on the Environment, to the screening are subject projects impact of which may vary depending on the size/scale, location, characteristics and other parameters of the project and the surrounding environment that need to be assessed in order to ensure that EIA is applied when relevant and at the same time, unnecessary costs of further steps are avoided in case impacts are insignificant. Screening also can be a basis for rejecting the project at this initial stage if there is already sufficient information indicating that the project cannot proceed, e.g. if the project contradicts to the existing land use status and requirements, if there is a concern of significant cumulative impacts, if project would require large-scale resettlement etc.

7.2 PROCEDURE

Screening is undertaken at an early stage of project planning. It applies to activities listed in the EAC Annex II. According to the EAC Article 7, paragraph 2, the developer

shall apply to the Ministry with screening application in order to obtain the decision on whether or not EIA is required for the particular project. The Ministry publishes the screening application to enable public comments and after a certain fixed time period issues a screening decision (graph 2). The different procedure, described in this chapter below, applies in case the proposed project is subject to a mining license.



Graph 2 - Screening procedure

Screening procedure for projects related to mining

Mining and exploration/mining is subject to a license that is issued via auctioning¹. Mining license is issued by the National Environmental Agency of the Ministry of Environment and Natural Resources Protection or Ministry of Finances and Economy of Adjara Autonomous Republic (AR) that is authorized to issue licenses for mining and exploration/mining of construction materials and groundwater on the territory of Adjara AR.

In case license is issued via auctioning, the administrative body issuing the license – National Environmental Agency or Ministry of Finances and Economy of Adjara AR, applies to the Ministry with a screening application, in accordance with the general requirements defined for the screening procedure, before an auction on a given resource is announced. Thus, the need for EIA is defined before the license is auctioned. The developer obtains the license before EIA is conducted, but is allowed to commence the activity only after the positive environmental decision is issued. With such arrangement, the developer starts EIA after obtaining the license, avoiding unnecessary costs related to EIA until the license is secured.

7.3 SCREENING APPLICATION

The screening application shall include:

- a) The name of the administrative body to which the application is submitted (Ministry)
- b) Name and address of the applicant
- c) Brief information about the planned project
- d) Data on project characteristics, location and nature of potential impacts
- e) Request for issuing the screening decision
- f) Date of submission of application and signature of the applicant
- g) List of documents attached to the application, if any

The applicant may also submit to the Ministry any other document that can become a ground for issuing a Screening decision.

EAC, Article 7, and General Administrative Code of Georgia, Article 78

Box 2 requirements to the screening application

As it is seen from the box 2, developer is required to include in the screening application brief information about the planned project, project characteristics, location and nature of poten-

1. Only licenses for extraction of medicinal mud and underground mineral water for external use (medicinal baths) for tourist and recreational purposes is issued in a direct manner on the basis of the government's consent. The license is not needed for extraction of fresh groundwater for private or non-commercial purposes (Georgian Government Decree #136 of 11 August 2005 on approval of the statute on rules and conditions for issuance of mining license, Articles 3, 31).

tial impacts. This is the information that the Ministry would need in order to issue a screening decision. In order to speed up the screening procedure, developers are encouraged to use the screening application templates included in Annexes II-IV.

7.4 SCREENING CRITERIA

The key for a screening decision is to identify whether project is likely to have significant effects on the environment. According to the EAC, in Georgia this is assessed on a case-by-case basis. Article 7, paragraph 6 of the Code provides criteria that have to be taken into account during case-by-case examination of the project, such as e.g. size, location, cumulative impacts, use of natural resources, waste generation, pollution and nuisances, risk of accidents, risks to human health, characteristics of impacts, sensitivity/vulnerability of the surrounding areas to the potential impacts, transboundary impacts etc. The characteristics of projects as well as the sensitivity of project locations and potential impacts should be considered in deciding whether EIA is needed. Screening criteria for project having potential transboundary impacts is provided in Annex I of this Guideline.

To make a screening decision, the Ministry might need to consult developer or other authorities e.g. sectoral departments within the Ministry, Protected Areas Agency, Forestry Agency, National Environmental Agency, other sectoral ministries, local self-governance institutions, other interested parties etc.

7.5 SCREENING DETERMINATION (DECISION)

The Ministry issues screening decision within 10-15 days after registration of the screening application. Screening decision can result in the following outcomes:

- a) If screening establishes that the project proposal is subject to EIA, the project will follow next steps in EIA procedure to obtain environmental decision.
- b) If screening establishes that the project is not subject to EIA, the project should be implemented in accordance with the requirements determined by technical environmental regulations and environmental norms existing in Georgia.
- c) If screening establishes that the project implementation will cause violation of the requirements of the Georgian legislation; or implementation of the project is not reasonable due to its characteristics, capacity, location, nature of impacts and/or risks; or there is the enacted Court/ Arbitration decision which excludes possibility to accept the request, the Ministry issues the individual administrative legal act on the refusal to implement the project. For example, the project can be rejected if its implementation would violate the designated land use status of the given territory, e.g. if the territory has a protected status not allowing an economic activity, or if the territory is under the state forest fund, under licensed use etc., also, if the project might contradict to the current national or local spatial development plans. In some cases, it is possible to ap-

ply for changing the existing designated status of the land, e.g. from agricultural to non-agricultural, and in case application is satisfied, the proponent can re-submit the screening application. Other reasons for rejecting the project might be the scale of impacts on the environment and human health, including cumulative impacts, and associated risks, impacts on sensitive areas as well as social impacts, such as large-scale resettlements etc.

d) If screening establishes that implementation of the project is likely to have transboundary impacts, project should follow the transboundary impact assessment procedures defined in Chapter V of the Code.

Within 5 days after completion of the screening procedure, the Ministry publishes the screening decision, together with the comments submitted by the public, on its official website and on the notice board of the executive or representative branches of the local self-governance units and ensures access to printed copies at request.

The template for screening decision is provided in Annex V.

08 Scoping

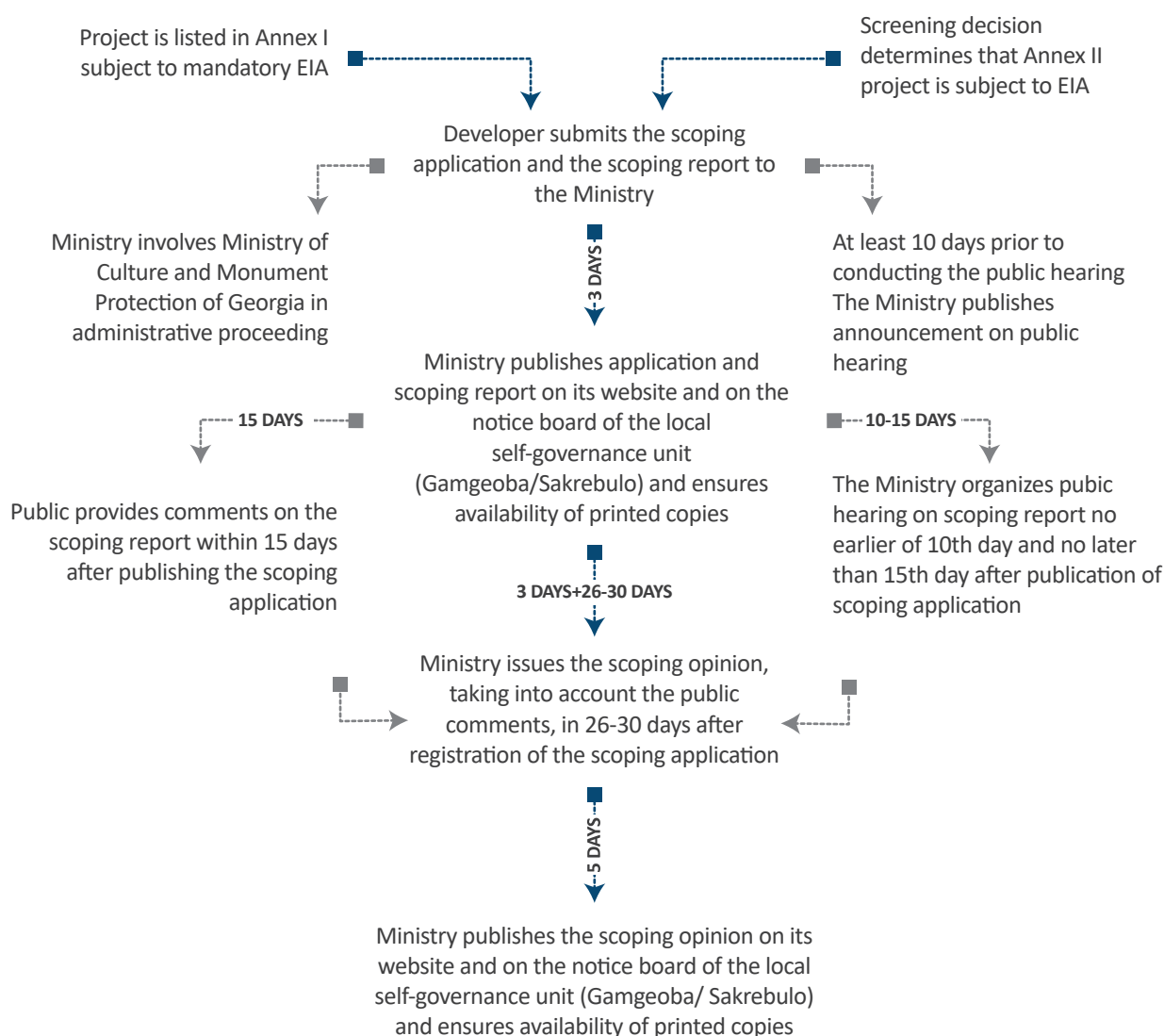
8.1 ROLE

Scoping is part of the environmental impact assessment process. It is a procedure to determine the content and extent of the matters that should be covered, under the separate items indicated in Article 10, paragraph 3 of the EAC, in the EIA report that the developer submits to the Ministry in order to obtain environmental decision. Scoping identifies the key environmental issues that are likely to be the most relevant during the EIA and eliminates those that are of little concern. Thus, scoping ensures that EIA focuses on the significant effects, while unnecessary costs of investigating less important issues are avoided.

Scoping is a basis for an effective and efficient EIA process. It helps to identify key issues to be addressed by EIA, assessment methods to be used, reasonable and practical alternatives to be considered etc. This helps to reduce the risk of delays caused by request of further information and the risk of disagreement about impact assessment methods after submission of the EIA report. In addition, one of the main objectives of scoping is to inform the public about the proposal and to identify the main stakeholders and interested parties that can be affected by the project. Early consultations with all interested parties, including the general public ensures that important issues to be covered in EIA, including specific local circumstances, are not overlooked. This can help to avoid later delays if new issues emerge from consultations after EIA is submitted. Scoping helps to recognize different perspectives, consider alternatives and concerns of the affected parties and enables relevant modifications to the project proposal as needed. Thus, It is very important that scoping is undertaken at an early stage of project development, when alternatives are still open and mitigation measures can be incorporated into project designs.

8.2 SCOPING PROCEDURE

Scoping is an early step in preparation of EIA. Typically it begins after the completion of the screening process. However, these stages may overlap, providing that the EAC Article 8, paragraph 3 allows the developer to submit screening and scoping request for Annex II projects in one application. Developer is required to provide to the Ministry the information about the project and its location. The Ministry reviews the submitted documents and after consultations with other competent authorities, interested parties and the general public issues a scoping opinion (graph 3).



Graph 3 - Scoping procedure

Consultations are important part of the scoping procedure. Consultations ensure that all alternatives, issues and possible mitigations raised by interested parties are addressed in EIA. According to the EAC, the Ministry is responsible for informing and consulting the public on the scoping application, and is obliged to take in due account all received comments, including during the public hearing, while issuing the scoping opinion.

The Ministry might need to consult other competent authorities or other interested parties during issuing the scoping opinion, e.g. sectoral departments of the Ministry, Protected Areas Agency, Forestry Agency, National Environmental Agency, other sectoral ministries, local self-governance institutions etc. The EAC obliges the Ministry to involve Ministry of Culture and Monument Protection of Georgia in the administrative proceeding before issuing the scoping opinion. For this the Ministry, in accordance with the General Administrative Code of Georgia, shall send the scoping application and attached documents to the Ministry of Culture and Monument Protection within 3 days after establishment of the compliance of the scoping application with the formal legal requirements. The Ministry of Culture and Monument Protection is obliged to provide their conclusion within two weeks.

In addition, it is recommended to identify and consult other organizations and individuals who might be interested in the project. Consultees might be a valuable source of local and other knowledge. If there are several groups with a common interest, it could be considered to set up separate meetings for them. All views expressed in consultations should be recorded. Visiting the project site also could provide valuable information and insights.

8.3 SCOPING APPLICATION AND REPORT

In order to issue a scoping opinion, the Ministry needs to receive information on the project from the developer. Article 8, paragraph 4 of the EAC lists the information that the developer is required to include in the scoping report, to be submitted to the Ministry together with the scoping application. This includes: location and brief description of the project and its possible alternatives, general technical specifications of the project – capacity, duration, area, output etc., types and significance of the potential impacts, including regarding the protected areas and transboundary impacts, baseline surveys and investigations to be carried out, methods to be used in EIA, mitigation measures to be considered, public concerned to be involved in EIA process and other. Some of this information is similar to the information requested for screening, except that more details are needed for scoping. Where the project underwent the screening procedure, some of the information might be already available. Obtaining some other information may involve preliminary data collection and fieldwork. It is advisable to provide as much information as available at the given stage. The EAC entitles the developer to submit to the Ministry any additional information that can help the Ministry in decision-making. The developer should submit the scoping report both, in paper and in electronic forms.

8.4 SCOPING OPINION

The Ministry issues scoping opinion within 26-30 working days after registration of the scoping application. The scoping opinion includes the assessment of the information provided in the scoping report, determines the scope of the information to be obtained and analyzed for the EIA and the methods to reflect this information in the EIA report. Specifically, this includes baseline studies to be undertaken, types of environmental impacts to be investigated, methods to be used, project alternatives and mitigation measures to be considered etc.

Scoping also can become a ground to reject the project. While some information on the project already becomes available during screening, more details are accumulated during scoping that may reveal the specifics and circumstances suggesting that implementation of the project would not be reasonable.

There can be the following outcomes to the scoping decision:

- a) Ministry issues the scoping opinion defining the scopes of EIA. Developer is obliged to follow the scoping opinion during preparation of the EIA report.
- b) If during the scoping it will be established that the project implementation will cause violation of the requirements of the Georgian legislation; or implementation of the project is not reasonable due to its characteristics, capacity, location, nature of impacts and/or risks; or there is the enacted Court/Arbitration decision which excludes possibility to accept the request, the Ministry issues the individual administrative legal act on the refusal to implement the project.
- c) If during the scoping it will be established that implementation of the project is likely to have transboundary impacts, project should follow the transboundary impact assessment procedures defined in Chapter V of the Code.

It is important to take into account that even though scoping already defines the frames of the environmental information to be submitted for obtaining the environmental decision, the Ministry can request additional information at a later stage in the EIA process, even if this information was not requested by the time of issuing a formal scoping opinion. Thus, the requirements to EIA can be amended to incorporate the new issues that might emerge during EIA e.g. due to obtaining new information or as a result of changes in project design or through consultations.

Scoping opinion is valid for 2 years, meaning that developer needs to obtain environmental decision within 2 years after issuance of the scoping opinion. The reason for this is that in 2 years period environmental conditions might change and the scoping report might no longer correspond to the real situation that is needed for preparation of the EIA report.

A template for scoping decision is provided in Annex VI.

09 EIA Report

Preparation of the EIA report starts right after the Ministry issues the scoping opinion on the proposed project. Developer is responsible for preparing the report and covering all associate expenses. Providing that EIA involves comprehensive studies, it's advisable that it is undertaken by people with appropriate skills. While developers themselves also may prepare EIA in case they have relevant qualification, usually this is done by environmental consultants on behalf of developers. List of registered environmental consultant companies can be obtained at the Ministry.

EIA report shall be based on the scoping opinion and it shall cover all the issues indicated in the EAC Article 10, paragraph 3. Thus, the report shall include clearly indicated parts as follows: a detailed description of the project comprised of: information on the site, design and size of the project, use of energy and natural resources, emissions and waste, land use requirements etc.; a description and justification of project location/technology alternatives including the alternative most favorable for the environment and a zero alternative; a description of the current state of the environment and its aspects likely to be significantly affected by the proposed project; description of all possible effects on the environment and assessment of the risks related to implementation of the project; probability of accidents and expected consequences; measures to avoid, prevent, reduce or offset any identified significant adverse impact on the environment; means for remediation of the existing environment to its initial state in case of termination of the project and other. The report shall also include a brief non-technical summary of all required topics covered in EIA, intended for the general public, and cover means of informing the public and assessment of the public opinions and comments received during the scoping procedures. In addition, it shall indicate a detailed list and description of the methods and sources of information used, as well as identified uncertainties and lack of knowledge encountered during preparation of the EIA report. Finally, EIA report shall be signed by the person(s) that participated in its preparation e.g. developer or consultants.

According to the EAC Article 10, paragraph 4, following annexes should be enclosed in the EIA report:

- ▶ Environmental impact mitigation action plan;
- ▶ Emergency response plan;
- ▶ Environmental monitoring plan for the stage of implementation and progress of the activity that would include the environmental safety self-monitoring program;

- ▶ Mine operating plan that includes technological scheme of mine processing, in case exists;
- ▶ Name and legal address of the consultant involved in preparation of the EIA report, if applicable;
- ▶ Master plan of the project implementation area, with indication of GIS coordinates (including shapefiles) presenting location of the planned project, temporary installations, utility systems and components that cause impact;
- ▶ Extract from the State Register for a legal entity of private law and an individual entrepreneur, or copies of identification documents set forth by the existing legislation for a natural person, or certified copies of founding documents for a legal entity of public law.

The report may be supplemented also by other information that the developer considers relevant and useful to be included. The developer should submit the EIA report and other enclosed materials both, in paper as well as in electronic forms.

Upon reviewing the report, the Ministry may ask the developer for revisions or further information in case required topics are not covered adequately.

Generally, information provided in EIA report is public. In case report contains any state, commercial, professional or personal secret, and/or personal data, the developer should indicate on confidentiality of the information in the application. The Ministry is responsible for ensuring confidentiality of the information in accordance with the rules set forth in the national legislation.

The EIA report plays a fundamental role in the EIA process. It is a primary basis for issuing the environmental decision. Therefore, it is very important to ensure its adequate quality. The developer should make sure that the EIA report is based on the objective and comprehensive analysis of positive and negative impacts of the proposed project. Inadequate or poor quality EIA report can cause delays in the EIA process and even can result in a negative environmental decision despite how beneficial the project could be. In contrast, well-prepared EIA reports help to a sound and timely decision-making.

A good quality EIA report is well-structured, concise, comprehensive and objective. It is written in clear and an easy to understand language in an impartial and unbiased manner; it uses consistent terminology with a glossary; it references all information sources; it makes effective use of diagrams, illustrations, photographs and other graphic materials supporting the text; it contains a non-technical summary written in a simple, non-technical language, and provides evidence of adequately lead consultations.

Developer can consult the Ministry for additional advice on how best to prepare the EIA report in case needed. Developer can also consult other relevant government authorities that have jurisdiction over the site and the resources that the project may use; the local communities and their representatives in the project area; and any other stakeholders and organizations expressing an interest in the impacts of the proposed project.

10 Environmental Decision

10.1 APPLICATION

In order to obtain environmental decision, developer shall submit a written application to the Ministry with enclosed EIA report and other documents required by the EAC Article 11, paragraph 2 (box. 3). According to the EAC, the developer is entitled to request the Environmental Decision on several activities through a single application, in case these activities are inherently interconnected.

Application to obtain environmental decision shall include:

- a) The name of the administrative body to which the application is submitted (Ministry)
- b) The name and address of the applicant
- c) Request for issuing the environmental decision
- d) EIA report
- e) Project (calculations) on maximum permissible norms for emission of harmful substances into the atmospheric air and maximum permissible norms for pollutants discharged with wastewater into surface waters
- f) Request on classifying the secret information, if applicable
- g) The copy of the document confirming payment of the service fee
- h) Electronic versions of the documents listed in the paragraphs d), e), f), g)
- i) Date of submission of application and signature of the applicant
- j) List of documents attached to the application, if any

The applicant may also submit to the Ministry any other document that can become a ground for issuing an environmental decision.

EAC, Article 11, and General Administrative Code of Georgia, Article 78

Box 3 requirements to the application for obtaining environmental decision

As indicated in the box 3 above, application submitted to the Ministry should be attached by the EIA report; the project (calculations) on maximum permissible emission and discharge limits; request on classifying the secret information, if applicable; and the copy of the document confirming payment of the service fee.

Maximum permissible emission and discharge limits are established for entities implementing activities subject to issuance of an environmental decision and having stationary sources of emission, or resulting in discharge of industrial, municipal and

amelioration wastewaters, and drainage or storm waters into surface waters. Methodology for calculation of maximum permissible emission and discharge limits are defined by the respective technical regulations approved by the government of Georgia. Specifically, Georgian Government Decree #408 of 31 December 2013 on approval of the technical regulation on calculation of maximum permissible limits of emission of harmful substances into the atmospheric air, and Georgian Government Decree #414 of 31 December 2013 on approval of the technical regulation on maximum permissible norms for pollutants discharged with wastewater into surface waters. Projects on maximum allowable emission and discharge norms can be prepared by a developer or any other competent organization by order of a developer e.g. project development company, scientific-research organization etc. Projects on maximum permissible emission and discharge norms for each particular activity are approved by the Ministry, while projects on maximum allowable emission norms for stationary emission sources on the territory of Adjara AR, first are approved by Adjara AR authorities and then by the Ministry.

In case EIA report contains any state, commercial, professional or personal secret information and/or personal data, the developer should indicate this in the application. The Ministry is responsible for ensuring confidentiality of the information in accordance with the rules set forth in the national legislation. According to the General Administrative Code of Georgia 'secret information' means any information held by a public agency or received, processed, created or sent by a public agency that contains personal data, state or commercial secrets. Definitions and further provisions on each type of secret information is provided in the General Administrative Code, the Law on Personal Data Protection and legislation on state secrets, including the Law on State Secrets.

Finally, the application should be attached by a document confirming payment of the service fee. Service fee, a single mandatory payment paid for obtaining the Environmental Decision, called as environmental impact assessment fee, amounts to 500 GEL. It covers administrative expenses related to issuance of the environmental decision. Fee is paid directly to the state budget, national treasury code 3080. Payment can be made in any bank. Fee is not subject to return in case project is rejected.

10.2 PROCEDURAL STEPS

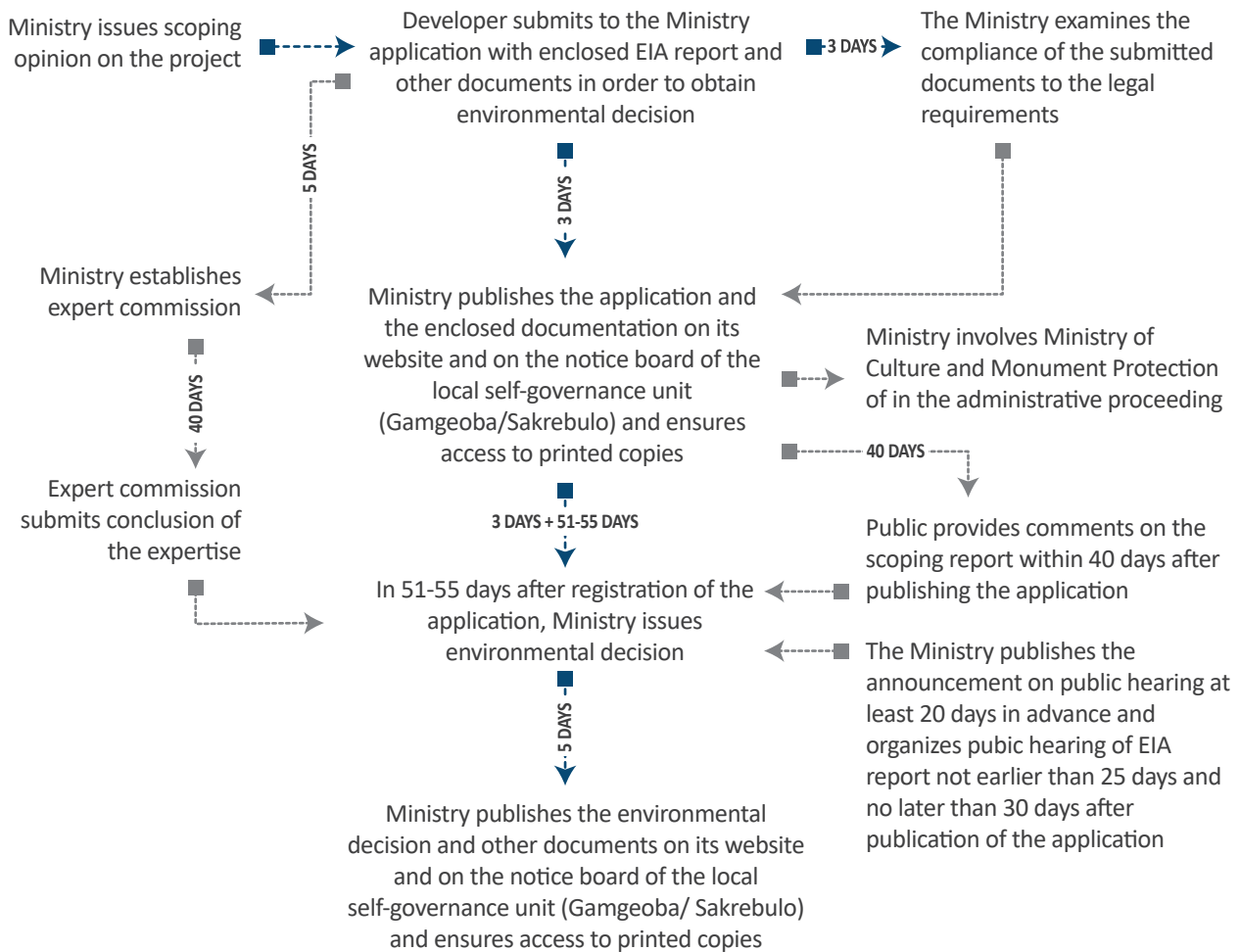
Administrative procedure for issuance of environmental decision involves: assessment of the EIA report (expertize); participation of the public and relevant public authorities; and a transboundary impact assessment procedure (see in Chapter VII) in case the project is associated with any potential transboundary impacts. Environmental decision is issued within 51-55 days after registration of the application.

There can be two outcomes to the environmental decision procedure:

- a) Ministry issues Environmental Decision, meaning that the project is approved and shall be implemented in accordance with the conditions outlined in the environmental decision.
- b) Ministry issues an administrative legal act on rejection of the project, meaning that the proj-

ect cannot be implemented. For example, the project can be rejected if the EIA report does not correspond to the legal requirements prescribed in the Article 10, 3 of the EAC (e.g. impacts of the project are not fully described, analyzed and addressed, suggested mitigation/compensation measures are not sufficient to mitigate/offset all potential impacts of the project etc.); or if potential emissions from the project would cause violation of emission standards set by the Georgian legislation; and other. Even though some information regarding the potential impacts of the project is already available during the screening and scoping stages, more comprehensive studies at the EIA level can reveal that impacts/risks of the project exceed to what would have been considered reasonable including impacts on protected or sensitive areas and areas with some special status.

Environmental Decision is issued for an indefinite period. Though the developer needs to start the activity within 5 years. After expiry of the indicated time, the environmental decision will be declared invalid.



Graph 4 – Procedure for issuing environmental decision

Upon submission of the application by a developer, The Ministry, within 3 days, examines the compliance of the submitted documents with the legal requirements defined by EAC and Article 78 of the General Administrative Code. If the developer fails to provide any document or other

required information, the Ministry sets at least 5 days, within which the developer shall provide the missing document or information. Upon request, the Ministry may extend the set timeframe only once, by up to 15 days. Until the submission of the required documents or information, further review of the application is suspended. If the developer fails to provide the requested documents or information within 15 days after registration of the application, the Ministry is entitled to issue decision on disregarding the application. Proceedings on the application will be resumed upon submission of the required documents or information.

The Ministry involves the Ministry of Culture and Monument Protection of Georgia in the administrative proceeding before issuing the environmental decision. For this, the Ministry sends the environmental decision application and attached documents to the Ministry of Culture and Monument Protection within 3 days after establishment of the compliance of the application with the formal requirements. The Ministry of Culture and Monument Protection is obliged to provide their conclusion within two weeks. The Ministry also might need to consult other competent authorities and/or other interested parties.

The Ministry is responsible for informing and consulting the public and for conducting the public hearing. The Ministry is obliged to review and take due account of all comments provided by the public, including during the public hearing; comments received from any competent authorities; results of EIA review; and in case of transboundary impacts, results of transboundary impact assessment procedure in issuing the environmental decision.

10.3 CONTENT OF ENVIRONMENTAL DECISION

Environmental Decision is an individual administrative legal act issued by the Ministry that allows the developer to implement the project and sets conditions that developer is obliged to meet. The content of Environmental Decision is defined in EAC Article 13 and General Administrative Code, Article 53. This includes: indication of the type of the project and the place of the project implementation, the conditions for the use of the area, environmental measures to be implemented, conditions that must be complied during the construction, operational and post operational phases and the requirements to post-project analysis. Information on environmental measures should be taken into account by other public authorities issuing other licenses or permits for the given project. In case of transboundary impacts, the Environmental Decision must also contain information on the results of transboundary environmental impact assessment procedure.

The Environmental Decision shall include:

- a) Indication of the type of the individual administrative legal act
- b) The title of the administrative body issuing the legal act (Ministry)
- c) The title of the individual administrative legal act
- d) Full name and signature of the authorized official
- e) The date and place of the issuance of the legal act

- f) Registration number assigned by the administrative body issuing the legal act (Ministry)
- g) Reference to the institution where it is possible to appeal against the decision, including the address of the institution and the deadline to file a notice of appeal.
- h) The type and place of project implementation
- i) The conditions for the use of the area at different stages of the project implementation, with particular consideration given to the need to protect special natural values, natural resources and cultural heritage and to reduce the preventing conditions for the adjacent areas of the planned project
- j) Information on environmental measures, which must be taken into account by other public authorities when issuing licenses or permits
- k) The conditions determined by the Environmental Decision that must be complied during the construction, operational and post-operational phases
- l) The objective, scale and timing of post-project analysis
- m) The information on the results of transboundary environmental impact
- n) Written justification for issuing the act
- o) Title of the normative act based on which the individual administrative act was issued
- p) The content of the expertize conclusion
- q) Finally, on the act should be depicted the national coat of arms.

EAC, Article 13, and General Administrative Code of Georgia, Articles 52, 53

10.4 POSSIBILITY FOR REFUSAL

The Ministry can reject the project by issuing an individual administrative legal act on rejection. The project can be rejected at different stages of the EIA procedure: as early as screening and scoping and also, after reviewing the full EIA report at the stage of issuing Environmental Decision.

The project can be rejected in case one of the circumstances below is present:

1. The project implementation will violate the requirements envisaged by the Georgian legislation;

For example, the project could be rejected if the project implementation would violate the designated land use status or requirements of the existing national or local spatial development plans; if EIA report does not fully correspond to the requirements of the Article 10 of the EAC; or if expected emissions caused by the project would violate the emission standards set by the Georgian legislation etc.

2. The project is not reasonable due to its characteristics, capacity, location, nature of the impact and/or risks;

E.g. if potential impacts/risks of the project to the environment and human health exceed

reasonable levels, including cumulative impacts, impacts on protected and sensitive areas and areas with some special status, as well as social impacts, such as e.g. large scale resettlements.

3. There is the enacted Court/Arbitration decision, which excludes possibility to accept the request of the developer.

10.5 PUBLICATION OF THE DECISION

The Ministry shall publish the Environmental Decision, or the legal act on rejection of the project on its website and on the notice board of the local self-governance representative (Sakurebulo) or executive (Gamageoba) authorities within 5 days after issuing the act. Together with the act, the Ministry publishes the EIA report, the conclusion of Expertize as well as the results of public participation. The Ministry also shall ensure that printed copies of all abovementioned documents are publicly available upon request.

11 Public participation

Public participation is the integral part of the EIA procedure. Timely and properly implemented public participation contributes to better quality EIA so that it is a valuable source of information on key impacts, potential mitigation measures and viable alternatives. At the same time, public participation serves to better understanding of the project and helps to secure acceptance of the project by the public, which is important for successful implementation of the project at a later stage.

The EAC, following the requirements of the Aarhus Convention, provides detailed provisions on public participation. It grants the public right to participate in decision-making on projects subject to EIA and obliges the Ministry: to ensure public participation at an early stage of decision-making; to ensure informing the public in a timely, effective and adequate manner about commencement of the administrative procedure and the possibilities for public participation; to ensure access to all documentation relevant to the decision-making; to ensure participation of the public in public hearing and provide possibility to submit their opinions and comments; and finally, to ensure that opinions and comments submitted by the public are duly considered in decision-making and the public is informed about the outcomes of decision.

All costs related to public participation are to be covered by the Ministry. The Ministry is responsible for ensuring feedback from the public, organizing all public hearings and reflecting the received feedback in the issued decision.

11.1 INFORMING THE PUBLIC

EAC envisages public information upon commencement of different stages of the EIA procedure, namely:

- ▶ Screening
- ▶ Scoping
- ▶ Issuance of Environmental Decision
- ▶ Exemption from EIA

Informing includes publishing the information about commencement of a specific stage of the EIA procedure within 3 days upon submitting the application by a de-

veloper. Information is published on the official website of the Ministry and on the notice boards of the representative and/or executive branches of the local self-governance units. Namely, the Ministry shall publish respective applications and all enclosed documents, such as scoping report and EIA report with attached documentation. Published information shall include details about the possibility, means and specific time frames for submitting the opinions and comments by the public.

According to General Administrative Code Chapter IX, the published information shall also include: brief information about the application and/or commencement of the administrative proceeding, the name of the agency carrying out the administrative proceeding (Ministry), and addresses of the public institutions (the Ministry and the local self-governance units) where the respective documents can be accessed. Also, the Ministry shall indicate time frames for issuance of an individual administrative legal act, and time frames for submission of comments.

Informing also involves publishing the information about the outcomes of a decision: screening decision, scoping opinion, environmental decision, a legal act on rejecting the project and decision on exemption from EIA. The decision is published on the official website of the Ministry and the notice boards of the local self-governance units within 5 days after its issuance. Again, decision should be attached with all relevant documents, such as: scoping report, EIA report, conclusion of Expertise, and results of public participation.

In addition, the Ministry shall ensure availability of printed copies of the applications, decisions and all related documentation upon request.

In all the above situations informing the public - according to the Aarhus Convention - must be "effective" that is the announcements should be made in such a way that they are reasonable chances that they reach the public concerned that is all those who are affected or likely to be affected or interested in the respective decision to be issued.

11.2 ENSURING ACCESS TO DOCUMENTS RELEVANT TO DECISION-MAKING

The EAC requires that the public be given access to all information and materials related to decision-making at different stages of the EIA procedure such as:

- ▶ Scoping opinion and
- ▶ EIA report with attached documentation

The Ministry shall enable access to these documents by a) publishing the relevant documents on its official website and b) ensuring accessibility of printed copies upon request.

According to General Administrative Code Chapter IX, everyone has a right to freely access the public documents in the administrative body carrying out the administrative proceeding, (in this case the Ministry), as well as in other administrative bodies (local self-governance institutions), and everyone has a right to request copies of the public documents. Chapter III of the Code further stipulates that no fees shall be charged for providing the copies of the public documents,

except for reimbursing expenses needed for copying of the requested materials. According to the Law on Fees for Copying the Public Information, the costs for copying the public information shall amount to 0.05 GEL per page for Xerox copying a A4 and A5 format paper, 0.10 GEL per page for printing on a laser printer, and 2.65 GEL per disc for writing on a CD. The fee is not required in case documents are sent via e-mail, or copied to the CD or any device provided by a person requesting the information.

11.3 SUBMITTING COMMENTS AND PUBLIC HEARING

According to the EAC, the public shall be given a specific fixed time frame for submitting the comments at the stage of:

- ▶ Screening
- ▶ Scoping and
- ▶ Issuance of Environmental Decision

and the public hearing shall be organized at the stage of:

- ▶ Scoping and
- ▶ Issuance of Environmental Decision

The public is given 5 days during screening, 15 days – during scoping and 40 days – during issuance of environmental decision to submit their opinions and comments. The comments can be submitted to the Ministry electronically, via postal mail or orally during the public hearing. According to General Administrative Code Chapter IX, a person is entitled to present their opinion anonymously, without indicating their identity. In addition, the Code requires that this right be referred in the information published by the Ministry.

The Ministry organizes public hearings of scoping report and EIA report. Public hearing at the scoping stage shall be organized not earlier than 10 days and no later than 15 days after registration of the scoping application. The Ministry informs the public about the planned public hearing at least 10 days in advance. Public hearing at the stage of issuance of environmental decision shall be organized not earlier than 25 days and no later than 30 days after registration of the application for obtaining environmental decision. The Ministry shall inform the public at least 20 days in advance. It is advisable that scoping and EIA public hearings are organized in a way that the public is able to submit written comments also after the hearing, meaning that there is still time left until the deadline for submission of comments.

Announcement on public hearing shall be “effective” (see above). EAC requires that they should be published on the website and on the notice board of the Ministry as well as on the website and/or the notice board of the respective local self-governance unit and also, at places that are widely used for information dissemination, such as bus stops, schools, kindergartens, commercial centers, postal offices and/or other public areas and at the nearest public place in the vicinity of the proposed project. In addition, the announcement shall be published in a newspaper that

is widely available within the geographical scope of the likely affected territory and is accessible for the majority of the public concerned.

Announcement on public hearing shall include the brief overview of the issue – a subject matter of a respective decision to be discussed, and the format of discussion; information about the competent authority to issue the decision; the aim of the public hearing; the time, venue and rules of the public hearing; the web address as well as the place and address where the respective application and the relevant documentation, such as scoping/EIA report and enclosed materials can be accessed for review; as well as a reference to possibility of accessing the paper copies of these documents during the public hearing. The announcement shall clearly indicate the possibilities to participate in the public hearing and to submit the opinions and comments. In case of transboundary impacts, the announcement shall provide information on the respective procedure.

The EAC requires that the public hearing be held in the closest appropriate administrative building to the site of the planned project or within its vicinity. The public hearing is open to the public and anyone has a right to participate in it. Public hearing is chaired by a representative from the Ministry that is also responsible for developing a public hearing protocol.

11.4 CONSIDERING THE COMMENTS IN DECISION-MAKING

The EAC obliges the Ministry to give due consideration to all submitted opinions and comments. Moreover, the Ministry shall publish the public participation results reflected in a respective justification of the decision.

12 Transboundary procedure

According to the EAC Article 37, transboundary environmental impact assessment procedure applies when:

1. The project subject to EIA that is implemented in Georgia may cause a significant transboundary environmental impact.
2. The project that is implemented in a foreign country may cause a significant impact on the environment in Georgia.

Transboundary EIA procedure takes place only if the given foreign country has a commitment related to transboundary EIA under an international agreement or a bilateral agreement. In case one of the affected countries expresses their interest to participate in the procedure upon notifying by the Georgian authorities, the Government of Georgia issues decision on commencement of the transboundary EIA procedure with the given country (Graph 5). The decision shall also include information on forms of exchanging data and the time frames for further consultations and for the transboundary EIA procedure.

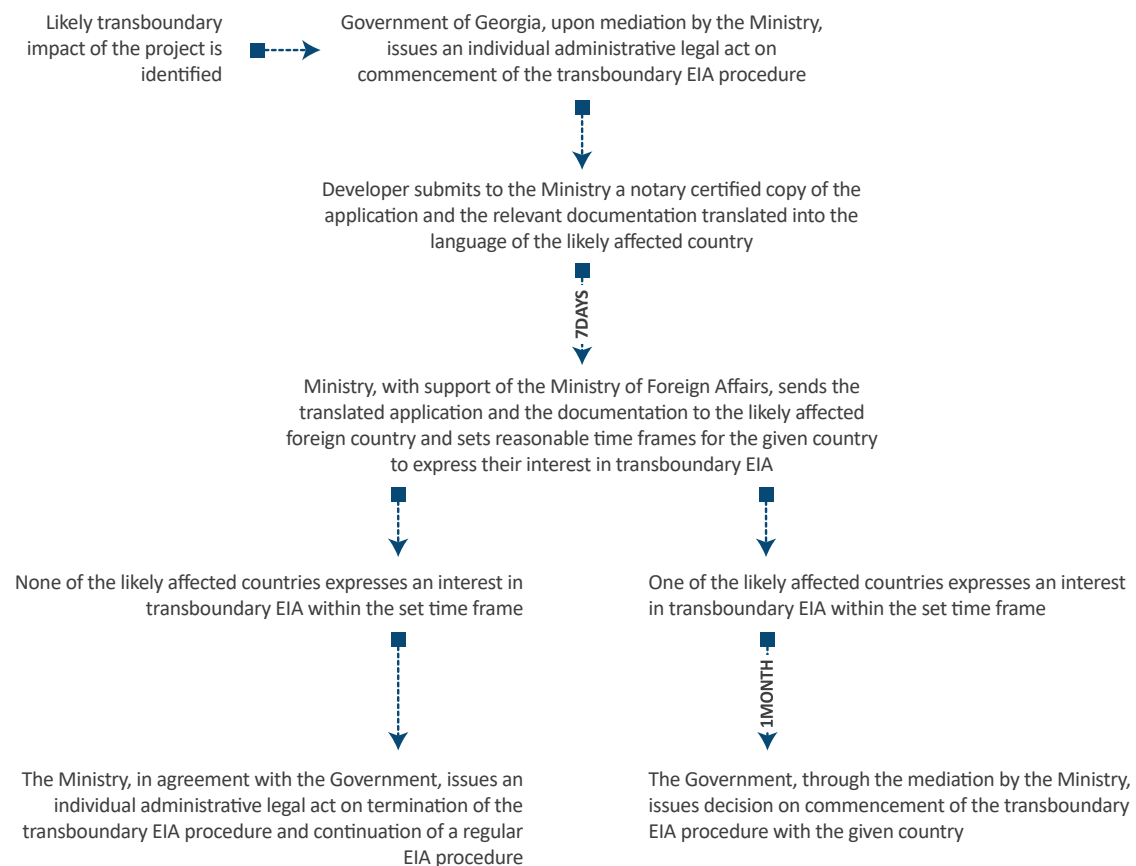
Implementation of the transboundary EIA procedure is responsibility of the Ministry. The Ministry is obliged to ensure access to all documents related to the transboundary EIA procedure in a similar manner as applies to the regular EIA procedure. The Ministry shall ensure consideration of the results of transboundary consultations in issuing the Environmental Decision.

Developer is entitled to get involved at any stage of the transboundary EIA procedure.

According to Article 39, developer is obliged to indicate the likely transboundary environmental impact in the screening or scoping application. During the transboundary EIA procedure developer shall ensure:

- ▶ Reflecting the results of the consultations on the transboundary EIA procedure with the foreign country in the scoping report and the EIA report;

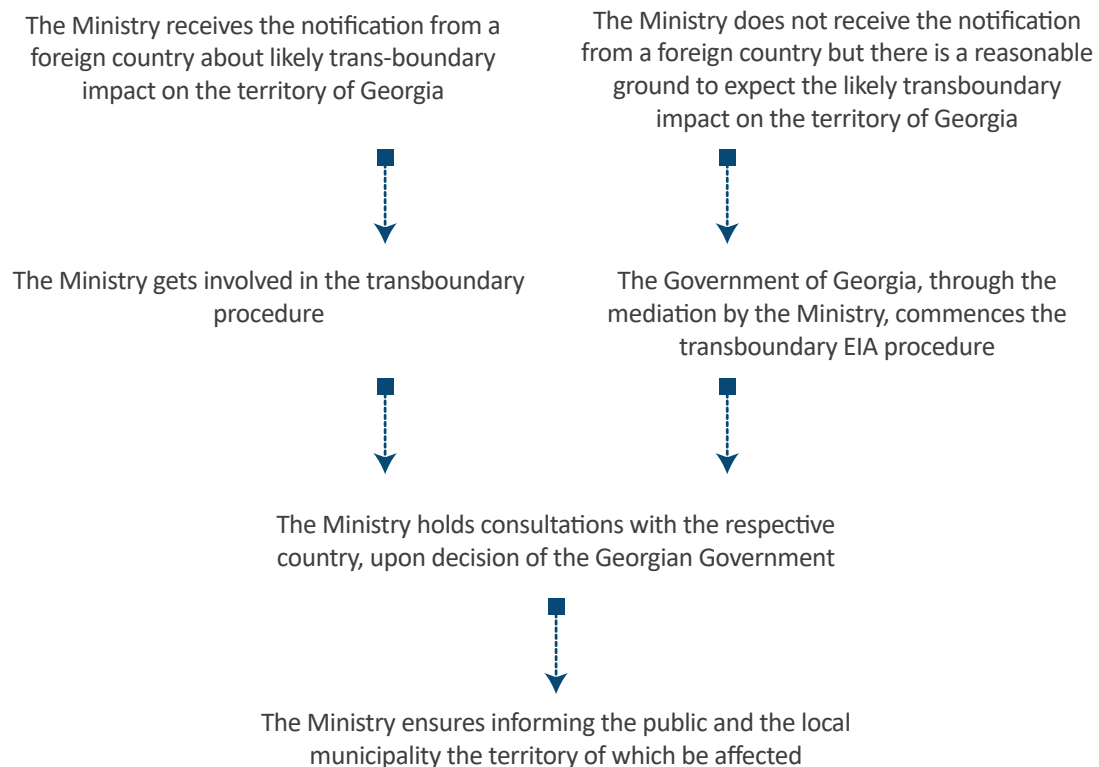
- ▶ Proper assessment of the potential transboundary environmental impacts in the EIA report;
- ▶ Translation of the respective parts of the EIA report, with indication of the Ministry, into the language of an affected country;
- ▶ Provision of proper translation during the public hearing in case foreign citizens attend the hearing;
- ▶ Provision of assistance to the Ministry in conducting the transboundary EIA procedure if necessary;
- ▶ Translation of the Environmental Decision within 1 month after its issuance into a relevant language and submitting to the Ministry that shall forward the Decision, via the Ministry of Foreign Affairs, to the respective country;
- ▶ Translation of the results of post-project analysis/monitoring of implementation of the project into a relevant language and submitting to the Ministry that shall forward them, via the Ministry of Foreign Affairs, to the respective country.



Graph 5 – Transboundary EIA procedure involving the project implemented in Georgia likely affecting the foreign country

The Ministry is entitled to get involved in the Transboundary EIA procedure in case it receives notification from a foreign country about the likely transboundary environmental impact of the project implemented in a foreign country on the environment of Georgia.

In case such notification is not received, but there is a reasonable ground to suspect that the project implemented outside Georgia will have likely significant effect on the environment in Georgia, the Government of Georgia may request the foreign country to commence the transboundary procedure.



Graph 6 – Transboundary EIA procedure involving the project implemented in a foreign country likely affecting the territory of Georgia

All expenses related to informing the public and the local municipality is covered by the Ministry.

13 Expert commission

The purpose of expert commission is to conduct expertise – a scientific-research measures implemented with the aim to prepare expert conclusion on the EIA report. Expert conclusion is a recommendation for issuing the environmental decision by the Ministry.

The Ministry establishes the expert commission within 5 days after registering the application requesting the environmental decision, in each particular case. The expert commission is composed of experts. The Ministry can also invite a foreign expert (physical or legal entity) or a stateless person as a member of expert commission.

Members of the expert commission are entitled to investigate the site of the proposed project. Accordingly, developer is obliged to ensure unimpeded access of experts on the site. In addition, experts are entitled to receive information from any administrative body free of charge.

Results of the Expertize are reflected in the conclusion of Expertize that is prepared by the expert commission and signed by the chair and the members of the commission. The conclusion is submitted to the Ministry within 40 days after establishment of the commission. Expert conclusion is of recommendatory character and aims to ensure informed and justified decision-making. The Ministry accordingly takes into account the expert conclusion in issuing the environmental decision.

14 Possibility to appeal

Anyone can appeal the decision issued in accordance with the EAC, such as:

- ▶ Environmental Decision
- ▶ Decision on rejecting the project
- ▶ Decision on exemption of the project from EIA

According to the Administrative Procedural Code of Georgia, an appeal against the administrative body shall be filed first, in a higher administrative body, in this case – Government Administration and only after that, in case appeal is not satisfied, the act may be appealed in the court (Article 2 (5)).

General Administrative Code Chapter VIII outlines provisions on proceedings related to administrative appeal. According to these, interested party may appeal an individual legal act issued by the administrative body, e.g. one of the abovementioned decisions issued by the Ministry. Interested party means any natural or legal person or administrative body, in relation to which is issued the administrative legal act, and the legal interests of which are directly affected by the act, e.g. person(s) living in the vicinity of the area affected by the project, developer seeking the environmental decision, environmental non-governmental organization etc.

Providing that the abovementioned decisions are issued by the Minister, holding the highest position at the Ministry, a complaint shall be filed in the Government Administration within 1 month after publishing the individual legal act. After the given time period, the appeal will not be accepted. An administrative complaint shall include the information indicated in the box 5.

The notice of appeal of the administrative legal act shall include:

- a) The title of the administrative body where the notice of appeal is filed
- b) The identity and the address of the complainant
- c) The title of the administrative body the administrative legal act or action of which is subject to appeal
- d) The title of the administrative legal act subject to appeal
- e) The claim
- f) The grounds of the claim
- g) The list of attached documents if any

The notice of appeal shall be attached by a copy of the administrative legal act in case the complainant was provided with the respective act

General Administrative Code of Georgia, Article 181

Box 5 Content of the administrative appeal

No state duty or tax shall be imposed for review of an administrative complaint. Each party shall cover costs incurred by them in connection to the administrative proceeding. In case the complaint is satisfied, the administrative body shall reimburse the party of the administrative proceeding for attorney/other representative costs only in case the party is insolvent (Article 204).

Upon registration of an administrative appeal, the administrative legal act subject to appeal will be suspended, except in cases envisaged in Article 184, General Administrative Code. An authorized administrative body reviews the administrative complaint and issues respective decision within 1 month. Further extension is possible for only 1 month on the basis of justified decision on extension.

In case the higher administrative body does not satisfy the complaint, the legal act can be appealed in the court. According to the Administrative Procedural Code of Georgia, the decision issued in accordance with EAC may be appealed in the district (city) courts. The claim may be filed with request of annulment or declaring invalid an administrative act. The claim is allowed, if the act or its part imposes direct, individual harm to the legal right or interest of the claimant or unlawfully restricts their rights. Claim to the court should be filed within 1 month after issuing the decision on appeal related to the administrative act, or after 1 month after expiry of the time determined for rendering a decision regarding the administrative claim (Article 22). Acceptance of the claim by the court suspends the respective appealed administrative act, except in cases indicated in the Administrative Procedural Code (Article 29). The court renders decision on annulment of the administrative act in case the act or its part contradicts the law, or imposes direct individual harm to the legal right or interest of the claimant, or unlawfully restricts their rights. In case the court finds that the administrative act has been issued without examination and evaluation of the substantial circumstances, the court is authorized to render decision on annulment of the act, without resolving the dispute, and to assign the administrative body to issue a new act after examining and evaluating the given circumstances (Article 32).

Costs associated with the trial are court costs – state fees and costs related to a case hearing, and extra-judicial costs – attorney fees, lost wages, costs incurred for providing evidence, and other necessary costs of the parties (Civil Procedure Code of Georgia, Article 37). In the given case, appealing an administrative legal act would result in state fees amounting to 100 GEL (Civil Procedure Code of Georgia Article 39, Law of Georgia on State Fees, Article 4).

According to the General Administrative Code of Georgia, an individual administrative legal act shall indicate the institution, where notice of appeal against the decision may be filed, including the address of the institution and the time frames for making an appeal (Article 52). In addition, the administrative body (Ministry?) is obliged to provide legal support to the interested party in terms of explaining their rights and obligations, rules for reviewing the application, type and time frames of the proceeding and the requirements that an application or appeal is expected to meet and refer to any errors made in the application (Article 85).

15 Monitoring and compliance

15.1 POST-PROJECT ANALYSIS

The EAC obliges developer to report on implementation of the conditions and mitigation measures defined in the Environmental Decision. Post-project analysis and reporting ensures accountability of the developer for fulfillment of their obligations and gives possibility to the Ministry and to the public to analyze the rightfulness of the made assumptions and also to take into consideration the results of post project analysis in decision-making on other projects subject to EIA.

The objectives, scale and timing of the post-project analysis are outlined in the Environmental Decision. The developer is obliged to submit report on the results of post-project analysis to the Ministry within the time frames indicated in the Environmental Decision.

The post-project analysis report should contain information on:

1. Results of monitoring of the conditions and mitigation measures defined in the Environmental Decision
2. Analysis of impact on the environment caused by the project implementation
3. Assessment of changes of the environmental characteristics addressed in the EIA report.

The Ministry shall publish the report on its official website within 3 days upon receipt.

15.2 CONTROL

Control of implementation of the conditions defined in the Environmental Decision is undertaken by the Environmental Supervision Department of the Ministry. The Department is entitled to receive any needed information from the developer, to take samples when needed and to develop a protocol on administrative offence. The Department reviews cases of administrative offences and issues a resolution on administrative charges, determines (calculates) the damage caused to the environment and submits the request for reimbursement of the damage together with the protocol on administrative offence or a respective claim to the court. The Department shall submit to the Ministry the respective copies of documents submitted to the court. In case possible criminal offences are identified, the Department forwards the case materials to the respective institutions. In case of non-compliance with the conditions defined in the Environmental Decision, the Department defines the reasonable time frame for the developer to eliminate the given offences. When relevant, the Department is entitled to raise an issue about annulment of the Environmental Decision.

15.3 SANCTIONS AND LIABILITY

Administrative Offences Code of Georgia defines sanctions and liabilities related to violating requirements defined by the EAC. Namely:

- ▶ Implementing an activity subject to EIA without obtaining the Environmental Decision is subject to a fine from 7,000 to 9,000 GEL.
- ▶ Violation of the conditions defined in the Environmental Decision is subject to a fine amounting 5,000 GEL.

After imposing the administrative fine for non-compliance with the conditions of the Environmental Decision, the Ministry determines a reasonable time frame for a developer to eliminate the offence. Further non-compliance within the determined term will result in tripling the imposed fine. Again, the reasonable time frame will be determined to meet the required conditions. Repeated non-compliance will cause further tripling of the fine, while further repeated non-compliance will cause repealing the Environmental Decision.

16 Annexes

ANNEX I: SCREENING CRITERIA FOR TRANSBOUNDARY IMPACT¹

General rule

Notification should be transmitted whenever there is a possibility, no matter how uncertain, that an impact may be significant. Thus even a low likelihood of such an impact should trigger the obligation to notify affected Parties. This means that notification is necessary unless a significant adverse transboundary impact can be excluded².

Mandatory notification

Impacts, resulted from the routine activities or in case of accident, that meet any of the following criteria should always be considered significant and thus lead to the notification of an affected country:

1. The magnitude of the expected impact in a transboundary area exceeds environmental objectives or safety and health standards;
2. The expected impact in a transboundary area is virtually irreversible;

1. Based on Annex III to the Espoo Convention and on Specific Methodologies and Criteria to Determine the Significance of Adverse Transboundary Impact (CEP/WG.3/R.6)

2. CEP/WG.3/R.6 para 7; Guidance on the Practical Application of the Espoo Convention, paragraph 28 (as endorsed by decision III/4 (ECE/MP.EIA/6, annex IV); decision IV/2, annex I, para. 54

1. The expected impact leads to an adverse change in a protected area in the affected country.

Criteria

1. Is the proposed project located in the close proximity to the border?
2. Does the proposed project have impact on the shared resources?
3. Can the proposed project cause accidents with transboundary impacts?
4. Can the proposed project lead to a breach of any existing international agreement on environmental matters?
5. Can the proposed project activity affect interactions among environmental factors?

Checklist

Can the proposed project or its reasonable alternatives result in one or more of the following adverse transboundary impacts:

Air:

- ▶ Changes in ambient air quality
- ▶ Release of any toxic or hazardous air pollutant, radiation, or genetically engineered organisms
- ▶ Changes in noise levels and level of vibrations

Water:

- ▶ Surface water: Changes in water quality or water quantity
- ▶ Groundwater: Changes in water quality or quantity
- ▶ Coastal water: Changes in quality
- ▶ Sediments: Changes in quality and quantity (riverine, estuarine, coastal)
- ▶ Release of any toxic or hazardous water pollutant, radiation, or genetically engineered organisms
- ▶ Other

Climate:

- ▶ Microclimatic changes (temperature, rainfall, wind)
- ▶ Other

Can the proposed activity, or the related emissions listed above, result in one or more of the following adverse transboundary impacts:

Soil:

- ▶ Changes in soil acidification, nitrification or other contamination
- ▶ Changes in deposition or erosion
- ▶ Other

Landscape, historic monuments or other physical structures:

- ▶ Changes in land use
- ▶ Decreased aesthetic appeal or changes in visual amenities
- ▶ Changes in historical, archaeological, paleontological, architectural, or cultural assets
- ▶ Changes in quality and quantity of recreational opportunities or amenities
- ▶ Changes to present or potential use of natural resources (e.g. fisheries, hunting, agriculture/forestry, tourism)
- ▶ Impacts on ecologically sensitive areas or areas of special environmental value
- ▶ Other

Human health and safety:

- ▶ Changes in human health and safety
- ▶ Changes in disease incidence
- ▶ Changes to well-being and quality of life
- ▶ Other

Biodiversity:

- ▶ Changes in migratory patterns (birds, fish, mammals, etc.)
- ▶ Disturbance of habitat
- ▶ Decrease in biological diversity
- ▶ Impacts on threatened species
- ▶ Changes in species composition
- ▶ Other

ANNEX II: TEMPLATE FOR INFORMATION TO BE ATTACHED TO THE SCREENING APPLICATION – BLANK

1. A description of the project, including in particular:
 - ▶ a description of the type, scale and physical characteristics of the whole project and, where relevant, of demolition works;
 - ▶ a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
 - ▶ the surface area of the real estate and the built structure occupied and the existing manner of their use as well as the flora cover in the real estate;
 - ▶ the type of technology to be used;
 - ▶ the predicted quantities of the water, raw materials, intermediate materials, fuels and energy to be used.
2. Possible alternatives
3. A description of the aspects of the environment likely to be significantly affected by the project
4. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:
 - ▶ the expected residues and emissions and the production of waste, where relevant;
 - ▶ the use of natural resources, in particular soil, land, water and biodiversity.
5. The measures to protect the environment
6. Possible transboundary impact on the environment

ANNEX III: TEMPLATE FOR INFORMATION TO BE ATTACHED TO THE SCREENING APPLICATION – EXAMPLE OF MINING

1. A description of the project, including in particular:

- ▶ a description of the type, scale and physical characteristics of the whole project and, where relevant, of demolition works;

EXAMPLE:

**Extraction of mineral aggregate at the area of 132,927 m² (13,29 ha)
Per month extraction of 5,000 – 20,000 m³
For 12 months a year**

- ▶ a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected;

EXAMPLE:

**located in ...
West side: forest owned by ...
South side: agricultural land owned by various owners
East side: local road and agricultural land owned by the applicant (developer)
North side: abandoned brick factory owned by the applicant (developer)
Nearest dwellings ... (name) at 6 km (South)
Nearest protected area ... (name) at 14 km
Nearest river (name) at 3 km**

- ▶ the surface area of the real estate and the built structure occupied and the existing manner of their use as well as the flora cover in the real estate;

EXAMPLE:

**Real estate number...
No built structures
Currently used for agricultural purposes by tenants**

- ▶ The type of technology to be used;

EXAMPLE:

**Open-cast extraction by 2 wheel diggers
Extracted aggregate transported on-site by dumpers to the temporary storage and then transported off-site by lorries**

- ▶ The predicted quantities of the water, raw materials, intermediate materials, fuels and energy to be used.

EXAMPLE:

Water used only for sanitary purposes of the workers (number of workers)

**Fuel... (type, means of storage at the property etc.)
Energy ...**

2. Possible alternatives

EXAMPLES:

“0” alternative – area remain used for agricultural purposes – not economically viable because of low quality of soil

Technological alternative – use of other type of diggers – less efficient and noisier

3. A description of the aspects of the environment likely to be significantly affected by the project

EXAMPLES:

Landscape – temporarily affected but after the end of exploitation the area will be used as a water reservoir or pond for fish farming

Possible impact on water resources

4. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:

- ▶ the expected residues and emissions and the production of waste, where relevant;
- ▶ the use of natural resources, in particular soil, land, water and biodiversity.

EXAMPLES:

Similar effects during construction and exploitation:

Dust emission – due to prevailing wind towards East-North will be not be causing a nuisance for people

**Noise – workers equipped with anti-noise protectors,
– will not be heard outside the property**

The cover layer of soil will be stored and used for recultivation.

5. The measures to protect the environment

EXAMPLE:

ongoing recultivation

6. Possible transboundary impact on the environment

EXAMPLE:

Project located in 60 km from the nearest border – due to the characteristic of the project any transboundary impact is impossible.

ANNEX IV: TEMPLATE FOR INFORMATION TO BE ATTACHED TO THE SCREENING/SCOPING APPLICATION – EXAMPLE OF ROADS CONSTRUCTION

A general description of the project, including in particular:

1. Description of the type, scale and physical characteristics of the whole project and, where relevant, of demolition works

EXAMPLES:

Complex modernisation including realignment and partial widening of existing road in a length of 10 km
Resurfacing from asphalt to concrete
Adding traffic lights
Removing the existing surface
Adding pavements and/or bicycle paths
Constructing junction
Providing noise screens

2. Description of the location of the project, including GIS coordinates of project area (with shape files) with particular regard to the environmental sensitivity of geographical areas likely to be affected

EXAMPLES:

Road ... (name) between ... (name) and ... (name)
Removing the existing surface on the entire lengths
Resurfacing from asphalt to concrete on the ...
Adding pedestrian crossings with traffic lights at...
Adding pavements and/or bicycle paths at ...
Constructing junction with traffic lights with the road ... (name and GIS coordinates)
Providing noise screens in ...
Construction of a road service station with ... (number) parking places and facilities (rest-rooms etc.) at ... (GIS coordinates)
Along the road subject to modernization:
Dwellings and villages ... (names and coordinates)
Protected areas ...
Forrest owned by ...
Industrial estate ...

3. General information on physical specifications of the proposed project (capacity, production process, scale, output, etc.) including:
 - ▶ the surface area of the real estate and the built structure occupied and the existing manner of their use as well as the flora cover in the real estate;

EXAMPLE:

Surface area for widening the road ... covered by ...

**Surface area of the road service station ...
Area to be used for temporary storage of equipment**

- ▶ the type of technology to be used;

EXAMPLE:

**Traditional technology for road resurfacing
Organization of construction work to minimise impact...**

- ▶ the predicted quantities of the water, raw materials, intermediate materials, fuels and energy to be used.

EXAMPLES:

**Concrete and asphalt produced off-site and supplied continuously by lorries
No water intake on-site during the construction
Special water-intake provided for the road service station**

4. Possible alternatives, including alternative locations

EXAMPLES:

**Widening on both sides of the road or alternately - (each road variant in question has to be admissible in terms of road traffic safety)
Two alternative locations of the road service station
Resurfacing with asphalt again (cheaper but need to resurface again in 3 years) or with concrete (more expensive but long lasting)**

A description of the aspects of the environment likely to be significantly affected by the project

EXAMPLES:

**Trees to be removed ... (types, number, location)
Animals crossing the road
Pedestrians crossing the road
Underground water affected by waste-water from the road service station
Animals affected by paper waste in the road service station**

5. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:

- ▶ the expected residues and emissions and the production of waste, where relevant;

EXAMPLES:

**During construction
During exploitation
Road – noise and air pollution (expected intensity of traffic, noise intensity, types of air pollution, comparison with standards)**

Road service station – waste and wastewater (expected quantities)

- ▶ the use of natural resources, in particular soil, land, water and biodiversity.

EXAMPLE:

Use of land for temporary storage of removed asphalt

6. Possible transboundary impact on the environment

EXAMPLE:

Project located in 60 km from the nearest border – due to the characteristic of the project any transboundary impact is impossible.

7. The information on the baseline/exploration surveys and methods required for preparing EIA report

EXAMPLES:

Identification of habitats and population of protected species potentially affected (in particular in the protected areas)

Evaluation of number of persons using road service station and resulting amount of waste and wastewater

Expected intensity of traffic and resulting noise level depending on the surface and speed limit

8. General information on the types of the potential environmental impact, proposed to be subject to examination in the course of EIA process including:

- ▶ Regarding the impact on the biodiversity, in particular on protected areas (if any);

EXAMPLES:

Impact of removing trees on the biodiversity, in particular on habitats and population of protected species

Increased risk for wild animals having habitats on both sides of the road resulted from widening of the road

- ▶ Regarding potential impact on human health, social environment and cultural heritage;

EXAMPLES:

**Places for pedestrian crossing to be following traditional behaviour of local residents
Examination of the existing level of noise in the vicinity of dwellings ... (details)**

- ▶ Regarding transboundary impact on the environment – if applicable in the light of the information in point.

EXAMPLE:

Not applicable – no need to examine any specific transboundary impact because of the nature and location of the project (see point 5)

9. General information on the measures, which shall be considered for prevention, reduction and/or mitigation of significant adverse impacts on the environment

EXAMPLE:

Designation of noise screens in places exceeding noise limits

Designation of pedestrian crossings in places

Designation of pathways for wild animals to cross the road

Arrangements for wastewater and waste management at the road service station

Annex V Template for screening decision

ANNEX V: TEMPLATE FOR SCREENING DECISION

Screening decision

On the basis of article 7 paragraph 6 of the Code of Environmental Assessment, taking into account the criteria referred therein and the results of consultations referred to in article 7 paragraph 5, it was decided that a project ... (name of the project) shall (or „shall not”) be subject to EIA.

Justification

1. With the application of ... (date of submitting the application and its reference number) ... (name of developer) applied for issuing a Screening Decision for ... (name of project)
2. The project belongs to projects listed in Annex II
3. The application submitted by the developer was duly accompanied by the information of the project referred to in article 7 paragraph 4.
4. Following public announcement was published ... (when and where). There were submitted ... (number – or „no”) opinions and comments (provide brief description of views submitted)
5. Taking into account the above and the features such as
 - ▶ Characteristics of the project (referring to specific criteria in article 7 paragraph 6 (A) and respective information provided with the screening application)
 - ▶ Location of the project (referring to specific criteria in article 7 paragraph 6 (B) and respective information provided with the screening application)
 - ▶ Characteristics of the potential impact (referring to specific criteria in article 7 paragraph 6 (C) and respective information provided with the screening application)

It was decided that the project shall (or „shall not”) be subject to EIA.

6. Instruction
 - ▶ About the possible appeal
 - ▶ About the need to submit scoping report

ANNEX VI: TEMPLATE FOR SCOPING OPINION – EXAMPLE OF ROAD CONSTRUCTION

Scoping opinion

On the basis of article 9 paragraph 1 of the Code of Environmental Assessment, taking into account the proposals submitted in the Scoping Report and the results of consultations referred to in article 9 paragraphs 2-5, the scope of the EIA Report for a project ... (name of the project) was determined as follows.

1. Alternatives to be studied

EXAMPLES:

The alternative options of widening on both sides of the road or alternately – should be studied in the light of results of the studies regarding impact on biodiversity of respective cutting the trees

2. Types of impacts and elements of environment which require detailed studies

- ▶ Regarding the impact on the biodiversity, in particular on protected areas;

EXAMPLES:

Impact of removing trees on the biodiversity, in particular on habitats and population of protected species
Increased risk for wild animals having habitats on both sides of the road resulted from widening of the road

- ▶ Regarding wastewater;

EXAMPLE:

Identification of potential impact on underground water of the wastewater from road service station

- ▶ Regarding potential impact on human health, social environment and cultural heritage;

EXAMPLES:

Places for pedestrian crossing to be following traditional behaviour of local residents
Examination of the existing level of noise in the vicinity of dwellings ... (details)

- ▶ Regarding transboundary impact on the environment – if applicable in the light of the information in point.

EXAMPLE:

Not applicable – no need to examine any specific transboundary impact because of the nature and location of the project (see point 5)

3. Baseline/exploration surveys and methods required for preparing EIA report

EXAMPLES:

Identification of habitats and population of protected species potentially affected (in particular in the protected areas) – by using available inventories and field research
Evaluation of number of persons using road service station and resulting amount of waste and wastewater – by using available statistical data and expert judgment
Expected intensity of traffic and resulting noise level depending on the surface and speed limit – by using available methodologies

4. Measures, which shall be considered for prevention, reduction and/or mitigation of significant adverse impacts on the environment

EXAMPLES:

Designation of noise screens in places exceeding noise limits – in light of studies regarding noise
Designation of pedestrian crossings in places – in light of field investigation regarding habits of local people
Designation of pathways for wild animals to cross the road – in light of field investigation regarding habits of local animals
Arrangements for wastewater and waste management at the road service station

Justification

1. With the application of ... (date of submitting the application and its reference number) ... (name of developer) applied for issuing a Scoping Opinion for ... (name of project)
2. The project belongs to projects listed in Annex ...
3. The application submitted by the developer was duly accompanied by the Scoping Report
4. Following public announcement was published ... (when and where) and public hearing was conducted (when and where). There were submitted.... (number – or „no”) opinions and comments (provide brief description of views submitted)
5. Having involved the Ministry of Culture and Monument protection
6. When determining the scope of the alternatives to be studied, it was considered ... (brief explanation of reasons)
7. When determining the scope of the impacts and elements of environment which require detailed studies, it was considered ... (brief explanation of reasons)
8. When determining the scope of the baseline/exploration surveys and methods required for preparing EIA report, it was considered ... (brief explanation of reasons)
9. When determining the scope of the measures, which shall be considered for prevention, reduction and/or mitigation of significant adverse impacts on the environment it was considered, ... (brief explanation of reasons)
10. Instruction
 - ▶ About the possible appeal
 - ▶ About the need to obtain Environmental decision within 2 years

ANNEX VII: JUSTIFICATION OF THE ENVIRONMENTAL DECISION

1. With the application of ... (date of submitting the application and its reference number) ... (name of developer) applied for issuing an Environmental Decision for ... (name of project)
2. The project belongs to projects listed in ... (Annex I or Annex II)
3. The scoping opinion was issued on... (date and reference number)
4. The application submitted by the developer was duly accompanied by the following documents ... (list documents submitted, in particular those listed in article 11 paragraph 2 of the Code)
5. The submitted EIA Report was developed in accordance with Article 10 and with the scoping opinion
6. The Expert Commission was set up on...(date), consisted of ... (name of experts) and delivered the expert conclusion on ... (date and reference number)
7. The public participation procedure included
 - ▶ Public announcement (when and where)
 - ▶ Public hearing (when and where)
8. The involvement of relevant public authorities included
 - ▶ Ministry of Culture
 - ▶ ...
9. The transboundary procedure (if applicable) with respect to ... (name of affected country or countries) was initiated on ... (date) , included ... (list of activities) and was concluded on ... (date)
10. Information about the manner how the following have been considered and taken into account
 - ▶ Findings of the EIA Report
 - ▶ The experts conclusion
 - ▶ Opinions and comments submitted by the public
 - ▶ Opinions and comments submitted by the relevant public authorities
 - ▶ Results of transboundary procedure (if applicable)
11. Reasons (alternatively) for:
 - ▶ Refusal under article 14
 - ▶ Imposing specific conditions and requirements, including those regarding the objective, scale and timing of post-project analysis under article 13
12. Instruction
 - ▶ About the possible appeal
 - ▶ About the need to implement the project within 5 years

