



Association Agreement and Local and Regional Authorities in Georgia

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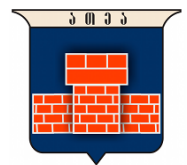


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1. INTRODUCTION

On 27 June 2014 Georgia and the European Union signed an Association Agreement (AA)¹, which entered into force on 1 July 2016. The Agreement brought to the next level the Georgia-EU relations, which started back in 1992 after EU's recognition of Georgia's independence.

One of the first political documents to systematise EU-Georgia relations was the Partnership and Cooperation Agreement (PCA)², which was signed in 1996 in Luxembourg and entered into force in 1999. The PCA defined the priority cooperation areas, such as: political dialogue; democracy and human rights; legal, economic, and cultural cooperation; fight against crime, and prevention and control of illegal migration; and other institutional matters.

In the following years Georgia has become one of the main beneficiaries of the EU's technical and financial assistance. A number of sectoral agreements were also signed.

Starting from 2003 the European Union launched "European Neighbourhood Policy (ENP)"³, a new large-scale cooperation process in its eastern and southern neighbourhood. ENP aimed at stabilising the countries of its neighbourhood through supporting their financial sustainability and institutional capacities. The policy was built on the following pillars: 1. efficient governance, democracy, rule of law and human rights; 2. Economic development for stability; 3. Security; and 4. Migration and mobility. ENP was adapted to the needs of the participating countries and sought to raise funds and allocate assistance according to them.

Georgia enrolled in ENP in 2004. In 2006 the EU-Georgia Action Plan for the Implementation of ENP (ENPAP) was signed. ENPAP defined 8 priority directions of strategic cooperation, including: reform of judiciary and penitential systems and development of democratic institutions; fight against corruption and establishment of environment to stimulate the growth of business and investments; economic development and fight against poverty; cooperation in the field of justice, freedom and security; regional cooperation; peaceful resolution of conflicts; cooperation in the fields of international policy and security; cooperation in the development of transport and energy sectors;

In 2014 the ENP was superseded by a new European Neighbourhood Instrument (ENI), which started to evaluate the success of reforms in individual countries and provide additional support and motivation for best performers - "More for More" is the main ENI principle.

The successful implementation of the ENI Agenda made Georgia able to deepen its relations with EU and sign AA.

ENI continues to provide technical and financial assistance to Georgia in support of cooperation priorities with the annual assistance volume of more than 100mln EUR. ENI also helps to raise funds from international financial institutions to subsidise Georgia's investment capacities. For example the EU's structural and investments funds allocated around 35bln Georgian Lari to support the implementation of 2015-2017 regional development policy.

1 <https://www.matsne.gov.ge/ka/document/view/2496959>

2 <http://www.eu-nato.gov.ge/ge/eu/agreement>

3 https://eeas.europa.eu/headquarters/headquarters-homepage/330/european-neighbourhood-policy-enp_en

2. WHAT IS THE ASSOCIATION AGREEMENT?

The Association Agreement is one of the main EU instruments to help partner countries introduce European standards and norms in their domestic policies. The Agreement with Georgia is arranged into 4 main chapters: Political dialogue and reform, and cooperation in the field of foreign and security policy; Freedom, security and justice; Deep and comprehensive free trade area (DCFTA); and Other cooperation policies, which cover a wide range of sectors including environment, education, transport, agriculture, and regional development.

In 2014 EU also signed the AA with two other EaP countries, Ukraine and Moldova. The EU has effective Association Agreement with Turkey; Association and Stabilisation Agreements with Balkan countries; and the Association Agreements with countries of Maghreb.

The Agreement with Georgia (and EaP countries) is different from others as it has DCFTA, which obliges the signatories to introduce European standards in a wide range of areas, such as trade, customer protection, food security, environment, etc..

The AA with Georgia and other EaP countries does not directly offer EU membership, but does not entirely rule it out. The preamble of the document says that the agreement “shall not prejudice and leaves open the way for future progressive developments in EU-Georgia relations”. This provision makes the EaP AA different from the ones with Balkan states, where the EU membership was integrated in the text. Though AA with the EaP countries are better than those with Morocco and Tunisia as the latter documents preclude EU membership.

The association is a complex and lengthy process. For example, Croatia was offered the EU membership only after 12 years from signing AA. The Agreement with Turkey was signed back in 1962, but the association process is far from being completed.

3. ECONOMIC EFFECTS OF THE ASSOCIATION AGREEMENT

The Association Agreement, specifically the DCFTA creates new opportunities for Georgia’s economic integration with the European Union. DCFTA is based on the principles of the WTO and implies the abolition of import tariffs and unrestricted access of businesses to local services. This means that Georgian businesses will be able to establish their affiliations in EU countries and benefit from services available for local entities.

Georgian goods can be freely exported to the single European market with 500mln customers, and the size of economy of 12.9 trillion Euro⁴ (for comparison, the Eurasian Customs Union, established by Russia has 183mln customers and the economy of as much as 2 trillion Euro⁵).

It has to be mentioned here that from 2005 Georgia-EU trade relations were regulated by the Updated General System of Preferences (GSP+), which allowed the export of more than 7,200 locally produced goods in the EU without customs barriers. The GSP+ was in force till the end of 2016 to give Georgian producers sufficient time to adapt to new DCFTA requirements.

The available statistical data shows that the European Union is the largest trade partner of the country. In 2015 EU accounted for almost 31% of Georgia’s foreign trade. Turkey was on the

4 <http://ec.europa.eu/trade/policy/eu-position-in-world-trade>

5 https://en.wikipedia.org/wiki/Eurasian_Customs_Union

second place (17%), followed by Azerbaijan (10%), and Russia (7%). The EU market is Georgia's main export destination. In 2015 more than 29% of locally produced goods were exported in the EU, followed by Azerbaijan (11%), Turkey (9%), and Russia (7%)⁶.

DCFTA will have significant positive effect for Georgia's economy. The 2012 complex research commissioned by EU⁷ predicts that in the long term the Association Agreement will boost the country's GDP by 4.3%. Georgia's exports will increase by 12% and imports by 7.5% - therefore trade balance will improve. The producers of chemical goods, rubber, and plastic will benefit most, as, according to the research, the exports in these sectors may increase by as much as 62%.

The process of harmonisation will result in the reallocation of capital and labour force from low commodity sectors to those with higher productivity. The AA will also bring substantial benefits to Georgia's workers as both their income and social protection will improve.

4. POLITICAL EFFECTS OF THE ASSOCIATION AGREEMENT

The effect of AA over the political system of Georgia will be substantial, as the Agreement:

a. Supports the establishment of efficient and transparent system of governance in the country – AA puts special emphasis on issues of domestic political reforms, establishment of efficient, professional and transparent public administration and combating corruption. The Article 4 of the Title II of the Agreement takes the 2003 UN Convention Against Corruption⁸ as a basis of development.

b. Supports the protection and development of the principles of democracy, human rights and basic freedoms – these principles are the core to AA. The Article 2 of the title 1 of the Agreement says that “respect for the democratic principles, human rights and fundamental freedoms... shall form the basis of the domestic and external policies of the Parties and constitutes an essential element of this Agreement.”

c. Fosters rule of law and implementation of judicial reform – recognising Georgia's progress in the field AA puts special emphasis on deepening the process and declares that “the Parties shall attach particular importance to further promoting the rule of law, including the independence of the judiciary, access to justice, and the right to a fair trial” and that “respect for human rights and fundamental freedoms will guide all cooperation on freedom, security and justice.” (Title III, Article 13 of the AA).

d. creates a platform of continued political dialogue – as stated in the Article 1 of AA, the objective of the Agreement is to “provide a strengthened framework for enhanced political dialogue on all areas of mutual interest, allowing the development of close political relations between the Parties.” Joint structures are created to monitor the implementation of the agreement, and to inform and consult parties.

6 http://geostat.ge/?action=page&p_id=133&lang=geo

7 Trade Sustainability Impact Assessment in support of negotiations of a DCFTA between the EU and Georgia and the Republic of Moldova, Rotterdam, 27 October 2012

8 Georgia joined the Convention in 2008.

6. ASSOCIATION IMPLEMENTATION AND MONITORING

6.1 Association Agenda and Action Plan

The Association Agenda is the main instrument of the AA implementation. The Agenda is developed in cooperation with the European Commission and aims at defining the framework of practical activities under the Association Agreement.

On 26 June 2016 Georgia and EU agreed on the agenda, outlining priority activities for 2014-2016 years.

The practical implementation of the Association Agreement and the Association Agenda is carried out on the basis of an annual National Action Plan (NAP), adopted by the Government of Georgia. A report on the implementation of the NAP is submitted to and reviewed by the Association Council (see below, , p. 7). To date the Association Council has reviewed the NAP reports for 2014, 2015, and 2016 years.

6.2 Government Commission on the Integration of Georgia in the EU

Back in 2004, when Georgia initiated an association dialogue with the EU, the Government Commission on EU Integration (GC) was established. The Commission coordinates EU-related activities of central government agencies, decides on cooperation priorities and on specific projects within the framework of EU's financial and technical assistance, and implements strategic communication activities to raise public awareness in the field.

GC is chaired by the prime minister of Georgia. The Minister of Foreign Affairs and the State Minister on European and Euro-Atlantic Integration are its co-chairs. The Department of European Integration of the Office of the State Minister on European and Euro-Atlantic Integration performs secretarial functions.

To date 56 sessions of the Commission were organised. The last session was held on 17 March 2017 and deliberated on the 2017-2020 Government Strategy of Communication related to Georgia's EU and NATO Integration¹¹. The strategy was adopted by the Government of Georgia on 13 April 2017.

6.3 Georgia-EU Association Council

If GC is a national initiative and aims at coordinating central government agencies, the Georgia-EU Association Council (AC) is a structure established in accordance to the Article 404 of the Association Agreement. It is a supreme entity responsible for the oversight of the AA implementation. In specific cases the Council is authorised to review the Agreement and initiate changes.

Decisions of the Council are binding. It gathers at least once a year. To date three sessions of AC were held in Brussels – on 17 November 2014, on 17 November 2015, and on 2 December 2015. Georgian delegation to the Council was chaired by the Prime-Minister of Georgia. The Council adopted protocols, which, however, is not a public document. The official information about these sessions can be found by following the links below.¹².

¹¹ <https://goo.gl/A2w4b3>

¹² Official information from the meetings: 2016 - <https://goo.gl/YI0Lhr>, 2015 - <https://goo.gl/8Y3Huk> □ □ 2014 - <https://goo.gl/SyCm39>

6.4 Georgia-EU Association Committee

The Articles 407 and 409 of the Association Agreement require the establishment of an Association Committee (ACom), composed by principal public officials, Special Committees, and Sub-Committees. These structures provide assistance to the Association Council in the performance of its duties and functions.

Georgia has established 6 Sub-Committees of sectoral and economic cooperation. They are coordinated by the Office of the State Minister on European and Euro-Atlantic Integration. The Georgian Ministry of Economy and Sustainable Development chairs 4 Sub-Committees on the implementation and monitoring of DCFTA. Another Sub-Committee was established on issues deliberated in the Title III of the AA on freedom, security and justice and is chaired by the Ministry of Justice of Georgia.

6.5 Georgia-EU Parliamentary Association Committee

The Articles 410 and 411 of the Association Agreement define the role of the Parliament of Georgia in the process of its implementation. To this end the Parliamentary Association Committee (PAC) was created. PAC consists of Members of the European Parliament, on the one hand, and Members of the Parliament of Georgia, on the other. Since 2015 PAC meets two times a year in Tbilisi and in Brussels. To date the Committee met 4 times – 3 November 2015, 25-26 April 2016, and 19-20 December 2016 in Tbilisi and on 15-16 February 2017 in Strasbourg.

6.6 Civil Society Platform

In accordance to the requirement of the Article 412 of the AA on promoting regular meetings of and exchange of information between representatives of civil societies of Georgia and EU the Civil Society Platform was also established.

7. EU AND LOCAL SELF-GOVERNANCE

The examination of the 1993 Copenhagen criteria of EU membership shows us that issues pertinent to local governance are missing. The EU does not insist on a specific level of decentralisation, does not clarify, which type of territorial arrangement is better for its member states, and does not monitor local governance reforms. The ultimate requirement for an aspirant country is that it has sustainable democratic governance, functioning market economy, and capacity as well as willingness to accept and implement EU standards.

Policies related to regional and local governments come from the fundamental principles of EU's regional and cohesion policies (chapter 22 of the *aquis communautaire* “Regional Policy and Coordination of Structural Instruments”), which aim at mitigating social and economic disparities among EU Member States. The cohesion programmes take into account territorial arrangement of a particular country, its needs for social and economic, as well as urban and rural development to implement efficient cross-border partnership. The regional programmes are agreed with the European Commission, but implemented by particular member states according to the practice of multi-level governance.

The multilevel governance is in the core of the EU treaties and is based on the following three concepts: Subsidiarity – EU does not undertake a task that can be better implemented on

national, regional, or local levels of governance. Proximity – the member state should implement policies on the level of governance, which is closest to local population. Partnership – policies should be implemented through cooperation of actors from European, national, regional and local levels and, therefore, decision-making should be “multi-level”.

The concept of “multi-level governance” also implies that all of its participants, including regional and local governments, have adequate instruments and capacities to implement policies within the defined time-frame, achieve planned results, and, most importantly, adhere to EU legal norms (on public procurement, competition, environment, etc.) in their activities.

The European integration over the last few decades has increased role and capacities of local authorities. To date 300 regions and 91,000 local authorities of 27 member states are key decision makers in many important sectors such as education, environment, transport and economic development. Local authorities account for up to 2/3 of public spendings.

The increased role and importance of local governments have been reflected in different EU strategies. For example, a EU strategy on economic development entitled “Europe 2020”¹³ puts a special emphasis on the role of local authorities in development and implementation of national programmes.

Cooperation of local governments and representation of local authorities on pan-European level is the task of the European Committee of Regions (COR)¹⁴, established in 1994. The European treaties oblige the European Commission and the EU Council to consult COR on issues that may have substantial local effects. The Committee gathers six times a year in Brussels and appropriates opinions, publishes reports, and adopts resolutions on the incorporation of local issues in EU policies.

At the same time, EU is much more involved in local governance reforms in the countries of Eastern and Southern neighbourhood, as it sees decentralisation as an essential precondition of democratisation.

The partnership priorities with neighbourhood countries are listed in the 2013 communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions¹⁵. The document states that significant attention should be paid to: decentralisation and allocation of sufficient resources to local authorities; development of capacities of local officials; sustainable urbanisation; and involvement of associations of local authorities in planning and implementing national development priorities.

The decentralisation policies of the EU towards its neighbourhood are aided by the Council of Europe. In 2014 the parties launched Programmatic Cooperation Framework Project, which aims at providing support to EaP countries in order to make them closer to CoE and EU standards in the fields related to human rights, democracy, and rule of law. The provisions on enhancing capacities of local authorities are provided in the chapter 5 of the agreement,

13 https://ec.europa.eu/info/strategy/european-semester/framework/europe-2020-strategy_en

14 <http://cor.europa.eu/en/Pages/home.aspx>

15 <https://goo.gl/VvzfCF>

entitled “Support of Democratic Governance”. The Project will be implemented into two phases – 2015-2017 and 2018-2020.¹⁶

8. AA AND LOCAL AND REGIONAL AUTHORITIES

Requirements related to regional and local authorities are provided in the Article 373 of the Association Agreement, which states that “the Parties shall support and strengthen the involvement of local level authorities in regional policy cooperation including cross-border cooperation and the related management structures, enhance cooperation through the establishment of an enabling reciprocal legislative framework, sustain and develop capacity building measures and promote the strengthening of cross-border and regional economic and business networks”.

Therefore, as it was already mentioned, chapter 22 of the *aquis communautaire* on regional policy and structural instruments is the starting point of the AA.

It should also mentioned here that the specific role and functions of local and regional authorities in Georgia’s cross-border cooperation is defined by the “European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities” of the CoE¹⁷, which was joined by the country in 2006.

To make the partnership with regional and local authorities efficient the section 2 of the same Article 373 of the Association Agreement puts special emphasis efficient vertical and horizontal relationships among central and local levels of governance, as well as on development of capacities of local authorities.

The requirements are farther clarified in the section 2.1 of the Association Agenda entitled “Political Dialogue and Reform”, which says that the implementation of a decentralisation strategy in line with the European Charter of Local Self-Government is the foundation of local democracy in Georgia.

In addition, the Agenda requires efficient multi-level coordination in implementing regional development programmes, strategies and action plans (section 2.6 “Other Cooperation Policies”). This section also puts a special emphasis on increasing capacities of local authorities to make them able to either implement or monitor regional development policies.

In line with the above provisions the Association Agreement and the Association Agenda, the present document will attempt to review problematic issues related to Decentralisation and subsidiarity, multi-level policies, and qualification of local public servants.

As its was already mentioned, EU requires governments of all levels to adhere to EU legal norms and standards. Therefore, in the chapters below we will also review obligations and ongoing reforms in combating corruption, public procurement, and environment.

8.1 Decentralisation and subsidiarity

Subsidiarity, or the principle that central governments should only undertake tasks those can’t be implemented on local levels, is the founding principle of self-governance. It is protected by

¹⁶ http://www.coe.int/t/dgap/localdemocracy/EAP/Terms-of-Ref_en.pdf

¹⁷ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/106>

CoE's European Charter of Local Self-Government, which was ratified by Georgia back in 2004. The Charter stipulates that financial resources allocated to self-governments have to be commensurate to their legally defined tasks and responsibilities.

To emphasize the importance of the Charter and taking into account the recommendation CG/MON/2015(27)¹⁵ of the CoE's Monitoring Committee¹⁸, the Georgian Government included the principle of subsidiarity in the Chapter 7 "Principles of Territorial Arrangement" of a new Constitution, which currently is under the process of appropriation. The state takes responsibility to duly allocate tasks and ensure provision of adequate finances to local authorities.

However, exactly the lack of financial resources is the most serious among many challenges of self-governance and represents the biggest barrier for decentralisation in the country.

In 2015 CoE commissioned a large-scale research of self-governments in Georgia, Azerbaijan, Armenia, Moldova, and Ukraine¹⁹. The research highlights a wide variety of problems having negative impact on the implementation of local policies, such as financial weakness, excessive interference of the Ministry of Finances and the Treasury in the formation of local expenditures, strict regulation of the number of local officials and their remuneration, etc.

Expansion of financial capacities and multiplication of sources of income are the most important preconditions for financial independence of local self-governments. A number of CoE recommendations have already highlighted these challenges.

According to the new Code on Local Self-Government, a part of the income taxes goes directly in municipal budgets. In addition, municipalities, upon their request, may receive capital transfers to implement capital projects on their territories.

The reallocation of the income tax to local budgets should have been completed by September 2014. However, the Government of Georgia was late to submit the law "On Changes in the Georgian Budget Code" to the Parliament, and it was approved only in December 2014. Therefore, the change was not reflected in the 2015 local budgets. The analysis of the 2016 and 2017 self-government budgets shows that they could not bring significant changes. Along with the tax reallocation the volume of the equalisation transfer declined - in 2016 it was cut by almost 28%.

To achieve financial sustainability it is necessary to have correct understanding on what finances are required to implement local services, what is the services price and quality, and what resources are available in municipalities.

To date local self-governments have limited role in providing even basic communal services to their constituencies. For example, the provision of electricity and natural gas supplies is out of their competencies. The new Code makes self-governments responsible for water supply, however tariffs and service provision rules are defined by a central regulatory entity. The water infrastructure is either privatised or managed by the a state company "United Water Company". The new code makes local self-government responsible for management of local forests. However, the "National Concept on Forests" adopted in 2013 indicates that the

¹⁸ <https://goo.gl/Ck97fY>

¹⁹ <https://goo.gl/RwNmxV>

transfer of ownership did not happen because of “weakness local self-government” and that the process will be initiated only after implementation of programmes that will “increase capacities of local communities in commercialisation of forestry resources aimed at creating new workplaces, multiplying income sources, and eradicating poverty”.

One of the most important problems is the management of agriculture lands. It should be mentioned here that since 2004 the land balance is not assessed and to date annual official statistics is based on the data of the Department of Land Management from 1 April 2004²⁰. This data shows that the total area of agriculture land is 3,025.8 thousand hectares (this number is already outdated inasmuch as the available land under the national control has decreased in the aftermath of 2008 Russia-Georgia war). Almost 767 thousand hectares are privatised and more than 2,258 thousand hectares remain under the state ownership.

The Article 162 of the Code of Local Self-Government requested the Ministry of Justice, the Ministry of Regional Development and Infrastructure, the Ministry of Economy and Sustainable Development, and the Ministry of Finances to develop a time-frame and regulation to transfer state owned agriculture land to municipalities before 1 January 2017. This requirement was not implemented²¹. According to the Ministry of Regional Development and Infrastructure, the transfer of land ownership will become the part of the 2017-2020 strategy of democratic development and its action plan. The last meeting of the working group on the development of the strategy was held on 10 May 2017²². However, it is still unknown exactly when this obligation will be implemented.

All above challenges are reflected in the figures, which show dire state of local self-governance in the country. According to some experts, the share of municipal budgets in the state budget is as much as 14%, if excluding Tbilisi - only 7%²³.

Looking at the above figures we can hardly speak about efficiency of local governance, but the current system of designing and implementing regional development programmes makes things even worse, as it practically neglect principles of subsidiarity, proximity with local population, and partnership. We will discuss these issues in more details in the next chapter.

8.2 Formulation of multi-level policies

The “Strategy of Georgia on Social and Economic Development – Georgia 2020”²⁴ and the “Basic Data and Directions of the Country (BDD)”²⁵ are two of the most important documents that provide visions about efficient public service in the country and link policies with budgets.

With the help of EU and USAID a comprehensive reform of public administration was launched in the country in 2013. The existing conditions were analysed by OECD/SIGMA, the leading consultancy in the field of governance. The analysis addressed core areas of policy planning. A number of problems were identified and some mitigation measures were

20 Here is statistical data from 2015 http://www.geostat.ge/cms/site_images/files/georgian/agriculture/Garemo_2015.pdf

21 List of delayed legal obligations as of December 216 <http://www.parliament.ge/uploads/other/53/53783.pdf>

22 http://www.for.ge/view_news.php?news_id=69027&news_cat=0

23 David Zardiashvili “7-percent self-governance: poor towns and poorer communities” http://for.ge/view.php?for_id=48806&cat=12

24 <https://goo.gl/Ou8Ccu>

25 <http://www.mof.ge/en/4543>

developed later on in the “2015-2017 Strategy of the Reform of Policy Planning”. The Strategy was adopted in May 2015²⁶.

According to the above document the existing system of policy planning is inefficient. The existing legislation recognises the following documents – the government programme, the government annual action plan, the action plan of the government’s legislative activity, basic data and directions, and the state budget. Sectoral strategies and action plans are appropriated in the process of policy planning. However, adequate linkages among these instruments are not provided, their hierarchy is not clarified, fields of policy planning are not regulated, and stages of their implementation are not defined.

As a result, there are great variations among adopted documents with regard to their scope and quality. Existing systems of monitoring, reporting, and evaluation are weak and generally can’t evaluate what specific results the implementation of strategies bring along and what policy objectives are achieved. In addition, public participation is very weak.

The above challenges are especially problematic for the local governments. For example, the 2010-2017 regional development strategy stipulates that cohesion of social and economic disparities among different regions is the basis upon which regional development policies are built. To evaluate disparities, however, it is necessary to analyse needs and challenges faced by individual municipalities. Municipalities, however, generally fail to identify needs in their territorial entities, evaluate existing disparities, and design mitigation measures. As a result, the documents on municipal priorities do not reflect real problems, and, therefore, real development needs remain unknown. Subsequently, incorrect understanding of municipal needs leads to faulty regional-level policies.

One of the manifestations of the above problem is extremely low efficiency of rural support programmes. The Ministry of Regional Development and Infrastructure was calculating the volume of support funds to be allocated to a specific municipality based on the number of its population and not its needs.

Also, the examination of the latest consolidated report on the implementation of the regional development programme in 2015-2017 reveals the persistent prevalence of activities for the improvement of physical infrastructure. The bulk of support funds year by year are allocated to building and rehabilitating of national and local roads, while many other important challenges remain unattended. In addition, the programmes practically neglect principles of subsidiarity, proximity with population, and partnership in their design and implementation – they are directly managed by central government agencies and legal entities of public law.

The Association agenda puts a special emphasis on the provision of mitigation measures to the problem of policy building and requests Georgian authorities to make steps towards the establishment of a coherent system for the design and implementation local and regional level activities.

According to the section 201.1 of the 2016 National Action Plan of the Association Agenda, the Georgian government should have completed the development of a new law on “the Planning

26 http://gov.ge/files/423_49306_882810_Policy_Planning_Reform_Strategy_PDF.pdf

of Regional Policy and Development” and hand it to the Parliament by the end of 2016. To date the draft has been reviewed by the government but legal procedures are yet to be completed.

The draft law requires the relevant regional and local authorities to take into account the data and interconnection of a wide range of issues, including organisational capacities, social and economic indicators, environment, education, etc. when designing and implementing regional and local level policies. The document insists on synergy among initiatives on central, regional, and local levels, puts special emphasis on the hierarchy of different policy documents, and emphasizes principles of subsidiarity, as well as partnership and engagement of all interested parties (individuals, public agencies, municipalities, civil society).

The draft law defines the following types of policy documents:

1. Strategy Planning documents identify long-term objectives and priorities of regional development. Regional development strategies, as well as municipal strategies on social and economic development, and spatial-territorial planning fall under this category.
2. Programmatic Planning documents are developed on the basis of the above strategic documents. Action Plans for regional development and municipal development priorities belong to this category.

A Strategic Planning is a long term (7 years) document, while a Programmatic Planning – a mid term (3 or 4 years) one. The latter may be accompanied by annual or bi-annual Action Plans.

The draft law on policy planning clarifies the role and the level of involvement of public bodies of different levels into the process of regional planning. The agencies authorised by the law are: the Government of Georgia, the Commission on the Reform of Regional Development and Local Self-Governance, the Ministry of Regional Development and Infrastructure, other ministries, offices of regional governors, regional consultancy councils, and municipalities.

It is interesting that the draft law introduces a new institution, Regional Development Agency, which will perform a wide range of consulting functions. It will evaluate local investment capacities, develop investment projects, and consult local authorities, individual businesses, and investors. It should be noted here, that the role and functions of the Agency are reminiscent of that established in the regions with the support of the German Agency of Technical Cooperation (GIZ) back in 2012.

Starting from 2017 the existing rural support programmes in municipalities are abolished. Procedures for addressing municipal development needs have changed - municipalities should request funds themselves. To this end they have to consult local population, develop project proposals, arrange them according to their importance and submit them to the Regional Fund. The RegFund will fund proposals according to their quality and also according to available resources. It should be noted here, that in 2017 the funding of the RegFund decreased by 10mln Lari. Also, this institute is underdeveloped - according to the MRDI, the Fund will be transformed into a news instrument of social and economic development only from 2018, or after the decentralisation strategy and the law “On the Planning of Regional Policy and Development” are adopted.

Municipalities already face critical needs of support in developing strategic and programmatic policy documents, as well as in drafting project proposals through inclusive process. Support activities in this regard so far have been implemented by international donors and civil society organisations²⁷.

8.3 Combating Corruption

Corruption undermines rule of law and obstructs activities of public agencies. It results into waste of resources and low quality of public services. More importantly, corruption undermines public trust in political leaders and institutions. Combating corruption, on the other hand, fosters development, incites competition and investments.

Over the past decade Georgia has achieved significant progress in this field. The country has initiated a number of radical reforms to modernise the system of governance and increase institutional capacities. In 2008 the country also joined two important international instruments – CoE’s “Criminal Law Convention on Corruption”²⁸, and UN Convention Convention against Corruption²⁹.

According to the World Justice Project’s “Rule of Law Index” of 2016, Georgia is on 34th place out of 113 countries and leads the list of countries from Eastern Europe and Central Asia³⁰. In the same year Georgia occupied 44th place among 176 countries in the corruption perception index of Transparency International, just next to Lithuania, Latvia, and Spain.

Combating corruption is one of the most important requirements of AA. The Article 2 of the Title 1 of the Agreement, which outlines its founding principles, equates corruption with transnational organised crime and terrorism, and declares that the parties to the Agreement should “commit themselves to the rule of law, good governance, the fight against corruption, the fight against the various forms of transnational organised crime and terrorism”. The Article 4 of AA considers anti-corruption activities as an important part of domestic reforms. Finally, the Article 17 of the Agreement “the fight against organised crime and corruption” obliges the government of Georgia to tackle problems of both active and passive forms of corruption in both public and private sectors.

- Active corruption is a deliberate actions of a person, who directly or through intermediaries offers or promises to offer any undue benefits to a public official or a person or entities related to him/her in order that the public official acts or refrains from acting in the exercise of his or her official duties.
- Passive corruption is a deliberate action of a public official to accept, directly or indirectly, an undue advantage in order that the official acts or refrains from acting in the exercise of his or her official duties.

After signing the Association Agreement the government of Georgia adopted a 2015-2016 anti-corruption strategy and an action plan. The strategy highlighted 13 priorities in dealing with

²⁷ For example, in 2016 the Georgian Young Economists Association provided assistance to 43 municipalities in 6 regions of Georgia in drafting mid-term development priority documents. The project was funded by UNDP.

²⁸ <https://goo.gl/B78Wna>

²⁹ <https://goo.gl/nQB5EL>

³⁰ <http://worldjusticeproject.org/rule-of-law-index>

challenges of corruption. The methodology of monitoring and evaluating the implementation of the strategy was also developed and adopted on 4 February 2015.

In 2016 the work on a new action plan started. The anti-corruption strategy was updated and the 14th priority “the prevention of corruption in municipalities” was added. In April 2017 the Anti-Corruption Council of Georgia adopted a new 2017-2018 action plan.

According to the strategy and its action plan, the government of Georgia accepted responsibility of implementing additional reforms in a number of high-risk policy areas. The list of activities that are of special importance for local self-governments are as follows: strengthening of the “whistle-blower” institute, improving practice of proactive publication of public information, improvement of legal norms related to freedom of information and making them adherent to international standards, integration of municipal financial management into the unified system of the management of public finances; fostering capacities of public advisory councils in municipalities, etc.

One of the primary priorities in combating corruption is related to establishment of efficient and transparent public procurement system. Few other risks matter more than the risks related to improper management of public finances.

Public procurement is very important for the EU as the overall annual volume of procurement in Member States is over 2 trillion Euro. The 2014 EU anti-corruption report indicates that corruption costs that European taxpayers pay annually is almost 120bln Euro³¹.

EU has developed a comprehensive set of legislation in the field. One of the most important legal acts is the 2003 Council Framework Decision on combating corruption in the private sector³², which criminalises both active and passive corruption. Also in 2014 the EU member states agreed to transpose a number of EU legal acts in their national legislation, including the Directive 2014/24/EU on public procurement³³, The Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors³⁴ and the Directive 2014/23/EU on the award of concession contracts³⁵ (to note, these directives updated ones from 2004, which are the integral part of the EU-Georgia AA).

Furthermore, EU monitors public procurement in all Member States and publishes statistics in a matrix³⁶, which shows the performance of different countries.

It is interesting that, according to the new EU requirements, by 2018 the system of electronic procurement will be come mandatory for Member States. In this regard Georgia has a significant advantage as far as the country moved to the electronic system of procurement back in 2010.

The Articles 141-149 of AA and the annex XVI request Georgia to make additional reforms to harmonise the public procurement system to the EU legislation. The whole process is arranged in 5 phases and should be implemented in 8 years.

31 https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en

32 <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003F0568>

33 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0024-20160101>

34 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0025-20160101>

35 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014L0023-20160101>

36 http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm

In accordance to the obligations of the 1st phase (first 3 years)³⁷ the Parliament of Georgia adopted changes to the law on public procurement by the third hearing³⁸.

According to the new provisions prepared by the Agency of Public Procurement of Georgia the simplified procedure of electronic tenders will be abolished. The required time-frame of electronic tenders is increased and will be dependent to the value of a specific tender. This is very important change as much as the existing procedures of simplified tender requests the solicitor to review the tender documents and submit proposal in only 3 working days. Such small amount of time, of course, does not comply to any international standards³⁹.

The new draft law also introduces equal treatment and proportionality. In addition, a purchasing party is required to provide specific technical and implementation details of a procured object - this requirement is directly requested by AA. In addition, the modification of tender requirements will entail the restart of its time-frame.

However, a number of important provisions have not been incorporated in the new draft law. Specifically, the award criterion of the best price-quality ratio is missing. This criterion is in the list of the AA requirement for the first phase of its implementation and was lobbied by a number of international organisations, business entities and associations.

However, the State Procurement Agency and other public institutions were reluctant to introduce this change. Their argument was that many public institutions lacked capacities to implement price-quality analysis and that it would eventually increase the risks of corruption. Therefore, according to central authorities, price remains the only criterion that excludes subjectivity.

Another principle that is missing in the draft law is the concept of pre-qualification. The purpose of pre-qualification is to invite only bidders, which appear to be capable of carrying out requested services and provide goods in an adequate manner.

The absence of the above two concepts from the draft law will prolong the problem related to quality of services rendered by bidders. It will be especially problematic for the procurement of intellectual products. We will discuss more on latter in the next chapter.

8.4 Qualification of local officials

As its was discussed earlier in this report, the Article 2 of AA requires Georgia to efficiently implement provisions of the 2003 UN Convention Against Corruption. The Convention that the country joined in 2008 puts an important emphasis on the existence of efficient governance system. Specifically, the document highlights the need of having quality system of hiring and promoting public officials, implementing their training, providing adequate remuneration, etc.

In 2013 a large-scale public administration reform was initiated. In order to guide changes in the field, the Government of Georgia drafted and adopted a “Public Administration Reforms Guideline 2020”⁴⁰, the document establishes 6 pillars of activities in the field: policy

37 [http://procurement.gov.ge/getattachment/ELibrary/StrategyActionPlan/DCFTA-\(31-03-16\).pdf.aspx](http://procurement.gov.ge/getattachment/ELibrary/StrategyActionPlan/DCFTA-(31-03-16).pdf.aspx)

38 <http://info.parliament.ge/#law-drafting/13265>

39 Meanwhile, more that 70% of tenders are carried out in the simplified form and hence high number of cancellation - in 2015 31% of tenders were cancelled or did not complete, <http://charts.procurement.gov.ge/index.php?page=chart9>

40 http://gov.ge/index.php?lang_id=geo&sec_id=423&info_id=49307

development and cooperation, human resources management, service provision, public finances management, and local governance.

In 2014 a new concept of public administration reform was developed, which clarifies priorities and main directions of the reform⁴¹. It puts special emphasis on the introduction of clear regulations, transparent remuneration system, unified rules for certification and carrier development of public officials, improvement of disciplinary proceedings, and increase of transparency.

These principles were incorporated a new “Law on Public Service”. The law provides guidelines for the establishment of a carrier-based public service, fosters possibilities of professional development of public officials. It makes stress on establishment of unified system of certification of public officials, as well as on their promotion, mobility, and professional development standards.

The law makes the Civil Service Bureau (CSB) responsible for implementing tasks related to training and certification. It also requires the adoption of a number of subsidiary legal acts. In 2016 CSB was actively promoting discussions on their provisions with regional and local authorities, local and international civil society organisations, and donor community.

In spite of CSB activities, the process of adoption of subsidiary legislation was delayed - the Government of Georgia had to develop 2 draft laws and appropriate 3 government decisions before 1 September 2016. 10 additional government ordinances should have also been adopted before 31 December 2016. This did not happen in due time. Moreover, the date of entry into force of the new law (initially planned for 1 January 2017) was also postponed to 1 July 2017.

The Government of Georgia started to adopt subsidiary legal acts by the end of April 2017. 11 out of 13 government ordinances were appropriated. New provisions clarify the structure and activities of public service in the country.

- The government ordinance “On the Adoption of the Rule and Conditions for Assigning Public Servant Classes to Professional Public Servants”⁴² introduces 12 classes where the 1st class is the lowest and the 12th class – the highest one. The class assignment is lifelong.
- The ordinances “On the Rule of Naming of Positions of Professional Public Servants, Assignment of Hierarchical Ranks, and the Definition of a Hierarchical List of Public Service Positions According to Ranks”⁴³ and “On the Definition of Requirements for a Specific Rank of Public Service Positions”⁴⁴ introduces requirements and steps of public carrier development. For example, the first-rank (high-level position) public officials should have at least 5 years of work experience in the relevant field, including 2 years of work experience in managerial positions. As of the lowest, 4th rank public servant (junior specialist) only secondary education is required, while work experience is not necessary.

41

<https://matsne.gov.ge/ka/document/view/2582658>

42 <https://matsne.gov.ge/ka/document/view/3652584>

43 <https://matsne.gov.ge/ka/document/view/3651187>

44 <https://matsne.gov.ge/ka/document/view/3652566>

- The ordinance “On the competition for the Employment in Public Service”⁴⁵ defines rules for selection and employment of public officials of different ranks. According to the legal act, higher level public officials (3rd rank and above) are selected through closed competition. Open competitions are held for the lowest, 4th rank positions, or in exceptional cases for the higher ones.
- The ordinance “On the Adoption of the Rule and Conditions of Evaluation of Professional Public Servant”⁴⁶ clarifies requirements of the new law on public service with regard to examination of qualification of public servants. According to the document the evaluation happens once a year and is implemented by a supervisor of a servant or a person responsible for human resources. This ordinance will enter into force from 1 January 2018.

To date development and adoption of all subordinate legal acts required by the law on public service is not completed - the ordinances on remuneration of public servants, on standards and topical areas of their certification, and on identification of needs of professional development and training are yet to be appropriated.

The missing legal acts are critical for local authorities, where policies related to human resources management have substantial drawbacks and can neither ensure recruitment of professional public servants nor increase their professional skills. Meanwhile, the 2012-2013 research on the needs of local officials, implemented by Vano Khukhunaishvili Centre for Effective Governance System and Territorial Arrangement Reform (CEGSTAR) shows that qualification of local officials are not up to the “objectively required skills”⁴⁷.

In response to the stated challenges and according to the Article 157 of the law on self-government MRDI developed a “Concept on Continuous Learning of Local Self-government Officials”⁴⁸, which was approved by the Government of Georgia in May 2014. The Action Plan outlines the schedule for the development and registration of training programmes and standards. At the same time, the July 2015 government ordinance “On the Life-Long Learning System for Public Officials, Competencies of Involved Public Agencies, and the Adoption of the Rule and Conditions of its Activities”⁴⁹, made CEGSTAR responsible for identifying training needs of local public officials, developing programmatic standards, and running the training programmes registry.

In accordance to the ordinance, the Centre established a special online portal, and collected and systematised training programmes in 36 categories. The interested audiences are able choose among short and long-term training cycles, seminars, in-job training, or distance learning. The registry provides a title and description of a programme, its time-frame, and information about a training provider. A special Council composed by 29 experts looks after the quality of programmes, capacities and qualifications of a provider.

The CEGSTAR portal also features a registry of identified need by municipalities, which was made possible after their benchmarking.

45 <https://matsne.gov.ge/ka/document/view/3646700>

46 <https://www.matsne.gov.ge/ka/document/view/3652594>

47 <http://www.economists.ge/storage/uploads/publication/150219040358b0f0.pdf>

48 <https://www.matsne.gov.ge/ka/document/view/2365571>

49 <https://www.matsne.gov.ge/ka/document/view/2901403>

The above mentioned ordinance on life-long learning also requires municipalities to develop annual education plans and send them to CEGSTAR and CSB for additional analysis and systematisation. In addition, the code of local self-governance also obliges municipalities to allocate at least 1% of their salary budgets to professional education and training of their employees.

It should be noted however, that the process of registration of training providers and training programmes faced substantial challenges. It has started in May 2016 and originally should have been completed in one month. However, the deadline of programme submissions was extended first by July and then by November 2016. In addition, not all training programmes are available on the portal - there are no training courses in spatial planning, municipal infrastructure, municipal transport, street trade, and internal audit categories. The number of courses is also higher in general subjects compared to specific ones.

Donor community provides significant support to the development of training capacities in challenging areas. For example, two phases of EU's research facility assistance was designed specifically to develop materials and capacities in missing training subjects.

One more challenge in the field of training and education relates to procurement of services. According to the existing procedures, municipalities should announce an open tender and as neither the existing law on procurement nor the planned changes feature concepts of price-quality criterion or pre-qualification, all efforts applied to the development of the education portal and the roster of training needs and courses may render pretty useless.

To date thematic training cycles for local officials are implemented by international assistance projects. Thus, the report of the 2016 annual national plan of the Association Agenda indicates that UNDP and GIZ provided training on regulations related to ethics and behaviour in public bodies, as well as on issues of whistle-blowers. The training cycles were attended by 844 public officials. In the same 2016, UNDP also implemented a training on development of a scope of work for 300 local and regional officials.

Finally, the most important challenge in the field of qualification of local public servants is the ambiguity of allocation of competencies among different public agencies. Thus in 2016 the civil service bureau signed a memorandum with the International Education Centre and started to develop training system for public officials. The system implied the provision of training cycles arranged into the following three areas: a) basic training, b) continuous and specialised education, and c) training of high-rank officials. The partnership could not bring any positive results in 2016 but the whole concept of training overlaps the resources developed by CEGSTAR. Therefore until the process of the establishment of the system of certification and training of public officials is completed, the future of products developed by CEGSTAR is pretty much undecided.

8.5 Environment

The issues of environment are addressed in the Title 6 of AA. It provides guidelines of cooperation between the parties, including the integration of environment issues in development policies. The section 2 of the Article 302 of the Agreement stipulates that the cooperation shall aim "at integrating environment into policy areas other than environment policy."

In accordance to the section 2.6 of the NAP of the Association Agenda, the government of Georgia adopted and implemented Action plans of the National Environment (NEAP). On 20 April 2017 the Parliament of Georgia approved by the first reading an “Environment Assessment Code”, which provides guidelines to public agencies, including local authorities, for the development and implementation of policies integrating issues of environment.

One of most important and at the same time problematic issues in this filed, however, is one of waste management.

The Waste Framework Directive of the European Parliament and of the Council of 19 November 2008⁵⁰ stipulates that the primary aim of the waste management policy is the minimisation of waste on human health, and misuse of precious resources. For EU the prevention of waste is more important than, for example, extraction of energy from its incineration as the latter has higher negative impact on the environment. Another EU priority is waste recycling, which is a core principle of EU as a recycling society.

The EU legislation in waste management is extensive. It has a complex hierarchy of laws and legal acts arranged in the following broad subjects: framework legislation⁵¹, waste management operational legislation⁵² and legal acts related to different types of waste⁵³. In addition, the reporting and evaluation forms and questionnaires of EU Member States are standardised⁵⁴.

The above mentioned Framework Directive obliges EU Member States to develop and implement Waste Management Plans. In addition, a particular MS may request regional and local authorities to develop waste management plans on their territories.

The same directive lists a number of basic components of a typical waste management plan. They should be developed after the analysis of: waste types, their volume and source on specific territories; existing waste collection, deposition, and recycling schemes; and new schemes of collection, addition of closure of existing deposit and recycling facilities. In case of the establishment of a new deposit facility the waste management plan should provide comprehensive analysis of the identification of its location. It should also deliberate on general waste management policies, recycling technologies and methods.

The waste management plans should be updated in every six years and all interested parties should be able to take part in their development.

To provide farther methodological support to central, regional, and local authorities in the development of waste management plans, the European Commission published a practical manual⁵⁵. It is not legally binding but helps Members States in accepting uniform management practices on their territories.

The waste management Georgia is generally confined to collection and deposition of waste. At the same time, there are no specific data on exact percentage of territory, where waste removal services are available. The waste removal is more or less functional in cities and towns but

50 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0098>

51 <http://ec.europa.eu/environment/waste/legislation/a.htm>

52 <http://ec.europa.eu/environment/waste/legislation/b.htm>

53 <http://ec.europa.eu/environment/waste/legislation/c.htm>

54 <http://ec.europa.eu/environment/waste/legislation/d.htm>

55 http://ec.europa.eu/environment/waste/plans/pdf/2012_guidance_note.pdf

there are no data about how many villages benefit from the service and, more importantly, what is the volume of removed waste. The deficient data, meanwhile, makes it difficult to decide where to exactly to build waste depositing and processing facilities, or what capacities should they have. The ongoing programme of regional development allocated 65mln Georgian Lari to building 9 regional deposits for approximately 2.9mln people in 68 municipalities.

In April 2016 the government of Georgia adopted a 2016-2030 national strategy of waste management and its 2016-2020 action plan. The strategy stipulates that the main challenge in the field is the absence of elaborate waste management planning system. According to the document, municipalities have limited planning capacities and do not possess municipal waste management plans.

To date main activities in the field are implemented only with support of international donors. According to the Ministry of Environment and Natural Resources Protection of Georgia, draft waste management plans are being prepared in 7 municipalities and towns of Kakheti region and Ajara's Autonomous Republic by a project implemented by the Caucasus Environmental NGO Network (CENN) and funded by USAID. A project "Solid Waste Integrated Management in Kutaisi" supported by the KfW Development Bank provides training on waste management in municipalities of Imereti, and Racha-Lechkhumi and Kvemo Svaneti regions. Training on waste management plans is implemented in municipalities of Guria region by the project of Georgian Green Movement, funded by UNDP, Swiss Cooperation Office (SCO), and Austrian Development Agency (ADC).

Finally, the separation and recycling of waste will make it additional source of income and highlight the issue of its ownership, which needs to be addressed as soon as possible. As it is the case in many countries, all waste removed from any land or premises by or on behalf of the council or received at a depot of the council should the property of the council.

9. CONCLUSIONS

With signing the Association Agreement Georgia accepted obligation to introduce new political, economic, social, and legal standards on its territory. These standards imply development of democratic institutions and the rule of law, respect and protection of human rights, and independence of judiciary. AA will foster economic reforms, regional policies, and sectoral cooperation with EU. It will deepen EU-Georgia dialogue and participation of civil society.

At the same time, the process of association will bring along new challenges as it will require the implementation of large-scale reforms, harmonisation of legislation, and development of capacities of public institutions.

The present report briefly reviewed possible impact of AA over the system of regional and local policies and identified a few problematic fields, which deserve special attention.

To summarise, to efficiently implement reforms the achievement of the following objectives are critical:

- Local government urgently need adequate financial capacities. They need to be in full management of property and resources on their territories, as well as be able to expand and multiply their tax base.
- Proper allocation of tasks and responsibilities among different governance levels is important. Regional development programmes should be build on the principles of subsidiarity, proximity, and partnership with local authorities. Where possible, local authorities should become fully responsible for their implementation.
- New tasks will require qualified workforce in localities. To this end the introduction of new recruitment, certification, and training systems are critical. The potential of already available resources, created through partnership with international institutions, should be preserved, developed, and fully utilised.