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SELECTION OF INSTITUTIONS TO RECEIVE REGULATORY IMPACT ASSESSMENT SUPPORT

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17 October 2018

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DATA

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ACRONYMS

AA	Association Agreement
AYPEG	Association of Young Professionals in Energy of Georgia
CBA	Cost-Benefit Analysis
EU	European Union
G4G	Governing for Growth in Georgia (USAID Project)
GNERC	Georgian National Energy and Water Supply Regulatory Commission
GoG	Government of Georgia
ISU	Iliia State University
MES	Ministry of Education and Science
MoESD	Ministry of Economy and Sustainable Development of Georgia
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
RIA	Regulatory Impact Assessment
USAID	United States Agency for International Development
VRE	Variable Renewable Energy
WEG	World Experience for Georgia

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INTRODUCTION

By signing the Association Agreement (AA) in 2014, Georgia committed itself to enhancing the harmonization process with the European Union (EU) Legislation. Together with numerous reform areas, the Government of Georgia (GoG) is trying to institutionalize a Regulatory Impact Assessment (RIA) tool. The draft Law on RIA Institutionalization is ready and planned to be adopted during the fall Georgian Parliament session 2018. During this period, USAID has been supporting the GoG in the development of several RIAs in various economic sectors.

USAID Energy Program will build the capacity of the GoG and relevant institutions to evaluate the fiscal and long-term security impacts of regulatory changes and promote energy investment, primarily in Variable Renewable Energy (VRE) development. USAID Energy Program shall provide technical assistance to prepare local relevant institutions to perform technical and other analyses such as RIAs and to continue training new counterpart staff on ongoing reporting processes.

RIA is a crucially useful instrument for legislative activity. At the same time, RIA facilitates the dialogue between the GoG and private sector while drafting the legislation. The Ministry of Economy and Sustainable Development of Georgia (MoESD) has been provided with trainings through various USAID projects in performing RIA analysis. However, in view of the recent changes of administration and staff turnover, sustainability of the high-level expertise within the government and other relevant institutions can become a challenge in future.

Another main counterpart, Georgian National Energy and Water Supply Regulatory Commission (GNERC,) requested assistance in Cost-Benefit Analysis (CBA). USAID Energy Program will assist GNERC in developing cost-benefit analysis/light RIA for some of the secondary legislation.

Usually, authors of draft legislative acts are responsible for conducting RIAs. It would be ideal to give the responsibility to specific experts (legal, economic, etc.) within the governmental bodies who should also be supported by other colleagues with experience in drafting Legislative proposals. RIAs can also be performed by other institutions under the contractual agreement by the decision of the governmental body.

In order to create an effective RIA system, it is vital to form a strong body of control and inspection. In some countries, these functions are performed by various ministries (justice, economic or finance). The ministries do not have enough power to implement these functions efficiently, and there also arises conflicts of interest. Therefore, these functions are better to be carried out by a department in the government administration, responsible for examining the quality of regulations.

In some countries, there are groups of independent experts who are responsible for RIAs.

BACKGROUND

The RIA process has proved to be an effective policymaking tool integrated into policy and legislative processes in numerous countries. Donor organizations, including USAID, has made significant efforts in recent years to raise the GoG's awareness on RIA. Many GoG officials attended RIA trainings, including the Ministries' staff participation in pilot RIAs on the selected regulatory reforms.

In Georgia, when a draft legislation is introduced to the Parliament, it should be accompanied by an explanatory note. The preparation and use of explanatory notes is an important part of the legislative process. Each explanatory note requires the analysis of the potential impact of regulation. However, according to the international standards, an explanatory note is not sufficient. Explanatory note can't substitute RIA document since many principal components are missing. Besides, in most cases, the explanatory note is very brief, and it does not give answers to each part, e.g. financial justification of the bill, economic benefits to the citizens etc.

Business associations and experts referred to numerous negative outcomes of new initiatives, which were attributed to inefficient consulting processes and lack of impact analysis of regulation.

Therefore, the GoG recognized the need for better and evidence-based policymaking and legislative drafting by having approved the Policy Planning System Reform Strategy 2015-2017, which prescribes the introduction of RIA into the Georgian legislative process. Additionally, in 2015, the GoG established the Investors Council, which is expected to serve as a high-level cooperation platform for the public and private sectors in shaping a better and more business-friendly regulatory framework.

The ultimate mission of any government is to produce better public policies, which effectively deliver social goods, being at the same time business friendly and less costly for citizens. In ensuring a good and consistent process for introducing sound public policies, countries and international organizations developed standard definitions and principles which public policies need to embrace. RIA is a process of evidence-based policymaking, which helps in complying with better regulation principles and designing better regulations.

Internationally recognized standards for RIA are established by the Organization for Economic Co-operation and Development (OECD). RIA emerged as a policymaking process to help with producing better regulations. According to the EU 2009 Guidelines, RIA is "a set of logical steps to be followed when you prepare policy proposals. It is a process that prepares evidence for political decision-makers on the advantages and disadvantages of possible policy options by assessing their potential impacts."

Most of the countries with an effective RIA system have mandated it through the laws and/or government decrees and set up a strong oversight and scrutiny body. International best practices and recommendations of pertinent organizations suggest that, as RIA is an effort and time-consuming exercise, it should be applied to the normative acts featuring the most significant potential impacts.

IDENTIFYING INSTITUTIONS IN ENERGY SECTOR AND SELECTION CRITERIA

USAID Energy Program plans to provide general and detailed methodological training on Energy RIA. The goal of these training is to give the selected institutions the skills needed to undertake high quality Energy RIA and to familiarize officials with their obligations during the Energy RIA process. Conducting a RIA requires technical skills. Training and capacity building is thus of utmost importance for successful RIA implementation and systematization.

Once RIA is introduced in the regulatory processes, practical problems may occur, more often than technical ones, derived from misunderstanding or ignorance of theoretical aspects of RIA. Thus, training and familiarization with Energy RIA techniques should assist officials in its effective practical application.

This training will be targeted for those institutions that are developing and/or adopting energy policies, and primary and secondary legislation, i.e. those that are directly or indirectly involved in RIA process.

USAID Energy Program followed the next steps in the selection process of institutions to receive Energy RIA support:

At the initial stage, the USAID Energy Program identified several potential institutions, Non-Governmental Organizations (NGOs), universities, governmental institutions and other energy sector stakeholders who might be interested in Energy RIA training.

During the second stage, the USAID Energy Program developed a set of selection criteria. Two core criteria were identified:

1. Relevant institutions involved in developing legislation;
2. Capable of creating a sustainable system by providing on-going assistance to GoG staff in the Energy field.

At a third stage, USAID Energy Program assessed the capacity of interested institutions in Energy RIA training, whether they were directly or indirectly involved in the RIA process.

The final stage was the selection process. USAID Energy Program evaluated institutional candidates' technical capacity, training needs to achieve RIA competency and institution's ability to create long term sustainable Energy RIA capability. Below listed (table in the attached Appendix) institutions have been selected out of the sixteen identified institutions.

These institutions are the major players within the industry and NGOs. Hence, building their capacity will create the sustainable system where the selected institutions will be responsible and capable of delivering constant trainings to the GoG staff in the energy.

Priority was given to those relevant institutions involved in drafting, analyzing/providing feedback or adopting legislation since training for these institutions is more crucial for sustainability point of view than those not directly involved in this process.

Currently, a pilot RIA project is ongoing for the selected legislation packages. The ministries of Georgia and the representatives of the Parliamentary Secretary Office of Government are involved in a working group. With the help of foreigner experts, the working group is completing the impact analyses and developing RIA reports: e.g G4G supported Ministry of Economy and Sustainable Development (MoESD) and Ministry of Education and Science (MES) in the implementation of 2 pilot RIAs: RIA on Consumers' Rights Protection Law and RIA on Professional Education Law.

The description of the selected institutions and the reasons for selecting them are listed below:

One of the most important selected institutions is the MoESD. The Law of Georgia on Normative Acts commits the Government of Georgia and namely the MoESD to develop and submit new laws to the parliament with respective RIAs. The MoESD will bear the responsibility for carrying out RIA and drafting RIA reports.

USAID Energy Program met Ms. Ekaterine Mikabadze - Deputy Minister of the MoESD and Tea Loladze, Head of Regulatory Impact Assessment Economic Policy Department. Obtained information revealed the shortage of RIA skills within the MoESD, moreover, the group in charge of RIA so far is consistent of one-person. Nevertheless, she will need support in fitting the theoretical knowledge of RIA with the practical application in the specific field of energy. The MoESD envisages further staffing

for RIA, therefore new staff will apparently need assistance from USAID Energy Program in capacity building and institutional strengthening. In view of RIA skills shortage in Georgia, the parties agreed to have two Energy RIA trainings initially, one focusing on the Energy field and the other one assessing the impact of a draft law and market opening on vulnerable customers. As a pre-condition for RIA training USAID Energy Program will also deliver tailored training to create awareness on the functioning of an energy market and respective regulations.

The suggested trainings will enhance the capacity of the MoESD and create a knowledge pool capable of performing regular obligatory analysis. It will assist the MoESD to check whether the draft regulation is accompanied by the appropriate RIA document. In addition, the training materials will form a toolkit, which can be applied by the MoESD to create knowledge among the new staff. Hence, it will assist in maintaining the advanced expertise within a government, which is challenging in the light of high turnover.

However, from the viewpoint of creating a more sustainable system, USAID Energy Program deems the capacity building of selected NGOs, the Parliament and educational units very important, since it will ensure the presence of skills who will be in a position to provide assistance to civil servants responsible for carrying out RIA. In view of high turnover in the MoESD VS relatively low turnover in NGOs, such a tailored approach will have a long-term sustainable impact in terms of maintaining the required level of expertise.

In that regard among the selected intuitions for RIA training are:

The Association of Young Professionals in Energy of Georgia (AYPEG) - AYPEG is a NGO which supports public understanding and awareness of energy issues and facilitates the adoption of sustainable energy policies, activities and practices in the society through strategic partnerships, innovative research, education, consulting and advocacy. USAID Energy Program has reached out to Mariam Chachua, senior researcher at AYPEG. Association not only expressed an interest in Energy RIA training, but also referred to a potential future plan to commence working on RIA. Hence, USAID Energy Program selected the institution, as a potential supportive organization for the government in the field of RIA.

World Experience for Georgia (WEG) - is also among the identified institutions. WEG is an independent, not-for-profit think tank dedicated to strengthening Georgia's energy security and economic sustainability, supporting and challenging Georgian decision-makers at all levels to make informed decisions based on accurate analysis and knowledge, and providing a platform for engaging partners, stakeholders and citizens in the country's policy-making and in the debate about the future of the country in its path to Euro-Atlantic integration. USAID Energy Program team has reached out Mr. Murman Margvelashvili, founder of WEG, who had expressed interest in RIA trainings due to WEG plans to be involved in RIA issues in the future. Therefore, USAID Energy Program selected the institution, as another potential supportive organization for the government in the field of RIA.

The Parliament - In case of draft laws initiated in the Parliament, those who intend to propose the drafts which are subject to RIA, would be responsible to prepare a RIA report. In the Parliament the right of legal initiative belongs to MPs, committees and factions. The authors of RIA would seek assistance from the Parliamentary staff in carrying out RIA. At the Government level the unit responsible for the implementation and scrutiny of RIA would be the Parliamentary Secretary. The Secretary and Parliamentary Committees will select legal initiatives to be subject to RIA at the planning stage. In the Parliament, the Legal and Budgetary Units, Parliamentary Bureau and Committees review draft laws and explanatory notes, having the power to refuse issuing opinions and, thus, banning the draft law promotion. Currently, the Economic Units are involved in assessing the costs of policies for the public budget. These estimates could be also used for RIA.

Such tailored trainings will enhance the skills within the respective Units of the Parliament in terms of scrutinizing the RIA quality. Hence, these units will be able to check whether the proper RIA was prepared and consulted for the drafts which are subject to RIA.

Iliia State University (ISU) - is among the identified institutions. USAID Energy Program has contacted Mr. David Maisuradze, Associated Professor at Iliia State University. The University staff has been working on RIA on Electricity Trading Mechanism (ETM) with USAID Governing for Growth (G4G) for Georgia project. Despite having an experience in RIA process, they still expressed willingness to attend the trainings. The reason for selecting the University is the combination of their direct involvement and a great interest in the field of Energy RIA. Therefore, they can further aid those in charge of carrying out RIA in its improved understanding.

Such training will set up a sustainable system in which the selected institution, will be capable of providing ongoing training to the GoG staff in the energy. Hence, these institutions will be able to:

- Encourage and monitor the implementation of RIA;
- Organize planning of RIA exercises;
- Provide methodological support in carrying out RIA;
- Scrutinize RIA documents before they are submitted to stakeholders for consultation;
- Participate in networking and knowledge sharing activities with other institutions involved in carrying out RIAs.

GNERC is also among the selected institutions. However, GNERC management and commissioners expressed great desire for having CBA training rather than RIA due to a particular nature of their activities. Such training will enable GNERC to be more flexible and to function more effectively under the planned market structure. Suggested training will upgrade the skills of staff for an improved understanding of a systematic approach to calculating and comparing the benefits and costs of an action undertaken in the transition period. The request of GNERC is under consideration by USAID Energy Program, however the actual implementation is subject to USAID approval.

APPENDIX

THE LIST OF SELECTED INSTITUTIONS IN ENERGY SECTOR AND SELECTING CRITERIA

RIA Training Program					
#	Potential Entities for USAID Energy Project to Support	Scheduled to be trained	What type of RIA (General and Methodology)	Selecting Criteria	Current level of Capability
Entities Responsible for Legislation Development and Adoption					
1	Ministry of Economy and Sustainable Development of Georgia (MoESD)	✓	General and Methodology	Relevance from viewpoint of sustainability	Shortage of skilled staff in RIA Department
2	The parliament of Georgia	✓	Methodology	Relevance from viewpoint of sustainability	Shortage of skills
3	Georgian National Energy and Water Supply Regulatory Commission (GNERC)	✓	Methodology	Relevance from viewpoint of sustainability	Shortage of skills
Non-Governmental Organizations (NGOs)					
4	Association of Young Professionals in Energy of Georgia (AYPEG)	✓	General and Methodology	Relevance from viewpoint of sustainability	Shortage of skills
5	World Experience for Georgia (WEG)	✓	General and Methodology	Relevance from viewpoint of sustainability	Shortage of skills
Academic Institutions					
6	Ilia State University (ISU)	✓	Methodology	Relevance from viewpoint of sustainability	Shortage of skills

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