

ANNEX

ACTION FICHE GEORGIA – ENPI AAP 2008

1. IDENTIFICATION

Title	Support to the reform of criminal justice system in Georgia - CRIS N° ENPI/2008/19630		
Total cost	16 M €		
Aid method / management mode	Sector Policy Support Programme: - Sector budget support (centralised management) 15 M €; - Project mode (centralised, complementary TA) 1 M €.		
DAC-code	15130	Sector	Legal and Judicial Development

2. RATIONALE AND COUNTRY CONTEXT

2.1. Economic and social situation

The rationale of the EC in providing a sector programme to strengthen rule of law of the partner country is part of the overall objective of promoting good governance and assistance of the partner country to comply with its international and national legal obligations in the field of human rights. This will help to strengthen performance of sector institutions in line with democratic standards, which is a precondition for stability and security in the country, as well as improve service delivery in those institutions where the state has a special responsibility to guarantee human rights protection (i.e. penitentiary institutions), increase accountability and transparency and democratic oversight, independence and credibility of judiciary, all of which contribute to economic growth and consequently poverty reduction. Rule of Law is the priority area 1 within the ENP EU-Georgia Action Plan.

According to the IMF *Sixth Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility and Request for Waiver of Performance Criterion*, published in August 2007 the Economic performance in recent years has been impressive, with the establishment of macroeconomic stability, a dramatic fiscal turnaround, and remarkable improvements in governance and the business environment. The original targets under the PRGF arrangement have been reached or exceeded. Real GDP growth was 9.4 percent in 2006, accelerating to 11.4 percent in the first quarter of 2007. Private capital inflows were roughly 18 percent of GDP in 2006, more than financing the 14 percent of GDP current account deficit.

More recently during the last IMF mission to Georgia in November 2007 related to the assessments of recent economic developments and prospects for 2008, it has been noted that Georgia's economic performance continues to be strong, but signs of overheating are beginning to emerge. Twelve-month inflation was noted as 11.2 percent as of end-October 2007 and it was noted that it would be difficult to keep inflation in single digits for 2007 as a whole. It is, therefore, important that greater efforts be made to control liquidity and, in turn, the growth of monetary aggregates. For 2008, the mission recommended that the authorities target single-digit inflation. An IMF mission plans to visit Tbilisi again in the first quarter of 2008 to conduct discussions for the annual Article IV consultation and the first post-program monitoring report.

Georgia receives Sector Budget Support to strengthen the public finance management system of the country under ENPI 2007. Assessment of the macroeconomic policy and public financial management by reference institutions such as IMF or World Bank confirm that the country's financial systems, while not perfect, still qualify for budget support.

2.2. Cooperation policy of beneficiary country

The Economic Development and Poverty Reduction Programme (EDPRP) was finalised in mid-2003 and the priorities remain unchanged. These include achieving and sustaining rapid economic growth (at least 5 percent per year), reducing extreme poverty from 13.5 percent in 2005 to 5 percent or less by 2015 and overall poverty from 39.4 percent in 2005 to half that figure by 2015. The reform program also supports important features of Georgia's Action Plan under the European Neighbourhood Policy (ENP) and its Individual Partnership Action Plan for joining NATO (IPAP). An important development in terms of planning, implementing and monitoring EDPRP priorities is the Basic Data and Directions (BDD) document. This has been prepared as part of the process of developing MTEF and attempts to link overall national policies to sector strategies and the budget. The first BDD was for the period 2006-2009, it has subsequently been revised for the period of 2007-2010. In March 2007 the Government published the BDD for the period 2008-2011.

2.3. Government Sector Programme

The ENPI Country Strategy Paper for Georgia, released in March 2007 and the ENPI National Indicative Programme (NIP), covering the period 2007-2010 include as priority area 1: Support for democratic development, the rule of law and governance. The European Neighbourhood Policy (ENP) Action Plan also refers to the area of rule of law as priority number 1 with special emphasis on the judicial system, the penitentiary system and respect for human rights and fundamental freedoms in compliance with international commitments of Georgia (PCA, CoE, OSCE and UN).

Following up on previous assistance provided by the European Union (TACIS AP 2001, 2004, 2004bis, 2006, RRM July 2004, EUJUST THEMIS 2004/2005) the programme builds on previous commitments and ongoing reforms in the criminal justice sector and on governmental policy documents:

- Strategy of the reform of the Criminal Legislation of Georgia, endorsed by the Government and President in 2005 (elaborated with assistance of EU Rule of Law Mission) (*The Strategy*)
- Implementation Plan for the Strategy on Criminal Justice Reforms in Georgia (as amended by the State Commission on Coordination of Legal Reforms) (endorsed by the Government on 26 January 2007), (*The Implementation Plan*)

The *Strategy* and the *Implementation Plan* have been elaborated in a consultative process and enjoy a high level of ownership from the side of the government. It should be appreciated that a sector with such a large number of interlinked institutions is politically quite vulnerable. The *Strategy* provides a common framework and policy goals for all involved sector institutions. The *Implementation Plan* has been included in the governmental financial planning and expenditure frameworks (MTEF and BDD).

While *Strategy* and *Implementation Plan* may and should be subject to a review for adaptation to the current situation, it is agreed that review of the *Strategy* should take place in cooperation with EC in order to ensure that both documents stay in line with European standards¹.

EC has been supporting institutional capacity building for the Ministry of Justice of Georgia since 2004, also with the perspective of the sector budget support programme. Formally the Minister of Justice is in charge of coordination of these reforms on behalf of the government; however, in practice it has been difficult for the previous Ministers in office to fully implement this function. Since January 2007 intergovernmental consultation has decreased, coordination with donors has nearly ceased due to political instability. In September 2007 and later in January 2008 new Ministers of Justice have been appointed.

¹ During the previous PCA Committee in Tbilisi in September 2007 it was formally agreed that the government would launch the revision of the *Strategy* and the *Implementation Plan* in coordination with the European Commission. There has been no follow up on this issue by the government yet, according to the Ministry of Justice due to the political situation in the end of 2007 and elections on 5 January 2008.

A pre-condition to the sector programme will be re-establishment and formalisation of sector management by government: establishment of schedule and format for monitoring of progress and – if necessary – adaptation of Implementation Plan and possibly Strategy to current needs through transparent process and establishment of formalised donor coordination/ policy dialogue and stakeholder consultation e.g. with civil society. The Ministry of Justice is the main counterpart for the policy dialogue and negotiations related to the sector programme.

In Georgia the concept of using performance indicators is in general relatively new and has not been a feature of past government programmes. Traditionally performance was measured solely in terms of budget execution and this became meaningless due to inadequate revenues to meet budget commitments.

As for the criminal justice sector, preliminary areas for which performance indicators could be defined have been identified (refer to section 3.2). The EU-Georgia European Neighbourhood Action Plan also provides for some results to be achieved, which could be used for definition of performance indicators. Further analysis and dialogue with government will be necessary to agree on details.

Implementation of justice sector reforms has progressed in line mostly with the Implementation Plan: establishment of a number of important training institutions, substantial training activities over the past years already covering some of the novelties anticipated for the new CPC, substantial increase in salaries of key personnel throughout the sector and modernisation of human resources management, improvement of the infrastructure in the country. Still the institutions have seen frequent turnover of senior officials over the past three years, it can be anticipated that this will remain a problem in terms of sustainability for the years to come. In addition serious human rights concerns keep to be raised and capacity to fully understand and implement international standards seems to be limited from the top down to the bottom of some of the institutions and law-enforcement agencies.

In terms of developing an appropriate public finance management system in accordance with international standards and practices, the activity of the Government has focused on six major areas of structural reform: budget, treasury, revenue, procurement and internal and external control. It is also accepted that significant further reforms are required to ensure that an efficient, effective and transparent public finance system (PFS) exists, one that all stakeholders can have confidence in.

With the SPSP on Public Finance Management under ENP 2007 budget, EC provides additional support to this process by trying to support some of the areas where improvements are urgently needed such as Internal and External Audit. The Ministry of Justice is one of the pilot institutions of this new programme and currently already receives support via technical assistance (in the framework of a broader capacity development project) to strengthen its capacity in financial management. A full PEFA has been conducted jointly by EU and World Bank in summer 2007; however the final results are still not published.

From the above stated it can be concluded that the relevant eligibility criteria for Sector Budget Support are fulfilled with (a) a well defined sector policy for the Criminal Justice Reform and (b) a well defined programme to improve PFM supported by EC under ENP AP 2007.

2.4. Lessons learnt

The lessons learned from the previous Budget Support Programmes (EC FSP 1996-2006; PFM SPSP ENP AP 2007) have shown that Georgia qualifies for budget support and that the system is understood by the Government.

In the rule of law sector EC has been closely involved in cooperation programmes with the Georgian government since 2004. With political support of the EUJUST THEMIS mission the government has managed to establish in a consultative and transparent process a policy document that complies with European standards. This is a major achievement.

The management of these important reforms in 2006 and 2007 has become weak, but the cooperation with the government in this sensitive sector will only be possible if the sector management is put back on track. EC is ready to assist the government in setting up such coordination mechanism.

2.5. Complementary actions

For the preparation of this programme a Justice Sector Study was carried out in the second half of 2006. In the coming months a programme consisting of a number of technical assistance projects will be launched under the TACIS AP 2006 to provide targeted assistance to key institutions (Institutional Capacity Building Ministry of Justice, Support to Public Defenders Office to strengthen human rights protection in criminal justice proceedings, Support to Reforms of the Juvenile Justice System, Strengthening Public Finance Management in the Ministry of Justice). Currently under Implementation are assistance programmes to strengthen institutional capacities of the Ministry of Justice (until October 2008) as well as to support reforms of the penitentiary and probation systems (until August 2008). An important complement in the sector is also a number of EIDHR projects with NGOs in the field of rule of law and specifically torture prevention and rehabilitation of torture victims.

2.6. Donor coordination

The main donors are associated with Government discussions in the framework of the implementation of the MTEF process. The Government is coordinating with the donor community to ensure the consistency of policy reforms by consolidating the reform agendas of the Individual Partnership Action Plan for joining NATO (IPAP), the EU Neighbourhood Policy (ENP) and other policy document. The government needs to take the lead in a structured dialogue on criminal justice reforms and human rights with donors and mandated international organisations. Relevant donors are EU, EUMS with different scope of involvement, USAID, USDOJ, different agencies from UN and Council of Europe and OSCE. Establishment of donor coordination and more coherent and formalised management of these major reforms based on past achievements should form part of the conditionalities to enter into sector budget support. Some EU Member States have expressed strong interest in close coordination with EC for this sector programme.

3. DESCRIPTION

3.1. Objectives

Objective of the proposed sector policy support programme is to strengthen rule of law and human rights protection in Georgia. Implementing the governmental priorities in this sector, as stated in the ENP AP as well as related Georgian Government policy documents (Strategy of the Reform of the Criminal Legislation of Georgia), will improve compliance with international human rights standards, Georgia has committed to. Human rights protection is at the foundation of the partnership between Georgia and the European Union. Improvements in this area are under way, but this is a challenging process with many actors involved. Continuation of the reforms in a coherent manner will contribute significantly to stability and security in Georgia.

3.2. Expected results and main activities

Since the criminal justice sector is extremely broad, it is important to focus on number of key results. This selection is necessarily based on the urgency of the issue and also feasibility for real monitoring (some sector institutions are extremely sensitive). The areas below have been proposed based on EC experience and expertise over years, recent developments and assessments, as well as on the governmental reform agenda and ongoing reforms:

- Establishment/strengthening of transparent and formal sector management (including donor coordination, Pre-Condition);
- Penal reforms and improvement of detention conditions in line with CPT recommendations;
- Reduction of prison population in line with Council of Europe recommendations (the government has to develop a strategic approach in this area);
- Introduction of rehabilitation and re-socialisation programmes in penitentiary and probation;
- Enhancement of the use of alternatives to imprisonment, especially other measures provided by law other than bail;

- Establishment of a comprehensive juvenile justice system that complies with international standards and UNICEF recommendations;
- Strengthening independence of judiciary (coherent implementation of existing reform agenda);
- Enhancement of free legal aid system (in line with current planning);
- Establishment of independent monitoring of ongoing reforms and human rights protection by enhancing the work of the Public Defender's office and immediate implementation of the Optional Protocol to the UN Convention against Torture (should have been in place since June 2007, proposals by Public Defender and civil society have been put on hold).

3.3. Stakeholders

In May 2006 the government established a *Commission for the Support of the Legal Reforms Coordination (The Commission)* "to ensure the coordination of the ongoing legal reform in the country" (Order of the Government of Georgia of 2 May, 2006 establishing the *Commission*). This *Commission* is chaired by the Georgian Prime Minister and has as members high level officials from bodies relevant to the criminal justice sector. It shall guide and monitor implementation of reforms. The Commission devoted several sessions to the finalisation of the *Implementation Plan*. The Minister of Justice (MoJ) is specifically mandated to lead donor coordination and contact with foreign experts.

The justice sector covers a considerable number of sector institutions (Ministry of Justice as main coordinator, legal advisor to the government and body executing penalties), Judiciary (i.e. Court System, in Georgia not administered by the Ministry of Justice, but by the High Council of Justice), Ministry of Internal Affairs, Office of the Prosecutor General, Office of the Public Defender, Bar Association. Donors (EC as a lead donor, EUMS, USDOJ, USAID), international organisations (UNDP, UNICEF, OSCE, COE) as well as local and international human rights watchdogs and professional associations are important stakeholders in the reforms.

3.4 Risks and Assumptions

Risks:

- Delays in establishment of structured sector management for review of Implementation Plan and Strategy (proposed pre-condition for engaging in SPSP);
- Political instability and frequent changes of staff, namely at the senior management level might hinder the successful implementation of reforms and policy dialogue;
- Lack of human resources and not sufficient training of the staff may cause obstacles in the implementation of the reforms;
- Delays in adoption of the necessary policies and legal basis by relevant Georgian authorities.

Assumptions:

It is assumed that the Georgian beneficiaries will contribute to the logistical arrangements in order to ensure the successful implementation of this programme

3.5 Crosscutting Issues

In essence the project targets human rights protection and promotion as well as good governance as it supports intergovernmental consultation and coordination within a sector that has been reason for serious human rights concerns over the past decade. As the project aims to improve juvenile justice in Georgia, it directly promotes children's rights.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Untargeted budget support programme, centrally managed.

The TA component will be implemented through centralised management.

4.2. Procurement and grant award procedures

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

4.3. Budget and calendar

The programme has a budget of €16 million, out of which €15 million will be used for budget support and €1 million for technical assistance.

The € 15 million component of budget support will be disbursed through 3 instalments. The first instalment of € 5 million will be payable at the signature of the Financing Agreement to the Georgian State budget, subject to pre-conditions (e.g. with regard to sector management). The balance of €10 million will be paid in 2 equal instalments in 2009, 2010 against successful achievement of policy conditions to be further identified in areas such as listed under section 3.2.

A TA provision is included in the programme to finance (a) evaluation, audit, and visibility actions (indicatively € 0.50m), (b) independent expertise to assess the fulfilment by the GoA of the conditions for disbursements (indicatively € 0.25m) and (c) capacity building to the Recipient Institutions (indicatively € 0.25m).

The operational duration of the programme should indicatively be of maximum 36 months as from signature of the Financing Agreement.

4.4. Performance monitoring and criteria for disbursement

The proposed budget support programme will be subject to a number of agreed conditions and benchmarks all of which will be based on the agreed Government strategy for criminal justice reforms and priorities out of the EU/Georgia ENP Action Plan, linked to results in the areas listed under 3.2. It is currently discussed with EU MS, which also plan to support this sector, how coordination can be enhanced in order to establish a common policy matrix and policy dialogue with the government. Considering the current stage of reforms, it is envisaged that the conditions will be a mix of “process related”, outcome and impact based conditions.

4.5. Evaluation and audit

Evaluation of the programme as well as external audits may be carried out if so decided by the Commission. In such a case, they may be entrusted to independent consultants.

4.6. Communication and visibility

Communication and visibility will be organised in close cooperation with the Ministry of Justice and in accordance with the orientations of the Manual on Visibility of External Actions (e.g., press release at the signature of the FA, visibility for reports and studies, etc).