

# Report on gap analysis of the current legislation in Georgia and development of a roadmap outlining EU4Climate support to Georgia in alignment with EU *acquis* included in Bilateral Agreements on Climate Action and/or Energy Community Treaty (Lot 1)

Part I: Review of relevant climate *acquis* (EU and Energy Community) applicable to Georgia

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Produced by Irakli Samkharadze  
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## List of abbreviations

|                 |   |
|-----------------|---|
| AA              | EU-Georgia Association Agreement                      |
| BUR             | Biennial Update Report                                |
| CO <sub>2</sub> | Carbon Dioxide  |
| CAP             | Climate Action Plan                                   |
| EaP             | Eastern Partnership Initiative                        |
| EU              | European Union  |
| EnC             | Energy Community                                      |
| F-gases         | Fluorinated Greenhouse gases                          |
| GoG             | Government of Georgia                                 |
| IPCC            | Intergovernmental Panel on Climate Change             |
| GHG             | Greenhouse Gas  |
| KP              | Kyoto Protocol  |
| LEDS            | Low Emissions Development Strategy                    |
| LTS             | Long-Term Strategy for Low Emission Development       |
| MRV             | Measurement, Reporting and Verification               |
| NAMA            | Nationally Appropriate Mitigation Actions             |
| NAPA            | National Adaptation Programmes of Action              |
| NAP             | National Adaptation Plan                              |
| NECP            | National Energy and Climate Plan                      |
| NDC             | Nationally Determined Contribution                    |
| ODS             | Ozone Depleting Substances                            |
| PA              | Paris Agreement                                       |
| SDG             | Sustainable Development Goal                          |
| UNFCCC          | United Nations Framework Convention on Climate Change |

## 1. Background and scope

### 1.1. Climate stocktaking in Georgia

It is no longer a fresh word that Georgia is heavily impacted by climate change. Frequent natural disasters caused or intensified by climate change adverse effects result in substantial economic losses and threat to people's life.<sup>1</sup> Translating the natural risks into policy actions, Georgia has submitted the first international legally binding climate commitment – Intended Nationally Determined Contribution (INDC) – to curb carbon emissions as non-Annex I party to UNFCCC on 25 September 2015, ahead of the landmark Paris climate agreement. Being a responsible member of the international community, Georgia has pledged to reduce GHG emissions unconditionally by 15% (with additional 10% of conditionality) compared to the business as usual (BAU) scenario by 2030.<sup>2</sup>

In the aftermath of the Paris Agreement ratification on 8 May 2017, Georgia is now developing an updated NDC document with more ambitious commitments complemented with the fairness principle. Both mitigation and adaptation to climate change are embedded in Georgia's NDC with respective policy orientations. Also, the implementation of the Paris Agreement and the review of international climate commitment require alignments of already assumed obligations in national legislation and the legal harmonisation – i.e. convergence of domestic laws and policy goals. The new commitments will also largely be dependent on the availability of external financial and human resources supported by the international donor community.

The harmonization of Georgia's national legal framework is not pursued in a silo mode. It is rather influenced by the partnership between Georgia and the European Union (EU). The EU, as an "exporter" of rules and regulations, supports the country to approximate its climate and energy law to the European standards. This process has been legalised in 2014 by the signature of the Association Agreement (AA), which has in more recent years been endorsed by Georgia's accession to the Energy Community Treaty (EnC). In other words, Georgia is going through a Europeanization of its legal framework, when a top-down process translates change from European level to the national one and stimulates the local agenda. It should, however, be mentioned that approximation of national laws is a separate norm-making process with respect to national regulatory procedures to apply.

Pursuant to these legal instruments, Georgia is in a unique situation accepting EU's climate *acquis communautaire* (hereinafter '*acquis*') that transcends the national borders and is encapsulated in Georgian regime. Accordingly, the country largely benefits from harmonizing the obsolete or rather uneven climate legislation under the footprint of EU standards. This also contributes to the development of the legal field of climate change that is lagging behind compared to other areas.

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<sup>1</sup> See the Third National Communication of Georgia to the UN Framework Convention on Climate Change (UNFCCC).

<sup>2</sup> INDC of Georgia.

## 1.2. Project description

The project is launched within the framework of the EU4Climate Programme, a regional climate change initiative for the Eastern Partnership countries (EaP) financed by the European Union and implemented under the indirect management of the United Nations Development Programme (UNDP). The objective of the EU4Climate Programme is to reinforce climate action and to support the development and implementation of climate-related policies in respective countries, which contribute to their low emission and climate resilient development and their commitments to the 2015 Paris Agreement (PA) on Climate Change.

The present report is prepared as a part of a contract assignment with the Energy Community Secretariat under the project titled “Gap analysis of the current legislation in Georgia and development of a roadmap outlining EU4Climate support to Georgia in alignment with EU *acquis* included in Bilateral Agreements on Climate Action and/or Energy Community Treaty.”

This report forms the first pillar of the assignment and outlines the detailed review and analysis of the relevant EU climate *acquis* applicable to Georgia under the Association Agreement and Energy Community Treaty along with the scrutiny of the existing national legislation in Georgia both in place and in draft. The review of national strategies on the implementation of the AA/EnC Treaty and analysis of climate reporting also fall under the scope of the present report.

The report also identifies key actions and results taken by Georgia in line with its climate commitments under the AA and EnC as well as priority actions outlined in the existing climate policies and legislation. For this particular purpose, desk research and descriptive analysis of climate *acquis* as well as main national legal acts and strategy documents are applied in this study. Apart from this report, three other deliverables are expected to be prepared including the detailed gap analysis and step-by-step Roadmap to the EU4Climate project, culminating into an overarching final report.

## 2. Review of Georgia’ climate commitments under the Association Agreement with the EU

### 2.1. The legal nature

The AA is an ambitious and pioneering agreement putting the dynamics of the EU-Georgia relations into legal shape, supporting the core legal reforms and defining a wide range of areas for Georgia to approximate to the EU legislation. The AA stresses the necessity of cooperation on climate change issues in the following spheres: mitigation

and adaptation to climate change, carbon trade, integration into industrial policy on climate change issues and development of clean technologies.<sup>3</sup>

Upon entering into force on 1 July 2016, the AA became automatically a legal act incorporated into Georgian legal system. According to Article 7 (3) of the Law of Georgia of Normative Acts and Article 3 of the Law of Georgia on International Agreements, the AA, as an international agreement, enjoys supremacy over the domestic law as long as it does not contradict with the Georgian Constitution, Constitutional Law and the Constitutional Agreement of Georgia.<sup>4</sup> Therefore, the AA provisions, including the Annex XXVII (climate action) has got a strong legally binding status upon Georgia.

Furthermore, specific provisions that are to be adopted in Georgia are stemming from the regulations as the legal acts of the European Union. Albeit a regulation represents the secondary source of EU legislation, it is a directly applicable and immediately enforceable law in all EU Member States as opposed to a directive, which needs to be transposed into national law.<sup>5</sup> This proposition, however, does not apply to Georgia, as an EU associate country. Namely, Georgia is a non-EU member state and the EU regulations do not apply automatically in its domestic legal system. Therefore, in order to approximate the national legislation to the negotiated provisions of the EU regulations enshrined in the AA, the formal adoption of EU standards in the form of updating the existing legislation or adopting new ones (primary or secondary by-laws) is necessary. The regulations can be implemented by means of a variety of national legislative procedures depending on specific subject matter.

## 2.2. Description of applicable EU climate *acquis* under AA

The AA requires alignment with the EU climate policy in designing Georgia's National climate strategy. While Article 310 refers to the Low Emission Development Strategy (LEDS), Nationally Appropriate Mitigation Actions (NAMA) and National Adaptation Programmes of Action (NAPA), Article 312 mandates the country "to carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXVII". The commitment to tackle climate change is also underscored in the preamble of the AA.<sup>6</sup> Some more general considerations to the climate change can be found in the Chapter 4 of Title VI ("other cooperation policies") of the AA, which specifically refers to climate action.

Nevertheless, the key climate obligations are to be found in Annex XXVII of the AA, laying down the binding legal commitment for designing the domestic climate legislation. More specifically, the implementation of the *Regulation (EC) No 842/2006 of the European*

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<sup>3</sup> Article 310 of the AA.

<sup>4</sup> Article 7 (3) of the Law of Georgia on Normative Acts.

<sup>5</sup> For more detailed information, see < [https://europa.eu/european-union/eu-law/legal-acts\\_en](https://europa.eu/european-union/eu-law/legal-acts_en) > accesses on 10 December 2019.

<sup>6</sup> According to the international law, the preamble of an international agreement is not necessarily legally-binding, but it very well reflects the essence and general nature of the agreement.

*Parliament and of the Council of 17 May 2006 on certain fluorinated greenhouse gases* (hereinafter “F-gases Regulation”) into the Georgian legal system within five years after entry into force of the AA will directly contribute to combat climate change, as F-gases are controlled under the KP and thus are subject to the UNFCCC. The implementation of *Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer* (hereinafter “ODS Regulation”) will also directly contribute to combating climate change, since, in addition to depleting the ozone layer, most ozone depleting substances controlled by the Montreal Protocol are also powerful greenhouse gases.

Moreover, the AA defines the specific provisions under F-gases and ODS regulations that need to be incorporated into the national legal system within the stipulated timeframes. Therefore, the implementation progress and the existing gaps shall be checked according to the requested provisions in the course of this assignment (Deliverables 1-4). This may, *inter alia*, include the compliance check to a) develop the legally binding instruments: drafting and adopting persistent national legislation and by-laws as well as amending the existing ones accordingly; b) review licensing conditions and enforcement measures; c) establish training and certification requirements (Article 5, F-gases Regulation) and a ban of the production of controlled substances (Article 4, ODS Regulation); d) design the competent authorities, reporting systems and other non-legally binding tools, such as specific programmes contributing to the implementation process.

### 3. Review of Georgia’s climate commitments under the Energy Community Treaty

#### 3.1. Accession legal landscape

On 1 July 2017, Georgia has acceded to the Energy Community Treaty, which should be considered as an “endorsement” of already-assumed legal obligations under the AA and the obvious manifestation of creating a stable energy regulatory and market framework. Georgia’s accession to the Treaty is regulated by the Protocol Concerning the Accession of Georgia to the Treaty Establishing the Energy Community (hereinafter “Accession Protocol”). Like the AA, in its legal nature, the Protocol is an international treaty binding on Georgia, which enjoys supremacy *vis-à-vis* conflicting national laws. This requires approximation of the country's national legislation with the EU energy *acquis*, within the strictly defined timeframe.

In terms of climate change mitigation, the commitments taken to promote energy efficiency and renewable sources of energy are of particular importance. However, since there is no pre-defined formula of climate-relevant *acquis*, the detailed review of Energy Efficiency and Renewable Energy provisions coupled with environmental legislation fall beyond the scope of this entire assignment. Therefore, the report will rather concentrate on the classic climate legislation – ie. the ones, which: (1) establish a clear human-caused GHG emissions reduction potential and forming a tool (legal, political or financial) for



mitigation and adaptation; (2) contribute to preparing and implementing the national climate change strategies and action plans (e.g. LEDS, NDC, Climate Action Plan) and removing the barriers to implement mitigation activities, such as lack of technologies, finance and implementation capacity as well as lack of data, regulations & standards, Measurement, Reporting and Verification (MRV), institutional capacity and political ownership.

### 3.2. Description of applicable EU climate *acquis* under EnC

Echoing above, two pieces of legislation should be taken into consideration in this context: (1) *Recommendation on preparing for the development of integrated national energy and climate plans by the Contracting Parties of the Energy Community* (hereinafter “EnC Recommendation 1”), including Policy Guidelines (PG 03/2018) on the development of NECPs; (2) *Recommendation on preparing for the implementation of Regulation (EU) 525/2013 on a mechanism for monitoring and reporting greenhouse gas emissions*<sup>7</sup> (hereinafter “EnC Recommendation 2”). The *General Policy Guidelines on the 2030 targets for the Contracting Parties of the Energy Community*, adopted in November 2018 for CPs to establish three separate energy and climate targets<sup>8</sup>, can also be mentioned in this context. However, it does not provide specific legal obligatory framework to Georgia and can be left out of the detailed scrutiny of this assignment.

These recommendations are made by the Ministerial Council, as the highest decision-making body of the Energy Community. According to Article 76 of the EnC Treaty, a recommendation has no binding force for the parties, including Georgia. They are not included in Accession Protocol either and therefore are not characterized with binding force from this legal instrument either. However, Georgia still “shall use their best endeavours to carry out recommendations” by virtue of its accession to the Energy Community and, therefore, the implementation progress of these two Recommendations article by article should also be respectively tracked down within the domestic regulatory system.

## 1. The national legal framework and climate reporting

### 1.1. Existing and draft climate legislation in place

Some legal foundations for the implementation of the early-mentioned instruments can be found, in principle, within the existing climate legislation in Georgia, although somewhat faulty and inadequate. This jeopardizes the implementation of AA and EnC conditions. The country does not operate a comprehensive, dedicated legislation of climate change. Since there is no single climate legal act in place, several sectoral laws

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<sup>7</sup> Not covered by legally binding AA and Accession Protocol.

<sup>8</sup> Namely targets for: (1) energy efficiency, (2) contribution of renewable energy sources, and a (3) GHG emission reduction target.



and regulatory measures dealing with climate related matters are scattered in the primary and secondary legislation. The legal acts outlined below should be analysed in detail to verify compatibility with the listed climate commitments in previous chapters.

It is *the 1996 Law of Georgia on Environmental Protection* to be invoked in the first place as a key primary national act providing the foundation for the establishment of a domestic environmental legislation including the general reference to climate change (Article 51) and protection of the ozone layer (Article 52). The second significant primary national legal act to be scrutinized in this light is the *1999 Law of Georgia on Ambient Air Protection*. Its chapter XV (Global and Regional Management of Ambient Air) contains ODS relevant provisions (Article 54), within five paragraphs, which have been amended in 2007, 2010, 2011, and 2013. Further to this, the *Environmental Assessment Code* has been adopted on 1 June 2017, whereas the vulnerability of the activities to climate change and monitoring greenhouse gas emissions (Article 10) are mentioned accordingly.

Based on this desk research, it is to claim that some references to ODS do exist in Georgian legislation. However, they do not relate to ODS alternatives. No existing legal act or explicit addresses have been found with regard to the F-gases. Nevertheless, what needs to be mentioned is the ODS and F-gases draft laws in place that have been prepared by the EU funded ClimaEast facility as a precursor of the EU4Climate project. According to the findings of ClimaEast, there are two possible ways to approximate the Georgian climate domestic legislation to the EU ODS and F-gases requirements. One option is to review and adjust the existing legislation, while another path to follow is adopting separate national legal acts on ODS and F-gases. It should also be stressed that the latter has been recommended by the ClimaEast Expert Facility project in order to avoid the high number of specifying amendments and supplements. This is still *work-in-progress* to be studied thoroughly in the ambit of the second deliverable of the present assignment.

The *Law of Georgia on Ambient Air Protection* has been amended in 2016 and in 2017 to accommodate climate provisions. More recent amendment to the same primary law based on the draft laws on ODS and F-gases are now deliberated in the parliament, initiated by the GoG registered on 10 April 2019. This amendment has passed two hearings and is pending to the final adoption. According to the explanatory note of the draft law, the overall objective of the amendment is to align Georgian climate legislation to the requested EU standards. The amendment should be accompanied by technical guidelines in a form of secondary laws.<sup>9</sup> Therefore, this draft law together with other supplementary documents will be checked in detail against the EU climate *acquis* to assess the state of compliance, to gauge the remaining legal gaps article by article and to analyse whether the implementation process corresponds to Georgia's commitments under the AA and EnC treaty.

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<sup>9</sup> The draft technical guidelines will be requested from the Ministry of Environmental Protection and Agriculture of Georgia for further compliance check in the light of this assignment.

## 1.2. National policies and sectoral strategies

Georgia is characterized by a low level of GHG emissions per capita. At the same time, the country lacks a comprehensive national framework on climate change to implement the afore-reviewed commitments under the various strategies and plans that are currently in preparation. Thus, the following documents and strategy guidelines shall be scrutinized in a detailed manner to define the state of play and monitor the implementation of climate commitments thereof:

**The National Strategy on Sustainable Development Goals** has been quite recently adopted by the GoG, on 12 November 2019. 93 Action Points and 201 Indicators on 17 SDGs have been set in place by the strategy to nationalize and coordinate the global development goals. Among other things, the strategy points out the importance of SDG 13 (climate action) and places its emphasis on sectoral strategies, such as NDC, CAP, NAP and LEDS.

**The Social-economic Development Strategy of Georgia 2020**, adopted on 17 June 2014, refers to attracting "environmental investments from international funds of UN Framework Convention on Climate Change (Green Climate Fund, Global Environment Protection Fund, etc.) in order to meet the requirements of the Convention."

**The National Environment Action Programme (2017-2021)**, adopted on May 2018, represents the country's main strategic document in the field of environment. The Programme indicates Georgia's progress in legal approximation processes for climate action under AA and defines the long-term priorities and plans for the sector.

**The Low Emissions Development Strategy** of Georgia has been prepared and finalised in September 2017, but it has not yet been adopted by the government. Some actions defined by the strategy have been transferred into the National Environmental Action Plan 2017-2020. To a large degree, the measures planned within LEDS and the actions to be implemented to fulfil Georgia's commitments under the AA and EnC are harmonized. Thus, implementation of the measures stipulated by LEDS should in fact contribute to the fulfilment of the EU climate *acquis* commitments.

**The Climate Action Plan** is currently being prepared with the support of the German Government, targeting the period of 2021-2030. The CAP will be covering Georgia's updated NDC mitigation ambition and its sectoral implications<sup>10</sup>, with potential 2050 pathways to long term decarbonisation. The CAP will also include the adaptation component. As a key milestone towards the implementation of AA/EnC commitments, the CAP process should be analysed respectively throughout the entire process.

**The preparation of the National Energy and Climate Plan** is recommended by the Energy Community, as explained above. The NECP should address the five dimensions

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<sup>10</sup> Electricity, transport, buildings, industrial energy, industrial processes, waste, agriculture, Forestry and Land-use (AFOLU).

of Energy Union<sup>11</sup> and should ensure coherence with PA as well as other possible long-term energy and climate targets for 2030. (Article 1, EnC Recommendation 1). At the time of writing (December 2019), GoG has not yet presented analytical and technical aspects of the strategy. In addition to this, the NECPs are often misinterpreted among Georgian stakeholders in connection with NDC (decarbonisation dimension), CAP and LEDS.

**National Renewable Energy Action Plan** and **National Energy Efficiency Action Plan** are put aside from the explicit scope of this assignment. Some aspects, nevertheless, might be checked respectively during the gap analysis process. It should also be noted that draft laws on renewable energy and energy efficiency buildings are submitted to the parliament of Georgia.<sup>12</sup>

### 1.3. Climate reporting and MRV

Climate reporting responsibilities and obligations are mainly based on the international agreements and treaties (UNFCCC, Vienna Convention for the Protection of the Ozone Layer, Montreal protocol on Ozone Depleting Substances, Kyoto Protocol, Paris Agreement) ratified by the parliament. Georgia lacks the normative framework that will act as a basis for a binding climate reporting and MRV system in the national legislation. State entities (ie. GeoStat<sup>13</sup>) are limited in performing tasks which are not directly assigned to them by relevant legislation. Therefore, climate reporting obligation mostly relies on a goodwill of data providers and has relatively uncategorized nature.<sup>14</sup>

Going beyond discussing the institutional and legal set-up climate reporting, it must be mentioned that the AA does not explicitly refer to climate reporting obligation. Therefore, the reporting obligations must be checked against the **Association Agreement Implementation Action Plans (2016-2019)**, the **third National Communication** and the **second Biennial Update Report** under UNFCCC processes and 2006 IPCC GHG Inventory Methodology. EnC Recommendation for compliance with EU 525/2013 Regulation on a mechanism for monitoring and reporting GHG emissions should also be studied against these documentations and along with the recently released **Annual Implementation Report 2018/2019** by the Energy Community Secretariat.

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<sup>11</sup> 1. Energy security, solidarity and trust; 2. A fully integrated energy market; 3. Energy efficiency; 4. Climate action – decarbonizing economy; 5. Research, innovation and competitiveness. For detailed analysis, see EU Commission Communication “A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy.”

<sup>12</sup> While the renewable energy draft law is registered on 24 July 2019, energy efficiency buildings draft law is registered on 21 June 2018. Draft law on Energy and Water Supply is also pending to approval.

<sup>13</sup> National Statistics Office of Georgia <<https://www.geostat.ge/ka>> accessed on 27 November 2019.

<sup>14</sup> For detailed analysis, see Background Paper on a Legal Setup for MRV in Georgia prepared under GIZ “Information Matters” Project (PN: 2012.9020.4-003).

## 2. Concluding remarks

### 2.1. Wrapping-up

This report, as the first deliverable of the project, sheds a light on existing climate legislative framework in Georgia, considering climate commitments deriving from the EU-Georgia Association Agreement and Georgia's accession to the Energy Community Treaty. It applies desk research and provides a theoretical underpinning to verify whether domestic legislation in Georgia is compatible with the EU *acquis* included in the bilateral agreements on climate action and Energy Community Treaty.

To recap, EU regulations on ODS and F-gases have been identified as the key legally binding acts derived from the AA that need to be transposed into Georgian domestic legislation. It has also been claimed that, although EnC Recommendations on NECP and GHG monitoring and reporting jointly do not establish legally binding nature, it is in the best endeavour of Georgia to implement these pieces of legislation into national content. Therefore, the national regulatory and strategy framework as well as the climate reporting requirements should be checked against the existing and draft national laws and policy actions.

Some other recommendations<sup>15</sup> and key takeaways can be summarized as follows:

- Approximate Georgia's climate legislation to the ones of the EU as envisaged by the Association Agreement in accordance with the relevant Annexes thereof;
- Recognize the specific nature of existing climate commitments under the EnC treaty and create synergies between the AA and EnC climate *acquis*;
- Elaborate the updated Nationally Determined Contribution (NDC) document, taking into consideration the EU association process;
- Mainstream climate action in sectoral policies and systemize the national programmes and policy documentations to implement climate action across sectors;
- Enhance Georgia's transparency framework for climate action through a robust national MRV system for the monitoring and reporting of climate policies, measures and greenhouse gas emissions on the basis of the EU model;
- Finalize amendments to the normative acts or adopt the draft pending laws in order to ensure full and timely transposition and implementation of climate *acquis* in Georgia;
- Consolidate and streamline multiple climate planning processes (NDC, CAP, LEDS, NECP, NAP, LTS) due to the diversity of different directions to align the processes in the best way possible;
- Prepare and follow up the roadmap for EU approximation in the climate change field and apply step-by-step guidance of the implementing activities under each legislative act.

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<sup>15</sup> The detailed step-by-step recommendations to be included in the final report.

## 5.2. The next steps

As per the next steps of the assignment, the compliance check of national legislation must be applied against the EU main legislative acts enshrined in the Annex XXVII of the AA and EnC Recommendations 1 and 2. The specific provisions of the EU ODS/F-gases regulation such as the designation of the competent authorities, reporting obligations and certification requirements along with conditions should be examined in detailed manner and legislative gaps analysed. Whenever the existing legislation and draft national laws in place do not suffice to monitor the implementation progress, the policy documentations and strategies listed above should be scrutinized respectively.

Based on performed desk analysis and identified legislative gaps (upcoming Deliverable 2) a Roadmap for the EU4Climate support to Georgia will be developed providing a set of recommendations on the integration of the existing bilateral agreements on Climate Action and Energy Community Treaty into relevant national strategic planning and legal drafting. At the end, the final report will be delivered comprising of the gap analysis, the results of the field interviews with state authorities and other key stakeholders and a complete Roadmap for EU4Climate support outlining priority actions and specific recommendations for Georgia.