



**Evaluation of the Economic Part (DCFTA) of the Association  
Agreement between the European Union and Georgia (2014-  
2015) – Public Procurement**

**Policy Document**

Tornike Zurabashvili

Georgia's Reforms Associates (GRASS)

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## **About the Research**

The research has been carried out by Tornike Zurabashvili, at Georgia's Reforms Associates, in the framework of Think Tank Young Professional Development Program of Open Society Foundation. The research process was conducted from November 2015 to April 2016.

The presented report was originally written in the Georgian language. The document was translated in English by Shota Gelovani.

## **About the Organization**

Georgia's Reforms Associates (GRASS) is a non-partisan, non-governmental policy watchdog and think tank, which conducts research and public policy analysis, and provides advice and project management in the fields of public policy and public administration reform.

27 Mitskevichi Street, Tbilisi, Georgia, 0194

Tel.: +995322222913

[www.grass.org.ge](http://www.grass.org.ge)

[grass@grassgroup.org](mailto:grass@grassgroup.org)

## Introduction

Public procurement is one of the key components of the Association Agreement (AA) between the European Union and Georgia, the association agenda and the 2015 and 2014-2017 Action Plans of the Deep and Comprehensive Free Trade Agreement (DCFTA).

A separate chapter (Chapter 8) of the Association Agreement is devoted to the public procurements in the Title IV (trade and trade-related matters). This Chapter of the agreement envisages mutual access to public procurement markets on the basis of the principle of national treatment at national, regional and local level for public contracts and concessions in the traditional sector, as well as in the utilities sector that will allow Georgian companies to participate in state procurements of the European Union countries.<sup>1</sup> It is noteworthy that the agreement is valid only for those procurements that exceed the monetary thresholds set by the agreement.

The opening of the procurement market is connected with a gradual alignment of Georgia's state procurement legislation with respective directives of the European Union. The EU's public procurement market will be opened for Georgian companies gradually, in the course of eight years from the enforcement of the Association Agreement.

In the framework of the Association Agreement, Georgia made several important commitments on carrying out reforms in the field of state procurement. Successful implementation of these reforms is important not only with regards to the fulfilment of commitments made in the Association Agreement, but also to improve the functioning of public institutions, in general.

Through the last two decades, Georgia achieved important progress in increasing efficiency and transparency of the state procurement system. The reforms process of 2009-2010 is of special importance, as it provided for a full transfer of the procurement system to an electronic platform. Nevertheless, plenty of legislative and institutional issues require further upgrade.

Alignment with the European legislation will make the state procurement system even more transparent and competitive. On the road to the gradual alignment with the EU regulations, permanent monitoring of achievements and an active engagement of civil society organizations in this process is crucial.

The given document aims for the aforementioned goal. Its objective is to evaluate the completion of commitments made via the Association Agreement in the sphere of public procurements in 2014 and 2015, thereby promoting intensification and improvement of dialogue on European integration between the representatives of the civil society and the research institutes, on the one side, and the Government of Georgia, on another. The author hopes that the given research

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<sup>1</sup> Association Agreement. Available at [http://www.eu-nato.gov.ge/sites/default/files/AA\\_BodyText %2810%29.pdf](http://www.eu-nato.gov.ge/sites/default/files/AA_BodyText%2810%29.pdf)

will promote technical and content-wise improvement of DCFTA actions plans of the coming years.

It should also be noted that the given report views the state procurement sphere solely from the point of view of the Association Agreement and its agenda and does not offer a comprehensive assessment of the existing situation in the system.

The next chapter of the report presents the research methodology. The following chapter reviews the association agenda and 2014-2017 and 2015 Action Plans. More specifically, the aforementioned part evaluates both general quality of the Action Plans and the compliance of the planned activities with the goals of the association agenda. The succeeding chapter overviews in details the situation regarding the completion of the Action Plans (as of April 2016). In the final part of the report, based on analysis, specific recommendations for the action plan activities and improvement of their implementation are offered.

## **Research Methodology**

Information received from various sources have been used whilst preparing the research report. The research material has been collected via desk research and retrieving of information from public institutions. On the initial stage, reports, legislation, budget and existing programs of international and local organizations on the research topic were identified and analyzed. On a later stage of the research, official materials were also retrieved.

The research is based on the following documents: Association Agreement; Association Agenda; 2014-2017 Action Plan of DCFTA Implementation; 2014 and 2015 Completion Reports of DCFTA; 2014 and 2015 Reports of the Activity of the State Procurement Agency.

In the process of evaluation, the attention was paid to accounting both specific activities aiming to implement priorities of the action plan and achieved results, which is to what extent had been the objectives envisaged by the Action Plans achieved.

## **Action Plans**

### **Association Agenda**

On June 26, 2014, with the aim of preparing for the completion process of the Association Agreement and facilitating its implementation, the EU and Georgia adopted the Association Agenda. The Association Agenda is based on the Association Agreement and combines a list of defined priorities for a joint operation in 2014-2016. The document is a practical framework that

provides for implementing main tasks of a political association and economic integration with the EU.

Interestingly enough, the agenda concerns only a restricted number of the priorities and it does not fully cover the commitments stemming from the Association Agreement. Alike the full document, the public procurement sphere is represented very scarcely; the Association Agenda has only one paragraph concerning the public procurements direction, that is possibly due to a three-year term of the document, whilst the commitments in the public procurement sphere are designated for a longer, eight-year period.

The agenda notes that the signatory parties will cooperate within the procurements chapter of the Association Agreement and during the process of preparation for implementing respective reforms.<sup>2</sup> Preparatory works include initializing preparation of a Comprehensive Action Plan that should be formulated in accordance with the procurements chapter of the Association Agreement and provide for precise information on the development of Georgian legislation, especially concerning the planned legislative works on the procurement policy and the implementation issues.<sup>3</sup>

### **Georgia's Action Plan for Implementation of the Deep and Comprehensive Free Trade Agreement (DCFTA) (2014-2017)**

With the aim of efficiently implementing the DCFTA, on July 28, 2014, the Committee of EU Integration of Georgia approved the 2014-2017 Action Plan of the DCFTA implementation that includes the reforms and activities to be carried out in this direction.

The Action Plan combines three priorities of the public procurement sphere: initializing of formulation of the comprehensive action plan; initializing a gradual alignment; capacity building of stakeholders.

Initializing of formulation of the comprehensive action plan, by itself, combines two activities:

- Renewing negotiations with European Commission concerning the amendments in the European legislation that were made after the initialization of the negotiations. Also, reviewing orientation terms designated for each stage of the legislative alignment (2014-2015);

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<sup>2</sup> Association Agenda. Unofficial translation. Available at [http://eeas.europa.eu/delegations/georgia/documents/eap\\_aa/associationagenda\\_2014\\_ka.pdf](http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_ka.pdf)

<sup>3</sup> Ibid.

- Formulating the Comprehensive Action Plan of the legislative alignment implementation, in accordance with the Annex XVI-B of the AA (2015).<sup>4</sup>

Initializing a gradual alignment implies a legislative alignment with main standards of contract conclusion envisaged by the 144<sup>th</sup> article of the Association Agreement.<sup>5</sup>

As for the capacity building of stakeholders, three activities are planned in this regard:

- Training individuals employed in public procurement sphere of state bodies in EU countries and Georgia (2014-2017);
- Training of suppliers interested in participating in state procurements (2014-2017);
- Sharing best practice, information and regulatory rules in the state procurement sphere that includes local trainings/workshops in EU member countries (2014-2017).<sup>6</sup>

The procurement part of the Action Plan is quite general and does not include comprehensive information on the reforms to be implemented; expected results of particular activities, target groups, completion indicators and exact amounts of funding are not specified. This complicates both the efficient completion of activities envisaged by the Action Plan, as well as monitoring and proper evaluation of particular outputs.

In addition, several of the planned activities are formulated superficially. Gradual alignment project, designated for completion of the commitments given in the 144<sup>th</sup> article, is an example of this. Interestingly enough, the aforementioned article of the AA includes 15 paragraphs.<sup>7</sup> Considering this, the priority indicated in the Association Agenda is very superficial; it is unclear, precisely what changes are required by the paragraphs of the 144<sup>th</sup> article and what amendments are planned in the action period for the completion of this priority.

It is also of note that in case of all three priorities, the State Procurement Agency is named as the responsible body that is positive with regards to efficiently coordinating and directing activities. However, considering that part of the priorities goes beyond direct competences of the agency, it remains unclear, why is the participation of other executive bodies and the Parliament of Georgia not envisaged at all.

## **2015 National Action Plan of the Association Agreement between Georgia and the EU and the Association Agenda**

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<sup>4</sup> 2014-2017 Action Plan of DCFTA Implementation. Available at [http://economy.ge/uploads/dcfta/DCFTA\\_action\\_plan\\_GEO.pdf](http://economy.ge/uploads/dcfta/DCFTA_action_plan_GEO.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Association Agreement. Available at [http://www.eu-nato.gov.ge/sites/default/files/AA\\_BodyText %2810%29.pdf](http://www.eu-nato.gov.ge/sites/default/files/AA_BodyText%2810%29.pdf)

On January 26, 2015, based on Decree №59 of the Government of Georgia, 2015 National Action Plan of the Association Agreement between Georgia and the EU and the Association Agenda was approved. It includes the 2015 Action Plan concerning the Deep and Comprehensive Free Trade Agreement (DCFTA) part, as well.

The Action Plan combines two priorities of the public procurement sphere: initialization of preparation of the Comprehensive Action Plan and cooperation of sides in the process of preparing for the implementation of the reforms.

Initializing of preparation of the comprehensive action plan, in turn, is composed of two activities:

- Identifying amendments regulating state procurements and institutional amendments;
- Formulating and adopting the Comprehensive Action Plan to implement a legal alignment, in accordance with the Annex XVI-B of the AA.<sup>8</sup>

Alike the first priority, the second also comprises two activities:

- Training for representatives of the state bodies of Georgia and the local self-governments implementing state procurements;
- Conducting workshop for the suppliers interested in participating in state procurements.<sup>9</sup>

Similar to the 2014-2017 Action Plan of the DCFTA implementation, the public procurement part of the 2015 Action Plan is quite general and does not include detailed information on the activities to be undertaken; expected results of particular activities, target groups, completion indicators and amount of funding are yet to be specified. Such obscurity of the planned activities is unjustifiable, as, unlike the previous Action Plan, this document is designated for a year-long period and requires more detailing. It is also of note that the State Procurement Agency is named as a sole responsible body for the implementation of all three priorities here as well.

Three out of six activities envisaged by the 2014-2017 Action Plan of the Implementation of DCFTA were also reflected in the public procurement part of the 2015 Action Plan, whilst two of the remaining three were not considered due to different reasons. Specifically, the document does not imply renewing negotiations with the European Commission that may be due to resuming the negotiations in 2014, so there may have been no need to reflect it again. Initialization of the gradual alignment also did not end up in 2015 Action Plan that may be due to the fact that implementing the given priority, according to 2014-2017 Action Plan of DCFTA, was planned for 2016. It remains unclear, why sharing best practice, information and regulatory rules in the state procurement sphere that includes local trainings/workshops was not considered.

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<sup>8</sup> 2015 Detailed Action Plan of DCFTA Implementation. Available at [http://economy.ge/uploads/dcfta/DCFTA\\_National\\_Action\\_Plan\\_2015-Draft\\_GEO\\_1.pdf](http://economy.ge/uploads/dcfta/DCFTA_National_Action_Plan_2015-Draft_GEO_1.pdf)

<sup>9</sup> Ibid.

Despite the fact that the AA and Association Agenda completion reports have been published quarterly since 2015, the activities envisaged by the Action Plans are not given in a quarterly manner. Absence of a quarterly division of plans makes the permanent monitoring of the process impossible. Dividing the completion reports by three-month terms does not make sense as well.

In most of the cases, only the budget of the State Procurement Agency is indicated as the funding source. Whilst in other cases, funding issue is left open and dependent upon donor funding. Funds necessary for implementation of the planned activities is not set in the plans that is yet another proof of the plan's vagueness.

Incompatibility between activities and priorities of Association Agenda can also be seen in the Action Plan. This gives a reason to reckon that substance and goals of the commitments are not properly comprehended. Priorities of the cooperation between sides in the process of preparing reforms for implementation is one of the examples. The Association Agenda notes that the signatory parties will cooperate within the procurements chapter of the AA and during the process of preparation for implementing respective reforms. In case of the Action Plan, this priority envisages conducting trainings for specialists of state procurements and workshops for the interested suppliers. It is evident that conducting trainings and workshops does not comply with the cooperation commitments envisaged by the Association Agenda substantially. In addition, conducting trainings and workshops is designated by a priority of 2014-2017 Action Plan - capacity-building of stakeholders.

## **Completion of Action Plans**

### **2014 Report of the 2014-2017 Deep and Comprehensive Free Trade Agreement (DCFTA) Implementation Action Plan**

2014 Report has been prepared according to 2014-2017 Deep and Comprehensive Free Trade Agreement (DCFTA) Implementation Action Plan. The public procurement chapter of the given document reviews the activity of the State procurement Agency in 2014.

With the aim of evaluation, the activities reflected in the report were grouped under the three priorities of the 2014-2017 Action Plan: initializing of formulation of the comprehensive action plan; initializing a gradual alignment; capacity building of stakeholders.

#### *Initializing of formulation of the comprehensive action plan*

During the reporting year, with the aim of formulation of the Comprehensive Action Plan for the legislative alignment, in the framework of technical support from the administration and governance development program SIGMA (a joint initiative of EU and OECD), the assessment of

state procurement legislation and institutional framework on its conformity with EU key standards and legislation was conducted.<sup>10</sup>

As it has already been noted, as a result of amendments made in the EU law, a need emerged for a renewed dialogue with the European Commission on respective annexes of the AA. On December 2, 2014, bilateral negotiations on the annexes were resumed.<sup>11</sup>

#### *Initializing a gradual alignment*

On September 25, 2014, a legal amendment was made concerning the issue of procurement-related disputes, their submission to the dispute-resolution council and the eligibility of such submissions.<sup>12</sup> According to this amendment, appeal of the decision of a purchaser organization and/or tender commission will be possible no later than 15 days after uploading the decision to the system.<sup>13</sup>

#### *Capacity building of stakeholders*

In 2014, with the aim of training the procuring organizations' respective employees (members and the apparatus of the Tender Commission), an independent structural entity – study center, was created in the State Procurement Agency.<sup>14</sup> In the reporting period, 92 specialists from 60 municipalities, city halls and administrations of self-governing cities underwent the center's study course.<sup>15</sup>

In May-June 2014, with the aim of raising qualification of the procurer organizations' employees, regional site visits were organized.<sup>16</sup> On September 19, 2014, an informational meeting was held between the State Procurement Agency and the entrepreneurs, as well as trade representatives of accredited consulates and embassies.<sup>17</sup> Nearly 120 people attended the meeting. On November 14, 2014, a meeting was held between the employees of the State Procurement Agency, companies operating in construction sector and representatives of the procurer organizations.<sup>18</sup>

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<sup>10</sup> 2014 Completion Report of DCFTA Implementation. Available at [http://economy.ge/uploads/dcfta/2014\\_ANNUAL\\_REPORT\\_geo.pdf](http://economy.ge/uploads/dcfta/2014_ANNUAL_REPORT_geo.pdf)

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Report on the Activity of the State Procurement Agency in 2014. Available at <http://procurement.gov.ge/getattachment/ELibrary/AnalyticalStudiesReports/2014-tslis-angarishi-geo.pdf.aspx>

<sup>14</sup> 2014 Completion Report of DCFTA Implementation. Available at [http://economy.ge/uploads/dcfta/2014\\_ANNUAL\\_REPORT\\_geo.pdf](http://economy.ge/uploads/dcfta/2014_ANNUAL_REPORT_geo.pdf)

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

Moreover, the State Procurement Agency formulated and issued methodological guidelines for preliminary preparation stage of state procurement:

- On conducting the preparatory stage of procurements;
- On qualification requirements;
- On demands towards the procured items;
- Guide for using the Unified Electronic System of State Procurements.

Collection of frequently asked questions and answers, as well as a special informational booklet about the agency and Study Center were also published.<sup>19</sup>

Overall, activities carried out by the State Procurement Agency in 2014 mostly address the priorities of the 2014 – 2017 Action Plan. Initializing works on the Comprehensive Action Plan, resuming talks with the EU, legislative amendments made and the creation of the Study Center are important steps forward. Trainings/workshops in the EU member countries that were not conducted in the reporting period, are an exemption. It is also noteworthy that due to absence of expected outcomes and evaluation indicators in the Action Plan, a quantitative assessment of the activities carried out is impossible.

### **Completion Report of the 2015 National Action Plan of the Association Agenda Implementation**

In accordance with the Association Agreement between Georgia and the EU and the 2015 National Action Plan of the Association Agenda Implementation, a completion report has been prepared that also includes 2015 Action Plan Completion Report connected with the Deep and Comprehensive Free Trade Agreement (DCFTA) part.

Activities reflected in the report are grouped under the five priorities of the 2015 Action Plan.

*Identify the regulatory and institutional changes necessary for public procurement.*

In the reporting period, the technical support program SIGMA was ongoing and in its framework, necessary regulatory and institutional changes were determined.<sup>20</sup>

Two important changes of public procurement regulations were made. Based on decrees of the Head of the State Procurement Agency, competition procedures were fully converted to the electronic platform and the volume of simplified procurements was decreased all across the country.<sup>21</sup>

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<sup>19</sup> Ibid

<sup>20</sup> 2015 Completion Report of DCFTA Implementation. Available at [http://economy.ge/uploads/dcfta/AA\\_2015\\_National\\_Action\\_Plan\\_Report\\_Matrix\\_geo\\_version.pdf](http://economy.ge/uploads/dcfta/AA_2015_National_Action_Plan_Report_Matrix_geo_version.pdf)

<sup>21</sup> Ibid.

*Elaborate and adopt an initial draft of a comprehensive roadmap for implementation of legislative approximation, as set in annex XVI-B of the Association Agreement.*

In the State Procurement Agency, a Working Group for Formulating the Comprehensive Action Plan for Integrating Georgia into the EU was created. The given working group prepared a guide and action plan on completion of commitments made based on the AA between Georgia and the EU and the Deep and Comprehensive Free Trade Agreement (DCFTA), concerning the amendments in the state procurement sphere.<sup>22</sup>

The given document was positively acclaimed at the extended committee hearing of the Sectoral Economy Committee of the Parliament of Georgia. The action plan was also presented to the big procurer organizations.<sup>23</sup>

*Provide training sessions for Georgian officials from Government bodies and local self-government authorities engaged in public procurement.*

In the reporting period, 549 specialists employed in state institutions and local self-government bodies underwent the study course. With the aim of providing information on the new electronic module and procedures of its operation, the agency held informational-consultative meetings with representatives of Tbilisi and its adjacent municipalities, as well as representatives of state bodies of Imereti and Adjara regions.<sup>24</sup>

*Conduct workshop for suppliers interested in participating in public procurement.*

In the reporting period, 38 private sector representatives interested in participating in state procurements underwent training at the agency's Study Center.<sup>25</sup> In addition, with the aim of increasing the engagement of the private sector in the state procurements, meetings were held in Kutaisi and Batumi.<sup>26</sup>

In the reporting period, with the aim of sharing the EU countries' practice, the employees of the State Procurement Agency were in Germany for a working visit where they conducted meetings with representatives of local government, leading legal companies and international organizations.<sup>27</sup> The given activity was not reflected in the 2015 Action Plan, however, it is stipulated in the 2014-2017 Action Plan of the DCFTA Implementation (exchange of information and experience on best practice and regulatory rules in the sphere of public procurement,

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

including onsite trainings/seminars in EU member states (2014-2017)). It is noteworthy that in the previous reporting period this activity was not carried out.

Overall, activities carried out by the State Procurement Agency in 2015 mostly resonate with the priorities of the 2014-2017 Action Plans. Formulating the guide and the action plan for the completion of the DCFTA commitments is unambiguously a positive event. An important increase was witnessed in the number of graduates as compared to 2014. Despite the nominal increase in the number of those interested from the private sector (zero in 2014), the number of the graduates is very low, overall. Unfortunately, alike the previous report, owing to the lack of evaluation indicators, exact quantitative evaluation of the work done is impossible.

Both reports on completing the commitments are descriptive, mostly owing to the technical nature of the implementation process of the AA. Nevertheless, it is very hard to label the completion report comprehensive without analyzing the results achieved and elaborating on future necessities.

Internal and external monitoring mechanisms of the work conducted are not reflected in the completion reports. In this regard, the fact that the Parliament of Georgia does not participate in monitoring of the commitments made, is unjustifiable, as it is a constitutional right of the legislative body.

## **Conclusions and Recommendations**

As of April 2016, Georgia mostly completed the commitments made in the 2014-2017 and 2015 Action Plans of the Deep and Comprehensive Free Trade Agreement (DCFTA). Nevertheless, there are still several issues that need to be improved. These issues are presented as conclusions below:

*Unclear formulations of the planned activities:* Action Plans are not clearly formulated that, in most of the cases, makes it impossible to determine whether the particular commitment was completed;

*Lack of evaluation indicators:* the Action Plans do not specify evaluation indicators of particular activities that makes a proper evaluation of the activities carried out impossible;

*Lack of quarterly division of the plans:* despite the fact that the completion reports are published quarterly, the activities envisaged by the Action Plans are not planned in a quarterly manner. The lack of quarterly division makes the permanent monitoring of the process impossible. The three-month division of the completion reports also loses sense;

*Incompliance of priorities and particular activities:* in certain cases, incompliance between the Action Plans' activities and the Association Agenda priorities is observed that hints that the goals of the commitments are not properly understood;

*Lack of the precise amount of funding:* in most of the cases, the budget of the State Procurement Agency is indicated as the sole funding source. In other cases, the funding issue is open and dependent upon donor's funding. The plans do not include the amounts necessary for conducting the planned activities that is yet another proof of the ambiguity of the Action Plan.

*Technical nature of the completion reports:* the completion reports of the commitments are descriptive that is mostly due to the technical nature of the completion process. Nevertheless, presenting the work only in a context-free manner is unacceptable;

*Institution responsible for the completion of the commitments:* State Procurement Agency is named as the institution responsible for absolutely all activities, which is positive with regards to effectively coordinating and managing the activities. However, considering the fact that part of the priorities goes beyond the direct competences of the agency, it is unclear, why the participation of the legislative and executive bodies is not envisaged;

*Lack of monitoring mechanisms:* monitoring of the activities carried out does not take place. The fact that the Parliament of Georgia does not participate in monitoring the completion of the commitments, is unacceptable.

Considering all abovementioned, the research report presents the following recommendations that are deemed necessary for consideration:

- Clarify, to the extent possible, activities reflected in the Action Plans;
- Formulate evaluation indicators and expected outcomes for all paragraphs of the Action Plans;
- Formulate Action Plans in which the activities will be written in a quarterly manner;
- Provide for the compliance of the activities in the Action Plans with the general goals of the Association Agreement and the Association Agenda;
- Determine the amounts of funds necessary for the activities envisaged by the Action Plan;
- Base upcoming annual plans on the analysis of completion of the previous Action Plans and include uncompleted tasks in the next Action Plans;
- Make steps for ensuring internal and external monitoring of the process.

The author hopes that the given recommendations will provide for, on the one hand, for technical and substantial improvement of the DCFTA Action Plans of the coming years and on the other hand, transparency and efficiency of its implementation. It should also be noted that the given conclusions and recommendations view the state procurement sphere only from the point of

view of completion of the Association Agreement and Association Agenda and it does not offer a comprehensive assessment of the current situation in the system.

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