



EU4Digital

EU4Digital Facility Telecom Rules

Regulatory governance and setup in the Partner countries

EaPeReg IRB Expert Working Group
Discussing TOGETHER the progress on setting-up the independent
NRAs in the EaP countries &
further proposals
towards resilient DIGITAL Transformation in EaP

Online event | 21 March 2021



Funded under the EU4Digital
Initiative of the European Union

Scope of EU4Digital project

6 Eastern Partner Countries

6 Thematic areas:

- Telecom Rules
- Trust and Security
- eTrade
- ICT innovation
- eHealth
- eSkills
- Communication (horizontal area)

3 Years for implementation (01/2019 – 01/2022)



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EU4Digital Facility - Expected Results in 6 EaP countries until Jan 2022



1. TELECOM RULES

- Achieving **common roaming space**
- **NRA independence** strengthening
- Develop **coordinated frequency distribution strategies** for freeing 700MHz



2. TRUST & SECURITY

Cross-border **eSignature pilot** and regional framework for **cross-border eServices** for business, **cyber-resilience** strategies



3. eTRADE

Three pilots - cross-border **eTrade**, **eCustoms**, and **eCommerce**, preparatory actions to pilot **Digital Transport Corridor**



4. ICT INNOVATION

Actions to favour development of **ICT research**, **start-ups** & **innovation ecosystems**



5. eHEALTH

Harmonised frameworks for **eHealth**, among EaP partner countries and with the EU



6. DIGITAL SKILLS

Designing **digital skills strategies**, **Competence framework** for SMEs



COMMUNICATION

Building EU4Digital brand to streamline **visibility** and leverage impact of EU cooperation across the digital economy and society in the EaP



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1. Scope & Methodology

*Overview of scope and methodology for
NRA independence assessment*

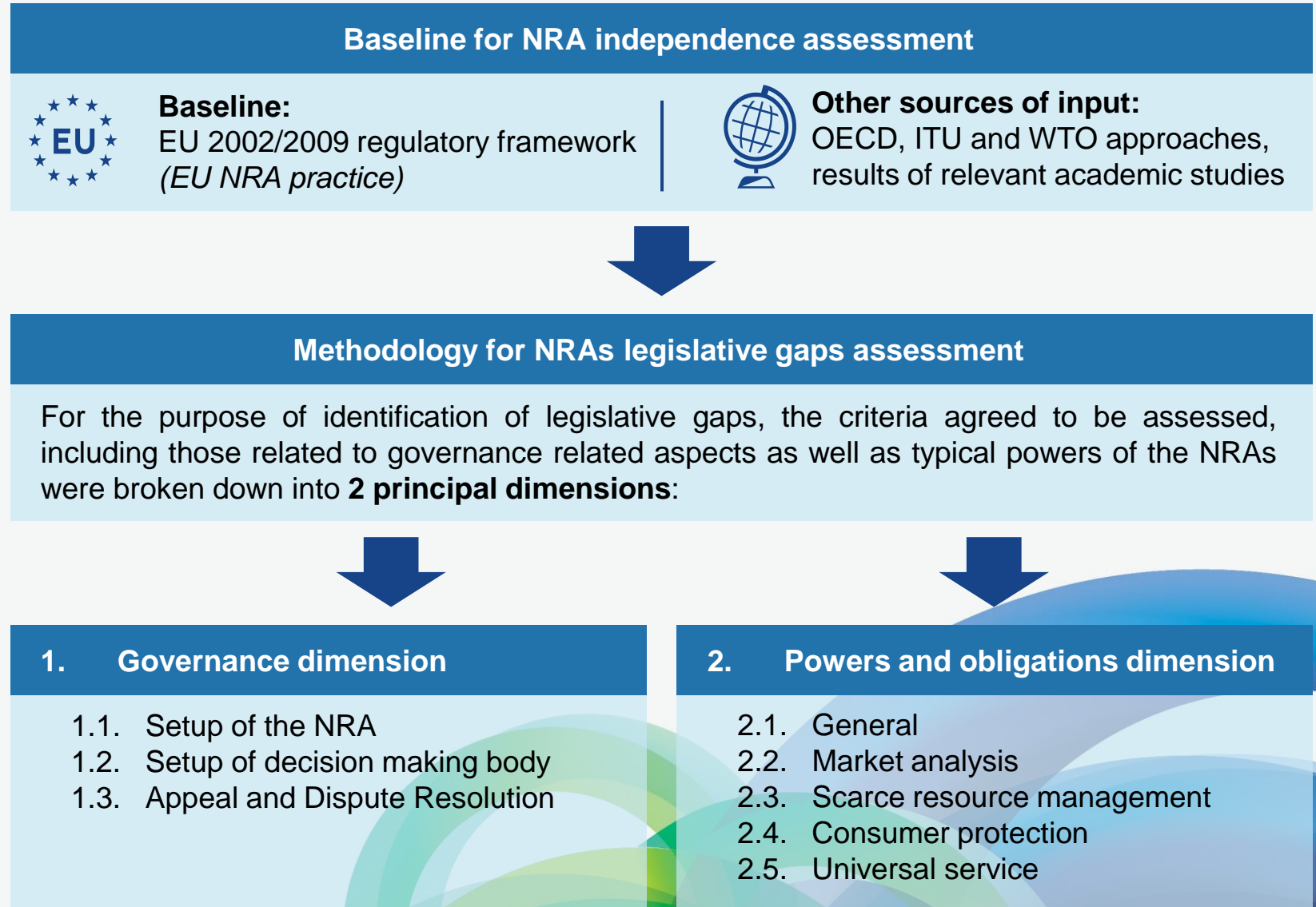


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Methodology: dimensions and criteria assessed



Methodology on NRAs independence assessment for Eastern partner countries



Scope (1/2): list of criteria per Governance dimension

1. GOVERNANCE			
1.1.	SETUP OF THE NRA		
1.1.1.	Status of NRA – legally distinct and functionally independent	1.1.7.	Recruitment of personnel and experts
1.1.2.	Decision making powers, prohibition to seek or take instructions	1.1.8.	Ability to set remuneration for Board members and employees
1.1.3.	Powers to develop NRA's own strategy	1.1.9.	Legislative initiative powers of NRA
1.1.4.	Formation of NRA's budget	1.1.10.	Bodies and process for challenging NRA's decisions
1.1.5.	Sources of NRA's financing	1.1.11.	Consultation and transparency requirements
1.1.6.	Possibilities to execute (spend) NRA's budget	1.1.12.	Cooperation setup with other competent authorities
1.2.	SETUP OF DECISION MAKING BODY		
1.2.1.	Procedure and conditions set for recruitment of head or collegiate body performing that function	1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal
1.2.2.	Appointment of the head or collegiate body performing that function	1.2.4.	Terms in Office as head or collegiate body performing that function
1.3.	APPEAL AND DISPUTE RESOLUTION		
1.3.1.	Appeal procedures	1.3.2.	Powers of resolve disputes between undertakings

Scope (2/2): list of criteria per Powers and obligations dimension

2. POWERS AND OBLIGATIONS

2.1.	GENERAL		
2.1.1.	Powers of enforcement of regulation	2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014
2.1.2.	Powers to collect information	2.1.8.	Powers to organise public hearings
2.1.3.	Powers to regulate market entry	2.1.9.	Powers to organise associated councils or consulting bodies
2.1.4.	Powers to regulate national and/or international roaming	2.1.10.	Powers for international cooperation
2.1.5.	Powers to regulate net neutrality	2.1.11.	Powers to be represented in international regulatory bodies
2.1.6.	Powers to control quality of service requirements		
2.2.	MARKET ANALYSIS		
2.2.1.	Powers to define and analyse relevant markets	2.2.5	Powers to regulate termination and/or origination and/or transit tariffs
2.2.2.	Powers to implement <i>ex-ante</i> obligations	2.2.6.	Powers to set tariffs and/or prices
2.2.3.	Powers to regulate interconnection and access	2.2.7.	Powers to apply cost accounting and allocation methodologies
2.2.4.	Powers to regulate access to ducts and/or other network infrastructure	2.2.8.	Powers to set Weighted Average Cost of Capital
2.3.	SCARCE RESOURCE MANAGEMENT		
2.3.1.	Powers to grant scarce resources	2.3.3.	Powers to manage numbering plans
2.3.2.	Powers to manage radio frequencies		
2.4.	CONSUMER PROTECTION		
2.4.1.	Powers to set requirements for contracts	2.4.2.	Powers to solve customer complaints
2.5.	UNIVERSAL SERVICE		
2.5.1.	Powers to set universal service obligations	2.5.2.	Powers to define universal service's baskets



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2. Gap Analysis Results

*Overview of initial results of NRA
independence assessment exercise*









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Gap analysis results summary

The results of the regulatory gap assessment performed by EU4Digital are summarised in Section 2 of this report. Additional details supporting the summary results are available in more detailed country-specific reports attached in Appendix 1 of this report. The results of the NRA independence gap analysis effort confirm that maturity of regulations and regulatory guidance is of different maturity in EaP countries compared to EU electronic communications regulatory framework as a benchmark.

Key highlights on the Report findings in the regulatory independence area are summarised per each EaP country below.

	If NRA is structurally separate from line ministries	Key highlights on latest developments in the regulatory independence area
AM 	Yes	NRA is well established, however, independence of the NRA may be further strengthened by ensuring availability of sufficient resources and competitiveness of the NRA in the labour market
AZ 	No	An authority meeting the requirements of NRA for electronic communications cannot be confirmed. However, adopted strategic roadmap on the development of ICT in AZ highlights the priority to establish an independent regulatory body by the end of 2020
BY 	No	Even though previously existence of NRA was reported, upon review the EU4Digital cannot confirm the statement
GE 	Yes	The regulatory system is well aligned with the EU regulatory framework. Legal guarantees of Independence of NRAs are established in the Constitution of GE
MD 	Yes	The regulatory system is highly compatible with the EU regulatory framework
UA 	Yes	NRA has been setup, however, it does not meet requirements of an independently functioning NRA. Substantial review of regulatory system is required to bring it in line with EU legislation



Regulatory independence in Armenia

High-level overview of legislative gap assessment exercise

- Armenian national legislation is well aligned with the EU regulatory framework requirements and thus, the PSRC is considered as well established NRA.
- However, some areas for improvement in order to further strengthen NRA independence were identified. Those cover the following gaps:
 - Limited rights on its' own merits to recruit personnel and experts;
 - Limited rights to set remuneration for decision making body and its employees as PSRC employees are considered as civil servants;
 - Lack of rights to plan and monitor the use of spectrum management.

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	6	PSRC lacks powers to recruit and set remuneration for its' employees as well as to prepare medium term strategy
	1.2	Setup of decision making body	4	1	AM law does not provide requirements for open selection process for head of the PSRC
	1.3	Appeal and Dispute Resolution	2	0	-
2. Powers and obligations	2.1	General	11	4	PSRC shall have powers to enforce regulation equally applicable to all market participants, incl. incumbent operator
	2.2	Market analysis	8	4	PSRC shall have powers to regulate any wholesale or retail tariff of service identified during market analysis procedure
	2.3	Scarce resource management	3	1	PRSC lacks rights of planning and monitoring the use of spectrum management
	2.4	Consumer protection	2	1	PSRC shall have rights to define minimum requirements for customer agreements
	2.5	Universal service	2	0	-
Total:			44	17	



Regulatory independence in Armenia

Insights per selected criteria assessment (1/2)



1.1.1. Status of NRA – legally distinct and functionally independent

- ▶ **Transposition of the relevant EU law provision on guaranteeing legal separation of the authority and functional independence has been identified as:**
 - a) The principle of institutional and financial independence of the PSRC is set forth by the Constitution
 - b) The work of the PSRC as delegated by the Constitution is guided by the law:
 - “On Body Regulating Public Services”
 - “On Civil Service”
 - “On Electronic Communications”



1.1.2. Decision making powers, prohibition to seek or take instructions from any other body

- ▶ **Transposition of the relevant EU law provision to ensure impartial decision making, decision making powers of NRAs and provide for prohibition to seek or to take instructions has been identified as:**
 - a) The law “On Body Regulating Public Services” ensures the PSRC independence in decision-making process when performing functions of a regulatory authority



Regulatory independence in Armenia

Insights per selected criteria assessment (2/2)



1.1.8. Ability to set remuneration for Board members and employees

- ▶ **Transposition of the relevant best practice in light of the EU law provision has not been identified as:**
 - a) PSRC employees are considered as civil servants according to the law “On Civil Service”
 - b) Remuneration of employees of the PSRC are regulated by the law “On Remuneration of Persons Holding State Positions”
 - c) The PSRC has no rights to set forth internal procedures and decision-making setting remuneration for decision making body and its employees



1.1.4. Formation of NRA's budget

- ▶ **Transposition of the relevant EU law provision has been identified as:**
 - a) Under the law “On Mandatory Regulatory Fees of Public Services”, the PSRC is financed by regulatory fee and other sources, as provided by the legislation



1.1.7. Recruitment of personnel and experts

- ▶ **Transposition of the relevant EU law provision has been identified as:**
 - a) Recruitment process is guided by provisions coming from procedures under law “On Body Regulating Public Services”
 - b) Law “On Body Regulating Public Services” describes in detail the requirements on citizenship, education and work experience of the Commissioners who can be eligible for selection process
 - c) Government may serve as nominating authority and nominate a candidate for the position of the Chairman, while approval rests with the Parliament



1.1.6. Possibilities to execute (spend) NRA's budget

- ▶ **Complete transposition of the relevant EU law provision has not been identified as:**
 - a) Certain percentage of the maintenance costs of the PSRC shall be directed to NGO which protect consumer's rights in the sector of regulation of public services



Regulatory independence in Azerbaijan

High-level overview of legislative gap assessment exercise

- There is no authority meeting the requirements of NRA for electronic communications established, which would be also structurally separate from line ministries.
- However, the work started following adoption of “Strategic Road Map on development of ICT in Azerbaijan”, which requires establishment of independent regulatory body by the end of 2020. For this purpose, "Three-year transition Plan" is adopted where all aspects of the process are defined.
- Further to requirement of legal distinction and functional independence, bodies setup in accordance with relevant EU law provisions shall be entrusted with tasks typically carried out by an NRA and have required powers in order to perform those tasks. As such independent body has not been setup - transposition of the relevant EU law provisions has not been identified in most of the cases, when reviewing relevant Azerbaijan legislation.
- Currently the Ministry of Transport, Communications and High Technologies has certain powers that are typically attributed to the NRAs, including powers to enforce regulation as well as rights to perform market analysis. Once the NRA is established - these powers are expected to be transferred under its' responsibility.

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU law provisions
1. Governance	1.1	Setup of the NRA	12	12	<p>Authority meeting the EU regulatory framework requirements of a NRA has not been setup. Thus, after an independent NRA is established, relevant AZ legislation shall be reviewed and amended in order to:</p> <ul style="list-style-type: none"> • Setup the independent decision-making process and ensure the NRA is not required to seek and receive instructions by any law. • Ensure budgetary autonomy of the NRA by providing a separate NRA managed budget, which would be also adopted by the NRA. • Setup the source of financing of the NRA as market based in form of a fee. • Enable the NRA to set forth internal procedures and decision-making on recruitment and setting remuneration for its' personnel and experts. • Enable open selection process for recruitment of NRA head or collegiate body performing that function. • Mandate the NRA as dispute resolution body. <p>More detailed findings and recommendations per each criteria are provided further in this document.</p>
	1.2	Setup of decision making body	4	4	
	1.3	Appeal and Dispute Resolution	2	2	
2. Powers and obligations	2.1	General	11	11	
	2.2	Market analysis	8	8	
	2.3	Scarce resource management	3	3	
	2.4	Consumer protection	2	1	
	2.5	Universal service	2	2	
Total:			44	43	



Regulatory independence in Azerbaijan

Insights per selected criteria assessment (1/2)



Status of NRA – legally distinct and functionally independent

- ▶ **Transposition of the relevant EU law provision has not been identified as:**
 - a) Institution entrusted with tasks typically carried out by an NRA has not been setup, therefore **legal separation of the authority and independence requirements are not being provided for**
- ▶ **Transposition of the relevant EU provision on prohibition to seek or take instructions has not been identified as:**
 - a) The body entrusted with tasks typically carried out by an NRA has not been setup, therefore the independence requirements, prohibition to seek or receive instructions has not been provided for
 - b) The Strategic Road Map on development of ICT in Azerbaijan requires establishment of independent regulatory body by the end of 2020. For this purpose, "Three-year transition Plan" is adopted where all aspects of the process are defined



Decision making powers, prohibition to seek or take instructions from any other body

- ▶ **Transposition of the relevant EU law provision has not been identified as:**
 - a) The body entrusted with tasks typically carried out by an NRA has not been setup, therefore, **impartial decision-making process and prohibition to seek or receive instructions are not being provided for**



Regulatory independence in Azerbaijan

Insights per selected criteria assessment (2/2)



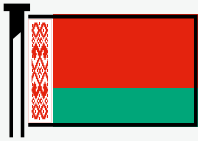
Powers of enforcement of regulation

- ▶ **Transposition of the relevant EU law provision has not been identified, however, the MTCHT has certain powers that are typically attributed to the NRAs:**
 - a) Carry out the control over the compliance with the telecommunication legislation
 - b) Monitor the relevant market
 - c) Monitor the usage of the numbering resources and radio frequencies
 - d) After the request provide other authorities with the necessary information
 - e) Solve the disputes
 - f) Issue licenses for the activities listed below:
 - Biometric technologies and services
 - Formation of personal data backups and creation of information systems with the purpose of provision of such services
 - Cellular (mobile) telecommunication services



Market Analysis

- ▶ **Transposition of the relevant EU law provision has not been identified, however, the MTCHT has rights to perform some tasks, that are typically carried out by NRAs, incl. rights to:**
 - a) Define relevant markets
 - b) Carry out an analysis of the activities of undertakings having significant market power
 - c) Impose, amend, maintain or withdraw obligations based on market analysis results



Regulatory independence in Belarus

High-level overview of legislative gap assessment exercise

- There is no authority meeting the requirements of NRA for electronic communications established, which would be also structurally separate from line ministries.
- Further to requirement of legal distinction and functional independence, bodies setup in accordance with relevant EU regulatory framework shall be entrusted with tasks typically carried out by an NRA and have required powers in order to perform those tasks. As such independent body has not been setup - transposition of the relevant EU law provisions has not been identified in most of the cases, when reviewing relevant Belarus legislation.
- However, it should be also noted, that the Ministry of Communications and Informatization has powers to enforce regulation as well as powers to collect information, that are typically attributed to the NRAs, while State Commission on Radio Frequencies has powers to manage national radiofrequency plan.

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	12	<p>Authority meeting the EU regulatory framework requirements of a NRA has not been setup. Thus, after an independent NRA is established, relevant BY legislation shall be reviewed and amended in order to:</p> <ul style="list-style-type: none"> • Setup the independent decision-making process and ensure the NRA is not required to seek and receive instructions by any law. • Ensure budgetary autonomy of the NRA by providing a separate NRA managed budget, which would be also adopted by the NRA. • Setup the source of financing of the NRA as market based in form of a fee. • Enable the NRA to set forth internal procedures and decision-making on recruitment and setting remuneration for its' personnel and experts. • Enable open selection process for recruitment of NRA head or collegiate body performing that function. • Mandate the NRA as dispute resolution body.
	1.2	Setup of decision making body	4	4	
	1.3	Appeal and Dispute Resolution	2	2	
2. Powers and obligations	2.1	General	11	11	<p>More detailed findings and recommendations per each criteria are provided further in this document.</p>
	2.2	Market analysis	8	8	
	2.3	Scarce resource management	3	3	
	2.4	Consumer protection	2	1	
	2.5	Universal service	2	2	

Total: 44 43



Regulatory independence in Belarus

Insights per selected criteria assessment (1/2)



Status of NRA – legally distinct and functionally independent

- ▶ Transposition of the relevant EU provision on prohibition to seek or take instructions has not been identified as:
 - a) Institution entrusted with tasks typically carried out by **NRA has not been setup**, therefore the independence requirements, prohibition to seek or receive instructions has not been provided for



Decision making powers, prohibition to seek or take instructions from any other body

- ▶ Transposition of the relevant EU law provision has not been identified as:
 - a) Institution entrusted with tasks typically carried out by an **NRA has not been setup**, therefore, impartial decision-making process and prohibition to seek or receive instructions are not being provided for
 - b) At the same time legal acts governing control and supervisory activities and dispute resolution contain provisions that state that **in case of disagreement with the decision of the competent authority, this decision can be appealed in court**



Regulatory independence in Belarus

Insights per selected criteria assessment (2/2)



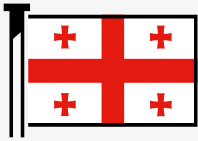
Powers of enforcement of regulation

- ▶ **Transposition of the relevant EU law provision has not been identified as there is no NRA, however the Ministry of Communications and Informatization has certain powers that are typically attributed to the NRAs:**
 - a) Under the Decree of the President of the Republic of Belarus on licensing of certain types of activities, the Ministry of Communications and Informatization shall license and exercise control over compliance by licensees with licensing legislation, licensing requirements and conditions
 - b) Under the Decree of the President of the Republic of Belarus on improving the control (supervisory) activities, in case of violation of the law, the Ministry of Communications and Informatization shall issue the proposal or order to undertakings to suspend activities until the elimination of the violation



Powers to collect information

- ▶ **Transposition of the relevant EU law provision has not been identified as there is no NRA, however the Ministry of Communications and Informatization has rights to perform some tasks, that are typically carried out by NRAs, incl. rights to:**
 - a) **Receive primary statistical data** indicated in the forms of decentralized state statistical observations
 - b) **Carry out a one-time collection of information** from subordinate and non-subordinate organisations, on issues within its competence



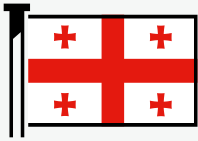
Regulatory independence in Georgia

High-level overview of legislative gap assessment exercise

- Georgian regulatory system is well aligned with EU regulatory framework. Legal guarantees of independence of NRA have been established in the Constitution of Georgia since 2017 with further technical changes introduced in 2018.
- However, some areas for improvement in order to further strengthen NRA independence were identified. Those cover the following gaps:
 - Lack of universal service related powers (at the moment of preparation of this Report, there is ongoing legislative process aimed at bridging this gap);
 - In terms of sources of NRA's financing – currently after covering regulatory services costs determined in the budget, the GNCC may transfer the remaining budget funds (if any) to the State Budget. However, pursuant to EU regulatory framework any NRA budget surplus shall be returned to market participants.

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	5	GNCC budget surplus (if any) shall be returned to market instead of being transferred to the State budget
	1.2	Setup of decision making body	4	0	-
	1.3	Appeal and Dispute Resolution	2	0	-
2. Powers and obligations	2.1	General	11	4	Information requested by GNCC shall be required proportionate in volume and solely for completion of tasks assigned to it
	2.2	Market analysis	8	4	Regularity of market reviews is not defined in national law. Also, GNCC shall have powers to maintain obligations
	2.3	Scarce resource management	3	1	Powers to manage national numbering system shall be transferred to GNCC
	2.4	Consumer protection	2	0	-
	2.5	Universal service	2	2	Powers related to provision and availability of universal service in electronic communications are not introduced in national legislation

Total: 44 16



Regulatory independence in Georgia

Insights per selected criteria assessment (1/2)



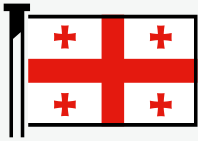
Status of NRA – legally distinct and functionally independent

- ▶ **Transposition of the relevant EU law provision has been identified as:**
 - a) The principle of institutional and financial independence of the GNCC is set forth by the Constitution of Georgia
 - b) The work of GNCC is guided by the law:
 - “On National Regulatory Bodies”
 - “On Electronic Communications”
 - “On Broadcasting”



Decision making powers, prohibition to seek or take instructions from any other body

- ▶ **Transposition of the relevant EU law provisions have been identified as:**
 - a) The law “On National Regulatory Bodies” provides guidance for functioning of the GNCC
 - b) The GNCC ensures transparency of GNCC activities



Regulatory independence in Georgia

Insights per selected criteria assessment (2/2)



Formation of NRA's budget

- ▶ **Transposition of the relevant EU law provision and best practice has been identified as GNCC is in charge of the budgetary preparation process:**
 - a) Under the law “On National Regulatory Bodies”, the GNCC activities are financed from the independent budget
 - b) The budget of the GNCC is formed by regulatory fee and other sources, under specific cases as provided for by the legislation



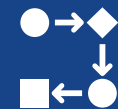
Powers to set universal service obligations

- ▶ **Transposition of the relevant EU law provision has not been identified as:**
 - a) Legislation required for implementation of the requirements of the Universal Service Directive related to provision and availability of universal service are not introduced
 - b) At the moment of preparation of review, there is ongoing legislative process aimed bridging the gaps between national legislation and the Universal Services Directive



Recruitment of personnel and experts

- ▶ **Transposition of the relevant EU law provision has been identified as in the recruitment process the GNCC:**
 - a) Approves the structure and staff list of GNCC
 - b) Determines the labor remuneration of its' staff
 - c) Establishes basic, special and additional qualification requirements for the employment
 - d) Also, a public competition shall be announced in the national regulatory body for the vacant position of all hierarchical ranks



Procedure and conditions set for recruitment of head or collegiate body performing that function

- ▶ **Transposition of the relevant EU law provision has been identified as under the law “On National Regulatory Bodies”:**
 - a) Parliament shall elect the GNCC members, whose candidacies shall be submitted to the Parliament for election by the President upon the recommendation (submission) of the Government
 - b) For this purpose, the Government initiates an open competition by publishing a decree on requirements for the applicants



Regulatory independence in Moldova

High-level overview of legislative gap assessment exercise

- Moldovan regulatory system is well aligned with EU regulatory framework.
- However, some areas for improvement in order to further strengthen NRA independence were identified. Those cover the following gaps:
 - In terms legislative initiative powers of NRA – best-practice approach implementation is not identified as such powers are not set forth in the national legislation;
 - Open selection procedure of Director and Deputy Directors of the ANRCETI is not ensured by the relevant national legislation.

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	1	ANRCETI lacks rights required to initiate legislative process
	1.2	Setup of decision making body	4	1	Government serves as appointing authority of Director and Deputy Directors of the ANRCETI and legislation does not ensure open competition
	1.3	Appeal and Dispute Resolution	2	0	-
2. Powers and obligations	2.1	General	11	4	ANRCETI lacks decision making powers required to ensure the open internet access; subject to requirements of general legislation on control over undertakings
	2.2	Market analysis	8	1	ANRCETI shall have regulatory obligation of functional separation and imposition
	2.3	Scarce resource management	3	1	Powers of managing of spectrum resources shall be transferred to ANRCETI
	2.4	Consumer protection	2	0	-
	2.5	Universal service	2	0	-

Total: 44 8



Regulatory independence in Moldova

Insights per selected criteria assessment (1/2)



Status of NRA – legally distinct and functionally independent

- ▶ Transposition of the relevant EU law provision has been identified and is guided by the law “On Electronic Communications”



Decision making powers, prohibition to seek or take instructions from any other body

- ▶ The transposition of the relevant EU law provision has been identified as:
 - a) ANRCETI ensures transparency of national regulatory authority's exercises
 - b) Law “On Electronic Communications” provides guidance for functioning of the ANRCETI



Regulatory independence in Moldova

Insights per selected criteria assessment (2/2)



Formation of NRA's budget

- ▶ **Best-practice approach implementation in ensuring sufficiency of resources available as:**
 - a) Under the law “On Electronic Communications”, the **ANRCETI activities are financed from the independent budget**
 - b) The budget of the ANRCETI is formed by regulatory fee, monitoring payments, payments for the assigned numbering resources, other sources, as provided by the law



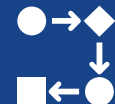
Recruitment of personnel and experts

- ▶ **Transposition of the relevant EU law provision has been identified as the ANRCETI is in charge of:**
 - a) Organisational structure, staff limit and budget of the ANRCETI is approved by the Administrative Board
 - b) The staff list of the ANRCETI is hired by the Director through a competitive process



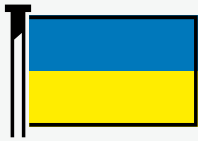
Legislative initiative powers of NRA

- ▶ **Best-practice approach implementation not identified as:**
 - a) Powers of the NRA to initiate legislative proposals not set forth in the national legislation



Procedure and conditions set for recruitment of head or collegiate body performing that function

- ▶ **Transposition of the relevant EU law provision has not been identified as under the law “On Electronic Communications”:**
 - a) Government serves as appointing authority of Director and Deputy Directors of the ANRCETI
 - b) The legislation does not provide for open competitions to be setup



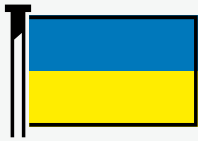
Regulatory independence in Ukraine

High-level overview of legislative gap assessment exercise

- NRA has been setup, however, it does not meet requirements of an independently functioning NRA.
- Some other areas for improvement in order to further strengthen NRA independence were also identified. Those inter alia cover the following gaps:
 - NCCIR is subject to horizontal provisions coming from the functional setup of governmental structure mandating further alignment of decision making with other governmental entities;
 - Transposition of the relevant EU regulatory framework provisions to prohibit NRA to seek or to take instructions has not been identified;
 - NCCIR remuneration system and recruitment process are guided by the law "On Civil Service". This limits NCCIR competitiveness and capacity in recruitment in the labour market, and as a result may not allow for NCCIR to have adequate financial and human resources to carry out the task assigned to it.

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	11	NCCIR independence is not guaranteed; regulatory decisions are to be aligned in advance; recruitment and remuneration are guided by law "On Civil Service", not competitive for experts
	1.2	Setup of decision making body	4	4	UA law does not provide requirements for open selection process of Commission of the NCCIR as well as transparency measures
	1.3	Appeal and Dispute Resolution	2	1	NCCIR has limited area of dispute resolution between market participants
2. Powers and obligations	2.1	General	11	5	NCCIR has to align on supervision measures with other institution
	2.2	Market analysis	8	8	Regularity of market reviews is not set for NCCIR; NCCIR is not mandated to impose, maintain, amend or withdraw regulatory obligations as a result of market analysis
	2.3	Scarce resource management	3	2	Powers to manage national numbering plan shall be transferred to NCCIR
	2.4	Consumer protection	2	1	NCCIR lacks right of pre-trial settlement of disputes between service providers and consumers
	2.5	Universal service	2	2	NCCIR shall be able to mandate the carrying of universal services obligations by undertakings not designated as dominant in the market

Total: 44 34



Regulatory independence in Ukraine

Insights per selected criteria assessment (1/2)



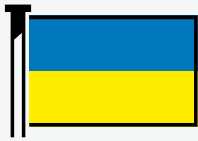
Status of NRA – legally distinct and functionally independent

- ▶ **Transposition of the relevant EU law provision on guaranteeing legal separation of the authority and functional independence has not been identified**
 - a) Institution entrusted with tasks typically carried out by NRA has been setup, however, independence requirements are not being provided for
- ▶ **Transposition of the relevant EU law provision on prohibition to seek or take instructions has not been identified**
 - a) The NCCIR as governmental body and part of governmental setup is subject to appeals procedures as provided for by the overall framework of administrative procedure under the Code of Administrative Procedure of Ukraine, falling within the scope of Article 4 of the Framework Directive
 - b) The NCCIR is also required to approve draft measures under law of Ukraine “On the principles of state regulatory policy in the sphere of economic activity”, not in line with independence provisions as well as prohibition to seek or receive instructions



Decision making powers, prohibition to seek or take instructions from any other body

- ▶ **Transposition of the relevant EU law provision to ensure impartial decision making, decision making powers of NRAs and provide for prohibition to seek or to take instructions has not been identified;**
Also, in the decision making process the principles of impartiality and transparency are not embedded as per EU law
 - a) NCCIR is mandated under law “On Telecommunications” to submit proposals to governmental authorities on draft laws, other legal documents, issue binding normative and administrative acts
 - b) Body entrusted with tasks typically carried out by NRA has been setup, however, impartial decision-making process and prohibition to seek or receive instructions are not being provided for
 - c) On the contrary, the NCCIR is subject to horizontal process of approval of regulatory measures. Documents are subject to mandatory state registration under law “On the Principles of State Regulatory Policy in the Field of Economic Activity”, and in cases provided for by the legislation the documents shall be submitted for approval to the interested state bodies and central executive authority of communications



Regulatory independence in Ukraine

Insights per selected criteria assessment (2/2)



Formation of NRA's budget

- ▶ **NCCIR has limited powers to drive the budgetary preparation process:**
 - a) For the NCCIR the activities are financed by the state budget following a budget request – a document prepared by the senior spending agency for which in turn the NCCIR provides a budgetary proposal within the merits of available financing
 - b) The applicable principle shall be that competent execution of tasks assigned shall have prevalence and appropriate financing shall be allocated accordingly



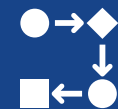
Ability to set remuneration for Board members and employees

- ▶ **NCCIR is subject to law "On Civil Service" that would not allow for the NRA to ensure flexible, market based approach to internal remuneration system. This limits NCCIR competitiveness in the labour market, which would enable to consequently strengthen the capacity of the NCCIR**



Recruitment of personnel and experts

- ▶ **Recruitment process is guided by provisions coming from recruitment procedures under general civil service. This may limit NCCIR capacity in recruitment in the labour market:**
 - a) For NCCIR the number of employees is approved by the President of Ukraine while the staffing list is approved by the Chairman in agreement with the Ministry of Finance
 - b) However, it is clear from the outset that the NCCIR shall be in position to define the most appropriate means of performing the tasks assigned, including all matters related to personnel policy



Procedure and conditions set for recruitment of head or collegiate body performing that function

- ▶ **The law "On Telecommunications" does not provide requirements for open selection process and steps to be taken to deem the selection process successful and well as transparency measures**