



EU4Digital

EU4Digital: supporting digital economy
and society in the Eastern Partnership

Gap assessment of Armenia regulatory system in the field of electronic communications

Findings and recommendations regarding governance,
powers and obligations of the national regulatory authority

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List of Acronyms & Abbreviations

Abbreviation	Definition
AM	Armenia
BEREC	Body of European Regulators for Electronic Communications
EaP	Eastern Partnership
EaP countries	Eastern partner countries
EaPeReg	Eastern Partnership Electronic Communications Regulators Network
EECC	European Electronic Communications Code
EU	European Union
EU MSs	European Union Member States
EU regulatory framework	2002/2009 EU electronic communications regulatory framework
EU4Digital	EU4Digital: Supporting digital economy and society in the Eastern Partnership
IRB EWG	Independent Regulators and Broadband expert working group
Methodology	Methodology on national electronic communications regulatory authorities' independence assessment for Eastern Partnership countries
NGO	Non-governmental organisation
NRA	National Regulatory Authority
PSRC	Public Services Regulatory Commission
Report	Report on assessment of the legislative gaps in the field of electronic communications – governance of national regulatory authorities and their powers and obligations



Executive summary

Context of this Report

The main objective of the “EU4Digital: Supporting digital economy and society in the Eastern Partnership” (hereinafter – EU4Digital) activities in the area of independence of national regulatory authorities (hereinafter – NRAs) is to strengthen the organisational and financial independence of NRAs for electronic communications in the Eastern partner countries (hereinafter – EaP countries). In order to enable EaP countries to strengthen independence of NRAs, EU4Digital jointly with the Eastern Partnership Electronic Communications Regulators Network (hereinafter – EaPeReg) has conducted a detailed analysis in each EaP country in terms of legislative gaps identified in the field of electronic communications. As a result, report on gap assessment regarding governance of NRAs and their powers and obligations (hereinafter – Report) was prepared. The Report also provides recommendations towards bridging the gaps where applicable.

The findings and recommendations regarding independence of the NRAs provided in the Report have been prepared based on the Methodology on national electronic communications regulatory authorities’ independence assessment for Eastern Partnership countries (hereinafter – Methodology). The Methodology has been prepared in cooperation with the Independent Regulators and Broadband expert working group (hereinafter – IRB EWG) of the EaPeReg and is based on the European Union (EU) 2002/2009 electronic communications regulatory framework (hereinafter – EU regulatory framework). The Methodology is composed of two principal assessment dimensions – governance of NRAs and their powers and obligations.

The aim of this Report is to assess the state-of-play in Armenia regarding legislative gaps in the field of independence of NRA for electronic communications, while using the EU regulatory framework as a benchmark. Findings and observations provided in this Report were made in cooperation with experts of Armenian NRA - Public Services Regulatory Commission (PSRC), who are also members of the EaPeReg. This Report also provides recommendations towards bridging the identified gaps in light of relevant EU regulatory framework.

Key findings and observations

According to the assessment completed by EU4Digital, Armenian national legislation (effective as of 14 May 2020) 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 organisational and financial 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.

Please see Table 1 below for key highlights of Armenian legislation gap assessment in light of relevant EU regulatory framework. More detailed findings and recommendations are provided further in this document.

Table 1. High-level overview of regulatory independence gap assessment exercise in Armenia

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	PSRC 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	

Further actions

Based on the outcomes of the legislative gap analysis and recommendations provided in the Report, country specific action plans to strengthen NRA independence will be prepared. Moreover, throughout 2021 EU4Digital will further provide technical support aimed at bridging the gaps identified and implementation of recommendations, including preparation of relevant legislation.



0 Introduction

0.1 Background of the report

Linked to the “Eastern Partnership 20 Deliverables for 2020”¹ document, EU4Digital facility has been launched aiming inter alia at supporting strengthening of independence of NRAs in the EaP region with the ultimate target of independent NRA for electronic communications in place in at least five EaP countries. EU4Digital prepared an early as-is situation analysis for EaP countries, which demonstrated differences in state-of-play of legal environments surrounding the functioning on NRAs, requiring further exploration of the legislative frameworks on country-per-country basis.

In order to assess the state-of-play in terms of legislative gaps in the field of governance of regulatory independence in each EaP country, the Methodology on national electronic communications regulatory authorities' independence assessment for EaP countries was developed. The Methodology has been prepared in cooperation with the IRB EWG of the EaPeReg and is based on the 2002/2009 EU regulatory framework.

The European Electronic Communications Code (hereinafter – EECC) being the latest step providing guidance of facilitating the electronic communications markets in EU was also taken into consideration as possible baseline for NRA independence gap assessment exercise in EaP countries. However, as it was adopted in end of 2018, at the moment of Methodology preparation there was no best-practice type of experience on EECC neither to be analysed, nor applied. Moreover, the EU4Digital prepared a comparison of norms related to regulatory independence under the 2002/2009 regulatory framework and the EECC (for more details please see Methodology). Comparative analysis did not reveal any major discrepancies / differences on the definition and attributes of NRA independence concept. Therefore, jointly with the EaPeReg a consensus was reached to focus the harmonisation efforts and apply the 2002/2009 regulatory framework as measuring stick, however, keep the EECC in perspective and following relevant developments within the EU, revisit the baseline in the future.

The aim of the Methodology is to enable the relevant EaP countries to assess and identify legislative gaps, if any, and, if necessary, compare among EaP countries' NRA governance model as well as assignment powers and responsibilities as set forth by the EU regulatory framework. The Methodology is composed of two principal assessment dimensions each divided in a set of sub-dimensions of assessment criteria:

1. Governance:
 - 1.1. Setup of the National Regulatory Authority;
 - 1.2. Setup of decision-making body;
 - 1.3. Appeal and Dispute Resolution.
2. Powers and obligations:
 - 2.1. General Powers and Obligations;
 - 2.2. Market Analysis;
 - 2.3. Scarce Resource Management;
 - 2.4. Consumer Protection;
 - 2.5. Universal Service.

Based on the information provided by the PSRC regarding assessment criteria of this Methodology, EU4Digital jointly with the EaPeReg has conducted a comprehensive gap assessment in terms of regulatory governance and powers and obligations.

0.2 Aim of the report

The aim of this Report is to assess the state-of-play in Armenia regarding legislative gaps in the field of independence of NRA for electronic communications, while using the EU regulatory framework as a benchmark. The Report provides recommendations towards bridging the identified gaps in light of relevant EU regulatory framework.

Based on the findings of this Report country specific action plans to strengthen NRA independence will be prepared. Moreover, throughout 2021 EU4Digital will further provide technical support towards bridging the gaps identified and implementation of recommendations, including preparation of relevant legislation.

¹ https://eeas.europa.eu/sites/eeas/files/20_deliverables_for_2020.pdf



0.3 Overview of the report

The independence assessment criteria used for the country analysis are determined in the Methodology on NRAs independence assessment for EaP countries. The criteria covered includes typical features, powers and responsibilities of a well-established and functioning NRA under the EU regulatory framework.

The Report is based on the information collected by the EU4Digital in Q1 2020 via the PSRC experts, who are also members of IRB EWG of the EaPeReg. Information collected includes text of relevant national legislation required to assess gaps in AM legislation using the EU regulatory framework as a benchmark. Where necessary, additional sources of available information, such as relevant legislation, were reviewed by EU4Digital. Please see Annex 1 for the list of national legislation analysed under gap assessment exercise.

The assessment exercise consists of two principal assessment dimensions – governance and powers and obligations – which are further divided into sub-dimensions containing specific criteria outlined in the Table 2.

Table 2. Independence assessment Criteria

No.	Criteria
1.	GOVERNANCE
1.1.	Setup of the NRA
1.1.1.	Status of NRA – legally distinct and functionally independent
1.1.2.	Decision making powers, prohibition to seek or take instructions
1.1.3.	Powers to develop NRA’s own strategy
1.1.4.	Formation of NRA’s budget
1.1.5.	Sources of NRA’s financing
1.1.6.	Possibilities to execute (spend) NRA’s budget
1.1.7.	Recruitment of personnel and experts
1.1.8.	Ability to set remuneration for Board members and employees
1.1.9.	Legislative initiative powers of NRA
1.1.10.	Bodies and process for challenging NRA’s decisions
1.1.11.	Consultation and transparency requirements
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
1.2.2.	Appointment of the head or collegiate body performing that function
1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal
1.2.4.	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
2.	POWERS AND OBLIGATIONS
2.1.	General
2.1.1.	Powers of enforcement of regulation
2.1.2.	Powers to collect information
2.1.3.	Powers to regulate market entry
2.1.4.	Powers to regulate national and/or international roaming



No.	Criteria
2.1.5.	Powers to regulate net neutrality
2.1.6.	Powers to control quality of service requirements
2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014
2.1.8.	Powers to organise public hearings
2.1.9.	Powers to organise associated councils or consulting bodies
2.1.10.	Powers for international cooperation
2.1.11.	Powers to be represented in international regulatory bodies
2.2.	Market Analysis
2.2.1.	Powers to define and analyse relevant markets
2.2.2.	Powers to implement <i>ex-ante</i> obligations
2.2.3.	Powers to regulate interconnection and access
2.2.4.	Powers to regulate access to ducts and/or other network infrastructure
2.2.5.	Powers to regulate termination and/or origination and/or transit tariffs
2.2.6.	Powers to set tariffs and/or prices
2.2.7.	Powers to apply cost accounting and allocation methodologies
2.2.8.	Powers to set Weighted Average Cost of Capital
2.3.	Scarce Resource Management
2.3.1.	Powers to grant scarce resources (radio frequencies and numbering)
2.3.2.	Powers to monitor radio frequencies
2.3.3.	Powers to manage numbering plans
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

The gap assessment of Armenia regulatory system in the field of electronic communications assessment was completed jointly with the EaPeReg and findings were later aligned with PSRC experts, who provided required information for the purpose of the assessment exercise. Based on these findings EU4Digital prepared recommendations towards bridging the gaps where applicable.

Further this document presents findings and recommendations per each of the criteria above. Detailed mapping of relevant EU regulatory framework norms versus relevant Armenia legislation is provided in the Annex 2 to this document.



1 Governance gap assessment results

1.1 Setup of the National Regulatory Authority

This set of criteria addresses setup of regulatory authority. Independence and impartial decision making are key elements of a well-functioning overall regulatory setup. NRAs shall be legally distinct and functionally independent to ensure impartiality of decision making.

The NRA shall have decision making powers to take binding decisions that only can be challenged before court through a clearly established appeal mechanism. The NRA is also prohibited to take or seek instructions on exercise of tasks assigned. There is a requirement to ensure administrative capacity of the NRAs, by ensuring access to appropriate finances and human resources. There can be several approaches to sources of financing – fee based or state budget, with the first meeting a requirement of a stronger independence criteria.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.1.	Status of NRA – legally distinct and functionally independent²	<ul style="list-style-type: none"> Pursuant to relevant provision of the EU regulatory framework the EU MSs shall guarantee independent functioning of NRA via guaranteeing legal separation of the authority and functional independence. This is a key element in ensuring robust and predictable evidence only based decision-making process. The principle of institutional and financial independence of NRA the PSRC is set forth by the Constitution of AM. The work of PSRC as delegated by the Constitution is guided by the law “On Body Regulating Public Services”, “On Civil Service”, “On Electronic Communications” and further details of set up are reviewed under other criteria. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
1.1.2.	Decision making powers, prohibition to seek or take instructions from any other body²	<ul style="list-style-type: none"> Pursuant to relevant provision of the EU regulatory framework the EM MSs shall ensure impartial decision making, decision making powers of NRAs and provide for prohibition to seek or to take instructions. Under Article 3, the EU MSs shall ensure that, when applicable, NRAs meet relevant deadlines, of decision making and in the decision making process the principles of impartiality and transparency are embedded. The transposition of the relevant EU regulatory framework provision has been identified. The law “On Body Regulating Public Services” ensures the PSRC independence of decision-making process of regulatory authority. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
1.1.3.	Powers to develop NRA’s own strategy²	<ul style="list-style-type: none"> A key feature of operational and medium-term outlook of functioning of NRAs are the powers to develop and adopt own activity strategy, within the merits of overall policies applicable to the regulated sector and taking into account the available toolbox. 	Review the legislation and set forth the explicit power to for the PSRC to prepare medium term strategy.

² Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> As the functioning of the NRA shall by default be independent, a planning document outlining medium term planning is important to ensure both predictable and transparent performance of the tasks assigned. Law “On Body Regulating Public Services” ensures PSRC, based on the annual Operational Plan, to develop and adopt its own internal Working Plan which is annually presented to the National Assembly of AM. 	
1.1.4.	Formation of NRA's budget³	<ul style="list-style-type: none"> Ability of NRA to execute its tasks competently and in a timely manner hinges availability of financial resources which in turn lead to ability of the NRA to gather necessary technical resources and the ability to compete in the labour market. Predictable for the stakeholders of regulatory process environment of budgetary formation is key for ensuring predictable regulatory outcomes. Under EU regulatory framework the NRA shall take its decisions impartially, transparently and in a timely manner and to enable this the legislation stipulates for having separate annual budgets. It is therefore of utmost importance that the budgetary process, including approval, is mostly driven by the NRAs themselves, on a basis of thorough preparatory process and budgetary proposal. 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. According to the law “On Body Regulating Public Services”, the budget of the PSRC is approved each year according to the law on State Budget of that year. Annually PSRC presents its financial report to the Government authorised body, which can carry financial operations audit of the PSRC. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
1.1.5	Sources of NRA's financing⁴	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure that the NRAs exercise their powers impartially, transparently and in a timely manner. The framework also requires the MSs to provide for separate budgets of the NRAs. Furthermore, the EU regulatory framework stipulates that NRAs shall have adequate financial resources available in order to fulfil tasks assigned to them. A typical approach to ensure availability of adequate financing is to ensure independent of state source of financing of the NRA, managed by the NRA itself. Again typical, such a source may be financing collected by the NRA directly from market participants for provision of regulatory services in form of a fee. A regulatory fee collected from regulated entities, with further balancing mechanisms applied if required, is a predictable environment for both market participants and the regulatory bodies 	No recommendations identified.

³ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.

⁴ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.

Directive 2002/20/EC (Authorisation Directive): Article 12 – Administrative charges; Article 13 – Fees for rights of use and rights to install facilities.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>themselves whereby using a certain mechanism, such as percentage of turnover over a given period, is transferred to the NRA budget directly. The sum of the transfers shall cover the totality of costs incurred for provision of regulatory services and any surplus shall returned to market participants. It is also important to note that any such financing collected shall only be used for the electronic communication's regulatory purposes.</p> <ul style="list-style-type: none"> • Law "On Body Regulating Public Services" provides detailed guidance, NRA the PSRC shall be financed by regulatory fees based on PSRC estimation and other sources of financing as set forth by the legislation. Yearly 1% of financing directed to non-governmental organisations involved in consumer protection on regulated areas. • Annually PSRC presents its financial report to the Government authorised body, which can carry financial operations audit of the PSRC. 	
1.1.6.	Possibilities to execute (spend) NRA's budget⁵	<ul style="list-style-type: none"> • The EU regulatory framework mandates MSs to ensure that NRAs have adequate financial and human resources to carry out tasks assigned to them. Following the review above of the formation and sources of NRA budget an integral element is the ability spend the budget as provided for in the sector-specific legislation in performing the assigned tasks. This includes making available necessary premises, technical equipment and human resources, in order to address regulatory challenges as set forth by the relevant policy and planning documents, within the merits competence. • Law "On Body Regulating Public Services" provide detailed guidance, NRA the PSRC shall be financed by regulatory fees based on PSRC estimation and other sources of financing as set forth by the legislation. • As described above, the PSRC is independent within the merits of the law to execute assigned tasks, by means allocating appropriate funding following a planning phase. • 1 percent of the budget included in the maintenance costs of the PSRC, is to be directed to the non-governmental organisations which protect consumer's rights in the sector of regulation of public services and are registered according to AM legislation to develop their capacities and to improve their professional knowledge. Each year the calculated amount is given to the non-governmental organisations by the authorised body decided by the AM government. The choice of the mentioned non-governmental organisations, the procedure of providing the allocation and conditions are set by the AM government. 	<p>In order to bring the legislation in line with that of the EU, review the relevant legislation mandating that certain percentage of the maintenance costs of the PSRC is to be directed to NGO which protect consumer's rights in the sector of regulation of public services and are registered according to AM legislation to develop their capacities and to improve their professional knowledge.</p>
1.1.7.	Recruitment of personnel and experts⁶	<ul style="list-style-type: none"> • Under the EU regulatory framework, the MSs shall ensure the NRAs have adequate financial and human resources to carry out tasks assigned to them. This includes the ability to recruit relevant personnel and experts in a transparent selection process. 	<p>Review the legislation to enable the PSRC to set forth internal procedures and decision making on</p>

⁵ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.

⁶ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> According to the law “On Civil Service”, PSRC employees are considered as civil servants and the remuneration of employees of the PSRC are regulated by the law on Remuneration of Persons Holding State Positions. 	recruitment of personnel and experts.
1.1.8.	Ability to set remuneration for Board members and employees⁶	<ul style="list-style-type: none"> The EU regulatory framework provides for MSs to ensure the NRAs have adequate financial and human resources to carry out the task assigned to them. To tackle part of availability of adequate human resources the NRAs are competing with other institutions and more importantly market participants in the labour market for the expertise and experts. As undertakings providing electronic communications services or networks and other business entities do not have requirements on certain remuneration systems that may seem dissuasive if compared to what would be normally available under competitive labour market, the NRAs are to be allowed to adjust their remuneration systems to meet, at least to a certain extent, the remuneration systems used by their direct competitors. According to the law “On Civil Service”, PSRC employees are considered as civil servants and the remuneration of employees of the PSRC are regulated by the law on Remuneration of Persons Holding State Positions. 	Review the legislation to enable the PSRC to set forth internal procedures and decision-making setting remuneration for decision making body and its employees, in order to ensure comparable conditions to those of the regulated markets.
1.1.9.	Legislative initiative powers of NRA⁷	<ul style="list-style-type: none"> While there is no direct reference to relevant provisions in the EU regulatory framework, powers to initiate legislative process, as opposed to powers delegated by the law to prepare legislation, are important to enable full participation of NRAs in the preparation of legislation governing electronic communications sector. The NRAs are on daily basis engaging both supply and demand sides of the market and possess most up to date information supporting evidence-based decision-making process. Should the NRA be in position only to propose amendments to legislation via another governmental body, the principle impartial decision making, and independence may not be met. Pursuant to the Constitution, a legislative proposal may be submitted by member of the Parliament, a faction of the National Assembly and the Government. The PSRC, however, has no right to initiate the legislative process. The PSRC may adopt Resolutions, which in their nature can be secondary normative, individual and internal legal acts. 	Introduce changes to relevant legislation enabling PSRC the right to initiate the legislative process.
1.1.10.	Bodies and process for challenging NRA’s decisions⁸	<ul style="list-style-type: none"> Under EU regulatory framework, any entity affected by decision shall have right to appeal against the decision to a body which is independent of the process. Under the law “On Body Regulating Public Services”, the legal acts of the PSRC can be appealed in court by any party. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

⁷ No direct EU legislation reference. During the legislative process the hands-on experience of NRA may not be realised to its fullest potential via legislative proposals, should those proposals be aligned with relevant state institution or national frameworks, whereby, the inputs received may be linked to governmental or non-governmental bodies linked to the various groups stakeholders whose efforts may not be based on independent decision making or balancing the market and consumer interests simultaneously.

⁸ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.11.	Consultation and transparency requirements⁹	<ul style="list-style-type: none"> The consultation procedures are set up in the law “On Body Regulating Public Services”. The PSRC has an open nature of meetings, consultation procedures except for the cases when the PSRC reviews issues related to state or official secrecy or internal procedural matters. The PSRC sets up meetings where interested bodies have the opportunity to participate and express their opinion, as well as consultation process is open to all parties. After the consultation process all results shall make publicly available, except for confidential information through the mass media, Internet and other facilities. However, there is no explicit requirement or mandate for the PSRC to adopt a consultation procedure. 	Review the legislation to add mandate in the sector-specific legislation for the PSRC on setup on consultations procedures.
1.1.12.	Cooperation setup with other competent authorities⁸	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to setup robust framework among national regulatory, national competition and national consumer protection authorities. Apart, from this there is a specific case – consultation on market analysis process, where input from national competition authority is mandatory to received. Cooperation with other authorities is set by law “On Electronic Communications”, where PSRC has to consult with Commission for the Protection of Economic Competition and Competent Authority for spectrum. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

1.2 Setup of decision making body

Decision making body has to be setup in a transparent procedure. The appointment shall be based on professional skills and capacities of the candidate solely, with regulatory tasks at hand in mind. There can be different level of appointment, depending on constitutional framework in a particular country, the overarching idea for appointment is to ensure the stability and predictability for the appointment from the perspectives of appointment, taking the office as well as dismissal with criteria for dismissal provided in advance and communicated to the members of decision-making body.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.2.1.	Procedure and conditions set for recruitment of head or collegiate body performing that function¹⁰	<ul style="list-style-type: none"> The EU regulatory framework does not stipulate for a specific selection process for the head or collegiate body performing that function to be provided in advance in relevant national legislation. It is however of utmost importance, having regard to the tasks to be performed by the NRA that the selection process is well documented, and results of intermediate steps and final results are publicly communicated. In the law “On Body Regulating Public Services” are detailed description of the requirements on citizenship, education and work experience of the Commissioners who can be eligible for selection process. 	Review the legislation by providing for open selection process for the Head of the PSRC or the members of the collegiate body performing that function.

⁹ Directive 2002/21/EC (Framework Directive): Article 6 – Consultation and transparency mechanism.

¹⁰ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> Government may serve as appointing authority and nominate a candidate for the position of the Chairman. Duration of the appointment stipulated for 5 years with limitations to being appointed more than 2 times consecutively. 	
1.2.2.	Appointment of the head or collegiate body performing that function¹⁰	<ul style="list-style-type: none"> Under the law “On Body Regulating Public Services”, the PSRC is composed of five Commissioners - the Chairman and four Commissioners. The Government has the right to nominate a candidate for the position of the Chairman. The Commissioners are appointed for five year period with a possibility to be re-appointed on second term, but not more than two times consecutively. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal¹⁰	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to set forth in a law a framework under which the head or collegiate decision making body performing that function may be dismissed from office only if certain conditions required for the performance of their tasks are no longer met. The EU regulatory framework provisions also require MSs to ensure that decision of dismiss the head or collegiate body performing that function shall be made publicly available, the persons concerned shall receive a statement of reasons for dismissal, request publishing of the decision and the decision to be published. The law “On Body Regulating Public Services” defines the conditions under which the Chairman and Commissioners may be dismissed from office. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
1.2.4.	Terms in office as head or collegiate body performing that function¹¹	<ul style="list-style-type: none"> Under the law “On Body Regulating Public Services”, the PSRC is composed of five Commissioners - the Chairman and four Commissioners. The Government has the right to nominate a candidate for the position of the Chairman. The Commissioners are appointed for five year period with a possibility to be re-appointed on second term, but not more than two times consecutively. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

¹¹ None, as there is no specific legal guidance on the criteria in the EU regulatory framework.



1.3 Appeal and Dispute Resolution

It is an essential right of those affected by decision making of the NRA to have rights to appeal against the decision. The EU regulatory framework provides for efficient mechanisms to be ensured on national level under which any user or provider of electronic communications services provider affected shall have right to appeal.

It is important to note that, that the decision, pending outcome and unless interim measures are granted shall remain in force. Only appeal bodies setup in accordance with EU regulatory framework may suspend or overturn decisions taken by the NRAs.

Pursuant to the EU regulatory framework following a request from any of the parties providing electronic communications services or benefitting from regulatory obligations imposed, NRAs shall issue binding decision to resolve the dispute in a shortest timeframe possible.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.3.1.	Appeal procedures ¹²	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure mechanisms exist at national level under which any user or undertaking who is affected by a decision of NRA has the right of appeal against the decision to an appeal body that is independent of the parties involved. Under the law “On Body Regulating Public Services”, the legal acts and the tariffs set by the PSRC can be appealed in court. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
1.3.2.	Powers of resolve disputes between undertakings ¹³	<ul style="list-style-type: none"> The EU regulatory framework enables under certain conditions the undertakings in electronic communications area to request the NRA to issue a binding decision. The EU regulatory framework also requires the binding decision to be taken within the shortest timeframe possible but not exceed four months period, except for predefined circumstances. The law on Electronic Communication enables the PSRC to serve as pre-trial body to review disputes between a dominant operator and any other operator, as well as between operator and end-user to ensure fair competition and protection of users rights. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

¹² Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities; Article 4 - Right of appeal.

¹³ Directive 2002/21/EC (Framework Directive): Article 20 – Dispute resolution between undertakings.



2 Power and obligations gap assessment results

2.1 General

Regulation is one of the primary ways in which government can achieve its policy. Thus, regulators shall be granted with some general powers enabling them to carry out their functions in an efficient and expeditious manner.

The NRAs shall be able to engage in policy implementation and have the authority to impose regulatory decisions. In this context, it is also important that regulators have the ability to ensure freedom to provide electronic communications networks and services as well enhance competition between mobile operators.

Scope of NRA functions shall also include information collection and monitoring of markets as well as quality of services provided to end-users. Furthermore, the NRAs shall be also responsible for organising public hearings and associated councils or consulting bodies – to take into account the views prior to taking regulatory actions.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.1.	Powers of enforcement of regulation¹⁴	<ul style="list-style-type: none"> The EU regulatory framework provides for certain powers to be attributed to the NRAs when it comes to enforcement of regulatory framework. Under the general authorisation regime, the market participants shall be bound to follow the requirements of regulatory framework and the NRAs shall be able to verify compliance thereof. For this the NRAs shall have powers to collect necessary information, issue binding decisions, enforce decisions taken. Under the law “On Electronic Communications”, the PSRC has the right: <ul style="list-style-type: none"> - on its own initiative or at the request to conduct inspections and audit to ensure compliance with the requirements of the legislation and the licence; - to set accounting standards and requirements on submitting reports for undertakings; - to obtain the information related to the implementation of its functions. The law also enables PSRC to apply sanctions, penalties and fines for violating the provisions of the law, the conditions of rights of use or authorisation, or the legal acts. The PSRC has the right to suspend a licence or file a claim, with a court for withdrawal of a licence and radio frequency authorisation. The PSRC has the right on its own or upon the request of any person suspend a cease-and-desist order to the person who is operating an unlicensed network or is providing unlicensed services. However, Suspension and withdrawal provisions prescribed by the law do not extend to the licence of the incumbent operator. The incumbent operator shall be subject to the conditions of its licence during the whole term of exclusivity. 	Review the legislation so that suspension or withdrawal provisions shall be equally applicable to all authorised undertakings, including the incumbent market participants.

¹⁴ Directive 2002/20/EC (Authorisation Directive): Article 10 – Compliance with the conditions of the general authorisation or of rights of use and with specific obligations.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.2.	Powers to collect information¹⁵	<ul style="list-style-type: none"> The EU regulatory framework provides that the MSs shall ensure that the NRAs have right to request and the undertakings providing services and networks have obligation to provide all information required for the purpose the enabling the ability to conform with the requirements of documents comprising the EU regulatory framework. However, the EU regulatory framework also provides obligation to justify the request for information and the requirement for the requested information be proportionate to the task at hand. Should the information provided be deemed as confidential, the NRAs shall treat the information as such. Under the law “On Electronic Communications”, PSRC has the right to collect the information related to the implementation of its functions as well as undertakings have the following obligation to provide the information under conditions and level of detail as established by the PSRC. Based on the information obtained from the operators the PSRC prepare yearly Activity Report of the past year and make it publicly available. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
2.1.3.	Powers to regulate market entry¹⁶	<ul style="list-style-type: none"> The EU regulatory framework establishes a framework for regulation of market entry by undertakings intending to provide electronic communications services or networks. The provision of both services and networks within the EU may only be subject to a general authorisation. The market participants may be required to submit notifications of their activities but may not be required to obtain explicit decision or any administrative act enabling market entry. The market activities may be commenced once the notification has been submitted. The law “On Electronic Communications” sets forth of general authorisation regime in AM. The undertakings are required to submit a notification to the PSRC of their intent to engage in provision of electronic communications services and networks and may provide electronic communications services and networks in 5 days after presenting the notification to the PSRC. 	Review the law “On Electronic Communications” by providing immediate market entry once the notification has been filed. The notification may take a stipulated form, however, may not be necessary.

¹⁵ Directive 2002/21/EC (Framework Directive): Article 5 – Provision of information.

Directive 2002/20/EC (Authorisation Directive): Article 10 – Compliance with the conditions of the general authorisation or of rights of use and with specific obligations; Article 11 - Information required under the general authorisation, for rights of use and for the specific obligations.

¹⁶ Directive 2002/20/EC (Authorisation Directive): Article 3 – General authorisation of electronic communications networks and services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.5.	Powers to regulate net neutrality¹⁷	<ul style="list-style-type: none"> Under the EU regulatory framework, the open internet access is regulated supranationally by regulations supported by a number of delegated legal documents. Regulations, while to be implemented without transposition, require certain decision making powers for the NRA not currently reflected in the law “On Electronic Communications”. Net neutrality is a part of policy development regarding which a document was approved by Protocol decree of the AM government. According to the Protocol decree of the AM government on Internet Governance Principles, internet governance principle is the facilitation of net neutrality principle. 	Review the legislation by providing the PSRC with necessary delegations and decision-making powers to ensure the open internet access.
2.1.6.	Powers to control quality of service requirements¹⁸	<ul style="list-style-type: none"> The EU regulatory framework mandates the MSs to empower the NRAs to able to request publication of information on quality of electronic communications services. Moreover, the NRAs may further specify the parameters to be measured, the content for and manner of the information to be published with an aim of providing access to comprehensive, comparable, reliable and user-friendly information. The law “On Electronic Communications” provides powers for the PSRC to provide quality standard for the operators and for the provision of services. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014¹⁹	<ul style="list-style-type: none"> From the NRA powers and obligations perspective, the purpose of this criterion is to assess responsibilities assigned to the NRA deriving from the Directive 2014/61/EU. There are various approaches within the EU when it comes to transposition said Directive, however, there are 2 areas which are typically assigned to NRAs as already similar responsibilities may be assigned beyond what would be required by the Directive – dispute resolution and single information point. 	Matter to be followed up – currently ongoing work on transposition of Directive 2014/61/EU.
2.1.8.	Powers to organise public hearings²⁰	<ul style="list-style-type: none"> The EU regulatory framework provides for the requirement of key elements of the national regulatory frameworks to be consulted with broader audience. It may not always be most appropriate to organise a written consultation procedure, in particular, when questions related to end-user empowerment and protection are under review. For this consultation in form of a hearing may be more appropriate that may be further complimentary to the written consultation procedures. Under the law “On Body Regulating Public Services”, the PSRC shall insure transparency of their activity and decisions. That includes public hearings, publicly available draft decisions and final decisions. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

¹⁷ Regulation (EU) No 531/2012 of the European Parliament and of the Council, of 13 June 2012 on roaming on public mobile communications networks within the Union. Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

¹⁸ Directive 2002/22/EC (Universal Service Directive): Article 22 – Quality of service.

¹⁹ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

²⁰ Directive 2002/21/EC (Framework Directive): Article 6 – Consultation and transparency mechanism.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.9.	Powers to organise associated councils or consulting bodies²¹	<ul style="list-style-type: none"> From the EU regulatory framework perspective there is no direct reference to support this criterion, however, as the electronic communications play important role in the overall economy and impact of regulatory activities may well go beyond what would be deemed sector specific, it often the case that advisory bodies or external working groups on both permanent and ad hoc basis are organised to support the regulatory activities. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
2.1.10.	Powers for international cooperation²¹	<ul style="list-style-type: none"> The EU regulatory framework requires the NRAs to cooperate in order strengthen the Single Market. This cooperation takes both formalised and non-formalised forms. The EU regulatory cooperation is formalised under BEREC mandating the MSs to ensure NRAs are cooperating and have adequate resources to so. And there are a number of informal cooperation frameworks based on regional cooperation and competition conditions, etc. A form of cooperation of EU NRAs under EU regulatory framework is participation on all levels of decision making process in specialised regulatory organisations with an aim of harmonisation of regulatory framework and strengthening the Single Market. There is also a number of international bodies which at least partially deal with matters that are typically EU NRA competences such as spectrum, numbering, technical and market regulation. Depending on the national governance of international representation the NRAs may serve as advisory bodies to the institutions representing or the NRAs themselves may serve as representation. Pursuant to the legislation applicable to activities of the PSRC, there are no restrictions to engage into international cooperation within the merits of the competence. In certain cases, an agreement shall be received from the government. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
2.1.11.	Powers to be represented in international regulatory bodies²²	<ul style="list-style-type: none"> A form of cooperation of EU NRAs under EU regulatory framework is participation on all levels decision making process in specialised regulatory organisations with an aim of harmonisation of regulatory framework and strengthening the Single Market. There is also a number of international bodies which at least partially deal with matters that are typically EU NRA competences such as spectrum, numbering, technical and market regulation. Depending on the national governance of international representation the NRAs may serve as advisory bodies to the institutions representing or the NRAs themselves may serve as representation. Pursuant to the legislation applicable to activities of the PSRC, there are no restrictions to engage into international cooperation within the merits of the competence. In certain cases, an agreement shall be received from the government. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

²¹ None, as there is no specific legal guidance on the criteria in the EU regulatory framework.

²² None, for European Union NRAs – BEREC.



2.2 Market Analysis

Under the EU regulatory framework, it is recommended that NRAs shall carry out an analysis of the regulated market as they usually collect wealth of information on electronic communications sector.

On the basis of their market analysis based on several assessment factors (e.g. prices, profitability or the relationship between price and costs) NRAs shall be able to determine the extent to which competition is effective in relevant market, so as to avoid any abuse of a dominant position, in particular to the detriment of consumers.

In case a market is considered not to be effectively competitive as a result of an undertaking having significant market power on that market, NRAs must impose obligations on this undertaking, or maintain/amend such obligations where they already exist.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.2.1.	Powers to define and analyse relevant markets²³	<ul style="list-style-type: none"> The EU regulatory framework provides for the NRAs to have both rights and obligation to define and analyse relevant markets for the purpose of assessment of state of competition with an aim of addressing competitive shortcomings, if any. Pursuant to the EU regulatory framework an undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. Pursuant the EU regulatory framework the NRAs shall carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation and taking the utmost account of the Guidelines. The PSRC has approved the decision on classification of public electronic communication networks and determination of the public electronic communication markets. Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant market. Pursuant to the law “On Electronic Communications”, undertaking with dominant position in a specific electronic communications market is a supplier or consumer, who has no competitors or is not facing any substantial competition, or its turnover volumes make at least one-third market share. 	Definition of the significant market power/dominant position to be adjusted; regularity of market reviews shall be set forth by the law.
2.2.2.	Powers to implement ex-ante obligations²⁴	<ul style="list-style-type: none"> The EU regulatory framework provides that if as a result of market analysis process the relevant market is not found effectively competitive, the NRA shall identify undertakings that either individually or jointly have a significant market power and impose, maintain or amend regulatory obligations. Should however market be found effectively competitive, conversely the obligations be withdrawn. Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant market. 	Review the legislation to decouple significant market power framework form universal services provision framework; ensure internet access services are not exempt from price regulation.

²³ Directive 2002/21/EC (Framework Directive): Article 15 – Procedure for the identification and definition of markets; Article 14 – Undertakings with significant market power; Article 16 – Market analysis procedure.

²⁴ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> • Pursuant to the law “On Electronic Communications”, undertaking with dominant position in a specific electronic communications market is a supplier or consumer, who has no competitors or is not facing any substantial competition, or its turnover volumes make at least one-third market share. • The PSRC has the right to develop guidelines, safeguard rules and impose obligations to undertakings with dominant position in the relevant market. • Should PSRC identify, even potentially, abuse of the dominant position in the relevant market, the PSRC may establish competitive safeguard rules under which it will: <ul style="list-style-type: none"> - prohibit anti-competitive pricing and other practices; - order a dominant operator or dominant service provider to provide competitive public electronic communications services only through one or more fully separated subsidiaries or affiliates; - order a dominant operator or dominant service provider to implement structural separations between its dominant operations and its competitive operations; - order a dominant operator or dominant service provider to restrict transactions, or the sharing of information or employees, or to take other steps which the PSRC considers reasonable and adequate for the purpose of safeguarding competition; - order, if other measures are unable to protect competition, the divestiture of one or more affiliates from the dominant carrier. • Obligations of dominant operators with regard to line facilities: <ul style="list-style-type: none"> - any dominant operator holding a line facility shall be obliged to allow any other operator to lease the capacity of the given line facility; - all dominant operators shall be obliged to publish information concerning the location of their line facilities and available capacity thereof in accordance with the procedure defined by the PSRC; - any operator seeking to lease the line facility of a dominant operator shall be obliged to request that operator in writing. The dominant operator from whom the line facility or the authorisation to use such a facility is sought shall be obliged to inform in writing the requesting operator within fourteen days with regard to its intention to provide the requested line facility or the authorisation to use it. • The PSRC has the right to establish and regulate the tariffs for public electronic communications services provided by undertakings. • However, the PSRC does not have the authority to regulate the tariffs charged by an Internet service provider for Internet access. • The PSRC has the right to regulate the tariffs for universal services provided by undertakings. • The PSRC has the right to establish for dominant undertakings an accounting system which requires demonstrating that the charges for the public electronic communications services are cost-based. • The PSRC shall ensure that undertakings subject to tariff regulation apportion the total costs of providing their product and service offerings. 	



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> The PSRC has the right to require all undertakings subject to tariff regulation to submit an audited statement of cost accounting for public electronic communications services and make it publicly available. 	
2.2.3.	Powers to regulate interconnection and access²⁵	<ul style="list-style-type: none"> The mandate for the NRA to regulate interconnection or access shall be part of both symmetric and asymmetric regulatory obligations. For the purpose of this criterion, asymmetric, market analysis based, regulatory framework of imposition of obligations to market participants is reviewed. The EU regulatory framework provides that in case NRA determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and the NRA shall on such undertakings impose appropriate specific regulatory obligations. The EU legislation further stipulates that NRA may impose on the undertakings designated as significant market power specific obligations to address the competitive shortcomings, such as: <ul style="list-style-type: none"> - obligation of transparency; - obligation of non-discrimination; - obligation of accounting separation; - obligations of access to, and use of, specific network facilities; - price control and cost accounting obligations; - functional separation. Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant market. Law “On Electronic Communications” provide the mandate for the PSRC to impose regulatory obligations. The PSRC may impose on the operators designated as having dominant position specific obligations to grant interconnection. 	Review the legislation so that the regulatory obligations, described in detail by the law, are not be automatically imposed. Following market definition procedure, definition of electronic communications services to be subject to significant market power regulation, NRA the PSRC shall have obligations and powers to impose proportionate measures to the competition problems identified, that may or may not constitute full set of remedies.
2.2.4.	Powers to regulate access to ducts and/or other network infrastructure²⁶	<ul style="list-style-type: none"> Under the EU regulatory framework, the if the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. The NRA shall be able to either define and analyse a relevant identified by the European Commission in its Recommendation, or if certain conditionality is met define and analyse a relevant market not included in the Recommendation. For provision of certain wholesale products it may be of crucial importance to be able to receive access to specific facilities enabling usage of those wholesale products or those facilities 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

²⁵ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.

Directive 2002/19/EC (Access Directive): Article 8 – Imposition, amendment or withdrawal of obligations; Article 9 – Obligation of transparency; Article 10 – Obligation of non-discrimination; Article 11 – Obligation of accounting separation; Article 12 – Obligations of access to, and use of, specific network facilities; Article 13 – Price control and cost accounting obligations; Article 13a – Functional separation.

²⁶ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.

Directive 2002/19/EC (Access Directive): Article 8 – Imposition, amendment or withdrawal of obligations; Article 9 – Obligation of transparency; Article 10 – Obligation of non-discrimination; Article 11 – Obligation of accounting separation; Article 12 – Obligations of access to, and use of, specific network facilities; Article 13 – Price control and cost accounting obligations.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>may well be subject to whole separate regulatory framework aimed promoting of effective competition by in turn promoting infrastructure based competition when the alternative networks may use current infrastructure that is not easily, economically and technically, duplicated. In general, the NRAs shall have rights to regulate access to ducts and other network infrastructure as any other electronic communications service or provision of network.</p> <ul style="list-style-type: none"> Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant market that may be markets related to subject matter – ducts or other infrastructure and as a result impose appropriate set of remedies, pending the adjustments as identified during review of other criteria. 	
2.2.5.	Powers to regulate termination and/or origination and/or transit tariffs²⁷	<ul style="list-style-type: none"> Under the EU regulatory framework, the NRAs may determine that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. The NRA shall be able to either define and analyse a relevant identified by the European Commission in its Recommendation, or if certain conditionality is met define and analyse a relevant market not included in the Recommendation. The 3 product markets reviewed by this criterion are included in the list of initial European Commission Recommendation for markets to be reviewed so NRA shall possess necessary powers to regulate the services as a result of market analysis process by means of imposition of appropriate regulatory obligations. Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant markets that may be markets related to subject matter – interconnection and as a result impose appropriate set of remedies, pending the adjustments as identified during review of other criteria. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
2.2.6.	Powers to set tariffs and/or prices²⁸	<ul style="list-style-type: none"> Under the EU regulatory framework if the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. One of the obligations is obligation of cost orientation which may take form setting tariffs or prices. The NRA shall be required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. Benchmarking exercises can also be applied. 	Review the legislation so that the PSRC have powers to regulate any wholesale or retail tariff of service identified during market analysis procedure, given the proportionality requirement of imposition of remedies is

²⁷ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.

Directive 2002/19/EC (Access Directive): Article 8 – Imposition, amendment or withdrawal of obligations; Article 13 - Price control and cost accounting obligations.

²⁸ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.

Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.

Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> • Should retail regulatory measures related to retail tariff regulation or other retail price controls, the NRA shall have right to request appropriate cost accounting system, by specifying format and accounting methodology to be applied. The NRA may request compliance to be verified by a qualified independent body. • There shall also be rights for the countries to oblige designated undertaking to provide to consumers electronic communications services which depart from those provided under normal conditions, in particular addressed to those with low incomes or special needs, which would be exempt from cost orientation obligation. • Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant markets and as a result impose appropriate set of remedies, including the obligation of regulation of tariffs. Certain services however are excluded from tariff regulation. 	<p>met, including tariffs applied for internet access services.</p>
2.2.7.	<p>Powers to apply cost accounting and allocation methodologies²⁹</p>	<ul style="list-style-type: none"> • Under the EU regulatory framework, the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. One of the obligations is obligation of cost orientation which may take form setting tariffs or prices. • The NRA shall be required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. Benchmarking exercises can also be applied. • Should retail regulatory measures related to retail tariff regulation or other retail price controls, the NRA shall have right to request appropriate cost accounting system, by specifying format and accounting methodology to be applied. The NRA may request compliance to be verified by a qualified independent body. • Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant market and impose obligations. • Under the law “On Electronic Communications”, the PSRC shall establish for dominant service providers an accounting system which demonstrate that the charges for the public electronic communications services are cost-based. The PSRC has the right to verify and audit cost allocations, ensure proportionality of cost allocations as well as consistency of costs incurred by the latter. • The PSRC may establish supplementary regulations governing the prices which a dominant operator may charge for interconnection services. 	<p>No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.</p>

²⁹ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.
 Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.
 Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.2.8.	Powers to set Weighted Average Cost of Capital³⁰	<ul style="list-style-type: none"> • Under the EU regulatory framework, the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. One of the obligations is obligation of cost orientation which may take form setting tariffs or prices. • The NRA shall be required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. Benchmarking exercises can also be applied. • Should retail regulatory measures related to retail tariff regulation or other retail price controls, the NRA shall have right to request appropriate cost accounting system, by specifying format and accounting methodology to be applied. The NRA may request compliance to be verified by a qualified independent body. • There shall also be rights for the countries to oblige designated undertaking to provide to consumers electronic communications services which depart from those provided under normal conditions, in particular addressed to those with low incomes or special needs, which would be exempt from cost orientation obligation. • Under the law “On Electronic Communications”, PSRC in consultation with the State Commission for the Protection of Economic Competition of the Republic of Armenia, have the rights to define undertakings with dominant position in the relevant market and impose obligations. • Under the law “On Electronic Communications”, the PSRC shall establish for dominant service providers an accounting system which demonstrate that the charges for the public electronic communications services are cost-based. The PSRC has the right to verify and audit cost allocations, ensure proportionality of cost allocations as well as consistency of costs incurred by the latter. • Furthermore, in regulating the charges levied by service providers, the PSRC shall ensure that such service providers have an opportunity to recover, based on effective management, a reasonable rate of return on the reasonable value of their investments made in providing services to the public. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

2.3 Scarce Resource Management

It is essential to ensure that services and devices do not cause harmful interference to each other. For this purpose, scarce resource regulation could serve as a basis for efficient use of spectrum and a level playing field for all market players.

Therefore, allocation and management of radiofrequency spectrum and numbering shall be administered by NRAs, with the aim of transparent, objective and more flexible access by public and private users.

³⁰ Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA).
 Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.
 Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.
 Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.3.1.	Powers to grant scarce resources (radio frequencies and numbering) ³¹	<ul style="list-style-type: none"> Under the EU regulatory framework there is a requirement that issuing general authorisations or individual rights of use of radio frequencies used for electronic communications are done by competent national authorities; when it comes to granting rights of use of numbering resources the function shall be performed by the NRA. For the granting of rights of use of spectrum, the EU transposition experience demonstrates preference of MSs to provide the NRAs with powers to issue the rights of use. According to legislation the approval of Table of Frequency allocation is done by the Ministry. Under the law “On Electronic Communications”, radio frequency authorisations are granted by PSRC based on the competitive applications or auction. The undertakings are required to submit a notification prescribed by the PSRC and notification shall be accompanied by an application fee. According to the law “On Electronic Communications”, the PSRC shall approve the national numbering plan and issue a number or code to an undertaking based on application. With the Resolutions the PSRC approved the procedure for issuing authorisation for radiofrequency usage, the rules of mobile number transfer services of public electronic communication networks, the rules on issuing authorisation for numbers and codes and their usage, the rules for reservation of numbers and codes for special services of service. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.
2.3.2.	Powers to monitor radio frequencies ³²	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure effective management of radiofrequencies, allowing for decision making discretion on the institutional setup on the national level to lie with the MSs themselves. The EU MSs according to the information available to the EU4Digital have opted in most cases for management or shared responsibility of management to lie with the NRAs. According to legislation the approval of Table of frequency allocation is done by the Ministry. Under the law “On Electronic Communications”, radio frequency authorisations are granted by PSRC based on the competitive applications or auction. The undertakings are required to submit a notification prescribed by the PSRC and notification shall be accompanied by an application fee. 	<p>The PSRC is in charge of spectrum management to the extent of assigning of rights of use but not planning or monitoring.</p> <p>Review the legislation by providing the PSRC the rights of planning and monitoring the use of spectrum management allocated for commercial use.</p>
2.3.3.	Powers to manage numbering plans ³³	<ul style="list-style-type: none"> The EU regulatory framework stipulates that MSs shall ensure that NRAs control the granting of rights of use of all national numbering resources and the management of the national numbering plans. According to the law “On Electronic Communications”, the PSRC shall adopt national numbering plan and issue rights of use for a number or code to an undertaking based on application. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

³¹ Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services; Article 10 – Numbering, naming and addressing.

³² Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services.

³³ Directive 2002/21/EC (Framework Directive): Article 10 – Numbering, naming and addressing.



2.4 Consumer Protection

One of objectives of regulation is to benefit and protect interests of current and future end-users in regulated markets. Thus, NRAs shall have an ability to ensure, together with other relevant authorities, that end-user protection measures are effective and enforced, so as to avoid any detriment of consumers.

NRA shall also have an ability to act as an alternative dispute settlement authority in respect of any complaint submitted by end-users. The regulatory authority’s decision shall have binding effect unless and until overruled on appeal.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.4.1.	Powers to set requirements for contracts³⁴	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations MSs to ensure that customers have rights to contract and minimum requirements to the contract. Those requirements can be specified either by the law itself or can be further mandated to NRA. The legislation in force does not cover information regarding minimum requirements to be covered by customer agreements. 	Review the legislation and provide the rights for the PSRC do define minimum requirements for customer agreements.
2.4.2.	Powers to solve customer complaints³⁵	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations for MSs to ensure that customers have rights to transparent, non-discriminatory, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services. The law on Electronic Communication enables the PSRC to serve as pre-trial body to review disputes between a dominant operator and any other operator, as well as between operator and end-user to ensure fair competition and protection of users rights. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

2.5 Universal Service

Pursuant to the EU regulatory framework NRAs shall have sufficient powers to ensure, that every user can access basic communications services (e.g. broadband internet access and voice communications services) at a reasonable quality and an affordable price, even if it is not satisfactorily met by the market.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.5.1.	Powers to set universal service obligations³⁶	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs. Under the law “On Electronic Communications”, the provision of universal telecommunication services is guaranteed. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

³⁴ Directive 2002/22/EC (Universal Service Directive): Article 20 – Contracts.

³⁵ Directive 2002/22/EC (Universal Service Directive): Article 34 – Out-of-court dispute resolution.

³⁶ Directive 2002/22/EC (Universal Service Directive): Article 3 – Availability of universal service.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> The PSRC may include a condition in the licence of any undertaking the requirement to provide one or two universal services and to ensure the possibility of universal services. The incumbent operator shall be obliged to deliver all universal services and provide the possibilities of universal services. 	
2.5.2.	Powers to define universal service's baskets³⁷	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs. The key element in design of universal obligations is take into account the national conditions – what type services are minimum type ones covering basic needs and where the natural market supply is not addressing the demand. There are minimum requirements to be reviewed in terms of scope of services to be provided and MSs may decide on the actual scope of services to be provided and potentially specific groups of customers, based on national conditions. Minimum services to be reviewed are: <ul style="list-style-type: none"> - access requests at fixed location (does not necessarily mean fixed network); - at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year; - at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones; - public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage. Under the law “On Electronic Communications” the universal service obligation shall consist of the provision of a minimum set of services approved by the PSRC pursuant to the policy objectives approved by the competent authority and as a result of consultation with all the stakeholders, which shall be available at an affordable price and in accordance with quality standards laid down for all end-users, irrespective of geographical location. The PSRC shall determine the most efficient and appropriate approaches for provision of universal services and define objectives for the provision of services, ensuring that the public electronic communication, in particular public telephone services are accessible to the majority of users. The provision of universal services is to take into account national conditions of electronic communications markets. 	No recommendations on the matter as the reviewed AM legislation in force covers the EU regulatory framework requirements.

³⁷ Directive 2002/22/EC (Universal Service Directive): Article 3 – Availability of universal service; Article 4 – Provision of access at a fixed location and provision of telephone services; Article 5 – Directory enquiry services and directories; Article 6 – Public pay telephones and other public voice telephony access points; Article 7 – Measures for disabled end-users.



Annex 1 – List of national legislation analysed under gap assessment exercise

Below please see a table, where national legislation documents analysed under gap assessment exercise are listed. Findings and observations provided in the Report are based on the text of relevant national legislation documents, which were effective as of 14 May 2020.

No.	Name of the legislative document
1.	Constitution of the Republic of Armenia
2.	Law of the Republic of Armenia “On the Regulatory Body for Public Services”
3.	Law of the Republic of Armenia “On Mandatory Regulatory Fees of Public Services”
4.	Law of the Republic of Armenia “On Electronic Communications”
5.	Law of the Republic of Armenia “On Civil Service”
6.	Protocol Decree of the Government of Armenia “On Internet Governance Principles”



Annex 2 – Detailed gap assessment report including legal references

[Electronic document version of detailed gap assessment report available upon request]