



EU4Digital

EU4Digital: supporting digital economy
and society in the Eastern Partnership

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

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

October 2020



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List of Acronyms & Abbreviations

Abbreviation	Definition
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
GE	Georgia
GNCC	Georgian National Communications Commission
IRB EWG	Independent Regulators and Broadband expert working group
Methodology	Methodology on national electronic communications regulatory authorities' independence assessment for Eastern Partnership countries
NRA	National Regulatory Authority
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 Georgia 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 Georgian NRA - Georgian National Communications Commission (GNCC), 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 of Georgian national legislation (effective as of 12 March 2020) completed by EU4Digital, 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 organisational and financial 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 instead.

Please see Table 1 below for key highlights of Georgian 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 Georgia

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	



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 GNCC 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 to is to assess the state-of-play in Georgia 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 GNCC experts, who are also members of IRB EWG of the EaPeReg. Information collected includes text of relevant national legislation required to assess gaps in Georgia 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
2.1.5.	Powers to regulate net neutrality



No.	Criteria
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 Georgia regulatory system in the field of electronic communications assessment was completed jointly with the EaPeReg and findings were later aligned with GNCC 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 Georgia 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 Member States 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 GNCC is set forth by the Constitution of GE. The work of GNCC as delegated by the Constitution is guided by the law “On National Regulatory Bodies”, “On Electronic Communications” and “On Broadcasting” and further details of set up are reviewed under other criteria. 	No recommendations on the matter as the reviewed GE 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 Member States 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 law “On National Regulatory Bodies” provides guidance for functioning of the GNCC. Under the law the NRA shall adhere to key principles of independence, publicity and responsibility. Furthermore, any type of interference in the ordinary course of activities of a National Regulatory Body, or of its control, or requesting a report regarding its activities, shall not be permitted unless otherwise provided for by law. The law further stipules main principles of guaranteeing regulatory independence: <ul style="list-style-type: none"> the impermissibility of any kind of control over National Regulatory Bodies; and the submission of reports only to the President of GE, the Government of GE and the Parliament of GE in accordance with the corresponding law; 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

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"> - the determination of the liability of a National Regulatory Body or a commissioner through the court unless otherwise determined by the legislation of GE; - the appointment of a commissioner only in compliance with the procedures determined by the corresponding law; - the impermissibility of transferring public functions (including the function of balancing the interests of licence holders and consumers) assigned under the law to other bodies or to private legal persons. <ul style="list-style-type: none"> • Furthermore, the law stipulates that inappropriate effect and unlawful interference or any attempt at such with regard to the plans, beliefs, decisions, activities or inactivity of a commissioner or a member of the administrative staff of a National Regulatory Body shall be illegal, and any decisions made under such inappropriate effect or unlawful interference shall be declared void. The members of decision-making body are entitled to file a motion with the court in order to prevent and/or eliminate such inappropriate effect or unlawful interference with regard to them. 	
1.1.3.	Powers to develop NRA's own strategy³	<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. • Pursuant to the law "On National Regulatory Bodies" the authority to perform regulatory functions, responsibility to implement transparent and reliable decision-making procedures, and to abide by core principles in formation and organisation of the NRA lie with NRA the GNCC itself. 	Review the legislation to provide the GNCC with explicit mandate to prepare medium term strategy.
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 National Regulatory Bodies" NRA, the GNCC is financed by regulatory fee and other sources, under specific cases as provided for by the legislation. The law further stipulates that budget shall be comprised by compulsory current and capital annual expenses required for exercising the authority granted by the legislation. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.5	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 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 be 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. Under the law "On National Regulatory Bodies" providing the framework and the law "On Electronic Communications" providing detailed guidance, NRA the GNCC shall be financed by a regulatory fee and other sources of financing as set forth by the legislation. The fee shall be established at 0.75 per cent of the total value (excluding VAT) of the regulated products (services) provided and/or of the work performed by an authorised body. There are also those fees collected for usage of scarce resources – numbering and radiofrequency spectrum. Under the law "On Electronic Communications" the GNCC may after covering the expenses determined by the budget of the Commission, transfer the remaining budget funds (if any) to the State Budget of GE. Under the same law the GNCC shall prepare an annual report on its activities and conduct a financial audit of its expenses and accounting statements in accordance with applicable rules. 	Review the legislation and ensure in case there is positive difference of regulatory costs incurred and totality of fees collected, the surplus is returned to the market.
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. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

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.

⁵ 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"> Under the law “On Electronic Communications” the expenses determined by the budget of the Commission shall be covered from the annual regulatory fees. Furthermore, the fee shall be transferred to a separate bank account and the GNCC may have access to it and may use it for specific purposes. As described above, the GNCC is independent within the merits of the law to execute assigned tasks, by means allocating appropriate funding following a planning phase. 	
1.1.7.	Recruitment of personnel and experts⁵	<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. Pursuant to the law “On National Regulatory Bodies”, it is NRA, the GNCC who may: <ul style="list-style-type: none"> - approve the structure and staff list of the staff of the NRA; - determine the labour remuneration of the person employed in the staff of the NRA; - establish basic requirements, special requirements and additional qualification requirements for the employment of a person in the staff of the NRA; - select and appoint a person to be appointed to the staff of the NRA; - promote, transfer and dismiss a person employed in the staff of the NRA. In case there is planned recruitment process, a public competition shall be announced in the national regulatory body for the vacant position of all hierarchical ranks. The rules and conditions for holding a competition for the employment of a person, as well as the rules for establishing and operating a competition commission shall be determined by the regulations for holding a competition approved by the GNCC. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
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. Pursuant to the law “On National Regulatory Bodies”, it is the NRA, the GNCC who may: <ul style="list-style-type: none"> - approve the structure and staff list of the staff of the NRA; - determine the labour remuneration of the person employed in the staff of the NRA. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.9.	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 Rules of Procedure of Parliament of GE, a legislative proposal may be submitted by citizens of GE, state bodies (except organizations of the executive branch and legal entities of public law under executive branch) including GNCC, and bodies of local self-government, political and public unions registered in GE according to the established rules, and other legal entities. The GNCC, however, has no right to initiate the legislative process. 	Introduce changes to relevant legislation enabling GNCC the right to initiate the legislative process.
1.1.10.	Bodies and process for challenging NRA's decisions⁶	<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 National Regulatory Bodies", appeals against the decisions of GNCC may be filed with the Constitutional Court and courts depending on the challenged measure. In principle – all legal enactments may be appealed against by affected party. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
1.1.11.	Consultation and transparency requirements⁸	<ul style="list-style-type: none"> There are no requirements in the sector specific legislation on consultation procedures. There are, however, horizontal consultation rules mandated by the Administrative Code. It shall be noted, that consultation procedures as referred to in sector specific electronic communications regulatory framework are a separate procedure from the horizontal requirements of the Administrative Code. 	Review the legislation to add mandate to the GNCC in the sector-specific legislation on setup and form of consultations procedures via relevant regulation adopted by the GNCC.
1.1.12.	Cooperation setup with other competent authorities⁹	<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. There are no requirements in the sector specific legislation on consultation procedures. There are, however, horizontal consultation rules mandated by the Administrative Code. 	Review the legislation to add mandate in the sector-specific legislation on setup of consultations procedures.

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 6 – Consultation and transparency mechanism.



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 function⁹	<ul style="list-style-type: none"> The EU regulatory framework does 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. Under the law “On National Regulatory Bodies”, the Parliament of GE shall elect the members of the NRA, whose candidacies shall be submitted to the Parliament of GE for election by the President of GE upon the recommendation (submission) of the Government of GE. For this purpose, the Government initiates an open competition by publishing a decree on requirements for the applicants. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
1.2.2.	Appointment of the head or collegiate body performing that function¹⁰	<ul style="list-style-type: none"> Under the law “On National Regulatory Bodies”, the Parliament of GE shall elect the members of the NRA. Selection of the documents to be submitted by the applicants based on qualification requirements and submission of the list of candidates to the President by the Government of GE is regulated by the law “On Broadcasting”, guided by the decree of the Government “On Procedural Rules of Government”. For the purpose of selection, the Government adopts a separate decree on holding an open competition based on requirements for applicants published. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal⁹	<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 Broadcasting” sets forth the procedure for dismissal of a member of decision making body of the GNCC, the decision thereof may be appealed to a court. Parliament shall decide within a month from the moment the mentioned cases occurred on his/her dismissal as a member of GNCC if: 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

⁹ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.

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"> - judgement of conviction sanctioning the imprisonment or restriction of liberty for a limited or unlimited period enters into force; - s/he is declared missing by a court; - is recognized as a recipient of support services, unless otherwise stated in the court decision; - resigns; - dies. • The decree of the Parliament, unless it is a normative decree, shall enter into force upon its adoption unless it provides other term. The decree of the Parliament shall be officially promulgated on the website of the legal entity of public law — Sakartvelos Sakanonmdeblo Matsne — and enters into force upon promulgation unless this decree provides other term. • However, at least one-third of the full composition of the Parliament may initiate procedures for dismissal of a member of the GNCC if: <ul style="list-style-type: none"> - provisions regarding conflict of interests specified by the law of GE “On Broadcasting” are violated; - a member of the Commission does not execute her/his duties for 15 consecutive working days or for a cumulative period of more than 2 months in a year for unjustifiable reasons. 	
1.2.4.	Terms in office as head or collegiate body performing that function¹¹	<ul style="list-style-type: none"> • Members of the GNCC are not appointed, they are elected by the Parliament; and the Chairman is elected by the members of the collegiate decision-making body. <ul style="list-style-type: none"> - 6 year for the Commissioner; - years for the Chair. • Commissioners can be re-elected on second term. Chair can be re-elected twice within its commissioner term. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

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.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.3.1.	Appeal procedures¹²	<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. • Depending on the legal document under review, the decisions of the GNCC may be appealed to either the Constitutional Court or court. • Under the law “On Electronic Communications”, the authorised person (registered undertaking) may appeal a legal act to the court. • Under the Administrative Proceeding Code, the appeal suspends the administrative act in question. However, there is conditionality provided that they may not be suspended, if: <ul style="list-style-type: none"> - it is connected with payment of state or local charges, duties or other fees; - postponing the execution causes significant material damage or poses a significant risk to the public order or security; - it is issued during a state of emergency or martial law, announced on the basis of an appropriate law; - an administrative body has rendered a written justified decision on immediate execution, if there is a necessity for urgent execution; - an individual administrative act has been executed or it is an enabling act and its suspension may significantly prejudice the legal rights and interests of other persons; - the above is determined by the law. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
1.3.2.	Powers of resolve disputes between undertakings¹³	<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. • Under the law “On Electronic Communications” the objectives of GNCC are: <ul style="list-style-type: none"> - resolve, within its powers, disputes arising between authorised persons operating in the field of electronic communications, also disputes between such authorised persons and users; - resolve, within its powers, disputes arising between licence and/or permit holders related to the exercise of the rights granted by the licence and/or permit. • And under the law “On National Regulatory Bodies” the GNCC is authorised to resolve any disputes with regard to the issues within their scope of competence: <ul style="list-style-type: none"> - between the holders of licences and/or permits issued by the GNCC; - or disputes between the holders of these licenses/permits and the users. 	No recommendations on the matter as the reviewed GE 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"> Under the law “On Electronic Communications” the GNCC shall monitor the activities of authorised persons in the field of electronic communications and their compliance with the requirements and obligations determined in the field of electronic communications by the legislation of GE, including by resolutions and decisions of the Commission. Furthermore, the GNCC shall observance of a license and/or permit conditions by a holder of the license and/or permit to use exhaustible resources. If license and/or permit holders fail to comply with the licence and/or permit conditions. The also provides for a sanctioning mechanism should compliance be further enforced, up to revoking of rights provide electronic communications services or networks. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
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” the authorised body shall provide to the GNCC, fully and within the required time limits, information on its activities requested in connection with the performance of the objectives and functions determined by law “On Electronic Communications” and by the normative acts of the GNCC. 	Review the legislation to add to legislation in force requirement on proportionality of information requested to the task at hand. Information requested shall be required solely for performance of tasks assigned to the GNCC and proportionate in volume in order to able to complete the task.

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.

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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> • That information may also include financial and economic documentation, despite its confidential nature, as well as documentation confirming compliance with the requirements determined by the legislation of GE on copyright and associated rights. • The GNCC will maintain the confidentiality of information that is deemed to be a commercial secret or personal data in accordance with the General Administrative Code of GE and the law of GE “On the Protection of Personal Data”. Generalised information on the service market, also data on the number of subscribers, traffic, revenues received, and expenditure incurred may not be confidential. The provision of incorrect or incomplete information by an authorised person shall be considered as a failure to provide information. 	
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. • Pursuant to the law “On Electronic Communications” the GNCC shall authorise market entry – the provision electronic communications services and/or networks. The GNCC within 10 working days from the receipt on application in a form adopted by the GNCC, shall grant authorisation for the provision of electronic communication services and/or networks by registering the authorised persons in the departmental registry. No decision on the market entry is taken by the GNCC. • The application shall be accompanied by an extract from the registry of entrepreneurs and non-entrepreneurial (non-commercial) legal persons, as well as by a copy of the charter of the legal person and a copy of the relevant identification document of the natural person. • The EU regulatory framework does not require for a binding authorisation process. On the contrary, the framework prohibits the MS from setting up authorisation process where a decision upon entry is required. • The EU regulatory framework provides immediate market entry once the notification has been filed. The notification may take a stipulated form, however, may not be necessary. The notification shall be able to cover the purpose of identification of entity engaging into entrepreneurship in the field of electronic communications. 	Review the legislation to ensure immediate commencement of provision of electronic communications services or networks is allowed after provision of the declaration.

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
2.1.4.	Powers to regulate national and/or international roaming ¹⁷	<ul style="list-style-type: none"> The EU regulatory framework sets forth the framework for regulation, at least to a certain extent, of both national and international roaming in the mobile electronic communications networks. Typically, the requirement enabling national roaming may be a result of market analysis process whereby there is a relevant market analysed and an undertaking or group of undertakings may be found enjoying significant market power and to remedy the situation proportionate set of remedies may be imposed. It can also come as a result of obligations attached to the granting the rights of use of radiofrequency spectrum where national roaming taking the form of sharing of existing infrastructure for specified period of time or permanently would grant wholesale access to the existing mobile infrastructure until certain conditions are met. Those conditions may be related to rollout of infrastructures, reaching certain retail market structure, however, with the main goal of enabling easier market access, limiting first mover advantage and ensuring level playing field. For international roaming regulatory framework the, if regulated, the obligations may come as a result of market analysis process, however, in case wholesale market analysis it would have to be a transnational relevant market that would require analysis to be completed as obligations would have to be imposed reciprocally amongst the participating national markets or directly from the EU regulatory framework in form of regulations. Under the law “On Electronic Communications” the GNCC would be able by the procedure for market analysis to come to the conclusion that regulatory obligations may be imposed roaming providers, however, due to natural constraints on retail level only, as analysed market would be non-transnational. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.1.5.	Powers to regulate net neutrality ¹⁸	<ul style="list-style-type: none"> Under 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”, however the GNCC has on 10 May 2018 adopted resolution “On rules defining and monitoring quality of internet service provision” and (10.05.2018; N4). Provisions from Regulation (EU) 2015/2120 have been taken into consideration in the resolution. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

¹⁷ Directive 2002/21/EC (Framework Directive): Article 14 – Undertakings with significant market power.

Directive 2002/19/EC (Access Directive): Article 8 – Imposition, amendment or withdrawal of obligations; Article 12 – Obligations of access to, and use of, specific network facilities.

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.

Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets.

¹⁸ 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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.6.	Powers to control quality of service requirements¹⁹	<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. In order to perform this function, the law “On Electronic Communications”, mandates the GNCC to provide quality standard for the provision of services and monitor the adherence of the providers of electronic communication services to this quality standard. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014²⁰	<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. Draft law has been prepared addressing the implementation of the Directive 2014/61/EU and to be sent to Parliament for adoption. 	Matter to be followed up – draft law currently in adoption process.
2.1.8.	Powers to organise public hearings²¹	<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. A draft law has been prepared guiding the process of consultation, including forms of consultations. 	Matter to be followed up – draft law adoption process.
2.1.9.	Powers to organise associated councils or consulting bodies²²	<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. Either the law “On National Regulatory Bodies” or “On Electronic Communications” or any other legislative enactment does not restrict the GNCC to organise associated councils or consulting bodies. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.1.10.	Powers for international cooperation²²	<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 Body of European Regulators for Electronic Communications mandating the MSs to 	No recommendations on the matter as the reviewed GE legislation in force covers the

¹⁹ Directive 2002/22/EC (Universal Service Directive): Article 22 – Quality of service.

²⁰ 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.

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

²² None, as there is no specific legal guidance on the criteria in the EU regulatory framework.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>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.</p> <ul style="list-style-type: none"> • A form of cooperation of EU NRAs under EU electronic communications 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. • Under the law “On Electronic Communications” the international cooperation shall be carried out on the basis on the legislative framework. In its relations with international organisations operating in the field of electronic communications and with the administrations of electronic communications of foreign countries, GE shall be represented by the Government of GE, as well as by the GNCC within the scope of authority delegated by the Government of GE. • In international associations of national regulatory bodies operating in the field of electronic communications, GE shall be represented by the GNCC. The Commission shall also retain its right to represent GE in those international organisations operating in the field of electronic communications in which it is already a member. 	<p>EU regulatory framework requirements.</p>
2.1.11.	<p>Powers to be represented in international regulatory bodies²³</p>	<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. • Under the law “On Electronic Communications” the international cooperation shall be carried out on the basis on the legislative framework. In its relations with international organisations operating in the field of electronic communications and with the administrations of electronic communications of foreign countries, GE shall be represented by the Government of GE, as well as by the GNCC within the scope of authority delegated by the Government of GE. • In international associations of national regulatory bodies operating in the field of electronic communications, GE shall be represented by the GNCC. The Commission shall also retain its right to represent GE in those international organisations operating in the field of electronic communications in which it is already a member. 	<p>No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.</p>

²³ 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 markets²⁴	<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 law “On Electronic Communications” the GNCC shall carry market definition of specific electronic communications services, analysis of the relevant markets and closely related segments of markets and designation of the market participants as those having significant market power, following a procedure established by the GNCC. In making a decision to conduct a study and analysis of a service market, to identify authorised persons with significant market power, also to impose specific obligations on authorised persons with significant market power, the Commission shall take into account the terms and conditions of international agreements and treaties of GE, including the General Agreement of the World Trade Organisation on Trade in Services. 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 to the law “On Electronic Communications” a significant market power of an undertaking over a relevant segment of the service market is a situation where the analysis conducted by the GNCC confirms that an undertaking has no competitors, is protected from significant competition or its competitive position allows it to have unilateral substantial influence over this segment of the market and to limit competition. 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. Pursuant to law “On Electronic Communications” the market review consists of 4 phases: <ul style="list-style-type: none"> - determining the relevant and closely related segments of the service market, and appropriate geographic boundaries of the market (market definition); 	<p>Review the legislation on definition of significant market power, while in principle compliant to be adjusted to the EU counterpart.</p> <p>Define regularity of market reviews in the law.</p>

²⁴ 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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> - conducting an analysis of the competitiveness of the relevant segments of the service market (market analysis); - determining authorised persons with significant market power in the relevant segment of the service market (market analysis); - determining authorised persons with significant market power in the relevant and closely related segments of the service market by taking into account the primary and secondary criteria and imposing specific obligations on them under concrete conditions determined (market analysis and imposition of remedies). • Pursuant the EU regulatory framework the NRAs shall determine if the relevant market is effectively competitive and in case there is not effective competition the NRAs shall impose appropriate remedies to tackle the competitive shortcomings. • Per the EU regulatory framework, the regularity of market reviews is as follows: <ul style="list-style-type: none"> (a) within three years from the adoption of a previous measure relating to that market; (b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously reviewed. 	
2.2.2.	Powers to implement ex-ante obligations²⁵	<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. • Pursuant to the law “On Electronic Communications” the GNCC may impose on an undertaking designated as having significant market power in the relevant market one or several of the following obligations: <ul style="list-style-type: none"> - obligation to ensure transparency of information; - obligation to prohibit discrimination; - obligation to record expenditure and income separately in accordance with the methodological rules approved by the Commission; - obligation to provide access to relevant elements of an electronic communication network; - obligation to regulate tariffs and prepare cost estimates. - Should market analysis find there is no undertaking with significant market power in the relevant market the obligations shall repealed. 	Review the legislation to provide the GNCC with powers to maintain obligations.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.2.3.	Powers to regulate interconnection and access²⁶	<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. Under the law “On Electronic Communications” the GNCC may as a result of completion of market analysis phase designate undertakings as having either individual or joint significant market power and impose appropriate remedies in form or regulatory obligations. Those obligations are: <ul style="list-style-type: none"> - obligation to ensure transparency of information; - obligation to prohibit discrimination; - obligation to record expenditure and income separately in accordance with the methodological rules approved by the Commission; - obligation to provide access to relevant elements of an electronic communication network; - obligation to regulate tariffs and prepare cost estimates. 	Review the legislation to add regulatory obligation of functional separation in the current legislation.
2.2.4.	Powers to regulate access to ducts and/or other network infrastructure²⁷	<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 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. Under the law “On Electronic Communications”, the GNCC may following the adopted procedure perform analysis of relevant markets that may be markets related to subject matter – ducts or other infrastructure 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

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; Article 13a – Functional separation.

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 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
		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 tariffs²⁸	<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. Pursuant to the law “On Electronic Communications” the GNCC may following the adopted procedure perform analysis of 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 GE legislation in force covers the EU regulatory framework requirements.
2.2.6.	Powers to set tariffs and/or prices²⁹	<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. 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. 	Review the legislation to enable the GNCC imposition of remedies under Universal Service Directive following a market analysis procedure.

²⁸ 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.

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
		<ul style="list-style-type: none"> Pursuant to the law “On Electronic Communications” the GNCC may following the adopted procedure perform analysis of relevant markets and as a result impose appropriate set of remedies, including the obligation of regulation of tariffs. 	
2.2.7.	Powers to apply cost accounting and allocation methodologies³⁰	<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” the GNCC may impose specific regulatory obligations on undertakings designated as having significant market power. The law further provides that electronic communication network operator with significant market power shall provide access and/or interconnection for interested authorised persons to the relevant elements of its own network, and to their functional resources and free capacities, or electronic communication service types, at cost-oriented and non-discriminatory tariffs. To ensure the implementation of cost orientation via cost accounting methodologies the GNCC may impose: <ul style="list-style-type: none"> a requirement that evidence is provided confirming that the tariffs set by the undertakings are cost-oriented and comply with the requirements of the methodological rules established by the GNCC; a requirement that data verified by an independent auditor are submitted to the GNCC by the designated undertaking; a requirement that the competition-restricting tariffs set by the undertakings are changed. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.2.8.	Powers to set Weighted Average Cost of Capital³¹	<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 	No recommendations on the matter as the reviewed GE legislation in force covers the

³⁰ 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.

³¹ Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA).



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>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.</p> <ul style="list-style-type: none"> • 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” the GNCC may impose specific regulatory obligations on undertakings designated as having significant market power. The law further provides that electronic communication network operator with significant market power shall provide access and/or interconnection for interested authorised persons to the relevant elements of its own network, and to their functional resources and free capacities, or electronic communication service types, at cost-oriented and non-discriminatory tariffs. • To ensure the implementation of cost orientation via cost accounting methodologies the GNCC may impose: <ul style="list-style-type: none"> - a requirement that evidence is provided confirming that the tariffs set by the undertakings are cost-oriented and comply with the requirements of the methodological rules established by the GNCC; - a requirement that data verified by an independent auditor are submitted to the GNCC by the designated undertaking; - a requirement that the competition-restricting tariffs set by the undertakings are changed. 	<p>EU legislative framework requirements.</p>

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.



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.

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.3.1.	Powers to grant scarce resources (radio frequencies and numbering)³²	<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. Pursuant to the law “On Electronic Communications” the GNCC shall grant rights of use (permit) for using of numbering and radiofrequency spectrum. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.3.2.	Powers to monitor radio frequencies³³	<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. Under the law “On Electronic Communications” the GNCC is in charge of the National Plan for the Allocation of the Radio Frequency Spectrum, taking into account the frequencies specified by the Government. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.3.3.	Powers to manage numbering plans³⁴	<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. Under the law “On Electronic Communications”, the national numbering system shall be developed by the Government of GE in agreement with the GNCC. Matters related to the use of numbering resources shall be regulated by the GNCC. Furthermore, the GNCC shall issue permits for using numbering resources and specify permit conditions. 	Review the law “On Electronic Communications” to transfer the obligation and powers of managing and approval of national numbering system by NRA, the GNCC.

³² Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services; Article 10 – Numbering, naming and addressing.

³³ Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services.

³⁴ 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 contracts³⁵	<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. There are minimum requirements customer agreements embedded into the law “On Electronic Communications” which are: <ul style="list-style-type: none"> - the name and address of the electronic communication service provider; - the conditions concerning the type of the provided service, the quality and the time of the first connection; - the conditions for restricting and terminating the service; - the conditions for repairing damages; - detailed information on the tariffs of services, also up-to-date information on any changes in tariffs; - the term of the agreement, the conditions for its termination and extension; - mechanisms for ensuring adherence to quality standards when providing the services stipulated by the agreement, as well as compensation mechanisms in the case of failure to comply with these quality standards; - the procedure for submitting service-related complaints and for settling disputes. Furthermore, the GNCC shall set the quality standard for the provision of services and monitor the adherence of the providers of electronic communication services to this quality standard. 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.
2.4.2.	Powers to solve customer complaints³⁶	<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. Pursuant to the law “On Electronic Communications” in the case of a dispute between an electronic communication service provider and an end-user, the matter shall be regulated under the law “On Electronic Communications”, and other legislative and subordinate normative acts of GE. The law mandates electronic communication service provider to create an effective internal mechanism for reviewing and responding to complaints. If an electronic communication service provider violates the 	No recommendations on the matter as the reviewed GE legislation in force covers the EU regulatory framework requirements.

³⁵ Directive 2002/22/EC (Universal Service Directive): Article 20 – Contracts.

³⁶ Directive 2002/22/EC (Universal Service Directive): Article 34 – Out-of-court dispute resolution.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>legislation of GE on the protection of users' rights, an interested person may apply to the electronic communication service provider concerned and/or to the GNCC, or directly to a court. An electronic communication service provider is bound to review a complaint within 15 days.</p> <ul style="list-style-type: none"> • Further, the GNCC shall review the applications and complaints of users at oral hearings, in formal administrative proceedings, except as provided for by the General Administrative Code of GE and except where the settlement of a dispute does not require the implementation of organised procedures. • The mandate to resolve disputes comes from the law "On National Regulatory Authorities". 	

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 and Recommendations in light of relevant EU regulatory framework
2.5.1.	Powers to set universal service obligations³⁷	Legislation required for implementation of the requirements of the Universal Service Directive related to provision and availability of universal service in electronic communications are not introduced in national legislation. At the moment of preparation of this report, there is ongoing legislative process aimed bridging the gaps between national legislation and the Universal Services Directive. It is recommended to transpose the legislative requirements supporting each criterion and assign appropriate powers and obligations as highlighted in the Methodology to the NRA.
2.5.2.	Powers to define universal service's baskets³⁸	

³⁷ Directive 2002/22/EC (Universal Service Directive): Article 3 – Availability of universal service.

³⁸ 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 12 March 2020.

No.	Name of the legislative document
1.	Administrative Proceeding Code of Georgia
2.	Constitution of Georgia
3.	General Administrative Code of Georgia
4.	Law of Georgia “On Broadcasting” (not consolidated since 20.12.2019)
5.	Law of Georgia “On Competition” (not consolidated since 20.12.2019)
6.	Law of Georgia “On Electronic Communications” (not consolidated since 22.03.2017)
7.	Law of Georgia “On National Regulatory Bodies” (not consolidated since 21.12.2016)
8.	Law of Georgia “On Regulatory fee”
9.	Regulations on the provision of electronic communications services and protection of end-users 'rights
10.	Resolution on Rules defining and monitoring quality of internet service provision (10.05.2018; N4)
11.	Rules of the Procedures of Parliament



Annex 2 – Detailed gap assessment report including legal references

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