



EU4Digital

EU4Digital: supporting digital economy  
and society in the Eastern Partnership

# **Gap assessment of the Republic of Moldova regulatory system in the field of electronic communications**

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

December 2020



## Table of contents

<b>List of Acronyms &amp; Abbreviations</b> .....	<b>3</b>
<b>Executive summary</b> .....	<b>4</b>
<b>0 Introduction</b> .....	<b>5</b>
0.1 Background of the report.....	5
0.2 Aim of the report.....	5
0.3 Overview of the report.....	6
<b>1 Governance gap assessment results</b> .....	<b>8</b>
1.1 Setup of the National Regulatory Authority .....	8
1.2 Setup of decision making body .....	12
1.3 Appeal and Dispute Resolution .....	13
<b>2 Power and obligations gap assessment results</b> .....	<b>15</b>
2.1 General.....	15
2.2 Market Analysis .....	20
2.3 Scarce Resource Management.....	26
2.4 Consumer Protection.....	27
2.5 Universal Service .....	27
<b>Annex 1 – List of national legislation analysed under gap assessment exercise</b> .....	<b>30</b>
<b>Annex 2 – Detailed gap assessment report including legal references</b> .....	<b>31</b>

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## List of Acronyms & Abbreviations

Abbreviation	Definition
<b>ANRCETI</b>	National Regulatory Agency for Electronic Communications and Information Technology of the Republic of Moldova
<b>BEREC</b>	Body of European Regulators for Electronic Communications
<b>EaP</b>	Eastern Partnership
<b>EaP countries</b>	Eastern partner countries
<b>EaPeReg</b>	Eastern Partnership Electronic Communications Regulators Network
<b>EECC</b>	European Electronic Communications Code
<b>EU</b>	European Union
<b>EU MSs</b>	European Union member states
<b>EU regulatory framework</b>	2002/2009 EU electronic communications regulatory framework
<b>EU4Digital</b>	EU4Digital: Supporting digital economy and society in the Eastern Partnership
<b>IRB EWG</b>	Independent Regulators and Broadband expert working group
<b>MD</b>	Republic of Moldova
<b>Methodology</b>	Methodology on national electronic communications regulatory authorities' independence assessment for Eastern Partnership countries
<b>NRA</b>	National Regulatory Authority
<b>Report</b>	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 the Republic of Moldova 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 Moldovan NRA - National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI), 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 Moldovan national legislation (effective as of 18 May 2020) completed by EU4Digital, Moldovan regulatory system is well aligned with EU regulatory framework. However, some areas for improvement in order to further strengthen NRA organisational and financial independence were identified. Those cover the following gaps:

- In terms legislative initiative powers of NRA – best-practice approach implementation is not identified as such powers are not set forth in the national legislation;
- Open selection procedure of Director and Deputy Directors of the ANRCETI is not ensured by the relevant national legislation.

Please see Table 1 below for key highlights of Moldovan 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 the Republic of Moldova

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	1	ANRCETI lacks rights required to initiate legislative process
	1.2	Setup of decision making body	4	1	Government serves as appointing authority of Director and Deputy Directors of the ANRCETI and legislation does not ensure open competition
	1.3	Appeal and Dispute Resolution	2	0	-
2. Powers and obligations	2.1	General	11	4	ANRCETI lacks decision making powers required to ensure the open internet access; subject to requirements of general legislation on control over undertakings
	2.2	Market analysis	8	1	ANRCETI shall have regulatory obligation of functional separation and imposition
	2.3	Scarce resource management	3	1	Powers of managing of spectrum resources shall be transferred to ANRCETI
	2.4	Consumer protection	2	0	-
	2.5	Universal service	2	0	-
Total:			44	8	

### 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”<sup>1</sup> 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 ANRCETI 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 the Republic of Moldova 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.

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<sup>1</sup> [https://eeas.europa.eu/sites/eeas/files/20\\_deliverables\\_for\\_2020.pdf](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 ANRCETI experts, who are also members of IRB EWG of the EaPeReg. Information collected includes text of relevant national legislation required to assess gaps in the Republic of Moldova 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
<b>1.</b>	<b>GOVERNANCE</b>
<b>1.1.</b>	<b>Setup of the NRA</b>
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
<b>1.2.</b>	<b>Setup of decision making body</b>
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
<b>1.3.</b>	<b>Appeal and Dispute Resolution</b>
1.3.1.	Appeal procedures
1.3.2.	Powers of resolve disputes between undertakings
<b>2.</b>	<b>POWERS AND OBLIGATIONS</b>
<b>2.1.</b>	<b>General</b>
2.1.1.	Powers of enforcement of regulation
2.1.2.	Powers to collect information
2.1.3.	Powers to regulate market entry
2.1.4.	Powers to regulate national and/or international roaming



No.	Criteria
2.1.5.	Powers to regulate net neutrality
2.1.6.	Powers to control quality of service requirements
2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014
2.1.8.	Powers to organise public hearings
2.1.9.	Powers to organise associated councils or consulting bodies
2.1.10.	Powers for international cooperation
2.1.11.	Powers to be represented in international regulatory bodies
<b>2.2.</b>	<b>Market Analysis</b>
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
<b>2.3.</b>	<b>Scarce Resource Management</b>
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
<b>2.4.</b>	<b>Consumer Protection</b>
2.4.1.	Powers to set requirements for contracts
2.4.2.	Powers to solve customer complaints
<b>2.5.</b>	<b>Universal Service</b>
2.5.1.	Powers to set universal service obligations
2.5.2.	Powers to define universal service's baskets

The gap assessment of the Republic of Moldova regulatory system in the field of electronic communications assessment was completed jointly with the EaPeReg and findings were later aligned with ANRCETI 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 Moldovan 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.	<b>Status of NRA – legally distinct and functionally independent<sup>2</sup></b>	<ul style="list-style-type: none"> <li>Pursuant to relevant provision of the EU regulatory framework the EU MSs shall guarantee independent functioning of NRA via guaranteeing legal separation of the authority and functional independence. This is a key element in ensuring robust and predictable evidence only based decision-making process.</li> <li>The principle of institutional and financial independence of NRA and work of the ANRCETI is guided by the law “On Electronic Communications”.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.1.2.	<b>Decision making powers, prohibition to seek or take instructions from any other body<sup>2</sup></b>	<ul style="list-style-type: none"> <li>Pursuant to relevant provision of the EU regulatory framework the EU MSs shall ensure impartial decision making, decision making powers of NRAs and provide for prohibition to seek or to take instructions.</li> <li>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.</li> <li>The law “On Electronic Communications” provides guidance for functioning of the ANRCETI. Under the law the NRA shall adhere to key principles of independence, transparency, impartiality and responsibility.</li> <li>The transposition of the relevant EU regulatory framework provision has been identified. The Agency ensures transparency of NRA’s exercises.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.1.3.	<b>Powers to develop NRA’s own strategy<sup>2</sup></b>	<ul style="list-style-type: none"> <li>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.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>2</sup> 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"> <li>As the functioning of the NRA shall by default be independent, a planning document outlining medium term planning is important to ensure both predictable and transparent performance of the tasks assigned.</li> <li>Ministry of Economy and Infrastructure ensures development, promotion and implementation the Government policy in the field of electronic communications and determines the sector development strategy. Whilst the ANRCETI ensures the implementation of development strategies of the sector and to supervise compliance of electronic communications networks and/or service providers with the sectoral legislation.</li> </ul>	
1.1.4.	<b>Formation of NRA's budget<sup>3</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>Predictable for the stakeholders of regulatory process environment of budgetary formation is key for ensuring predictable regulatory outcomes.</li> <li>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.</li> <li>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.</li> <li>Under the Law "On Electronic Communications", the ANRCETI activities are financed from the independent budget. The budget of the ANRCETI is formed by regulatory fee, monitoring payments, payments for the assigned numbering resources, other sources, as provided by the law.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.1.5	<b>Sources of NRA's financing<sup>4</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework requires the MSs to ensure that the NRAs exercise their powers impartially, transparently and in a timely manner. The EU regulatory framework also requires the MSs to provide for separate budgets of the NRAs.</li> <li>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.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

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

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> <li>• 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.</li> <li>• The ANRCETI has an independent budget financed by regulatory fee, monitoring payments, payments for the assigned numbering resources, other sources, as provided by the law "On Electronic Communications".</li> <li>• The amount of regulatory and monitoring fees shall be established on basis of estimation of revenues, generated by activities in electronic communications, up to 0,3% of the estimated revenue.</li> <li>• Fees and payments are also collected for the use of channels, radio frequencies or numbering resources, for installation of equipment in, on, over or under facilities of public or private property.</li> <li>• The ANRCETI has its own balance sheet, accounts in the single treasury account of the Ministry of Finance. The administration of the budget shall be verified by an independent audit, whose report shall be presented to the Government.</li> </ul>	
1.1.6.	<b>Possibilities to execute (spend) NRA's budget<sup>5</sup></b>	<ul style="list-style-type: none"> <li>• The EU regulatory framework mandates MSs to ensure that NRA 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 to 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.</li> <li>• Under the law "On Electronic Communications" the expenses determined by the budget of the ANRCETI shall be covered from the fees of annual regulatory and monitoring, payments for the assigned numbering resources and other sources, as provided by the law.</li> <li>• Furthermore, the ANRCETI has its own accounts in the single treasury account of the Ministry of Finance the Agency may have access to it and may use it for specific purposes.</li> <li>• As described above, the ANRCETI is independent within the merits of the law to execute assigned tasks, by means of allocating appropriate funding following a planning phase.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.7.	<b>Recruitment of personnel and experts<sup>6</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The organizational structure, staff limit and budget of the ANRCETI is approved by the Administrative Board while staff list is hired by the Director through a competitive process.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.1.8.	<b>Ability to set remuneration for Board members and employees<sup>6</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>Pursuant to the law “On Electronic Communications” the Administrative Board of the ANRCETI approve the organizational structure, staff limit and budget of the ANRCETI while Director of the ANRCETI hire and approve staff list through a competition.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.1.9.	<b>Legislative initiative powers of NRA<sup>7</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The ANRCETI has no right to initiative legislative process. This right in the electronic communications area is pertinent to the Ministry of Economy and Infrastructure.</li> </ul>	Introduce changes to relevant legislation enabling ANRCETI the right to initiate the legislative process.
1.1.10.	<b>Bodies and process for challenging NRA’s decisions<sup>6</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>Under the law “On Electronic Communications” appeals against the decisions of The ANRCETI may be filed with the competent court.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

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

<sup>7</sup> 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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.11.	<b>Consultation and transparency requirements<sup>8</sup></b>	<ul style="list-style-type: none"> <li>The consultation procedures are set up in the law “On Electronic Communications”. The ANRCETI has an open nature of Board meetings, consultation procedures and other procedures set forth by the law “On Electronic Communications”.</li> <li>The ANRCETI sets up Board meetings where interested bodies have the opportunity to participate and express their opinion, as well as consultation process is open to all parties. After the consultation process all results shall make publicly available, except for confidential information.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.1.12.	<b>Cooperation setup with other competent authorities<sup>9</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework requires the MSs to setup robust framework among national regulatory, national competition and national consumer protection authorities.</li> <li>Apart, from this there is a specific case – consultation on market analysis process, where input from national competition authority is mandatory to received.</li> <li>Consultation procedure defined by the law “On Electronic Communications”, the ANRCETI shall cooperate with Ministry of Economy and Infrastructure, competition authority, data protection authority.</li> <li>To provide information required for performance of functions, there is horizontal requirement is foreseen in the law “On Electronic Communications”.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

## 1.2 Setup of decision making body

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.2.1.	<b>Procedure and conditions set for recruitment of head or collegiate body performing that function<sup>9</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework does not stipulate for a specific selection process for the head or collegiate body performing that function to be provided in advance in relevant national legislation. It is however of utmost importance, having regard to the tasks to be performed by the NRA that the selection process is well documented, and results of intermediate steps and final results are publicly communicated.</li> <li>Under the law “On Electronic Communications”, Government serves as appointing authority of Director and Deputy Directors of the ANRCETI. To be eligible for selection process, the Director, Deputy Directors and employees of the ANRCETI must be citizens of MD, have a</li> </ul>	Review applicable legislation to ensure head of the authority or collegiate body performing that function is selected via open selection process.

<sup>8</sup> Directive 2002/21/EC (Framework Directive): Article 6 – Consultation and transparency mechanism.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		higher education, possess a higher professional qualification and work experience in the field of electronic communications.	
1.2.2.	<b>Appointment of the head or collegiate body performing that function<sup>10</sup></b>	<ul style="list-style-type: none"> <li>Under the law “On Electronic Communications”, the ANRCETI Director and two Board members – Deputy Directors are appointed by the Government for four year period with a possibility to be re-appointed on second term, but not more than in term of 8 years in total.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.2.3.	<b>Dismissal of the head or collegiate body performing that function, criteria for dismissal<sup>10</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>The law “On Electronic Communications” defines the conditions under which the director and deputy directors may be dismissed from office by the Government.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.2.4.	<b>Terms in office as head or collegiate body performing that function<sup>11</sup></b>	<ul style="list-style-type: none"> <li>Under the law “On Electronic Communications”, the Agency Director and two Board members – Deputy Directors are appointed by the Government for four year period with a possibility to be re-appointed on second term, but not more than in term of 8 years in total.</li> </ul>	<p>In principle no recommendations on the matter.</p> <p>However, to ensure continuous operation of the collegiate decision making body review the law “On Electronic Communications” to implement a staggered approach for appointment and expirations of offices of the Director and Deputy Directors whereby a defined number of members of the decision making body would change in a given moment of time.</p>

### 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.

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

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



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

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.3.1.	<b>Appeal procedures<sup>12</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>Under the law “On Electronic Communications” all decisions of the ANRCETI may be appealed to the competent courts by the affected parties.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
1.3.2.	<b>Powers of resolve disputes between undertakings<sup>13</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework enables under certain conditions the undertakings in electronic communications area to request the NRA to issue a binding decision.</li> <li>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.</li> <li>The law “On Electronic Communications” enables the ANRCETI to serve as pre-trial body to review disputes between market participants to ensure fair competition and protection of users rights.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

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

<sup>13</sup> 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.	<b>Powers of enforcement of regulation<sup>14</sup></b>	<ul style="list-style-type: none"> <li>• The EU regulatory framework provides for certain powers to be attributed to the NRAs when it comes to enforcement of regulatory framework. Under the general authorisation regime, the market participants shall be bound to follow the requirements of regulatory framework and the NRAs shall be able to verify compliance thereof. For this the NRAs shall have powers to collect necessary information, issue binding decisions, enforce decisions taken.</li> <li>• Under the law “On Electronic Communications”, the ANRCETI:               <ul style="list-style-type: none"> <li>- have the right to take actions to prevent and remove non-compliance with the legislation;</li> <li>- have the right to access to general authorisation or license documents, including access to commercial classified information;</li> <li>- have the right to request the information from market participants and governmental bodies;</li> </ul> </li> <li>• The law also enables the ANRCETI to apply administrative sanctions and issue decision with actions to be taken, if the license holder or the person acting under the general authorisation regime has violated:               <ul style="list-style-type: none"> <li>- license;</li> <li>- general authorisation conditions;</li> <li>- provisions of law;</li> <li>- other enactments in electronic communications.</li> </ul> </li> </ul>	<p>No recommendations on the matter as the reviewed MD electronic communications legislation in force covers the EU regulatory framework requirements.</p> <p>However, there are certain restrictions imposed when it comes to the procedure, joint supervision (control) and reporting imposed on the ANRCETI as a result of implementation requirement of the Law on State Control over Entrepreneurial / Business Activity. The ANRCETI shall be subject to legislative provisions of enforcement of exclusively as per electronic communications regulatory framework and be exempt from requirements not based of the EU electronic communications framework or contradicting it. The current framework sets forth the discretion<sup>15</sup> of ANRCETI to exercise its powers, however for the clarity it is recommended to review the Law on State Control over Entrepreneurial Activity and exempt ANRCETI from its application.</p>

<sup>14</sup> 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.

<sup>15</sup> Article. 1 (3) of the Law No. 131/08.06.2012, Law on State Control over Entrepreneurial/Business Activity



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.2.	<b>Powers to collect information<sup>16</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>Should the information provided be deemed as confidential, the NRAs shall treat the information as such.</li> <li>Under the law “On Electronic Communications”, operators have to provide the information under conditions and level of detail as established by the ANRCETI.</li> <li>The ANRCETI have the right to require and obtain from operators the necessary information.</li> <li>Based on the information obtained from operators the ANRCETI prepares and publishes quarterly statistical reports and annually, the report on the ANRCETI activity, as well as the statistical yearbook on the development of electronic communications.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.1.3.	<b>Powers to regulate market entry<sup>17</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The law “On Electronic Communications” sets forth of general authorisation regime in MD. The undertakings are required to submit a notification to the ANRCETI of their intent to engage in provision of electronic communications services and networks and may provide electronic communications services and networks from the date of providing of the notification to the ANRCETI.</li> <li>The notification contains minimal information which is required to allow the ANRCETI to keep the Public Register of electronic communications network and service providers.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>16</sup> 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.

<sup>17</sup> 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.	<b>Powers to regulate national and/or international roaming</b> <sup>18</sup>	<ul style="list-style-type: none"> <li>The EU regulatory framework set forth the framework for regulation, at least to a certain extent, of both national and international roaming in the mobile electronic communications networks.</li> <li>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.</li> <li>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.</li> <li>Under the law “On Electronic Communications” the ANRCETI would be able by the procedure for market analysis to come to the conclusion that regulatory obligations may be imposed roaming providers.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.1.5.	<b>Powers to regulate net neutrality</b> <sup>19</sup>	<ul style="list-style-type: none"> <li>Under the EU regulatory framework, the open internet access is regulated supranationally by regulations supported by a number of delegated legal documents. Regulations, while to be implemented without transposition, require certain decision making powers for the NRA not currently reflected in the law “On Electronic Communications”.</li> </ul>	Review the law “On Electronic Communications” by providing overall principles of ensuring open internet access and provide the ANRCETI with necessary delegations and decision-making powers to ensure the open internet access.

<sup>18</sup> 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.

<sup>19</sup> 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.	<b>Powers to control quality of service requirements<sup>20</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework mandates the MSs to empower the NRAs to be 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.</li> <li>The law “On Electronic Communications” provides powers for the ANRCETI to provide quality standard for the provision of services and to request operators to provide end-users with information.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.1.7.	<b>Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014<sup>21</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>In the action Plan for the implementation of the Program for the development of broadband networks for the years 2018–2020, the transposition of the corresponding directive was established.</li> </ul>	Matter to follow up.
2.1.8.	<b>Powers to organise public hearings<sup>22</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>Under the law “On Electronic Communications” the ANRCETI shall insure transparency of their activity and decisions. That includes public hearings, publicly available draft decisions and final decisions as well as the list of issued licenses should be published in official newspaper.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.1.9.	<b>Powers to organise associated councils or consulting bodies<sup>23</sup></b>	<ul style="list-style-type: none"> <li>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</li> </ul>	Review legislation in force to ensure powers to the ANRCETI to setup upon need identified advisory bodies or external working groups

<sup>20</sup> Directive 2002/22/EC (Universal Service Directive): Article 22 – Quality of service.

<sup>21</sup> 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.

<sup>22</sup> Directive 2002/21/EC (Framework Directive): Article 6 – Consultation and transparency mechanism.

<sup>23</sup> 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
		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.	for completion of specific tasks designated by the ANRCETI.
2.1.10.	<b>Powers for international cooperation<sup>23</sup></b>	<ul style="list-style-type: none"> <li>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 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.</li> <li>A form of cooperation of EU NRAs under EU regulatory framework is participation on all levels of decision making process in specialised regulatory organisations with an aim of harmonisation of regulatory framework and strengthening the Single Market.</li> <li>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.</li> <li>The law “On Electronic Communications” enables and formalises the participation of the ANRCETI international sectoral and regulatory organisations and institutions as well as collaboration with NRAs in other countries.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.1.11.	<b>Powers to be represented in international regulatory bodies<sup>24</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>The law “On Electronic Communications” enables and formalises the participation of the ANRCETI international sectoral and regulatory organisations and institutions as well as collaboration with NRAs in other countries.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>24</sup> 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.	<b>Powers to define and analyse relevant markets<sup>25</sup></b>	<ul style="list-style-type: none"> <li>• 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 ANRCETI 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 ANRCETI.</li> <li>• 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.</li> <li>• Pursuant to the law “On Electronic Communications” provider with significant market power on a relevant market is a provider which, either individually or together with other such providers, according to market analysis, enjoys a position equivalent to a dominant position as defined by competition law.</li> <li>• 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.</li> <li>• Pursuant to the law “On Electronic Communications” the ANRCETI, according to the principles established in the competition protection legislation, shall identify relevant markets and shall conduct market analysis, in order to determine whether those markets are sufficiently competitive to impose, maintain, modify or withdraw the special obligations imposed.</li> <li>• The ANRCETI shall identify relevant markets taking into account specific national conditions and ensuring a competitive environment on those markets. The list of relevant markets shall be published by the ANRCETI.</li> <li>• 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.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>25</sup> 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"> <li>• There are no time limits set for regular review of markets as per the EU regulatory framework that provides the regularity of market reviews:               <ul style="list-style-type: none"> <li>- within three years from the adoption of a previous measure relating to that market;</li> <li>- within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously reviewed.</li> </ul> </li> <li>• Pursuant to the law “On Electronic Communications” if the ANRCETI determine that there is effective competition in that relevant market, the ANRCETI shall not impose or maintain any special obligation or withdraw them if they exist. If the ANRCETI determine that there is no effective competition on the relevant market, the ANRCETI shall establish the operators who have significant power in this market.</li> <li>• If the ANRCETI Board intends to adopt regulatory acts in relevant markets, the ANRCETI shall comply with the public consultation procedure.</li> <li>• The ANRCETI shall carry out an analysis of the relevant markets within 3 years of the establishment of a previous measure concerning those markets. Exceptionally, this period may be extended by a maximum of 3 years when the ANRCETI has notified the Competition Council of the duly motivated extension proposal and the Competition Council has not raised any objections within one month of the notification.</li> </ul>	
2.2.2.	<b>Powers to implement ex-ante obligations<sup>26</sup></b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Pursuant to the law “On Electronic Communications” the ANRCETI shall identify relevant markets and conduct market analysis to determine whether in the relevant markets effective competition is found. If, the effective competition is not found, the ANRCETI may impose on operators with significant market power one or several of the following obligations:               <ul style="list-style-type: none"> <li>- ensuring the transparency related to the interconnection of the networks or to the access to these networks or to the associated infrastructure;</li> <li>- publication of the reference offer;</li> <li>- non-admission of discrimination in connection with interconnection or access;</li> <li>- separate accounting records;</li> <li>- providing accounting records;</li> <li>- ensuring access to some specific elements of the network and the associated infrastructure and their use;</li> </ul> </li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> <li>- recovery of investments, control of tariffs and their substantiation according to costs;</li> <li>- the presentation of all the information that was the basis for establishing the tariffs and the adjustment of these tariffs.</li> </ul>	
2.2.3.	<b>Powers to regulate interconnection and access<sup>27</sup></b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• The EU legislation further stipulates that NRA may impose on the undertakings designated as significant market power specific obligations to address the competitive shortcomings, such as:               <ul style="list-style-type: none"> <li>- obligation of transparency;</li> <li>- obligation of non-discrimination;</li> <li>- obligation of accounting separation;</li> <li>- obligations of access to, and use of, specific network facilities;</li> <li>- price control and cost accounting obligations;</li> <li>- functional separation.</li> </ul> </li> <li>• Law “On Electronic Communications” provide the mandate for the ANRCETI to impose regulatory obligations.</li> <li>• The ANRCETI may impose on the operators designated as having significant market power specific obligations one or more of the following obligations:               <ul style="list-style-type: none"> <li>- ensuring the transparency related to the interconnection of the networks or to the access to these networks or to the associated infrastructure;</li> <li>- publication of the reference offer;</li> <li>- non-admission of discrimination in connection with interconnection or access;</li> <li>- separate accounting records;</li> <li>- providing accounting records;</li> </ul> </li> </ul>	Review the legislation to add regulatory obligation of functional separation and imposition thereof to the current legislation.

<sup>27</sup> 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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> <li>- ensuring access to some specific elements of the network and the associated infrastructure and their use;</li> <li>- recovery of investments, control of tariffs and their substantiation according to costs;</li> <li>- the presentation of all the information that was the basis for establishing the tariffs and the adjustment of these tariffs.</li> </ul>	
2.2.4.	<b>Powers to regulate access to ducts and/or other network infrastructure<sup>28</sup></b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> <li>• Under the law “On Electronic Communications”, the ANRCETI may following the adopted procedure perform analysis of relevant markets that may be markets related to subject matter – ducts or other infrastructure and as a result impose appropriate set of remedies, pending the adjustments as identified during review of other criteria.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.2.5.	<b>Powers to regulate termination and/or origination and/or transit tariffs<sup>29</sup></b>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>28</sup> 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.

<sup>29</sup> 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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> <li>Under the law “On Electronic Communications”, the ANRCETI 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.</li> </ul>	
2.2.6.	<b>Powers to set tariffs and/or prices<sup>30</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>Pursuant to the law “On Electronic Communications” the ANRCETI may following the adopted procedure perform analysis of relevant markets and as a result may impose obligations regarding the recovery of investments and control of tariffs, including obligations to substantiate tariffs according to costs, as well as obligations regarding separate accounting records for the provision of certain forms of access or interconnection.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.2.7.	<b>Powers to apply cost accounting and allocation methodologies<sup>31</sup></b>	<ul style="list-style-type: none"> <li>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.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>30</sup> 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.

<sup>31</sup> 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"> <li>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.</li> <li>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.</li> <li>Pursuant to the law “On Electronic Communications” the ANRCETI may following the adopted procedure perform analysis of relevant markets and as a result may impose obligations regarding the recovery of investments and control of tariffs, including obligations to substantiate tariffs according to costs, as well as obligations regarding separate accounting records for the provision of certain forms of access or interconnection.</li> </ul>	
2.2.8.	<b>Powers to set Weighted Average Cost of Capital<sup>32</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>Pursuant to the law “On Electronic Communications” the ANRCETI may following the adopted procedure perform analysis of relevant markets and as a result may impose obligations regarding the recovery of investments and control of tariffs, including obligations to substantiate tariffs according to costs, as well as obligations regarding separate accounting records for the provision of certain forms of access or interconnection. Setting of a WACC may be part cost-orientation process.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>32</sup> Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA).  
 Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.  
 Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.  
 Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.



## 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.	<b>Powers to grant scarce resources (radio frequencies and numbering)<sup>33</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>The law “On Electronic Communications” Ministry of Economy and Infrastructure promotes the harmonization of the use of radio spectrum resources and performs the efficient management of the radio spectrum resources.</li> <li>The law “On Electronic Communications” mandates the ANRCETI to issue the rights of use of radiofrequency spectrum and numbering respectively.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.3.2.	<b>Powers to monitor radio frequencies<sup>34</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The law “On Electronic Communications” governs the radio frequencies usage matters in MD. Pursuant to this law Ministry of Economy and Infrastructure promotes the harmonization of the use and performs the efficient management of the radio spectrum resources.</li> <li>The law “On Electronic Communications” mandates the ANRCETI to issue the rights of use of radiofrequency spectrum and numbering respectively.</li> </ul>	Review the law “On Electronic Communications” to transfer the obligation and powers of managing of spectrum resources to NRA, the ANRCETI.
2.3.3.	<b>Powers to manage numbering plans<sup>35</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework stipulates that MSs shall ensure that NRA control the granting of rights of use of all national numbering resources and the management of the national numbering plans.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

<sup>33</sup> Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services; Article 10 – Numbering, naming and addressing.

<sup>34</sup> Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services.

<sup>35</sup> Directive 2002/21/EC (Framework Directive): Article 10 – Numbering, naming and addressing.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> <li>The law “On Electronic Communications” grants the ANRCETI the rights to develop and manage the National Numbering Plan by regulating, managing and assigning numbering resources for a fee.</li> </ul>	

## 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.	<b>Powers to set requirements for contracts<sup>36</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The law “On Electronic Communications” mandates the ANRCETI to set forth basic requirements for the contract on the provision of electronic communications services.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.
2.4.2.	<b>Powers to solve customer complaints<sup>37</sup></b>	<ul style="list-style-type: none"> <li>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.</li> <li>The law “On Electronic Communications” mandates the ANRCETI to review and solve customer complaints.</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.

## 2.5 Universal Service

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.5.1.	<b>Powers to set universal service obligations<sup>38</sup></b>	<ul style="list-style-type: none"> <li>The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated</li> </ul>	No recommendations on the matter as the reviewed MD legislation in force covers the EU

<sup>36</sup> Directive 2002/22/EC (Universal Service Directive): Article 20 – Contracts.

<sup>37</sup> Directive 2002/22/EC (Universal Service Directive): Article 34 – Out-of-court dispute resolution.

<sup>38</sup> Directive 2002/22/EC (Universal Service Directive): Article 3 – Availability of universal service.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs.</p> <ul style="list-style-type: none"> <li>• Under the law “On Electronic Communications” there is provision on rights of customers to access networks and receive services of standard quality for regulated prices.</li> <li>• The law “On Electronic Communications” mandates the ANRCETI to provide tender and designate operators for providing the universal service.</li> </ul>	<p>regulatory framework requirements.</p>
2.5.2.	<p><b>Powers to define universal service’s baskets<sup>39</sup></b></p>	<ul style="list-style-type: none"> <li>• The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs.</li> <li>• The key element in design of universal obligations is take into account the national conditions – what type services are minimum type ones covering basic needs and where the natural market supply is not addressing the demand.</li> <li>• There are minimum requirements to be reviewed in terms of scope of services to be provided and MSs may decide on the actual scope of services to be provided and potentially specific groups of customers, based on national conditions. Minimum services to be reviewed are: <ul style="list-style-type: none"> <li>- access requests at fixed location (does not necessarily mean fixed network);</li> <li>- at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;</li> <li>- at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones;</li> <li>- public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage.</li> </ul> </li> <li>• The law “On Electronic Communications” describes the scope of services to be made universally available. Those include: <ul style="list-style-type: none"> <li>- access and connection at a fixed location to public telephone networks and for access at a fixed location to public telephone services;</li> <li>- at least one directory of subscribers shall be available to end-users, upon request, in printed, electronic form or both and is updated periodically, at least every three years;</li> </ul> </li> </ul>	<p>No recommendations on the matter as the reviewed MD legislation in force covers the EU regulatory framework requirements.</p>

<sup>39</sup> 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.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"><li>- at least one directory enquiry service shall be available to end-users, including users of public pay phones;</li><li>- public pay phones in order to meet the reasonable needs of end-users in terms of geographical coverage, number of telephones installed in relation to population density, accessibility of telephones to disabled users and quality of service.</li><li>• The law further enables the ANRCETI to implement the requirements of the law concerning the provision of universal services.</li></ul>	



## 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 18 May 2020.

No.	Name of the legislative document	Version of the document
1.	ANRCETI Board Decision on forms of the statistical reports	No. 33 of 17.11.2011
2.	ANRCETI Board Decision on ex-ante measures on Market: Wholesale local access provided at a fixed location	No. 42 of 14.11.2017
3.	ANRCETI Board Decision on ex-ante measures on Market: Wholesale central access provided at a fixed location for mass-market products	No. 43 of 14.11.2017
4.	Contravention Code	No. 218-XVI of 24.10.2008
5.	Law on Electronic Communications	No. 241-XVI of 15.11.2007
6.	Law on State Control over Entrepreneurial / Business Activity	No. 131 of 08.06.2012
7.	Regulation on Organization and functioning of the National Agency for Regulation in Electronic Communications and Information Technology, approved by Government Decision	No. 643 of 17.12.2019



**Annex 2 – Detailed gap assessment report including legal references**

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