



EU4Digital

EU4Digital: supporting digital economy
and society in the Eastern Partnership

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

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

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List of Acronyms & Abbreviations

Abbreviation	Definition
BEREC	Body of European Regulators for Electronic Communications
EaP	Eastern Partnership
EaP countries	Eastern partner countries
EaPeReg	Eastern Partnership Electronic Communications Regulators Network
EECC	European Electronic Communications Code
EU	European Union
EU MSs	European Union Member States
EU regulatory framework	2002/2009 EU electronic communications regulatory framework
EU4Digital	EU4Digital: Supporting digital economy and society in the Eastern Partnership
IRB EWG	Independent Regulators and Broadband expert working group
Methodology	Methodology on national electronic communications regulatory authorities' independence assessment for Eastern Partnership countries
NCCIR	The National Commission for the State Regulation of Communications of Ukraine
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
UA	Ukraine



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 Ukraine 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 Ukrainian NRA - National Commission for the State Regulation of Communications (NCCIR), 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 Ukrainian national legislation (effective as of 25 April 2020) completed by EU4Digital, NCCIR - an authority for the purpose of regulation of electronic communications services and networks has been setup, however, it does not meet requirements of an independently functioning NRA. Some other areas for improvement in order to further strengthen NRA organisational and financial independence were also identified. Those inter alia cover the following gaps:

- NCCIR is subject to horizontal provisions coming from the functional setup of governmental structure mandating further alignment of decision making with other governmental entities;
- Transposition of the relevant EU regulatory framework provisions to ensure impartial decision making and prohibit NRA to seek or to take instructions has not been identified;
- NCCIR remuneration system and recruitment process are guided by the law "On Civil Service". This limits NCCIR competitiveness and capacity in recruitment in the labour market, and as a result may not allow for NCCIR to have adequate financial and human resources to carry out the task assigned to it.

Please see Table 1 below for key highlights of Ukrainian 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 Ukraine

Dimension	#	Criteria	Sub-criteria assessed	Gaps identified	Key gaps in light of relevant EU regulatory framework
1. Governance	1.1	Setup of the NRA	12	11	NCCIR independence is not guaranteed; regulatory decisions are to be aligned in advance; recruitment and remuneration are guided by law "On Civil Service", not competitive for experts
	1.2	Setup of decision making body	4	4	UA law does not provide requirements for open selection process of Commission of the NCCIR as well as transparency measures
	1.3	Appeal and Dispute Resolution	2	1	NCCIR has limited area of dispute resolution between market participants
2. Powers and obligations	2.1	General	11	5	NCCIR has to align on supervision measures with other institution
	2.2	Market analysis	8	8	Regularity of market reviews is not set for NCCIR; NCCIR is not mandated to impose, maintain, amend or withdraw regulatory obligations as a result of market analysis
	2.3	Scarce resource management	3	2	Powers to manage national numbering plan shall be transferred to NCCIR
	2.4	Consumer protection	2	1	NCCIR lacks right of pre-trial settlement of disputes between service providers and consumers
	2.5	Universal service	2	2	NCCIR shall be able to mandate the carrying of universal services obligations by undertakings not designated as dominant in the market
Total:			44	34	



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 NCCIR regarding assessment criteria of this Methodology, EU4Digital jointly with the EaPeReg has conducted a comprehensive gap assessment in terms of regulatory governance and powers and obligations.

0.2 Aim of the report

The aim of this Report is to assess the state-of-play in Ukraine 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 NCCIR experts, who are also members of IRB EWG of the EaPeReg. Information collected includes text of relevant national legislation required to assess gaps in Ukraine 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 Ukraine regulatory system in the field of electronic communications assessment was completed jointly with the EaPeReg and findings were later aligned with NCCIR 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 Ukraine legislation is provided in the Annex 2 to this document.



1 Governance gap assessment results

1.1 Setup of the National Regulatory Authority

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

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.1.	Status of NRA – legally distinct and functionally independent²	<ul style="list-style-type: none"> • Pursuant to relevant provision of the EU regulatory framework the EU MSs shall guarantee independent functioning of NRA via guaranteeing legal separation of the authority and functional independence. This is a key element in ensuring robust and predictable evidence only based decision making process. • The transposition of the relevant EU regulatory framework provision has not been identified. The body entrusted with tasks typically carried out by NRA has been setup, however, independence requirements are not being provided for. • Moreover, it is evident the NRA is subject to horizontal provisions stemming from the functional setup of governmental structure mandating further alignment of decision making with other governmental entities, not falling within the scope as provided for by the Article 4 of the Framework Directive stipulating appeal procedures. • Further to requirement of legal distinction and functional independence, the NRAs shall act independently and are prohibited to seek or take instructions. And only bodies setup in accordance with Article 4 of the Framework Directive shall have power to suspend or overturn decisions. • The transposition of the relevant EU provision on prohibition to seek or take instructions has not been identified. The body entrusted with tasks typically carried out by NRA has been setup, however the independence requirements, prohibition to seek or receive instructions has not been provided for. • The NCCIR as governmental body and part of governmental setup is subject to appeals procedures as provided for by the overall framework of administrative procedure under the Code of Administrative Procedure of UA, falling within the scope of Article 4 of the Framework Directive. However, the NCCIR is also required to approve draft measures under 	<ul style="list-style-type: none"> • In the “Telecommunications” law to provide for and strengthen the guarantee of independent functioning of the NRA the NCCIR by ensuring legal distinction and functional independence of all organisations providing electronic communications networks, equipment and services. It is imperative that by the provisions of the law the NRA is shielded from direct or indirect influence of bodies which provide electronic communications networks, equipment and services or are direct or indirect shareholders thereof or policy making bodies in the electronic communications area.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		law ³ of UA “On the principles of state regulatory policy in the sphere of economic activity”, not in line with independence provisions as well as prohibition to seek or receive instructions.	
1.1.2.	Decision making powers, prohibition to seek or take instructions from any other body³	<ul style="list-style-type: none"> 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. 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 NCCIR is mandated under law “On Telecommunications” to submit proposals to governmental authorities on draft laws and other legal documents in the field of electronic communications as well issue binding normative and administrative acts. However, as already outlined before on functioning of the NCCIR and general governmental setup, also in this case certain horizontal provisions are applicable, and the documents are subject to mandatory state registration. Moreover, under law “On the Principles of State Regulatory Policy in the Field of Economic Activity”, and in cases provided for by the legislation the documents shall be submitted for approval to the interested state bodies and central executive authority in the field of communications. The transposition of the relevant EU regulatory framework provision has not been identified. The body entrusted with tasks typically carried out by NRA has been setup, however, impartial decision-making process and prohibition to seek or receive instructions are not being provided for. On the contrary, the NCCIR is subject to horizontal process of approval of regulatory measures. 	<ul style="list-style-type: none"> Strengthen the independent decision-making process by adding a provision the law “On Telecommunications” enabling impartiality of decision making process and prohibiting seeking and receiving instructions. Exempt the NCCIR from horizontal requirements applicable that may in their in their nature and spirit breach the principle of independent decision making process such as registration process as well as transpose the requirement prohibiting for the NCCIR to seek and receive instructions into legislation applicable to the NCCIR.
1.1.3.	Powers to develop NRA’s own strategy⁴	<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. As the functioning of the NRA shall by default be independent, a planning document outlining medium term planning is important to ensure both predicable and transparent performance of the tasks assigned. The NCCIR is required under internal procedure to prepare annual planning document for management of projects as well as preparation of draft legislative documents. 	<ul style="list-style-type: none"> Prepare medium-term NCCIR strategy document. The electronic communications policy documents of UA, legislative regulatory framework, annual planning documents may be linked into medium term strategy document of the NCCIR outlining the envisaged activities, consulted with relevant stakeholders, within the merits of the NCCIR competence.

³ Law of Ukraine “On the principles of state regulatory policy in the sphere of economic activity” of 11.09.2003 № 1160-IV (amended)

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.4.	Formation of NRA's budget⁵	<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. • For the NCCIR the activities are financed by the state budget following a budget request – a document prepared by the senior spending agency for in turn the NCCIR provides a budgetary proposal within the merits of available financing while in fact, the applicable principle shall be that competent execution of tasks assigned shall have prevalence and appropriate financing shall be allocated accordingly. In the current framework of the budgetary process, the NRA has limited powers to join the budgetary preparation process. 	<ul style="list-style-type: none"> • Ensure budgetary autonomy of the NCCIR by providing a separate NCCIR managed budget based on the proposal of the NCCIR and adopted by the NCCIR and the right to set surcharges for NCCIR staff for the ability to compete in the labour market. • This approach may be further developed by reviewing the source of financing.
1.1.5	Sources of NRA's financing⁶	<ul style="list-style-type: none"> • As described above, the NRA – NCCIR is financed by the state budget, in a generally applicable budgetary process. Often, including outside of electronic communications regulation domain, lack of available financial resources is cited as reason behind not providing the requested budgetary allocation. • While in principle understandable, it does not allow for proper functioning of national electronic communications regulatory frameworks by breaching the relevant requirement of impartial and competent decision via ensuring the NRAs shall have adequate financial and human resources to carry out the tasks assigned to them. • A typical approach to balance this situation 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 	<ul style="list-style-type: none"> • Review the source of financing of the NCCIR and transition to market based financing set forth, administered by the NCCIR in form of a fee. Ensure that the system is transparent and proportionate, minimises additional administrative costs and attendant charges.

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

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>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 communications' regulatory purposes.</p> <ul style="list-style-type: none"> This approach, along with changes proposed to the budgetary formation process would ensure that NRA would be in charge and also accountable for regulatory functions and ensuring appropriate resources are made available for the performance of regulatory tasks. 	
1.1.6.	Possibilities to execute (spend) NRA's budget⁷	<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. For NCCIR the maximum possible number of employees is approved by the President of UA while the staffing list is approved by the Chairman in agreement with the Ministry of Finance, a process requiring further review to understand the situation as to which criteria are being included in the review process. However, it is clear from the outset that the NCCIR shall be in position to define the most appropriate means of performing the tasks assigned to it, including any and all matters related to personnel policy. 	<ul style="list-style-type: none"> Review the provisions of the law "On Telecommunications" to enable the NRA following the process of adoption and collection, the exaction of the budget of authority within the merits of sector specific legislation, having regard to accountability rules.
1.1.7.	Recruitment of personnel and experts⁷	<ul style="list-style-type: none"> For NCCIR the number of employees is approved by the President of UA while the staffing list is approved by the Chairman in agreement with the Ministry of Finance. However, it is clear from the outset that the NCCIR shall be in position to define the most appropriate means of performing the tasks assigned to it, including any and all matters related to personnel policy. At the moment the process is guided by provisions coming from recruitment procedures under general civil service, provided for by the law⁸ "On Civil Service". 	<ul style="list-style-type: none"> Review the provision of the law "On Telecommunications" to enable the NRA to set forth internal procedures and decision making on recruitment of personnel and experts. Review the provision of the law of UA "Telecommunications" to enable the NRA to set forth internal procedures and decision making on number and recruitment of personnel, including the right to hire and cover costs of external experts.

⁷ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.

⁸ Law of Ukraine "On Civil Service" of 10.12.2015 No 889



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.8.	Ability to set remuneration for Board members and employees⁹	<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. In UA, the NCCIR is subject to law "On Civil Service" that would allow for the NCCIR to ensure flexible, market based approach to internal remuneration system and enable the NCCIR to compete in the labour market and consequently strengthen the capacity of the NCCIR. 	<ul style="list-style-type: none"> Review the provision of the law "On Telecommunications" to enable the NRA to set forth internal procedures and rights for the decision making setting remuneration for decision making body and employees, in order to make the NCCIR competitive in the labour market, attract skilled employees and bring the level of their remuneration in line with the remuneration of the relevant specialists of economic entities in the field of communications and informatisation.
1.1.9.	Legislative initiative powers of NRA¹⁰	<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. 	<ul style="list-style-type: none"> Introduce changes to relevant legislation enabling participation of the NCCIR to the legislative process by submitting legislative proposals directly to the Verkhovna Rada.
1.1.10.	Bodies and process for challenging NRA's decisions⁹	<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. Any NCCIR decision be appealed against in accordance with procedure established by the Code of Administrative Procedure of UA. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
1.1.11.	Consultation and transparency requirements¹¹	<ul style="list-style-type: none"> The law "On Telecommunications" provides for open nature of decision-making process, inter alia, providing for open nature of meetings of the decision-making body where interested bodies have opportunity to participate. The NCCIR shall facilitate public interest in regulatory work. In line with the EU regulatory framework, the NCCIR is mandated to publish annual report. 	<ul style="list-style-type: none"> No recommendations on the substance, however as it expected that NCCIR proposed draft measures are not to be approved by any other governmental body, review of law "On Telecommunications" is required

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

¹⁰ 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.

¹¹ Directive 2002/21/EC (Framework Directive): Article 6 – Consultation and transparency mechanism.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> Horizontal consultation procedures are in place under the law “On the principles of state regulatory policy in the sphere of economic activity”. 	enabling the NCCIR adopt consultation procedure that may be linked to general consultation framework country, however, only having non-binding characteristics.
1.1.12.	Cooperation setup with other competent authorities¹²	<ul style="list-style-type: none"> The law “On Telecommunications” outlines the various responsibilities assigned to specific governmental bodies. During decision making process on matters related to competition regulation, indications of anti-competitive behaviour are to be forwarded to the national competition authority. 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 is binding alignment process foreseen for the NCCIR under the law "On the principles of state regulatory policy in the field of economic activity". 	<ul style="list-style-type: none"> Review the law "On the principles of state regulatory policy in the field of economic activity" to ensure non-binding consultation process; Review the law “On Telecommunications” to mandate the NCCIR to consult the national competition authority before adopting a decision as a result market analysis process.

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 function¹³	<ul style="list-style-type: none"> The EU regulatory framework does not stipulate for a specific selection process for the head or collegiate body performing that function to be provided in advance in relevant national legislation. It is however of utmost importance, having regard to the tasks to be performed by the NRA that the selection process is well documented, and results of intermediate steps and final results are publicly communicated. For NCCIR the regulatory function is performed by the commission, as a collegial body, consisting of the chairman of the commission and 6 members appointed directly by the President of UA. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to enable open selection process and public advance availability of intermediate steps, such as nomination by relevant policy maker with public participation and results thereof as well as of final results. Review the law “On Telecommunications” to enable the Parliament of UA as appointing

¹² Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities.

¹³ 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 law “On Telecommunications” does not provide requirements for open selection process and steps to be taken to deem the selection process successful and well as transparency measures. Furthermore, there are no criteria that would allow to determine which of the members of the commission, whose term of office has expired, should be dismissed in case of appointment of a new member of the commission. 	<p>authority for the positions of chairman and commissioners.</p> <ul style="list-style-type: none"> Update law “On Telecommunications” and settle the issue of dismissal of expired members of the Commission in case of appointment of a new member of the Commission.
1.2.2.	Appointment of the head or collegiate body performing that function¹³	<ul style="list-style-type: none"> Under law “On Telecommunications”, the chairman of the NCCIR and the 6 members are appointed to their office by a decree of President of UA. As described above in relation to selection process, the law does not stipulate further details for selection process and intermediate steps to be taken. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to enable the Parliament of UA to function as appointing authority for chairman and the 6 commissioners. Review the law “On Telecommunications” to foresee intermediate steps in the selection process such as public nomination.
1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal¹³	<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 Telecommunications” defines the conditions under which the chairman or commissioners of the NCCIR may be dismissed or office terminated. However, the law does not foresee publication of the decision, receiving by persons concerned of reasons for dismissal, right to request publication and obligation to follow up with publication upon request. The law does not specify criteria that would determine which of the members of the commission whose term of office has expired should be dismissed in the event of the appointment of a new member of the commission. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to ensure: <ul style="list-style-type: none"> publication of decision on dismissal or termination of the office; receiving of the statement of reasons for dismissal; right to request publication of statement of reasons and statement to be published; settlement of the question, which of the members of the Commission, whose term of office has expired, should be dismissed in case of appointment of a new member of the commission.
1.2.4.	Terms in office as head or collegiate body performing that function¹⁴	<ul style="list-style-type: none"> The law “On Telecommunications” provides for the term of office of the chair and commissioners to be 6 years as well as limits to two the number of consecutive terms. 	<ul style="list-style-type: none"> To ensure continuous operation of the collegiate decision making body, review the law “On Telecommunications” to implement a staggered approach for appointment and expirations of offices of commissioners

¹⁴ 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
			whereby a defined number of members of the decision making body would change in a given moment of time while maintaining the quorum required for NCCIR decision-making.

1.3 Appeal and Dispute Resolution

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

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

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.3.1.	Appeal procedures¹⁵	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure mechanisms exist at national level under which any user or undertaking who is affected by a decision of NRA has the right of appeal against the decision to an appeal body that is independent of the parties involved. Under the Code of Administrative Procedure of UA all decisions of the NCCIR may be appealed to the courts by the affected parties. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
1.3.2.	Powers of resolve disputes between undertakings¹⁶	<ul style="list-style-type: none"> The EU regulatory framework enables under certain conditions the undertakings in electronic communications area to request the NRA to issue a binding decision. The EU regulatory framework also requires the binding decision to be taken within the shortest timeframe possible but not exceed four months period, except for predefined circumstances. The law “On Telecommunications” enables the NCCIR to serve as pre-trial body to review disputes between market participants, however, limits the area of dispute resolution to interconnection, national roaming services, number portability and use of personal numbers. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to: <ul style="list-style-type: none"> extend the opportunity for undertakings to request issuing of a binding decision on any matter within the merits of the law; set forth a commitment to issue binding decision within the shortest timeframe possible and in any case within 4 months and define exceptional circumstances.

¹⁵ Directive 2002/21/EC (Framework Directive): Article 3 – National regulatory authorities; Article 4 - Right of appeal.

¹⁶ 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 regulation¹⁷	<ul style="list-style-type: none"> The EU regulatory framework provides for certain powers to be attributed to the NRAs when it comes to enforcement of regulatory framework. Under the general authorisation regime, the market participants shall be bound to follow the requirements of legislative 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. When it comes to supervision, the law “On Telecommunications” and the law "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" shall be applied. While in principle it may not be contradictory to apply several legal documents to the process, the law "On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity" constraints the NCCIR in performing certain functions as required by the EU regulatory framework. The law “On Telecommunications” extensively describes: <ul style="list-style-type: none"> - rights of NCCIR request information from market participants and governmental bodies alike; - general supervision procedure of the telecommunications market, including market entry, conditions of authorisations, quality of service. The law also enables the NCCIR to obtain physical access to market participants premises and issue binding decisions and request termination of any breaches of legislation that may be found by means of taking binding decisions and imposing monetary fines when appropriate. Law “On the Radio Frequency Resource of Ukraine”¹⁸ provides for powers of the NCCIR when it comes to enforcement of regulation on radiofrequency spectrum management matters, such as licensing (rights of use), control, exercising state supervision, co-ordination, monitoring. The NCCIR may also issue binding decisions and apply sanctions, including monetary penalties. The law also 	<ul style="list-style-type: none"> Review the relevant framework to ensure the NCCIR in the area of supervision from the operational perspective are only subject to requirements rooted in the relevant EU regulatory framework for electronic communications – any market regulatory function, including the supervision process to be exempt from the process as set forth by the law of UA “On Basic Principles of State Supervision (Control) in the Sphere of Economic Activity”. Review the relevant legislation to ensure in case of a breach of applicable legislation and conditions met a fine can be imposed on legal entities.

¹⁷ 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.

¹⁸ Law of Ukraine “On the Radio Frequency Resource of Ukraine” of 01.06.2000 No 1770



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		enables the NCCIR to obtain physical access to market participants premises to ensure compliance with regulatory requirements.	
2.1.2.	Powers to collect information¹⁹	<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 Telecommunications” the NCCIR may request and receive free of charge from the operators and the telecommunications services providers alike the information required, and in the form and order established by the NCCIR. The law does specify particular treatment of information marked as confidential, however, there are horizontal provisions in UA governing this process. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
2.1.3.	Powers to regulate market entry²⁰	<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. Under the law “On Telecommunications” sets forth the framework of general authorisation regime in UA. The undertakings are required to notify the NCCIR 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 NCCIR. This criterion does not cover rights of use of numbering and radiofrequency spectrum. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
2.1.4.	Powers to regulate national and/or	<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 	<ul style="list-style-type: none"> As specific transposition may not be required as regulatory framework is comprised of regulations, review the law “On Telecommunications” to enable

¹⁹ 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.

²⁰ 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
	international roaming²¹	<p>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.</p> <ul style="list-style-type: none"> • 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. • The law “On Telecommunications” should the circumstances require enables the regulation of national roaming, however for the international roaming, apart from market analysis process, there are no references included for both wholesale and retail levels. 	<p>general appropriate decision making of the NCCIR when it comes to providing regulatory conditions of the provision of international roaming services both on wholesale and retail levels. Not least because of the expected entry into force of the regional roaming arrangement aimed at harmonisation of roaming conditions among Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine and potential review of roaming conditions for the purpose of exploring of harmonisation of roaming conditions among the 6 EaP countries mentioned and the EU.</p>
2.1.5.	Powers to regulate net neutrality²²	<ul style="list-style-type: none"> • Under the EU regulatory framework, the open internet access is regulated subrationally 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 Telecommunications”. 	<ul style="list-style-type: none"> • Review the law “On Telecommunications” by providing overall principles of ensuring open internet access and provide the NCCIR with necessary delegations and decision-making powers to ensure the open internet access.

²¹ 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.

²² 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 requirements²³	<ul style="list-style-type: none"> 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. There is existing framework for management of quality of service within UA, however, not all aspects are under the scope of activities of NRA the NCCIR. The law “On Telecommunications” provides powers for the NCCIR to establish quality control of telecommunications services and customer satisfaction level. As a general principle of governance, the customers shall have access to information concerning the procedure and quality of services provided in the market. The specific list of quality of service indicators is to be approved by the NCCIR, in accordance with the legal acts of the central executive authority in the field of communications, which provide specific levels of quality of service indicators. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” and possibly other legislative documents to ensure the quality of service framework is the responsibility of the NRA, the NCCIR solely.
2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014²⁴	<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. For UA, the specific Directive remains to be transposed. 	<ul style="list-style-type: none"> As there may be several options when it comes to distribution of responsibilities among governmental bodies as a result of transposition of Directive 2014/61/EU that would suit the national circumstances, the recommendation, however, to take use of existing sector specific experience and assign via appropriate piece of legislation at the least the responsibility for resolution of disputes to the NRA, the NCCIR.
2.1.8.	Powers to organise public hearings²⁵	<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. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.

²³ Directive 2002/22/EC (Universal Service Directive): Article 22 – Quality of service.

²⁴ 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.

²⁵ Directive 2002/21/EC (Framework Directive): Article 6 – Consultation and transparency mechanism.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> Under the law “On Telecommunications” the NCCIR is required to provide public exposure of its work and there is open nature of the decision making body. There may also be working groups formed to address specific matters. Furthermore, there is a consultation procedure and KPI set forth by a law “On the Principles of State Regulatory Policy in the Sphere of Economic Activity”, foreseeing the option of organising a public hearing. 	
2.1.9.	Powers to organise associated councils or consulting bodies²⁶	<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. Under the law “On Telecommunications” the NCCIR may organise consulting and other advisory body to carry out its tasks. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
2.1.10.	Powers for international cooperation²⁶	<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 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. The law “On Telecommunications” enables and formalises the participation of the NCCIR to various international bodies and delegates the right to cooperate within the merits of the law with the relevant bodies in the electronic communications. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
2.1.11.	Powers to be represented in international regulatory bodies²⁷	<ul style="list-style-type: none"> A form of cooperation of EU NRAs under EU regulatory framework is participation on all level decision making process in specialised regulatory organisations with an aim of harmonisation of regulatory framework and strengthening the Single Market. There 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. The NCCIR is empowered to be representative of UA to the key regulatory organisation of the region the EaPeReg and assumes active expert and management participation role. The NCCIR pursuant to the law “On Telecommunications” is also the state representative to the International Telecommunications Union. Moreover, the NCCIR shall take part in the preparation of draft international treaties of UA in accordance with the established procedure and conclude international agreements of interagency nature. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.

²⁶ None, as there is no specific legal guidance on the criteria in the EU regulatory framework.

²⁷ 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 markets²⁸	<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 Telecommunications” the NCCIR shall carry market definition of specific electronic communications services, analysis of the relevant markets and designation of the market participants as those having significant market power, following a procedure established by the NCCIR. 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 Telecommunications” the service provider or operator is deemed to be service provider or operator with significant market power if revenue share in the market of certain telecommunications services, determined by the NCCIR, in the year preceding the market analysis exceeds 25 percent of the total income of all telecommunication providers received in this market for the same period of time, or if, as a result of the technological process of rendering the service to another operator, the telecommunications provider may only be provided to a particular network operator, telecommunication provider. Pursuant the EU regulatory framework the NRAs shall carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation and taking the utmost account of the Guidelines. The NCCIR under the law “On Telecommunications” shall carry out in accordance with the established procedure the definition of the relevant markets, conduct their analysis and identify the undertakings with significant market power. This analysis shall be based on procedure for analysing the markets of certain telecommunication services and identifying undertakings with significant market power. Procedure has been developed in accordance with the law "On Telecommunications" and other legislative documents, taking into account the provisions of the Association Agreement of UA with EU. The Procedure establishes a mechanism for analysing the 	<ul style="list-style-type: none"> There is a robust framework tied to the international commitments of the UA towards the EU on providing the procedure for market analysis and this approach can be further expanded and ensure that key elements of the market analysis process design and implementation are under the NCCIR responsibilities: <ul style="list-style-type: none"> the definition in the law “On Telecommunications” shall be adjusted to reflect the requirements of the EU regulatory framework, including those of joint significant market power; review the law “On Telecommunications” in order to set forth the regularity of market reviews.

²⁸ 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
		<p>relevant markets, identifying undertakings with significant market power. The analysis of the markets of certain services shall be based on the NCCIR procedure in accordance with the list of relevant markets, annexed to procedure, formed in accordance with the Indicative list of relevant markets to be analysed in accordance with Article 116 of the Association Agreement of UA with EU.</p> <ul style="list-style-type: none"> • 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. • 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"> - within three years from the adoption of a previous measure relating to that market; - 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 obligations²⁹	<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. This power is not attributed to the NCCIR by law “On Telecommunications”. 	<ul style="list-style-type: none"> • Review the law “On Telecommunications” to mandate the NCCIR to impose, maintain, amend or withdraw regulatory obligations as a result of market analysis. The review shall cover imposition of following obligations: <ul style="list-style-type: none"> - obligation of transparency; - obligation of non-discrimination; - obligation of accounting separation; - obligations of access to, and use of, specific network facilities; - price control and cost accounting obligations; - functional separation. • The mandate universally applicable to any market analysis process concluded would also

²⁹ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
			serve purpose of addressing legislative gaps when it comes to imposition regulatory obligations reviewed under other criteria.
2.2.3.	Powers to regulate interconnection and access³⁰	<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. • Law “On Telecommunications” does not provide for the mandate for the NCCIR to impose regulatory obligations. • The EU legislation further stipulates that NRA may impose on the undertakings designated as significant market power specific obligations to address the competitive shortcomings, such as: <ul style="list-style-type: none"> - obligation of transparency; - obligation of non-discrimination; - obligation of accounting separation; - obligations of access to, and use of, specific network facilities; - price control and cost accounting obligations; - functional separation. • Details of obligation as set forth by the law “On Telecommunications” are reviewed further. • Apart from significant market power framework obligations the NRAs may impose obligations related to interoperability of networks, on all network operators. • When it comes to interconnection, under calling-party-pays scenario provision of voice call termination services is typically done by an undertaking enjoying significant market power on its own electronic communications network and consequently regulatory obligations may imposed, amended or maintained. • Transparency obligation would entitle publication of certain information based on conditions set forth by the NRA. Combined with the non-discrimination obligation, the outcome may lead to a 	<ul style="list-style-type: none"> • Review the law “On Telecommunications”: - to enable the NCCIR impose obligations as set forth in the criterion reviewed above; - to clearly separate that certain regulatory obligations such as access, price regulation, non-discrimination, transparency can only be imposed by NRA as a result of market analysis process; - to enable the NCCIR to decide on specific obligations to be imposed on undertakings designated as having significant market power, based proportionality and geographical assumptions; - to delegate to the NCCIR to provide further details of conditions and details of regulatory framework.

³⁰ 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
		<p>requirement of publication of reference offers. Under the law “On Telecommunications” the NCCIR shall publish on annual basis a list of proposals on interconnection of networks – organisational, technical and economic conditions. For significant market power operators, the conditions shall be regulated pursuant to procedure established by the NCCIR.</p> <ul style="list-style-type: none"> • Obligation of non-discrimination would require for the designated operators to extend equivalent treatment either vis-à-vis market participants or among market participants. Pursuant to the law “On Telecommunications” the NCCIR shall, at the request of either party, regulate the relations of telecommunication operators with regard to interconnection, including with regard to traffic-passing services, when concluding, executing and terminating the respective contracts. Furthermore, the operators shall be obliged to provide other telecommunications operators willing to enter into agreements on interconnection all and any information required for drafting such agreements, as well as to offer interconnection conditions being not worse than those offered to other telecommunication operators. • Obligation of accounting separation would entitle the making transparent wholesale prices and transfer prices in order to ensure the non-discrimination of obligation can monitored or to prevent cross-subsidisation among services. • Access obligation would require the operators of networks designated as having significant market power to meet reasonable requests for access and use of, specific network elements and associated facilities. Pursuant to law “On Telecommunications” an operator designated as having significant market power cannot refuse interconnection, except if certain conditions prescribed by the law are met. • Price control and cost accounting obligations, including obligations for cost orientation of prices and obligations concerning cost accounting systems, may be imposed for the provision of specific types of interconnection of networks or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users. The law “On Telecommunications” provides that economic conditions for the interconnection of telecommunications networks and settlement rates for access to telecommunications networks, as well as settlement rates for traffic transmission services are subject to agreement among operators while the prices for traffic services, fees for access to telecommunications networks with significant market advantage shall be established in the manner approved by the national commission NCCIR with the specific Procedure establishing the detailed mechanism. • Under exceptional circumstances when other obligations imposed have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets the obligation of functional separation. As a result, the regulated undertaking shall supply access products and services to all undertakings, including to other business entities within the parent company, on the 	



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.	
2.2.4.	Powers to regulate access to ducts and/or other network infrastructure³¹	<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. Pursuant to the law “On Telecommunications” the NCCIR is in charge of market analysis framework. Key elements are provided for by the Procedure prepared by the NCCIR. The law sets forth certain regulatory elements such as price regulation of cable ducts that could be addressed by the NRA but may also well be tackled symmetrically – all particular type of infrastructure is regulated – by regulation of telecommunications cable ducts. 	<ul style="list-style-type: none"> The law “On Telecommunications” shall be reviewed to: <ul style="list-style-type: none"> enable NRA the NCCIR to decide on services – ducts and associated facilities – to be regulated to as a result of market definition process; enable NRA the NCCIR to select most appropriate and proportionate obligations to be imposed on regulated entities to address any shortcoming determined during the market analysis process; enable the NRA the NCCIR to provide further details and conditions of regulatory framework by means of relevant bylaws to guide the promotion of competition not only the in specific regulated market but those closely related.
2.2.5.	Powers to regulate termination and/or origination and/or transit tariffs³²	<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 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to: <ul style="list-style-type: none"> enable NRA the NCCIR to decide on services – origination, transit, and termination – to be regulated to as a result of market definition process;

³¹ 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.

³² 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
		<p>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.</p> <ul style="list-style-type: none"> The law “On Telecommunications” stipulates for certain obligations such as price regulation of traffic transmission to be imposed on undertakings designated as having significant market power, however, even this obligation may not be mandatory to impose as from systematic point of other obligations may reach identical outcome. 	<ul style="list-style-type: none"> - enable NRA the NCCIR to select most appropriate and proportionate obligations to be imposed on regulated entities to address any shortcoming determined during the market analysis process; - enable the NRA the NCCIR to provide further details and conditions of regulatory framework by means of relevant bylaws to guide the promotion of competition not only the in specific regulated market but those closely related.
2.2.6.	Powers to set tariffs and/or prices³³	<ul style="list-style-type: none"> Under the EU regulatory framework, the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. One of the obligations is obligation of cost orientation which may take form setting tariffs or prices. The NRA shall be required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. Benchmarking exercises can also be applied. Should retail regulatory measures related to retail tariff regulation or other retail price controls, the NRA shall have right to request appropriate cost accounting system, by specifying format and accounting methodology to be applied. The NRA may request compliance to be verified by a qualified independent body. There shall also be rights for the countries to oblige designated undertaking to provide to consumers electronic communications services which depart from those provided under normal conditions, in particular addressed to those with low incomes or special needs, which would be exempt from cost orientation obligation. The law “On Telecommunications” provides for prices for certain specified in the law services to be regulated should the conditionality of significant market power be met. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to if as a result of market analysis NRA, the NCCIR deems setting of tariffs or prices to be an appropriate obligation for a regulatory intervention powers to do would be set forth in the law.

³³ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.
 Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.
 Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.2.7.	Powers to apply cost accounting and allocation methodologies³³	<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. The law “On Telecommunications” provides for prices for certain specified in the law services to be regulated should the conditionality of significant market power be met. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to if as a result of market analysis NRA, the NCCIR deems imposition of cost accounting and allocation methodology to be an appropriate obligation for a regulatory intervention powers to do would be set forth in the law.
2.2.8.	Powers to set Weighted Average Cost of Capital³⁴	<ul style="list-style-type: none"> Under the EU regulatory framework, the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. One of the obligations is obligation of cost orientation which may take form setting tariffs or prices. The NRA shall be required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. Benchmarking exercises can also be applied. Should retail regulatory measures related to retail tariff regulation or other retail price controls, the NRA shall have right to request appropriate cost accounting system, by specifying format and accounting methodology to be applied. The NRA may request compliance to be verified by a qualified independent body. There shall also be rights for the countries to oblige designated undertaking to provide to consumers electronic communications services which depart from those provided under normal conditions, in particular addressed to those with low incomes or special needs, which would be exempt from cost orientation obligation. The law “On Telecommunications” provides for prices for certain specified in the law services to be regulated should the conditionality of significant market power be met. 	<ul style="list-style-type: none"> Review the law “On Telecommunications” to if as a result of market analysis NRA, the NCCIR deems imposition of cost accounting and allocation methodology to be an appropriate obligation for a regulatory intervention, powers to set WACC in a regulatory decision shall be set forth in the law. Further reference in the law may be provided to take utmost account of certain EU documents guiding the particular area of activity.

³⁴ 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.	Powers to grant scarce resources (radio frequencies and numbering)³⁵	<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. The law “On Radio Frequency Resource of Ukraine” and the law “On Telecommunications” mandate the NCCIR to issue the rights of use of radiofrequency spectrum and numbering respectively. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
2.3.2.	Powers to monitor radio frequencies³⁶	<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. Law of UA “On Radio Frequency Resource of Ukraine” manages the radiofrequency usage matters in UA. Pursuant to this law Central Executive Body in the Field of Communications manages the National Radio Frequency Table. The National Radio Frequency Table is document covering 3 functions: <ul style="list-style-type: none"> - the distribution of radio frequency bands between radio services in accordance with the Radio Regulations of the International Telecommunication Union; - the distribution of radio frequency bands between radio services; - the allocation of radio frequency bands to special and general use bands. The radiofrequency resources are used pursuant to Plan for Use of the Radio Frequency Resource of UA, prepared by Central Executive Body in the Field of Communications based on National Radio Frequency Table and approved by the Cabinet of the Ministers. 	<ul style="list-style-type: none"> While in principle the current setup conforms the EU electronic communications regulatory framework requirements, it is recommended to review both laws “On Telecommunications” and “On Radio Frequency Resource of Ukraine” to transfer the obligation and powers of managing and approval of national Plan for Use of the Radio Frequency Resource of UA to NRA, the NCCIR to reflect the best-practice setup of the EU governance of radiofrequency spectrum management.

³⁵ Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services; Article 10 – Numbering, naming and addressing.

³⁶ Directive 2002/21/EC (Framework Directive): Article 9 – Management of radio frequencies for electronic communications services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.3.3.	Powers to manage numbering plans³⁷	<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. The law “On Telecommunications” provides that the development and implementation of the technical policy for the numbers resource formation shall be a responsibility of Central Executive Body in the Field of Communications while allocation, assignment and accounting of the numbering resource, the issuance and revocation of permits for its use, the state supervision over the use of the numbering resource are carried out by the NCCIR. 	<ul style="list-style-type: none"> Review law “On Telecommunications” to transfer the obligation and powers of managing and approval of National Numbering Plan to NRA, the NCCIR.

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 contracts³⁸	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations MSs to ensure that customers have rights to contract and minimum requirements to the contract. Those requirements can be specified either by the law itself or can be further mandated to NRA. The law “On Telecommunications” mandates the NCCIR to set forth basic requirements for the contract on the provision of telecommunication services. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed UA legislation in force covers the EU regulatory framework requirements.
2.4.2.	Powers to solve customer complaints³⁹	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations for MSs to ensure that customers have rights to transparent, non-discriminatory, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services. The law “On Telecommunications” enables the consumers to apply to the NCCIR to resolve any issues within to its powers. The NCCIR shall review the application and take decision within the merits of its competence. Furthermore, the NCCIR has the right and considers appeals (including complaints) in accordance with the second part of Article 21 of the law "On Telecommunications" and the law "On Appeals of 	<ul style="list-style-type: none"> Review legislation in force to enable the NCCIR to review and take binding decisions on disputed between services providers and consumers.

³⁷ Directive 2002/21/EC (Framework Directive): Article 10 – Numbering, naming and addressing.

³⁸ Directive 2002/22/EC (Universal Service Directive): Article 20 – Contracts.

³⁹ 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>Citizens". At the same time, appeals (including complaints) of consumers of telecommunication services, which may be both individuals and legal entities, are considered.</p> <ul style="list-style-type: none"> • Currently, the NCCIR does not have the right of pre-trial settlement of disputes between service providers and consumers, as required by the requirements of the EU legislation 	

2.5 Universal Service

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.5.1.	Powers to set universal service obligations⁴⁰	<ul style="list-style-type: none"> • The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs. • Under the law "On Telecommunications" there is provision on rights of customers to access networks and receive services of standard quality for regulated prices. Should there be insufficient satisfaction of consumer demand, the NCCIR may take a binding decision requiring undertaking designated as having significant market power and fixed line operators who carry out or intend to operate in these regions provision of services to consumers. 	<ul style="list-style-type: none"> • Review law "On Telecommunications" to enable the NCCIR to mandate the carrying of universal services obligations by undertakings not designated as having significant market power and expand the opportunity of universal service provision by other network providers, on top of fixed.
2.5.2.	Powers to define universal service's baskets⁴¹	<ul style="list-style-type: none"> • The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs. • The key element in design of universal obligations is take into account the national conditions – what type services are minimum type ones covering basic needs and where the natural market supply is not addressing the demand. 	<ul style="list-style-type: none"> • Review the law "On Telecommunications" to mandate the NCCIR to review the following dimensions of provision of universal services: <ul style="list-style-type: none"> - scope; - availability, including specific user groups; - affordability.

⁴⁰ Directive 2002/22/EC (Universal Service Directive): Article 3 – Availability of universal service.

⁴¹ 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"> • There are minimum requirements to be reviewed in terms of scope of services to be provided and MSs may decide on the actual scope of services to be provided and potentially specific groups of customers, based on national conditions. Minimum services to be reviewed are: <ul style="list-style-type: none"> - access requests at fixed location (does not necessarily mean fixed network); - at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year; - at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones; - public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage. • The law “On Telecommunications” describes the scope of services to be made universally available. Those include: <ul style="list-style-type: none"> - connection of end user to networks of fixed use (universal access), fixed telephony services within the numbering area (local telephone service), as well as emergency services call, services help desk and telephony communications, excluding calls to mobile networks. Services may be provided using wired and / or wireless access technologies. - payphones, and conditions for provision of payphone services. - provision of services to the users with special needs – the undertakings cannot refuse to continue to provide services to persons with disabilities of groups I and II of all categories whose current indebtedness for the services received does not exceed three minimum retirement pensions. 	<ul style="list-style-type: none"> • Based on the study enable the NCCIR to adjust the specific applicable universal services obligations to the national conditions.



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 25 April 2020.

No.	Name of the legislative document	Version of the document
1.	Budgetary Code of Ukraine	08.07.2010 No. 2456-VI
2.	Law of Ukraine "On access to the objects of construction, transport, electricity for the purpose of development of telecommunication networks"	07.02.2017 No 1834-VIII
3.	Law of Ukraine "On Civil Service"	10.12.2015 No 889
4.	Law of Ukraine "On Telecommunications"	18.11.2003 No 1280
5.	Law of Ukraine "On the principles of state regulatory policy in the sphere of economic activity"	11.09.2003 No 1160
6.	Law of Ukraine "On the Radio Frequency Resource of Ukraine"	01.06.2000 No 1770-III
7.	Law of Ukraine "On the Regulation of the Verkhovna Rada of Ukraine"	10.02.2010 No 1861–6
8.	Decision of the NCCIR "On Approval of the Basic Requirements to the Contract on Provision of Telecommunication Services and Recognition as Expired of NCCIR Decision of 26.03.2009 No. 1420"	29.11.2012 No. 624
9.	Decision of the NCCIR "On procedure for analysing the markets of certain telecommunication services and identifying operators, providers of telecommunications with significant market power in the markets of such services"	11.12.2018 No 640
10.	Decision of the NCCIR "On procedure for establishing the amount of the settlement rates for traffic transmission services to telecommunication networks of telecommunication operators with significant market power"	07.06.2016 No 295
11.	Decision of the NCCIR "On Regulation of the National Commission for the State Regulation of Communications and Informatization" with relevant changes adopted by the NCCIR Decisions of 15.12.2015 № 662, 17.01.2017 № 27, 08.01.2019 № 7, 11.02.2020 № 59.	21.10.2014 No 720
12.	Decision of the NCCIR "On Regulation on the quality of telecommunication services"	15.04.2010 No. 174
13.	Decision of the NCCIR "On the Rules of interconnection of public telecommunications networks"	08.12.2005 No 155
14.	Provision on the National Commission for the State Regulation of Communications and Informatization adopted by the Decree of the President of Ukraine	23.11.2011 No 1067
15.	Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Rules for the Provision and Reception of Telecommunication Services"	11.04.2012 No 295
16.	Resolution of the Cabinet of Ministers of Ukraine "On Rules for providing and receiving telecommunication services"	11.04.2012 No 295



Annex 2 – Detailed gap assessment report including legal references

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