



EU4Digital

EU4Digital: supporting digital economy
and society in the Eastern Partnership

Gap assessment of Belarus 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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Table of contents

List of Acronyms & Abbreviations	3
Executive summary	4
0 Introduction	5
0.1 Background of the report.....	5
0.2 Aim of the report.....	5
0.3 Overview of the report	6
1 Governance gap assessment results	8
1.1 Setup of the National Regulatory Authority	8
1.2 Setup of decision making body	13
1.3 Appeal and Dispute Resolution	14
2 Power and obligations gap assessment results	15
2.1 General.....	15
2.2 Market Analysis	19
2.3 Scarce Resource Management.....	24
2.4 Consumer Protection.....	25
2.5 Universal Service	26
Annex 1 – List of national legislation analysed under gap assessment exercise	28
Annex 2 – Detailed gap assessment report including legal references	30

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List of Acronyms & Abbreviations

Abbreviation	Definition
BEREC	Body of European Regulators for Electronic Communications
BY	Belarus
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
NRA	National Regulatory Authority
Report	Report on assessment of the legislative gaps in the field of electronic communications – governance of national regulatory authorities and their powers and obligations



Executive summary

Context of this Report

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

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

The aim of this Report is to assess the state-of-play in Belarus 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 the Ministry of Communications and Informatization, 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 Belarus national legislation (effective as of 5 June 2020) completed by EU4Digital, there is no authority meeting the requirements of NRA for electronic communications established, which would be also structurally separate from line ministries. Further to requirement of legal distinction and functional independence, bodies setup in accordance with relevant EU regulatory framework shall be entrusted with tasks typically carried out by an NRA and have required powers in order to perform those tasks. As such independent body has not been setup - transposition of the relevant EU law provisions has not been identified in most of the cases, when reviewing relevant Belarus legislation.

However, it should be also noted, that the Ministry of Communications and Informatization has powers to enforce regulation as well as powers to collect information, that are typically attributed to the NRAs, while State Commission on Radio Frequencies has powers to manage national radiofrequency plan. Please see Table 1 below for key highlights of Belarus 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 Belarus

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

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

0.2 Aim of the report

The aim of this Report to is to assess the state-of-play in Belarus 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 Ministry of Communications and Informatization experts, who are also members of IRB EWG of the EaPeReg. Information collected includes text of relevant national legislation required to assess gaps in Belarus legislation using the EU regulatory framework as a benchmark. Where necessary, additional sources of available information, such as relevant legislation, were reviewed by EU4Digital. Please see Annex 1 for the list of national legislation analysed under gap assessment exercise.

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

Table 2. Independence assessment Criteria

No.	Criteria
1.	GOVERNANCE
1.1.	Setup of the NRA
1.1.1.	Status of NRA – legally distinct and functionally independent
1.1.2.	Decision making powers, prohibition to seek or take instructions
1.1.3.	Powers to develop NRA's own strategy
1.1.4.	Formation of NRA's budget
1.1.5.	Sources of NRA's financing
1.1.6.	Possibilities to execute (spend) NRA's budget
1.1.7.	Recruitment of personnel and experts
1.1.8.	Ability to set remuneration for Board members and employees
1.1.9.	Legislative initiative powers of NRA
1.1.10.	Bodies and process for challenging NRA's decisions
1.1.11.	Consultation and transparency requirements
1.1.12.	Cooperation setup with other competent authorities
1.2.	Setup of decision making body
1.2.1.	Procedure and conditions set for recruitment of head or collegiate body performing that function
1.2.2.	Appointment of the head or collegiate body performing that function
1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal
1.2.4.	Terms in Office as head or collegiate body performing that function
1.3.	Appeal and Dispute Resolution
1.3.1.	Appeal procedures
1.3.2.	Powers of resolve disputes between undertakings
2.	POWERS AND OBLIGATIONS
2.1.	General
2.1.1.	Powers of enforcement of regulation
2.1.2.	Powers to collect information
2.1.3.	Powers to regulate market entry
2.1.4.	Powers to regulate national and/or international roaming



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

The gap assessment of Belarus regulatory system in the field of electronic communications assessment was completed jointly with the EaPeReg and findings were later aligned with the Ministry of Communications and Informatization 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 Belarus legislation is provided in the Annex 2 to this document.



1 Governance gap assessment results

1.1 Setup of the National Regulatory Authority

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

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.1.	Status of NRA – legally distinct and functionally independent²	<ul style="list-style-type: none"> Pursuant to relevant provision of the EU regulatory framework the Member States shall guarantee independent functioning of NRA via guaranteeing legal separation of the authority and functional independence. This is a key element in ensuring robust and predictable evidence only based decision-making process. The transposition of the relevant EU regulatory framework provision has not been identified. The body entrusted with tasks typically carried out by NRA has not been setup, therefore legal separation of the authority and independence requirements are not being provided for. 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 European Union provision on prohibition to seek or take instructions has not been identified. The body entrusted with tasks typically carried out by NRA has not been setup, therefore the independence requirements, prohibition to seek or receive instructions has not been provided for. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After NRA is established, guarantee independent functioning of NRA via guaranteeing legal separation of the authority and functional independence.
1.1.2.	Decision making powers, prohibition to seek or take instructions from any other body²	<ul style="list-style-type: none"> Pursuant to relevant provision of the EU regulatory framework the Member States shall ensure impartial decision making, decision making powers of NRAs and provide for prohibition to seek or to take instructions. Under Article 3, the EU MSs shall ensure that, when applicable, NRAs meet relevant deadlines, of decision making and in the decision making process the principles of impartiality and transparency are embedded. The transposition of the relevant EU regulatory framework provision has not been identified. The body entrusted with tasks typically carried out by NRA has not been setup, therefore, impartial 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, setup the independent decision-making process and prohibiting seeking and receiving instructions by establishing relevant provision and ensure the authority is not

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>decision-making process and prohibition to seek or receive instructions are not being provided for.</p> <ul style="list-style-type: none"> At the same time legal acts governing control and supervisory activities and dispute resolution contain provisions that state that in case of disagreement with the decision of the competent authority, this decision can be appealed in court. 	<p>subject to such requirements by any law.</p>
1.1.3.	Powers to develop NRA's own strategy³	<ul style="list-style-type: none"> A key feature of operational and medium-term outlook of functioning of NRAs are the powers to develop and adopt own activity strategy, within the merits of overall policies applicable to the regulated sector and taking into account the available toolbox. Pursuant to resolution of the Council of Ministers of BY, The Ministry of Communications and Informatization of the Republic of Belarus budget is formed with the participation of government bodies. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA has established, entrust the authority with adoption of medium-term strategy within the merits of legislative framework.
1.1.4.	Formation of NRA's budget³	<ul style="list-style-type: none"> Ability of NRA to execute its tasks competently and in a timely manner hinges availability of financial resources which in turn lead to ability of the NRA to gather necessary technical resources and the ability to compete in the labour market. Predictable for the stakeholders of regulatory process environment of budgetary formation is key for ensuring predictable regulatory outcomes. Under EU regulatory framework the NRA shall take its decisions impartially, transparently and in a timely manner and to enable this the legislation stipulates for having separate annual budgets. It is therefore of utmost importance that the budgetary process, including approval, is mostly driven by the NRAs themselves, on a basis of thorough preparatory process and budgetary proposal. For the Ministry of Communications and Informatization of the Republic of Belarus the activities are financed by the republican budget. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA has established, ensure budgetary autonomy of the NRA by providing a separate NRA managed budget based on the proposal of the NRA and adopted by the NRA.
1.1.5	Sources of NRA's financing⁴	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure that the NRAs exercise their powers impartially, transparently and in a timely manner. The EU regulatory framework also requires the MSs to provide for separate budgets of the NRAs. Furthermore, the EU regulatory framework stipulates that NRAs shall have adequate financial resources available in order to fulfil tasks assigned to them. A typical approach to ensure availability of adequate financing is to ensure independent of state source of financing of the 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, setup the source of financing of the NRA as market based, administered by the NRA in

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

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>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.</p> <ul style="list-style-type: none"> A regulatory fee collected from regulated entities, with further balancing mechanisms applied if required, is a predictable environment for both market participants and the regulatory bodies themselves whereby using a certain mechanism, such as percentage of turnover over a given period, is transferred to the NRA budget directly. The sum of the transfers shall cover the totality of costs incurred for provision of regulatory services and any surplus shall be returned to market participants. It is also important to note that any such financing collected shall only be used for the electronic communication's regulatory purposes. 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. 	<p>form of a fee. Ensure that the system is transparent and proportionate, minimises additional administrative costs and attendant charges.</p>
1.1.6.	Possibilities to execute (spend) NRA's budget⁵	<ul style="list-style-type: none"> The EU regulatory framework mandates MSs to ensure that NRAs have adequate financial and human resources to carry out tasks assigned to them. Following the review above of the formation and sources of NRA budget an integral element is the ability to spend the budget as provided for in the sector-specific legislation in performing the assigned tasks. This includes making available necessary premises, technical equipment and human resources, in order to address regulatory challenges as set forth by the relevant policy and planning documents, within the merits competence. For the Ministry of Communications and Informatization of the Republic of Belarus the activities are financed by the budget under the Budget code of BY. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation to enable the NRA following the process of adoption and collection, the execution of the budget of authority within the merits of sector specific legislation, having regard to accountability rules.
1.1.7.	Recruitment of personnel and experts⁵	<ul style="list-style-type: none"> Under the EU regulatory framework, the MSs shall ensure the NRAs have adequate financial and human resources to carry out tasks assigned to them. This includes the ability to recruit relevant personnel and experts in a transparent selection process. For Ministry of Communications and Informatization of the Republic of Belarus staffing list is approved by the minister of Communications and Informatization. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation to enable the NRA to set forth internal procedures and decision making on recruitment of personnel and experts.
1.1.8.	Ability to set remuneration for Board	<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 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
	members and employees⁶	<p>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.</p> <ul style="list-style-type: none"> In BY the Ministry of Communications and Informatization of the Republic of Belarus is subject to law of BY “About the civil service in the Republic of Belarus” accordant to it the wages of the employees are set. 	<p>to enable the NRA to set forth internal procedures and decision-making setting remuneration for decision making body and its employees.</p>
1.1.9.	Legislative initiative powers of NRA⁷	<ul style="list-style-type: none"> While there is no direct reference to relevant provisions in the EU regulatory framework, powers to initiate legislative process, as opposed to powers delegated by the law to prepare legislation, are important to enable full participation of NRAs in the preparation of legislation governing electronic communications sector. The NRAs are on daily basis engaging both supply and demand sides of the market and possess most up to date information supporting evidence-based decision-making process. Should the NRA be in position only to propose amendments to legislation via another governmental body, the principle impartial decision making, and independence may not be met. The Ministry of Communications and Informatization of the Republic of Belarus has the right to develop on its own initiative draft legislative and other regulatory acts as well as adopt resolutions. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation to enable the NRA to have rights of legislative initiative.
1.1.10.	Bodies and process for challenging NRA's decisions⁶	<ul style="list-style-type: none"> Under EU regulatory framework, any entity affected by decision shall have right to appeal against the decision to a body which is independent of the process. Under the law of BY “About appeals of citizens and legal entities”, any Ministry of Communications and Informatization of the Republic of Belarus decision may be appealed to a court. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. Review the legislation to enable the appeal of decisions to the court only.
1.1.11.	Consultation and transparency requirements⁸	<ul style="list-style-type: none"> The resolution of the Council of Ministers of BY about public discussion of draft regulatory legal acts provides rules how public consultations should be organised, providing public discussions. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. Review the legislation to enable the NRA to set forth procedures for consultation mechanism.

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

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.1.12.	Cooperation setup with other competent authorities⁹	<ul style="list-style-type: none">• The EU regulatory framework requires the MSs to setup robust framework among national regulatory, national competition and national consumer protection authorities.• Apart, from this there is a specific case – consultation on market analysis process, where input from national competition authority is mandatory to received.• Under the law “On Telecommunications” powers in the field of telecommunications are distributed between the President of BY, Council of Ministers of BY, Ministry of Communications and Informatization, Operational and Analytical Centre under the President of BY, State Commission on Radio Frequencies under the Security Council of BY, RF services and local Councils of Deputies, executive and administrative bodies and other state bodies in the field of telecommunications.• There is binding alignment process foreseen for the Ministry of Communications and Informatization of the Republic of Belarus under the resolution of the Council of Ministers of BY “On approval of the Regulation on the Ministry of Communications and Informatization of the Republic of Belarus” and amendments to some resolutions of the Government of BY.	<ul style="list-style-type: none">• Establish an independent NRA for electronic communications.• After the independent NRA is established, prepare and ensure non-binding consultation process, by inter-alia providing appropriate delegation in the law.

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



1.2 Setup of decision making body

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
1.2.1.	Procedure and conditions set for recruitment of head or collegiate body performing that function¹⁰	<ul style="list-style-type: none"> The EU regulatory framework does stipulate for a specific selection process for the head or collegiate body performing that function to be provided in advance in relevant national legislation. It is however of utmost importance, having regard to the tasks to be performed by the NRA that the selection process is well documented, and results of intermediate steps and final results are publicly communicated. Under the Constitution of BY, President of BY shall appoint the minister of the Ministry of Communications and Informatization of the Republic of Belarus. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable open selection process and public advance availability of intermediate steps.
1.2.2.	Appointment of the head or collegiate body performing that function¹⁰	<ul style="list-style-type: none"> Under the resolution of the Council of Ministers of BY “On approval of the Regulation on the Ministry of Communications and Informatization of the Republic of Belarus” and amendments to some resolutions of the Government of BY, Council of Ministers of BY approve the collegium which consists of Minister, deputies, and employees of the central apparatus. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable open selection process and public advance availability of intermediate steps taken and results.
1.2.3.	Dismissal of the head or collegiate body performing that function, criteria for dismissal¹⁰ <small>Error! Bookmark not defined.</small>	<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. There is no relevant provision under national laws of BY. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA has established, review the legislation.
1.2.4.	Terms in office as head or collegiate	<ul style="list-style-type: none"> President of BY appoint the minister of the Ministry of Communications and Informatization of the Republic of Belarus. Council of Ministers of BY approve the collegium which consists of Minister, deputies, and employees of the central apparatus. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA has established, review the legislation.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
	body performing that function¹¹	<ul style="list-style-type: none"> There is no relevant provision under national laws of BY. 	

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 procedures¹²	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure mechanisms exist at national level under which any user or undertaking who is affected by a decision of NRA has the right of appeal against the decision to an appeal body that is independent of the parties involved. Under the law of BY “About appeals of citizens and legal entities”, all decisions may be appealed to the court by the affected parties. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. There shall be an independent body for appeal of decision making process results.
1.3.2.	Powers of resolve disputes between undertakings¹³	<ul style="list-style-type: none"> The EU regulatory framework enables under certain conditions the undertakings in electronic communications area to request the NRA to issue a binding decision. The EU regulatory framework also requires the binding decision to be taken within the shortest timeframe possible but not exceed four months period, except for predefined circumstances. Under the resolution of the Operational and Analytical Centre under the President of BY and the Ministry of Communications and Informatization “On approval of the Regulation on the procedure and conditions for connecting telecommunication networks to a public telecommunication network”, including a single republican data transmission network, as well as the order of their interaction, enables the Ministry of Communications and Informatization to solve the disagreements between telecommunications operators in case telecommunication operators were unable to resolve disagreements through negotiations in fifteen days. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, mandate the NRA as dispute resolution body.

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

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

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



2 Power and obligations gap assessment results

2.1 General

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

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

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

#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.1.	Powers of enforcement of regulation¹⁴	<ul style="list-style-type: none"> The EU regulatory framework provides for certain powers to be attributed to the NRAs when it comes to enforcement of regulatory framework. Under the general authorisation regime, the market participants shall be bound to follow the requirements of 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. Under the decree of the President of BY on licensing of certain types of activities, the Ministry of Communications and Informatization of the Republic of Belarus shall license and exercise control over compliance by licensees with licensing legislation, licensing requirements and conditions. Decree of the President of BY “On improving the control (supervisory) activities in the Republic of Belarus”, in case of violation of the law, the Ministry of Communications and Informatization of the Republic of Belarus shall issue the proposal or order to undertakings to suspend activities until the elimination of the violation. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, set forth the enforcement powers under the law to the NRA.
2.1.2.	Powers to collect information¹⁵	<ul style="list-style-type: none"> The EU regulatory framework provides that the MSs shall ensure that the NRAs have right to request and the undertakings providing services and networks have obligation to provide all information required for the purpose the enabling the ability to conform with the requirements of documents comprising the EU regulatory framework. However, the EU regulatory framework also provides obligation to justify the request for information and the requirement for the requested information be proportionate to the task at hand. Should the information provided be deemed as confidential, the NRAs shall treat the information as such. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation and ensure possibility to the NRA to collect information based on and within the merits of the law.

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

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> The Ministry of Communications and Informatization of the Republic of Belarus have the right to receive primary statistical data indicated in the forms of decentralized state statistical observations. The Ministry of Communications and Informatization of the Republic of Belarus have the right to carry out a one-time collection of information from subordinate and non-subordinate organisations, on issues within its competence. 	
2.1.3.	Powers to regulate market entry¹⁶	<ul style="list-style-type: none"> The EU regulatory framework establishes a framework for regulation of market entry by undertakings intending to provide electronic communications services or networks. The provision of both services and networks within the EU may only be subject to a general authorisation. The market participants may be required to submit notifications of their activities but may not be required to obtain explicit decision or any administrative act enabling market entry. The market activities may be commenced once the notification has been submitted. The EU regulatory framework does not require for a binding authorisation process. On the contrary, the framework prohibits the MS from setting up authorisation process where a decision upon entry is required. The EU regulatory framework provides immediate market entry once the notification has been filed. The notification may take a stipulated form, however, may not be necessary. The notification shall be able to cover the purpose of identification of entity engaging into entrepreneurship in the field of electronic communications. Under the decree of the President of BY on licensing of certain types of activities, sets forth the framework of general authorisation in BY. The Ministry of Communications and Informatization of the Republic of Belarus shall licence market entry by issuing the licence form. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, empower the NRA to manage market entry process under general authorisation regime.
2.1.4.	Powers to regulate national and/or international roaming¹⁷	<ul style="list-style-type: none"> The EU regulatory framework sets forth the framework for regulation, at least to a certain extent, of both national and international roaming in the mobile electronic communications networks. Typically, the requirement enabling national roaming may be a result of market analysis process whereby there is a relevant market analysed and an undertaking or group of undertakings may be found enjoying significant market power and to remedy the situation proportionate set of remedies may be imposed. It can also come as a result of obligations attached to the granting the rights of use of radiofrequency spectrum where national roaming taking the form of sharing of 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, prepare legislation and foreseen the procedure for NRA:

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

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

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

Regulation (EU) No 531/2012 of the European Parliament and of the Council, of 13 June 2012 on roaming on public mobile communications networks within the Union.

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>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 Ministry of Communications and Informatization of the Republic of Belarus is not in position to impose regulatory obligations on roaming providers. • The Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus would be able by the procedure for market analysis to come to the conclusion that regulatory obligations may be imposed roaming providers. 	<ul style="list-style-type: none"> - to establish the dominant position of undertakings; - to carry out an analysis of the activities of undertakings having significant market power; - to impose or withdraw obligations based on market analysis results.
2.1.5.	Powers to regulate net neutrality¹⁸	<ul style="list-style-type: none"> • Under the EU regulatory framework, the open internet access is regulated supranationally by regulations supported by a number of delegated legal documents. Regulations, while to be implemented without transposition, require certain decision-making powers for the NRA not currently reflected in BY legislation. 	<ul style="list-style-type: none"> • Establish an independent NRA for electronic communications. • After an independent NRA has established, entrust the authority with management of net-neutrality rules.
2.1.6.	Powers to control quality of service requirements¹⁹	<ul style="list-style-type: none"> • The EU regulatory framework mandates the MSs to empower the NRAs to able to request publication of information on quality of electronic communications services. Moreover, the NRAs may further specify the parameters to be measured, the content for and manner of the information to be published with an aim of providing access to comprehensive, comparable, reliable and user-friendly information. • The resolution of the Council of Ministers of BY “On approval of the Rules for the provision of telecommunication services” mandates the operators to report quality parameters on indicators of quality of services for the provision of telephone radio connection, fixed and mobile data transmission, digital terrestrial television, cable television. 	<ul style="list-style-type: none"> • Establish an independent NRA for electronic communications. • After an independent NRA has established, entrust the authority with management of quality of service regulatory framework.

¹⁸ Regulation (EU) No 531/2012 of the European Parliament and of the Council, of 13 June 2012 on roaming on public mobile communications networks within the Union. Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.1.7.	Powers to supervise EU Broadband Cost Reduction Directive implementation from 2014²⁰	<ul style="list-style-type: none"> From the NRA powers and obligations perspective, the purpose of this criterion is to assess responsibilities assigned to the NRA deriving from the Directive 2014/61/EU. There are various approaches within the EU when it comes to transposition said Directive, however, there are 2 areas which are typically assigned to NRAs as already similar responsibilities may be assigned beyond what would be required by the Directive – dispute resolution and single information point. Relevant provisions not identified within the legislation. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA has established, entrust the authority with performing the function dispute settlement body and single information point.
2.1.8.	Powers to organise public hearings²¹	<ul style="list-style-type: none"> The EU regulatory framework provides for the requirement of key elements of the national regulatory frameworks to be consulted with broader audience. It may not always be most appropriate to organise a written consultation procedure, in particular, when questions related to end-user empowerment and protection are under review. For this consultation in form of a hearing may be more appropriate that may be further complimentary to the written consultation procedures. The Ministry of Communications and Informatization of the Republic of Belarus is required to provide public exposure of draft legislative acts and resolutions and there is open nature of the decision-making body. There may also be expert groups formed to address specific matters. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA has established, entrust the authority with powers organise public hearings as one of options for consulting with wider group of stakeholders.
2.1.9.	Powers to organise associated councils or consulting bodies²²	<ul style="list-style-type: none"> From the EU regulatory framework perspective there is no direct reference to support this criterion, however, as the electronic communications play important role in the overall economy and impact of regulatory activities may well go beyond what would be deemed sector specific, it often the case that advisory bodies or external working groups on both permanent and ad hoc basis are organised to support the regulatory activities. Under the resolution of the Council of BY “On approval of the Regulation on the Ministry of Communications and Informatization of the Republic of Belarus” and amendments to some resolutions of the Government of BY, the Ministry of Communications and Informatization of the Republic of Belarus has the right to create councils, commissions and expert groups to carry out its tasks. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA has established, entrust the authority with powers, if deemed appropriate, to organise associated councils or consulting bodies.
2.1.10.	Powers for international cooperation²³	<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 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA has established, organise an information exchange mechanism

²⁰ Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks.

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

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

²³ None, as there is no specific legal guidance on the criteria in the EU regulatory framework.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>there are a number of informal cooperation frameworks based on regional cooperation and competition conditions, etc.</p> <ul style="list-style-type: none"> • A form of cooperation of EU NRAs under EU regulatory framework is participation on all levels decision making process in specialised regulatory organisations with an aim of harmonisation of regulatory framework and strengthening the Single Market. • There is also a number of international bodies which at least partially deal with matters that are typically EU NRA competences such as spectrum, numbering, technical and market regulation. Depending on the national governance of international representation the NRAs may serve as advisory bodies to the institutions representing or the NRAs themselves may serve as representation. • The law of BY “On Telecommunications” enables participation of the Ministry of Communications and Informatization of the Republic of Belarus in international organisations and telecommunication administrations of other states in the field of electronic communications. 	<p>and entrust the authority with powers to participate and represent BY on matters related to regulation electronic communications.</p>
2.1.11.	<p>Powers to be represented in international regulatory bodies²⁴</p>	<ul style="list-style-type: none"> • A form of cooperation of EU NRAs under EU regulatory framework is participation on all levels decision making process in specialised regulatory organisations with an aim of harmonisation of regulatory framework and strengthening the Single Market. • There is also a number of international bodies which at least partially deal with matters that are typically EU NRA competences such as spectrum, numbering, technical and market regulation. Depending on the national governance of international representation the NRAs may serve as advisory bodies to the institutions representing or the NRAs themselves may serve as representation. • In international cooperation related to the field of electronic communications, BY shall be represented by the Ministry of Communications and Informatization of the Republic of Belarus. 	<ul style="list-style-type: none"> • Establish an independent NRA for electronic communications. • After an independent NRA has established, organise an information exchange mechanism and entrust the authority with powers to participate and represent BY on matters related to regulation electronic communications.

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.

²⁴ None, for European Union NRAs – BEREC.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
2.2.1.	Powers to define and analyse relevant markets²⁵	<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. According law of BY “On Counteraction to Monopolistic Activity and Development of Competition” it is obligation of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus to carry out an analysis of the relevant markets. 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. The Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus establishes the dominant position of economic entities. 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. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable the NRA in the field of electronic communications: <ul style="list-style-type: none"> to define relevant markets; to carry out an analysis of the activities of undertakings having significant market power.
2.2.2.	Powers to implement ex-ante obligations²⁶	<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 Ministry of Communications and Informatization of the Republic of Belarus. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and foreseen the procedure for NRA to impose, amend, maintain or withdraw obligations based on market analysis results.
2.2.3.	Powers to regulate interconnection and access²⁷	<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 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and mandate the NRA in the area of access or interconnection: <ul style="list-style-type: none"> to define relevant markets;

²⁵ 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.

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

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

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



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<p>market power on that market and the NRA shall on such undertakings impose appropriate specific regulatory obligations.</p> <ul style="list-style-type: none"> The Ministry of Communications and Informatization of the Republic of Belarus has no powers to establish undertakings with significant market power, carry out market analysis as well as impose or withdraw obligations. 	<ul style="list-style-type: none"> to carry out an analysis of the activities of undertakings having significant market power; to impose, amend, maintain or withdraw obligations based on market analysis results.
2.2.4.	Powers to regulate access to ducts and/or other network infrastructure²⁸	<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. The Ministry of Communications and Informatization of the Republic of Belarus has no powers to establish undertakings with significant market power, carry out market analysis as well as impose or withdraw obligations. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and mandate the NRA in the area of access to ducts and/or other network infrastructure: <ul style="list-style-type: none"> to define relevant markets; to carry out an analysis of the activities of undertakings having significant market power; to impose, amend, maintain or withdraw obligations based on market analysis results.
2.2.5.	Powers to regulate termination and/or origination and/or transit tariffs²⁹	<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 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and mandate the NRA: <ul style="list-style-type: none"> to define relevant markets;

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

Directive 2002/19/EC (Access Directive): Article 8 – Imposition, amendment or withdrawal of obligations; Article 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.

²⁹ 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>criterion are included in the list of initial European Commission Recommendation for markets to be reviewed so NRA shall possess necessary powers to regulate the services as a result of market analysis process by means of imposition of appropriate regulatory obligations.</p> <ul style="list-style-type: none"> The Ministry of Communications and Informatization of the Republic of Belarus has no powers to establish undertakings with significant market power, carry out market analysis as well as impose or withdraw obligations. 	<ul style="list-style-type: none"> to carry out an analysis of the activities of undertakings having significant market power; to impose, amend, maintain or withdraw obligations based on market analysis results.
2.2.6.	Powers to set tariffs and/or prices³⁰	<ul style="list-style-type: none"> Under the EU regulatory framework if the NRAs determines that a relevant market is not effectively competitive, it shall identify undertakings which individually or jointly have a significant market power on that market and impose, amend or maintain certain regulatory obligations as a result. One of the obligations is obligation of cost orientation which may take form setting tariffs or prices. The NRA shall be required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. Benchmarking exercises can also be applied. Should retail regulatory measures related to retail tariff regulation or other retail price controls, the NRA shall have right to request appropriate cost accounting system, by specifying format and accounting methodology to be applied. The NRA may request compliance to be verified by a qualified independent body. There shall also be rights for the countries to oblige designated undertaking to provide to consumers electronic communications services which depart from those provided under normal conditions, in particular addressed to those with low incomes or special needs, which would be exempt from cost orientation obligation. The Ministry of Communications and Informatization of the Republic of Belarus has no powers to establish undertakings with significant market power, carry out market analysis as well as impose or withdraw obligations. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable the NRA to impose, amend, maintain or withdraw obligations based on market analysis results related to setting tariffs and/price regulation.
2.2.7.	Powers to apply cost accounting and allocation methodologies³¹	<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. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable the NRA to impose,

³⁰ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.
 Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.
 Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.

³¹ Directive 2002/21/EC (Framework Directive): Article 16 – Market analysis procedure.
 Directive 2002/19/EC (Access Directive): Article 13 – Price control and cost accounting obligations.
 Directive 2002/22/EC (Universal Service Directive): Article 17 – Regulatory controls on retail services.



#	Sub-criteria assessed	Findings in light of relevant EU regulatory framework	Recommendations
		<ul style="list-style-type: none"> 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 Ministry of Communications and Informatization of the Republic of Belarus has no powers to establish undertakings with significant market power, carry out market analysis as well as impose or withdraw obligations. 	<p>amend, maintain or withdraw obligations based on market analysis results related to implementation of cost accounting and allocation methodologies.</p>
2.2.8.	Powers to set Weighted Average Cost of Capital³²	<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 Ministry of Communications and Informatization of the Republic of Belarus has no powers to establish undertakings with significant market power, carry out market analysis as well as impose or withdraw obligations. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable the NRA to impose, amend, maintain or withdraw obligations based on market analysis results related to setting the Weighted Average Cost of Capital.

³² 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)³³	<ul style="list-style-type: none"> Under the EU regulatory framework there is a requirement that issuing general authorisations or individual rights of use of radio frequencies used for electronic communications are done by competent national authorities; when it comes to granting rights of use of numbering resources the function shall be performed by the NRA. For the granting of rights of use of spectrum, the EU transposition experience demonstrates preference of MSs to provide the NRAs with powers to issue the rights of use. Pursuant to the law of BY "On Telecommunications", the Ministry of Communications and Informatization of the Republic of Belarus shall grant rights of use for using numbering. Pursuant to the decree of the President of BY of July 31, 2006 N 473 "On the State Commission on Radio Frequencies under the Security Council of the Republic of Belarus" State Commission on Radio Frequencies under the Security Council of BY is the body responsible for ensuring the proper use of the radio frequency spectrum and user access to it, taking into account government priorities. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA has been established, review the legislation and enable the NRA to grant rights of use for numbering and radiofrequency spectrum.
2.3.2.	Powers to monitor radio frequencies³⁴	<ul style="list-style-type: none"> The EU regulatory framework requires the MSs to ensure effective management of radiofrequencies, allowing for decision making discretion on the institutional setup on the national level to lie with the MSs themselves. The EU MSs according to the information available to the EU4Digital have opted in most cases for management or shared responsibility of management to lie with the NRAs. According to the law "On Telecommunications" (Article 10) the State Commission on Radio Frequencies under the Security Council of BY implements a unified state policy in the field of distribution and use of the radio frequency spectrum. The regulations on the State Commission on Radio Frequencies under the Security Council of BY and its composition are approved by the President of BY. According the decree of the President of BY of July 31, 2006 N 473 "On the State Commission on Radio Frequencies under the Security Council of the Republic of Belarus" State Commission on Radio Frequencies under the Security Council of BY is the body responsible for ensuring the proper use of the radio frequency spectrum and user access to it, taking into account government priorities. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation and enable the NRA to manage national radiofrequency plan.

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

³⁴ 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
		<ul style="list-style-type: none"> The Commission organises the development of drafts of the Table of allocation of radio frequency bands between radio services of BY and a long-term plan for the use of the radio frequency spectrum by radio electronic means in BY. 	
2.3.3.	Powers to manage numbering plans³⁵	<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. Pursuant to the law of BY “On Telecommunications”, the Ministry of Communications and Informatization of the Republic of Belarus shall manage the numbering. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation and enable the NRA to manage national numbering plan.

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 contracts³⁶	<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” provides for minimum requirements to be included in the consumer contract. 	<ul style="list-style-type: none"> No recommendations on the matter as the reviewed BY legislation in force covers the EU regulatory framework requirements.
2.4.2.	Powers to solve customer complaints³⁷	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations for MSs to ensure that customers have rights to transparent, non-discriminatory, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services. Pursuant to the law of BY “On the Protection of Consumer Rights”, state bodies and organizations that protects consumers rights are responsible to review customers complaints. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After an independent NRA is established, review the legislation to enable the NRA to review and solve customer complaints.

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

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

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



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 obligations³⁸	<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 of BY “On Telecommunications”, the provision of universal telecommunication services is guaranteed. List of universal telecommunication services, the procedure and terms for their provision are determined by the Council of Ministers of BY. 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation to enable the NRA to designate or through an open procedure determine universal services carrier to provide one or several services included in the universal services in a specific geographical area.
2.5.2.	Powers to define universal service’s baskets³⁹	<ul style="list-style-type: none"> The EU regulatory framework sets forth obligations for MSs to ensure that customers have universal access to predefined set of services at an affordable price, in specified quality in light of national conditions. This requirement can be set forth by the law itself or further activities may be delegated other governmental bodies. Within EU the majority of MSs have opted for the scope to be set by either law or governmental bodies which are not NRAs, leaving the implementation phase to the NRAs. The key element in design of universal obligations is take into account the national conditions – what type services are minimum type ones covering basic needs and where the natural market supply is not addressing the demand. There are minimum requirements to be reviewed in terms of scope of services to be provided and MSs may decide on the actual scope of services to be provided and potentially specific groups of customers, based on national conditions. Minimum services to be reviewed are: <ul style="list-style-type: none"> - access requests at fixed location (does not necessarily mean fixed network); - at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year; 	<ul style="list-style-type: none"> Establish an independent NRA for electronic communications. After the independent NRA is established, review the legislation to ensure universal service basket is defined by the NRA, pursuant to requirements of the law based on specific national conditions.

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

³⁹ 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">- 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 list of universal telecommunication services, the procedure and terms for their provision are determined by the Council of Ministers of BY.• The resolution of the Council of Ministers of BY About universal telecommunication services describes the scope of services to be made universally available. Those include access services:<ul style="list-style-type: none">- to a fixed telecommunication network using a terminal subscriber device;- to the Internet in collective use points.• According to the resolution of the Council of Ministers of BY “On approval of the Rules for the provision of telecommunication services”, when providing a universal service for providing access to a stationary telecommunication network using a subscriber terminal, the universal service operator is obliged to provide:<ul style="list-style-type: none">- the ability to connect to emergency services for free;- the ability to provide in the prescribed manner to the subscriber services for providing access to local telephone services, for providing stationary broadband access to the Internet, television services via IP-protocol;- the possibility of free connection with technical support services for telecommunication services, with a telephone customer service centre;- accounting for the duration of telephone connections and their number.	



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 5 June 2020.

No.	Name of the legislative document	Version of the document
1.	Budget code of the Republic of Belarus	July 16, 2008 N 412-Z
2.	Constitution of the Republic of Belarus of 1994	1994
3.	Decree of the President of the Republic of Belarus "On improving the control (supervisory) activities in the Republic of Belarus"	October 16, 2009 No. 510
4.	Decree of the President of the Republic of Belarus "On licensing of certain types of activities"	September 01, 2010 N 450
5.	Decree of the President of the Republic of Belarus "On some issues of collecting information not contained in state statistical reporting"	March 03, 2011 N 95
6.	Decree of the President of the Republic of Belarus "On the allocation, use of the radio frequency spectrum and additions and amendments to Decree of the President of the Republic of Belarus of July 31, 2006 N 473"	April 15, 2013 N 192 (as amended on February 28, 2019)
7.	Law of the Republic of Belarus "About appeals of citizens and legal entities"	July 18, 2011 No. 300-Z
8.	Law of the Republic of Belarus "About the civil service in the Republic of Belarus"	June 14, 2003 N 204-Z
9.	Law of the Republic of Belarus "On counteraction to monopolistic activity and development of competition"	December 12, 2013 N 94-3
10.	Law of the Republic of Belarus "On state statistics"	November 28, 2004 N 345-Z
11.	Law of the Republic of Belarus "On Telecommunications"	July 19, 2005 N 45-3
12.	Law of the Republic of Belarus "On the Protection of Consumer Rights"	January 09, 2002 N 90-3
13.	Resolution of the Council of Ministers of the Republic of Belarus "About universal telecommunication services"	July 15, 2006 N 889
14.	Resolution of the Council of Ministers of the Republic of Belarus "About public discussion of draft regulatory legal acts"	January 28, 2019 No. 56
15.	Resolution of the Council of Ministers of the Republic of Belarus "On approval of the Regulation on the Ministry of Communications and Informatization of the Republic of Belarus and amendments to some resolutions of the Government of the Republic of Belarus"	March 17, 2004 No. 302
16.	Resolution of the Council of Ministers of the Republic of Belarus of "On approval of the Rules for the provision of telecommunication services"	August 17, 2006 N 1055
17.	Resolution of the Council of Ministers of the Republic of Belarus of "Issues of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus"	September 06, 2016 N 702
18.	Resolution of the Operational and Analytical Center under the President of the Republic of Belarus and the Ministry of Communications and Informatization of the Republic of Belarus "On approval of the Regulation on the procedure and conditions for connecting telecommunication networks to a public telecommunication network, including a single republican data transmission network, as well as the order of their interaction"	April 25, 2014 No. 3/6



No.	Name of the legislative document	Version of the document
19.	Resolution of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus "On approval of the Instructions on the procedure for the formation and maintenance of the State Register of economic entities dominant in the commodity markets"	December 27, 2017 N 62
20.	Resolution of the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus "On approval of the Instructions on the procedure for establishing the dominant, including monopsonic, position of an economic entity"	December 27, 2017 N 63



Annex 2 – Detailed gap assessment report including legal references

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