

GAP ANALYSIS AND LEGISLATIVE ACTION PLAN – AUTHORISATION DIRECTIVE

1. Introduction

1.1. Document purpose

Annex XV-B of the Association Agreement cites which parts of EU Legislation need to be implemented in Georgian Law in the field of Electronic communication networks and services. Relevant EU Legislation includes the: Framework Directive, Authorization Directive, Access Directive, Universal Service Directive, Directive on Privacy and Electronic Communications and the Radio Spectrum Decision.

In addition, Annex XXXIII of the Association Agreement cites that the Audiovisual Media Services Directive shall be implemented also.

This overview summarises an analysis of gaps between the currently applicable Georgian law and the parts of the Authorisation Directive (the “**Authorisation Directive**” or the “**Directive**”) which, according to the Accession Agreement, must be implemented in Georgian law by 1 September 2017.

1.2. Scope of review

The review has been conducted as part of the performance of consulting services for the project „Georgia - Information Communication Technology Sector Development: Harmonisation of laws, regulation of next generation access and regulatory development“ (the „Project“). It is intended to be confidential and covered by the attorney-client privilege, the attorney work product doctrine, and any other applicable privilege and/or protection. All documents prepared in connection with the review, including this document, are intended to be confidential and privileged and produced for the sole purpose of providing legal advice within the scope of the Project.

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We conducted the review under the EU law in the scope stipulated in the Project and based on the English translations of the relevant laws and/or other documents provided by GNCC. We are not qualified to provide legal advice under Georgian law. Unless we state differently in the document, we did not take into account any other law or any other document than those provided to us by GNCC.

1.3. Association Agreement Requirements

According to the Association Agreement, Georgian Law must be approximated with the following provisions/parts of the Authorisation Directive:

- implementing a regulation providing for general authorisations and restricting the need for individual licences to specific, duly justified cases.

1.4. Colour code and document structure

This overview analyses individual requirements contained in the Accession Agreement in relation to the Authorisation Directive and indicates initial conclusions by the following color code:

No Gap / Harmonised	Partial Gap / partially harmonised but additional legislative measures needed	Gap / not yet harmonised	Not applicable

When “No Gap” is identified we provide no further comments.

When „Partial Gap“ or „Gap“ is identified, we provide further comments on the nature of the gap and initial recommendations regarding how this gap could be addressed. In addition, we summarize these comments in an executive summary at the beginning of each chapter. Our initial recommendations are incorporated in this legislative Action Plan, taking into account also the outcome of our discussions with GNCC.

„Not applicable“ refers to the parts of the Authorisation Directive that cannot apply in Georgia, because Georgia is not yet a Member State. This would typically indicate provisions that implement certain competences or coordination roles of the European Commission or other bodies, such as BEREC.

1.5. Abbreviations and terms used

- ECA –Law of Georgia on Electronic Communications,
- BRA –Law of Georgia on Broadcasting,
- COA –Law of Georgia on Competition,
- INRA –Law of Georgia on Independent National Regulatory Authorities,
- ALP – Act on Licences and Permits
- GAC – General Administrative Code of Georgia
- Res13 – Resolution No.13 Of the Georgian National Communications Commission “On Approval of the Regulations on Conducting Auction for the Right to Use Radiofrequency Spectrum or/and Numbering Resource”, dated December 12, 2005

2. Executive Summary

We have identified the following gap areas, where Georgian law would need to be further harmonised with the Authorisation Directive:

- The most significant gap is that the default mechanism for use of radio frequencies under the Georgian law is based on licenses that are always assigned/awarded based on a tender procedure – an auction or a beauty contest. With the exception of specific cases (such as temporary use of spectrum or radio relay network use for non-commercial purposes) the Georgian law does not stipulate any other regimes for use of radio frequencies, such as a general

authorisation or individual use of rights without an auction, regimes standardly used across EU member states. We recommend that other licensing regimes, in particular based on a general authorisation, are added to the ECA.

- The ECA only allows the GNCC to issue or renew licenses for pre-defined periods of time – 10 or 15 years – which is not compliant with the EU framework. We would recommend that the license term be set by GNCC upon license issuance, taking due account of all relevant circumstances, including in particular the investment amortisation period.
- The Authorisation Directive stipulates in its Annex the conditions which may be imposed in connection with the assignment of right to use radio frequencies (through licensing or by general authorisation). The Georgian law does not include any such list of conditions and the GNCC may theoretically impose any conditions it deems fit without limitations. We recommend that a maximum scope of conditions that may be imposed in a license or a general authorisation is implemented in the ECA, similarly as in the Directive.
- When monitoring/inspecting the operations of the authorised persons and whether they act in compliance with the Law and with their license or permit, the GNCC has a limited scope of remedies it may impose – it may give the undertaking in breach a fine, but it may not impose interim measures. We propose to clarify the GNCC's competences and remedies it may issue and implement the right to issue interim measures.
- There are several other gaps which are of lesser concern or impact, and which generally relate to insufficient and/or unclear definitions of certain procedures such as modification, revocation or issuance of a license or authorisation. We also recommend to replace the current transparency measure consisting in the oral public hearings by a written public consultation in relation to GNCC measures and decisions that involve complexity requiring a structured written exchange of arguments.

3. Detailed Gap Analysis

Art 2/2	'general authorisation' means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.	Art 2/e ECA	e) authorisation - registration of the activities of a natural or legal person providing public electronic communication networks and facilities and/or electronic communication services, by the Georgian National Communications Commission in accordance with the unified procedure established by this Law;
		Art 14/3 ECA	3. No authorisation of activities shall be necessary if electronic communication networks and facilities are used for: a) organising special electronic communication networks; b) organising a departmental electronic communications network of an enterprise, institution or organisation that is created for non-commercial purposes, and for providing internal communication in such enterprise, institution or organisation.
<p><u>Gap 1 – Scope of authorized persons</u></p> <p>Definition of authorisation under the ECA applies only to the provision of <u>public</u> electronic communications networks and services. The Directive does not contain a limitation to public networks and services. In some Member States this opens a discussion about the authorisation requirement for networks and services limited to closed user groups.</p> <p>We understand that in Georgia authorisation also triggers a significant regulatory fee. For this reason, it may be sensible to maintain the authorisation</p>			

limited to public networks and services.			
Action plan			
Legislation:		ECA	
Sections:		2/e, 11/3a, 11/3/g, 14, 15, 16, 18, 19 ¹ , 43/4, 47 ¹ /2, 47 ¹ /3, 51/4, 51 ¹ /4	
Proposed change:		Change terminology from “authorisation” to “registration”; add provisions (and a definition) for “general authorisation”.	
Notes:		Limitation of registration process to public electronic communication networks should be maintained, among others in view of the regulatory fee regime.	
Art 3/1	1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 46(1) of the Treaty.	Art 14/1 ECA	1. Activities in the field of electronic communications shall be carried out on the basis of an authorisation granted for these activities.
		Art 19/1 ECA	1. The Commission may suspend authorisation: a) on the basis of a request of an authorised person for the period indicated by the authorised person; b) on its own initiative, if for more than one year, the authorised person fails to perform the following activities concurrently: b.a) carry out an authorised activity; b.b) submit to the Commission regulatory fee estimates or submits a zero sum estimate; b.c) pay a regulatory fee; c) on its own initiative, if an authorised person violates the requirements of the legislation of Georgia and if a

			written warning and a fine has already been used against the person as a sanction for such violation.
<p><u>Gap 2 – Suspension of authorization</u></p> <p>The ECA enforces a failure to pay the regulatory fee or to provide its estimates by suspending the authorisation to provide electronic communication networks and services.</p> <p>The Directive on the other hand requires that the freedom to provide networks and services be limited only on specific grounds according to the Directive which do not include enforcement of fees or their estimates.</p> <p>This constitutes a potential gap which could be addressed by including the payment as a mandatory obligation imposed by a general authorisation, once a general authorisation regime is implemented in Georgian law. Under such conditions, the failure to pay such regulatory fee could be sanctioned, similarly as any other breach of a general authorisation, by preventing the authorised persons from continuing to provide electronic communications networks or services.</p>			
<p><u>Action plan</u></p> <p>Legislation: ECA</p> <p>Section: 2/e, 14 - 19¹</p> <p>Proposed change: Introduce a “general authorization” regime as anticipated by the Directive. Under such regime, each person active in the electronic communications sector shall comply with (i) registration procedure as well as (ii) authorization. GNCC will issue two types of authorizations – (i) authorizations which apply to each registered person, and (ii) authorizations which apply to each registered person providing specific type of an electronic communication network or electronic communication service or network facility (the specific type to be described in the authorization). The later may also apply to certain spectrum bands (networks or facilities deployed in such bands).</p> <p>Conditions of the general authorization may also apply to networks and services provided by non-registered persons, such as non-commercial or non-public networks. Conditions for such entities may include in particular technical specifications and rules for interference.</p> <p>Definition of “authorization” under Section 2/e shall be changed as follows:</p>			

e) authorisation – a decision issued by the Commission stipulating conditions for carrying out activities in the field of electronic communication in relation to (i) all electronic communication networks or electronic communication services or (ii) specific electronic communication network, specific electronic communication services or technical facilities. Authorization shall apply to and be binding for all authorized persons providing the relevant electronic communication networks or electronic communication services.

Definition of “authorized person” under Section 2/f may remain as is.

f) authorised person - any entrepreneurial person, as well as any non-entrepreneurial person registered by the Georgian National Communications Commission and providing electronic communication networks (electronic communication network operator) and/or electronic communication services (provider of electronic communication services);

Under Section 15 ECA it shall be stipulated as follows:

In the field of electronic communications, activities shall be authorised by the Commission, which, in accordance with the procedure established by this Law shall:

- a) ~~authorize~~ register persons carrying out or intending to carry out activities in the field of electronic communications and maintain a departmental registry of authorised persons;*
- b) issue authorization stipulating conditions for carrying out activities in the field of electronic communication, including use of radio frequencies, in relation to (i) all electronic communication networks or electronic communication services or (ii) specific electronic communication network, specific electronic communication services or technical facilities. Authorization shall apply to and be binding for all authorized persons providing the relevant electronic communication networks or electronic communication services;*
- c) monitor the compliance by authorised persons in the field of electronic communications with the legislation of Georgia, including with the resolutions and decisions of the Commission.*

Notes:

The definition of “authorization” shall be modified. The current “authorization” shall be changed to “registration” and newly defined reflecting the fact that it relates only to registration of each potential undertaking active in the field of electronic communications. Once these changes are done, the payment of regulatory fee will be subject to “general authorization” and thus in line with the Directive, including the possibility to suspend the activities of persons in breach.

Art 3/2	2. The provision of electronic communications networks or the provision of electronic communications services may, without	Art 14/1 ECA	1. Activities in the field of electronic communications shall be carried out on the basis of an authorisation granted for these activities.
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	prejudice to the specific obligations referred to in Article 6(2) [<i>SMP obligations and conditions</i>] or rights of use referred to in Article 5 [<i>right of use for frequencies and numbers</i>], only be subject to a general authorisation. The undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7.	Art 16/1 ECA	A person interested to obtain an authorisation to provide electronic communication networks and facilities and/or electronic communication services, shall apply to the Commission with an application, the form of which shall be approved by the Commission.
		Art 18/1,2 and 7 ECA	<p>1. The Commission shall:</p> <p>a) authorise the provision of electronic communication networks and facilities;</p> <p>b) authorise the provision of services through electronic communication networks and facilities.</p> <p>2. Within 10 working days after the receipt of an application, the Commission shall grant authorisation for the provision of electronic communication networks and facilities and of services through electronic communication networks and facilities by registering the authorised persons in the departmental registry.</p>
		Art 18/7 ECA	7. A person may commence its activities from the day of its registration in the departmental registry of authorised persons.
<p>Gap 3 – Registration effective date</p> <p>The Directive requires that there be a general authorisation to provide electronic communications networks and services, under which any party can notify. The notification shall not be subject to further administrative decisions or approvals and shall be effective upon submission.</p>			

Although the ECA in English translation seems to stipulate that the GNCC issues an administrative decision by which the notifying person is registered and thus authorised, this gap is created by inaccurate translation and the GNCC does not issue any authorisation decision. There is no gap with regard to the registration (notification) process.

However, in contradiction to the Directive the ECA stipulates that the effective date of the authorisation to provide services shall be the date on which the authorised person is registered into the registry.

In relation to this the effective date of the right to provide electronic communications networks and services would need to be changed to take place upon delivery of the complete notification rather than upon the date of issue of the authorisation by GNCC, as currently provided in the ECA. In other words, the notifying person would become an authorised person by submitting a complete notification and GNCC would subsequently confirm this.

To avoid doubts about the harmonisation of legislation, we would also recommend changing the term “application” to the term “notification”, which better reflects the above proposed mechanism.

Action plan

Legislation: ECA

Section: 18/7

Proposed change: Change the effective date to the day of complete notification, not the day of registration in departmental registry.

Notes: The proposed change of the regime is described in Gaps 1 and 2 above.

Art 3/2 (continued)	Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.	N/A	
Art 3/3	3. The notification referred to in paragraph 2 shall not entail more than a declaration by a	Art 16/2,3 ECA	2. The application shall include:

	<p>legal or natural person to the national regulatory authority of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information must be limited to what is necessary for the identification of the provider, such as company registration numbers, and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.</p>		<p>a) for an individual entrepreneur - name, surname, place and date of birth, data on their registration with the registry of entrepreneurs and non-entrepreneurial (non-commercial) legal persons, and addresses of places of work and residence;</p> <p>b) for a legal person - trade name, legal form, legal address (domicile), data on its registration with the registry of entrepreneurs and non-entrepreneurial (non-commercial) legal persons, name and surname of the authorised representative;</p> <p>c) types of activity and/or services for which authorisation is requested by an individual entrepreneur or a legal person;</p> <p>d) a brief description of the relevant network and/or services.</p> <p>3. The application shall be accompanied by an extract from the registry of entrepreneurs and non-entrepreneurial (non-commercial) legal persons, as well as by a copy of the charter of the legal person and a copy of the relevant identification document of the natural person.</p>
<p>Comment</p> <p>Unlike the Directive, the ECA does not foresee that the notification would contain the „<i>estimated date for starting the activity</i>“. We assume that this is because under the ECA the regulatory fee is due upon the effective date of the authorisation and there is no room for an “advance authorisation”, triggered</p>			

as of a later date. We believe that this is not a gap compared to the Directive because the Directive limits the amount of information which may be required in a notification but does not impose the listed information as a mandatory requirement.			
Art 4/1	<p>1. Undertakings authorised pursuant to Article 3, shall have the right to:</p> <p>(a) provide electronic communications networks and services;</p> <p>(b) have their application for the necessary rights to install facilities considered in accordance with Article 11 of Directive 2002/21/EC (Framework Directive) [<i>right of way</i>]</p>	Art 18/1 ECA	<p>The Commission shall:</p> <p>a) authorise the provision of electronic communication networks and facilities;</p> <p>b) authorise the provision of services through electronic communication networks and facilities.</p>
		Art 19/1 ECA	<p>1. An authorised person may:</p> <p>a) request a provider of a public electronic communication network to provide access and/or interconnection to the relevant elements of its network;</p> <p>b) use exhaustible resources during its activities in accordance with the procedure established by this Law and set tariffs for access to the elements of its own network and for electronic communication services;</p> <p>c) in accordance with this Law, transfer, fully or partially, to other persons the rights and duties derived from the licence for the use of a radio frequency spectrum;</p> <p>d) (deleted - 28.12.2005, No2564);</p> <p>e) appeal a legal act of the Commission in court.</p>

Art 4/2	<p>2. When such undertakings provide electronic communications networks or services to the public the general authorisation shall also give them the right to:</p> <p>(a) negotiate interconnection with and where applicable obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation anywhere in the Community under the conditions of and in accordance with Directive 2002/19/EC (Access Directive);</p> <p>(b) be given an opportunity to be designated to provide different elements of a universal service and/or to cover different parts of the national territory in accordance with Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)</p>	Art 19/1 ECA	<p>1. An authorised person may:</p> <p>a) request a provider of a public electronic communication network to provide access and/or interconnection to the relevant elements of its network;</p>
		Art 19/2/d ECA	<p>2. An authorised person shall:</p> <p>d) upon request, ensure unlimited access of an interested authorised person to the relevant free elements of its own network and to their functional resources and capacities;</p>

Gap 4 – Rights of authorized persons relating to universal service

The Directive stipulates that as of authorisation, the authorised person may be designated to provide universal service or its elements.

As the Georgian law does not include provisions on universal service, the option to impose universal service is not implemented in the authorisation content.

This constitutes a partial **gap** in relation to the Authorisation Directive. We believe that this gap can be remedied only by introducing universal service into

Georgian law.			
Action plan			
Legislation:		ECA	
Section:		19	
Proposed change:		Include possibility that universal service obligation may be imposed on authorized person.	
Notes:		It has been agreed that this gap will be addressed once universal service obligations will be introduced in the ECA.	
Art 5/1	<p>1. Member States shall facilitate the use of radio frequencies under general authorisations. Where necessary, Member States may grant individual rights of use in order to:</p> <ul style="list-style-type: none"> — avoid harmful interference, — ensure technical quality of service, — safeguard efficient use of spectrum, or — fulfil other objectives of general interest as defined by Member States in conformity with Community law. 	Art 47/4-7 ECA	<p>4. The Commission shall allocate the radio frequency spectrum and regulate its use.</p> <p>5. The National Plan for the Allocation of the Radio Frequency Spectrum shall be prepared by the Commission in accordance with the Radio Regulations of the International Telecommunication Union, taking into account the radio frequencies specified by the Government of Georgia, in agreement with the Commission, for the execution of the public functions of the State.</p> <p>6. The right to use a radio frequency spectrum shall be obtained on the basis of a licence, through an auction or contest.</p> <p>7. The right to use a radio frequency spectrum to provide a digital terrestrial television network shall be obtained on the basis of a licence,</p>

			through a contest as provided for in Article 52 ¹ of this Law.
		Art 3/a ALP	a) License – the right to exercise a certain activity granted to a person by an administrative authority based on the administrative act in case of meeting the conditions prescribed by the law; a.a) User license – type of license under which a person is granted the right to use certain state resources. User license shall be issued by auction and related to an object.
		Art 18/1 ALP	User license shall be issued by auction.
		Art 52/2b ECA	A decision of the Commission to conduct an auction shall contain: b) technical and operational conditions for using an exhaustible resource, ensuring the prevention of its harmful interference and adverse effects on human health;

Gap 5 – Spectrum use under general authorization

The Directive stresses that unless mandated otherwise by the circumstances, rights to use spectrum should be granted to any authorised undertaking. The Directive thus stresses that the legal procedures for spectrum assignment should be primarily based on (i) a general authorisation regime or (ii) individual authorisations granted upon request, if there is enough spectrum to satisfy all requests. An auction or a beauty contest are under the Directive exceptional means of spectrum assignment, limited to circumstances when no other procedure would adequately serve the relevant public interests and the efficient utilisation of spectrum principles.

The ECA, on the other hand, foresees (i) a license as the default and only legal basis for use of spectrum and (ii) an auction or a contest as the default and

in fact the only legal procedures for spectrum assignment and issuance of a license.

We believe that this constitutes a gap and needs to be addressed by introducing the statutory regimes of general authorisations and of authorisations based on request, when the demand for the spectrum does not exceed the available amount of frequencies. In addition, we would recommend that the relationship between the ECA and the ALP (Act on Licenses and Permits) be clarified. The ALP in its Article 18 expressly only allows for issuance of license for use of spectrum in an auction. The ECA also allows for a contest. We assume that the ECA takes precedence (*lex specialis*) over the generally applicable ALP (*lex generalis*) and therefore ECA shall prevail in relation to spectrum assignment.

Action plan

Legislation: ECA

Section: 47 and 43/3, 47², 47³, 49, 50, 51, 52, 53, 54

Proposed change: In addition to licenses, include a regime for use of spectrum based on a general authorization issued by the GNCC. Wording of Section 47/6 ECA shall read as follows:

*6. The right to use a radio frequency spectrum shall be (i) **subject to conditions of the authorization issued by the Commission for the radio frequencies therein stipulated, or (ii) subject to** ~~obtained on the basis of a licence~~ **obtained through an auction or contest.***

Notes: In the first package, we propose to allow for two separate legal grounds for the use of spectrum: (i) a general authorization and (ii) a license. Use of spectrum under conditions of a general authorization is needed in particular with regards to providers of WiFi and similar services over certain frequencies without a license.

We propose to consider implementing also individual rights to use spectrum based on a less exclusive basis than a license, for instance in bands for which there is a low demand which can be satisfied by the available spectrum without any need for a tender. We propose to do this at a later stage, based on recommendations in the Spectrum Project Component. Transition rules and periods, among other things, need to be addressed in relation to such change. We understand that the Law on Licenses and Permits does not need to be amended as it stipulates rules for issuance of license, but it does not prohibit spectrum use under different regime than under a license. The ALP will thus not apply to general authorization.

<p>Art 5/2</p>	<p>2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking for the provision of networks or services under the general authorisation referred to in Article 3, subject to the provisions of Articles 6 [conditions in Annex 2 of the Directive], 7 [limiting the number of rights of use] and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).</p>	<p>Art 47/6 ECA</p>	<p>The right to use a radio frequency spectrum shall be obtained on the basis of a licence, through an auction or contest.</p>
		<p>Art 49/2 ECA</p>	<p>The Commission shall issue a licence for using a radio frequency spectrum through an auction or contest, in accordance with this Law, the Law of Georgia on Licences and Permits and the Law of Georgia on Licence and Permit Fees and the Regulation approved by the Commission on Conducting an Auction to Obtain the Right to Use a Radio Frequency Spectrum.</p>
		<p>Art 50/1, 2(a) ECA</p>	<p>1. The grounds for obtaining a license to use a radio frequency spectrum shall be the availability of free resources, an application of the person, and his/her successful bid at the auction.</p> <p>2. The Commission shall make a decision to conduct auction if there is a:</p> <p>a) free radio frequency spectrum provided for in the National Plan for the Allocation of Radio Frequency Spectrum and a request of a person to conduct an auction for obtaining the right to use a radio frequency spectrum. A decision of the Commission on conducting an auction shall specify the starting price of the right to use the</p>

			exhaustible resource to be put up for auction in accordance with the Regulation on Obtaining the Right to Use a Radio Frequency Spectrum;
Art 5/2 (cont. I)	Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law	Art 52/4 ECA	When conducting an auction, the Commission shall be guided by the principles of objectivity, transparency, publicity and non-discrimination
Art 5/5	5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.	Art 47/6 ECA	6. The right to use a radio frequency spectrum shall be obtained on the basis of a licence, through an auction or contest.

Gap 6 – Individual rights of use			
Gap analysis of Article 5/1 above applies.			
Action plan			
Legislation:	ECA		
Section:	47 and 43/3, 47 ² , 47 ³ , 49, 50, 51, 52, 53, 54		
Proposed change:	Action plan to Gap 5 above applies.		
Notes:	/		
Art 5/2 (cont. II and IV)	<p>When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provision shall be in accordance with Articles 9 and 9b of Directive 2002/21/EC (Framework Directive).</p> <p>Where individual rights to use radio frequencies are granted for 10 years or more and such rights may not be transferred or leased between undertakings pursuant to Article 9b of Directive 2002/21/EC (Framework Directive) the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the licence, in particular upon a justified request of the holder of the right. If</p>	Art 51/1, 2b ECA	<p>1. A holder of a licence for using a radio frequency spectrum may assign the right to use a radio frequency spectrum to another person, fully or partially, by direct assignment, without conducting an auction, by entering into an agreement for direct assignment. The Commission shall commence public administrative proceedings on the assignment of a licence on the basis of a joint application for assignment.</p> <p>2. By decision of the commission, the assignment of a licence may be restricted for a holder of a licence for using a radio frequency spectrum if:</p> <p>b) when transferring, fully or partially, a licence for using an exhaustible resource by direct</p>

	those criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice and after a reasonable period, or shall be made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).		assignment, a person independently and/or jointly with interdependent (affiliated) persons becomes the owner of more than the maximum limit of the radio frequency resource determined by a substantiated decision of the Commission on the basis of a study and analysis conducted within the scope of the public administrative proceedings commenced regarding the assignment of a specific section of the radio frequency band (radio frequency range) or of a set of specific sections of the radio frequency band (radio frequency ranges) with similar characteristics.
Art 5/6	6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) <i>[i) users derive maximum benefit, ii) there is no distortion of competition, and iii) efficient use and effective management of spectrum and numbers]</i> and 9(2) <i>[harmonization of use of frequencies]</i> of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.	Art 47 ³ /3/c ECA	3. When for the purpose of planning and distributing radio frequency ranges in accordance with the harmonised technical norms and parameters, the National Plan for the Distribution of Radio Frequency Spectrum is changed in such a way that it is impossible to ensure the simultaneous maintenance of the technical norms and parameters of existing, newly planned or allocated radio frequencies, also the co-existence of electronic communication technologies, the Commission may have the following rights with respect to a license holder using such a radio frequency resource: (...)

			<p>c) require from the licence holder full or partial transfer of the radio frequency resource covered by the licence before the expiry of that licence in lieu of appropriate compensation. The amount of compensation, payment conditions and methods shall be determined by a decision of the Commission in agreement with the Government of Georgia, and compensation shall be paid from the State Budget of Georgia. When determining the amount of compensation, the Commission shall rely on the opinion of an audit company selected from the list of persons providing audited financial reports and/or expert and audit opinions for enterprises determined by the Government of Georgia. To purchase the services of an international audit company, the Commission shall announce a tender. Expenses associated with the purchase shall be covered from the budget of the Commission or from the State Budget of Georgia, as agreed with the Government of Georgia;</p>
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Gaps 7, 8, 9 – License assignment and transfers

Gap 7: The Directive requires that transfer rights be specified upon license award.

The ECA allows for any license transfer, but requires that any license transfer must be approved in administrative proceedings by the GNCC. We would recommend that the license transfers shall be subjected to conditions stipulated in the license (set by GNCC upon license award) which would allow operators to have more certainty of their rights to the licenses. In cases where the GNCC decides, subsequent approval of transfers in administrative proceedings will remain.

Stipulating license transfer limitation may be needed in particular in relation to auctions aimed at facilitating a new market entry. If GNCC could not prevent

future spectrum assignments, as currently foreseen in the ECA, it could not effectively support new entrants in spectrum auctions.

Gap 8: The Directive requires that local law provides sufficient safeguards ensuring that competition is not distorted by any transfer or accumulation of spectrum. The Directive suggests that the appropriate mechanisms ensuring this would be GNCC's competence to mandate the sale or lease of spectrum rights where such measure would be required to restore competition distorted by a spectrum transfer. The ECA provides for no such competence. Under the ECA the GNCC must approve all spectrum transfers and may reject such transfers if they would result in spectrum hoarding. GNCC may not reject transfers on grounds related to competition distortion. We assess this as a partial gap and propose to address it, either by broadening the grounds for license transfer rejection to include also competition distortion or by cancelling the spectrum transfer approval by GNCC and providing statutory conditions for license transfers, including no competition distortion.

We note that in some Member States operators called for re-introducing administrative proceedings to approve license transfers, to increase legal certainty. If local law foresees broadly drafted conditions for a license transfer (i.e. no competition distortion) and sanctions an unlawful license transfer by subsequent mandated spectrum transfer, then license transfers may become too risky and thus unfeasible.

Gap 9: The Directive requires that if the criteria for the assignment of the frequencies under a license become no longer applicable during the license term, the right to use frequencies shall be changed into general authorisation. Such a procedure is currently not implemented into the ECA, because the ECA only allows for use of spectrum based on a license. We propose to implement such provision in connection to introducing new authorisation scheme for the use of frequencies and numbers.

Action plan

Legislation: ECA

Section: 51

Proposed change: Implement the right of the GNCC to subject license transfer to conditions stipulated in the license (set by GNCC upon license award). If transfer is allowed under the license conditions, it should not be subject to further approval by the GNCC. On the other hand, the GNCC may also prohibit the transfer in the license conditions or limit it in terms of minimum duration or other conditions.

New competence of the GNCC to mandate the sale or lease of spectrum rights where such measure would be required to restore competition distorted by a spectrum transfer shall be introduced.

Due to the fact that the regime of individual rights to use radio frequencies will not be implemented in the first package of the

<p>harmonization we propose to postpone the action plan for gap 9 above to a future stage of the project. Action plan to gap no. 5 above shall apply.</p>			
Notes:		/	
Art 5/2 (cont. III)	Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation.	Art 49/3 ECA	The licence shall be issued for 10 years.
		Art 47 ² /2 ECA	Licences for the use of exhaustible resources within the harmonised radio frequency ranges specified in paragraph 1 of this article shall be issued in accordance with the principle of technological and service neutrality, for 15 years, in compliance with the technical norms and conditions determined by the decisions and/or directives of the European Commission.
<p><u>Gap 10 – Duration of the license</u></p> <p>The Directive requires that the duration of license term be appropriate, taking due account to the investment amortisation period.</p> <p>The ECA stipulates a license term of 10 years for non-harmonised spectrum and of 15 years for harmonised spectrum. This may not be appropriate for every frequency within the non-harmonised and harmonised ranges as each network requires a different investment amortisation period. In addition, harmonisation may not be the appropriate differentiating factor directly linked to the investment amortisation period.</p> <p>We assess this as a gap.</p> <p>We would recommend that the license term be set by GNCC upon license issuance, taking due account of all relevant circumstances, including in particular the investment amortisation period.</p>			
<u>Action plan</u>			
Legislation:		ECA	

<p>Section: 47²/2, 49/3</p> <p>Proposed change: Implement new competence of the GNCC allowing GNCC to decide on the duration of the license based on certain conditions stipulated in the ECA. This shall apply to all newly issued licenses as well as to the prolongation of licenses, when the GNCC shall have a discretion to decide on the term of the prolongation according to the criteria applied to decisions about the license term. The prolongation rules and durations shall be decided by GNCC based on specific criteria such as for example effective use of the spectrum.</p> <p>Following discussion with the GNCC a possibility not to prolong the harmonized licenses in justified cases shall be implemented.</p> <p>Following discussion with the GNCC we recommend that this change be implemented after a more detailed discussion with the operators which will be carried out in the upcoming months within the Spectrum Project component. These discussions will cover also the related transition periods and other transition measures. We therefore recommend that this change be implemented in a later stage (within the second stage of the ECA approximation to the EU directives), taking into account the conclusions and recommendations from the Spectrum Project component.</p> <p>Notes: /</p>			
Art 5/3	3. Decisions on the granting of rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated to be used by electronic communications services within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital	Art 52/1,5,6 ECA	<p>1. A decision to conduct an auction for issuing a licence to use a radio frequency spectrum shall be made by the Commission; the decision shall be disseminated via mass media and published in the Internet on the official website of the Commission.</p> <p>5. A successful bidder in an auction shall be selected by a decision of the Commission. The criterion for identifying a successful bidder in an auction shall be the maximum price offered for the use of an exhaustible resource, 30 per cent of which shall be paid within one month after a decision identifying the successful bidder is made. A decision of the Commission identifying</p>

	positions.		<p>the successful bidder in the auction shall be disseminated via mass media or the Internet.</p> <p>6. A licence shall be issued within seven working days after the successful bidder pays 30 per cent of the price for using an exhaustible resource. The remaining part of the price for using an exhaustible resource shall be paid within one year after obtaining the licence, in accordance with conditions determined by the decision of the Commission.</p>
		Art 18/9 ALP	9. Information about condition of auction on issuance of user license of specific state resource shall be published in the central press by license issuer no later than one month before conduction of auction. Other media may also be used for dissemination of information.
		Art 5/12 Res13	12. The Commission shall decide on identifying the winner of the auction.
Art 5/4	4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of	Art 52/1 ECA	1. A decision to conduct an auction for issuing a licence to use a radio frequency spectrum shall be made by the Commission; the decision shall be disseminated via mass media and published in the Internet on the official website of the Commission.
		Art 110/1-4 GAC	1. An administrative body shall make a decision

	<p>three weeks by up to a further three weeks.</p> <p>With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.</p>		<p>only on the basis of an oral hearing.</p> <p>2. Interested parties must be notified of an oral hearing at least seven days before the hearing and must be summoned to participate in the oral hearing.</p> <p>3. The subpoena shall specify the powers of the administrative body to review the case and make a decision even without participation of an interested party, except as provided for by law.</p> <p>4. If the number of interested parties exceeds 50, an administrative body may summon the interested parties to participate in the oral hearing by publishing a notice in the official gazette. The notice must contain the subject of the oral hearing, the name of the administrative body holding the hearing, the basis for initiating the administrative proceedings, and the time and place of the hearing.</p>
		<p>Article 34/1 GAC</p>	<p>1. A collegial public institution shall be obliged to announce publicly one week earlier about a coming session, including the place, time and agenda of the session, and upon making the respective decision, announce about concluding the session as well.</p>

Gaps 11, 12 – Maximum time periods for issuance of right to use frequencies and numbers and public consultation

Gap 11: The Directive stipulates maximum time periods for processing the spectrum grant after the receipt of a complete application.

The ECA does not stipulate a maximum period for the license issuance process. This is connected also to the fact that the auction process may only be initiated by the GNCC in accordance with Article 50 (2) ECA.

We assess this as a gap and recommend that it be remedied at the very least by stipulating that licenses shall be issued without undue delay or, preferably by implementing the time periods stipulated in the Directive. These time periods shall in particular be implemented in connection with new authorisation scheme, under which individual authorisations (rights of use) shall be issued upon request of authorised persons.

Gap 12: The Directive requires that a public consultation must be carried out prior to commencement of an auction for frequencies.

The ECA stipulates that the decision to conduct an auction must be made publicly available via mass media and GNCC's website but does not require a public consultation. However, the General Administrative Code of Georgia stipulates a mandatory public hearing prior each administrative decision, the agenda of which must be notified to interested parties prior the hearing. If there are more than 50 interested parties, the oral hearing notification must be published in an official gazette.

As the public hearing seems to be an alternative tool ensuring a transparency of the concerned proceedings, we do not assess this as a gap. We recommend, however, that the ECA authorizes GNCC to replace the public hearing by a public consultation prior certain auctions, for example auctions for frequencies to be used for mobile services. We believe that a public consultation carried out in a written form is a more efficient tool ensuring transparency than an oral public hearing in relation to complex topics involving many interdependencies.

Action plan

Legislation: ECA

Section: 52

Proposed change: We propose that the currently applicable public hearing, not a public consultation, shall be held prior each tender. Public consultation may be carried out voluntarily at the decision of the GNCC. After spectrum management processes are implemented, the full-scale obligation to carry out public consultation prior each tender shall be implemented.

For proposals on the maximum duration for the GNCC to administer the auction and issue a license please see action plan for gap 17 below.

Notes:		A new framework for public consultations with regard to tender rules shall be implemented under the ECA. Under the current system where most of the spectrum is used based on licenses issued following an auction, it would be administratively too burdensome and ineffective to publicly consult the conditions of each auction. Therefore we propose to implement a temporary partial solution to “test” the public consultation process for auction rules and implement the full-scope later.	
Art 6/1	1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed in the Annex. Such conditions shall be non-discriminatory, proportionate and transparent and, in the case of rights of use for radio frequencies, shall be in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).	Art 52/2 ECA	A decision of the Commission to conduct an auction shall contain: a) the relevant geographic boundaries of the service market; b) technical and operational conditions for using an exhaustible resource, ensuring the prevention of its harmful interference and adverse effects on human health; c) starting or offered price; d) starting and ending dates of receiving applications, and the time limits for conducting the auction; e) other data specified in Article 18(10) of the Law of Georgia on Licenses and Permits.
		Art 18/10 ALP	Publishable information shall cover the following data: a) name of the license issuer; b) specific object of user license; c) the time period for admission of application by license seeker and conduction of auction; d) license conditions as stipulated by the legislation; e) requirements for use of specific object;

			f) the criteria for reveal of winner; g) other data – as decided by license issuer.	
Art 6/3	3. The general authorisation shall only contain conditions which are specific for that sector and are set out in Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.	N/A		
Art 6/4	4. Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.	N/A		
Annex	<p>A. Conditions which may be attached to a general authorisation</p> <p>1. Financial contributions to the funding of universal service in conformity with Directive 2002/22/EC (Universal Service Directive).</p> <p>2. Administrative charges in accordance with Article 12 of this Directive.</p> <p>3. Interoperability of services and interconnection of networks in conformity with Directive 2002/19/EC (Access Directive).</p> <p>4. Accessibility by end users of numbers from the national numbering plan, numbers from the</p>	Art 52/2 ECA	<p>A decision of the Commission to conduct an auction shall contain:</p> <p>a) the relevant geographic boundaries of the service market;</p> <p>b) technical and operational conditions for using an exhaustible resource, ensuring the prevention of its harmful interference and adverse effects on human health;</p> <p>c) starting or offered price;</p> <p>d) starting and ending dates of receiving applications, and the time limits for conducting the auction;</p> <p>e) other data specified in Article 18(10) of the</p>	

	<p>European Telephone Numbering Space, the Universal International Freephone Numbers, and, where technically and economically feasible, from numbering plans of other Member States, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).</p> <p>5.Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Directive 2002/22/EC (Framework Directive) and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.</p> <p>6.'Must carry' obligations in conformity with Directive 2002/22/EC (Universal Service Directive).</p> <p>7. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 2002/58/EC of the European Parliament and of the Council (Directive on privacy and electronic communications) (9)</p> <p>8. Consumer protection rules specific to the electronic communications sector, including</p>		<p>Law of Georgia on Licenses and Permits.</p>
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	<p>conditions in conformity with Directive 2002/22/EC (Universal Service Directive), and conditions on accessibility for users with disabilities in accordance with Article 7 of that Directive.</p> <p>9.Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (10) and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (11).</p> <p>10.Information to be provided under a notification procedure in accordance with Article 3(3) of this Directive and for other purposes as included in Article 11 of this Directive.</p> <p>11.Enabling of legal interception by competent national authorities in conformity with ►M1 Directive 2002/58/EC ◀ and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the</p>		
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	<p>protection of individuals with regard to the processing of personal data and on the free movement of such data (12).</p> <p>11a.Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.</p> <p>12.Terms of use during major disasters or national emergencies to ensure communications between emergency services and authorities.</p> <p>13.Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with Community law.</p> <p>14.Access obligations other than those provided for in Article 6(2) of this Directive applying to undertakings providing electronic communications networks or services, in conformity with Directive 2002/19/EC (Access Directive).</p> <p>15.Maintenance of the integrity of public communications networks in accordance with Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service</p>		
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	<p>Directive) including by conditions to prevent electromagnetic interference between electronic communications networks and/or services in accordance with Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (13).</p> <p>16.Security of public networks against unauthorised access according to Directive 2002/58/EC (Directive on Privacy and electronic communications).</p> <p>17.Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC, where such use is not made subject to the granting of individual rights of use in accordance with Article 5(1) of this Directive.</p> <p>18.Measures designed to ensure compliance with the standards and/or specifications referred to in Article 17 of Directive 2002/21/EC (Framework Directive).</p> <p>19.Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC</p>		
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	<p>(Framework Directive), disclosure regarding any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law, and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.</p> <p>B. Conditions which may be attached to rights of use for radio frequencies</p> <p>1.Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted, including, where appropriate, coverage and quality requirements.</p> <p>2.Effective and efficient use of frequencies in conformity with Directive 2002/21/EC (Framework Directive).</p> <p>3.Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.</p> <p>4.Maximum duration in conformity with Article 5</p>		
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	<p>of this Directive, subject to any changes in the national frequency plan.</p> <p>5. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2002/21/EC (Framework Directive).</p> <p>6. Usage fees in accordance with Article 13 of this Directive.</p> <p>7. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.</p> <p>8. Obligations under relevant international agreements relating to the use of frequencies.</p> <p>9. Obligations specific to an experimental use of radio frequencies.</p> <p>C. Conditions which may be attached to rights of use for numbers</p> <p>1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article</p>		
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	<p>8(4)(b) of Directive 2002/21/EC (Framework Directive).</p> <p>2.Effective and efficient use of numbers in conformity with Directive 2002/21/EC (Framework Directive).</p> <p>3.Number portability requirements in conformity with Directive 2002/22/EC (Universal Service Directive).</p> <p>4.Obligation to provide public directory subscriber information for the purposes of Articles 5 and 25 of Directive 2002/22/EC (Universal Service Directive).</p> <p>5.Maximum duration in conformity with Article 5 of this Directive, subject to any changes in the national numbering plan.</p> <p>6.Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2002/21/EC (Framework Directive).</p> <p>7.Usage fees in accordance with Article 13 of this Directive.</p> <p>8.Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.</p> <p>9.Obligations under relevant international</p>		
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	agreements relating to the use of numbers.		
<p>Gap 13</p> <p>The Directive lists a maximum scope of conditions that may be imposed in a license or a general authorisation.</p> <p>The ECA contains no such limitation of conditions. Provisions of Article 18 paragraph 10 ALP in connection with Article 52 paragraph 2 ECA allow the GNCC generally to set conditions relating to the rights to use of frequencies, without limiting their scope. With regard to authorisation, the list of conditions (obligations) connected with the authorisation is listed in Article 18 paragraph 2 ECA.</p> <p>We assess this as a gap and recommend that it be remedied by implementing a maximum scope of conditions that may be imposed in a license or a general authorisation similarly as in the Directive. We propose that conditions associated with the general authorisation shall, in addition to the statutory obligations stipulated in Article 18 par. 2 ECA, be also specified by the GNCC if needed in connection to the specific general authorisation.</p>			
<p>Action plan</p> <p>Legislation: ECA</p> <p>Section: 19, 48, 49, 52</p> <p>Proposed change: We propose to harmonize the ECA with the Directive and limit the conditions which may be imposed in relation to general authorization, license and numbers to the list specified in Annex to the Directive. We propose to include the list in Section 18 or 19 ECA in relation to general authorization, in Section 48 in relation to number and in Section 49 or 52 in relation to the use of spectrum.</p> <p>Notes: The wording of the ECA shall be limited so that the reference to ALP does not allow GNCC to stipulate any additional conditions to the auctions or to the licenses (permits, general authorisations) beyond the conditions stipulated in the Annex.</p>			
Art 7/1	1. Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies or whether to	Art 49/4 ECA	4. A licence holder may apply to the Commission with a request to extend the validity period of the licence, one month prior to the expiry of the

	<p>extend the duration of existing rights other than in accordance with the terms specified in such rights, it shall inter alia:</p> <p>(a) give due weight to the need to maximise benefits for users and to facilitate the development of competition;</p> <p>(b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with Article 6 of Directive 2002/21/EC (Framework Directive);</p> <p>(c) publish any decision to limit the granting of rights of use or the renewal of rights of use, stating the reasons therefor;</p> <p>(d) after having determined the procedure, invite applications for rights of use; and</p> <p>(e) review the limitation at reasonable intervals or at the reasonable request of affected undertakings.</p>		<p>licence. If a licence holder uses a radio frequency spectrum in accordance with the rules established by this Law, the validity period of the licence shall be extended for 10 years by a decision of the Commission.</p>
Art 7/2	<p>2. Where a Member State concludes that further rights of use for radio frequencies can be granted, it shall publish that conclusion and invite applications for such rights.</p>	N/A	

Gaps 14, 15 – Limitation of number or rights

Gap 14: The Directive requires that the process of limiting the number of rights to a particular spectrum meets certain requirements.

The ECA foresees no such process. This is because under the ECA the number of spectrum rights is presumably considered as limited by default.

We assess this as a gap and would recommend introducing a process for spectrum rights limitation, reflecting the Directive requirements.

Gap 15: The Directive requires that the process for extension of rights be similar to the process of limiting the number of rights.

Under the ECA, the extension of rights is foreseen for 10 years upon request provided all conditions for spectrum use are met. The ECA seems to allow for no discretionary assessment by GNCC as to whether it is suitable to extend the rights and for what period.

We assess this as a gap and would recommend that it be remedied by introducing a discretionary assessment by GNCC as to whether the already granted rights shall be extended, based on the criteria set in the Directive for assessment on the limitation of the number of rights of use.

We note that in practice this imposes on GNCC a difficult judgment call in relation to already granted rights with potentially significant value. There are discussions on the EU level regarding the best practice for spectrum rights extensions and their valuations.

Action plan

Legislation: ECA

Section: TBD

Proposed change: We propose to implement the procedure for limitation of number of rights after (i) spectrum management processes are implemented and approved and (ii) after individual rights of use are implemented as a possible regime to use spectrum. Before these two regimes are implemented, the limitation of rights could not be effectively used.

Notes: For more information on the implementation of individual rights of use please see action plan to gap 5 above.
For more information on the implementation of prolongation of licenses please see action plan to gap 10 above.

Art 7/3

3. Where the granting of rights of use for radio frequencies needs to be limited, Member

Art 52/4 ECA

4. When conducting an auction, the Commission shall be guided by the principles of objectivity,

	<p>States shall grant such rights on the basis of selection criteria which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 8 of Directive 2002/21/EC (Framework Directive) and of the requirements of Article 9 of that Directive.</p>		<p>transparency, publicity and non-discrimination.</p>
<p><u>Gap 16 – Principle of proportionality</u></p> <p>The Directive requires that selection criteria for a license award be based, among other things, on the principle of proportionality.</p> <p>The ECA, the ALP and the Administrative Code of Georgia do not explicitly include the proportionality principle. We assess this as a partial gap and propose to explicitly include the proportionality principle in the ECA as applicable to selection criteria for license awards.</p> <p>By way of background, this may be relevant in particular when the selection criteria include certain obligations or commitments, such as a wholesale offer or national roaming. The proportionality principle then implies a weighting and balancing exercise of the legitimate goals pursued by the license award (such as promoting competition) and the impact of the commitment on the license holder (wholesale offer or national roaming).</p>			
<p><u>Action plan</u></p> <p>Legislation: ECA</p> <p>Section: 52/4</p> <p>Proposed change: We propose to explicitly specify that the GNCC shall grant the right to use spectrum on the basis of the principle of proportionality. The reference to proportionality is currently missing in the principles listed in the ECA.</p> <p>Notes: /</p>			

<p>Art 7/4</p>	<p>4. Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 5(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months.</p> <p>These time limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite coordination.</p>	<p>Art 52/1,5,6 ECA</p>	<p>1. A decision to conduct an auction for issuing a licence to use a radio frequency spectrum shall be made by the Commission; the decision shall be disseminated via mass media and published in the Internet on the official website of the Commission.</p> <p>5. A successful bidder in an auction shall be selected by a decision of the Commission. The criterion for identifying a successful bidder in an auction shall be the maximum price offered for the use of an exhaustible resource, 30 per cent of which shall be paid within one month after a decision identifying the successful bidder is made. A decision of the Commission identifying the successful bidder in the auction shall be disseminated via mass media or the Internet.</p> <p>6. A licence shall be issued within seven working days after the successful bidder pays 30 per cent of the price for using an exhaustible resource. The remaining part of the price for using an exhaustible resource shall be paid within one year after obtaining the licence, in accordance with conditions determined by the decision of the Commission.</p>
	<p>Art 18/9 ALP</p>	<p>9. Information about condition of auction on issuance of user license of specific state resource shall be published in the central press</p>	

			by license issuer no later than one month before conduction of auction. Other media may also be used for dissemination of information.
		Art 5/12 Res13	12. The Commission shall decide on identifying the winner of the auction.
		Article 100 GAC	<p>1. Unless otherwise provided for by law or by an act issued under law, an administrative body shall make a decision on issuing or refusing to issue an individual administrative act within one month after the application is submitted.</p> <p>2. Unless otherwise provided by law, an individual administrative act not related to the interests of a third party must be issued within 15 days after the application is submitted.</p> <p>3. If a timeframe longer than that provided for by law for issuing an individual administrative act is required to establish circumstances of substantial significance to the case, the administrative body shall make a decision, on initiating the administrative proceedings, on determining the timeframe for issuing the individual administrative act.</p> <p>4. If so provided for in the third paragraph of this article, the aggregate term for issuing an individual administrative act must not exceed three months.</p>

Gap 17 – Duration for issuance of license			
Gap analysis of Article 5/3 applies.			
<u>Action plan</u>			
Legislation:	ECA		
Section:	52		
Proposed change:	We propose to explicitly include in the ECA that the maximum period between (i-a) publication of a decision to conduct an auction or (i-b) request for auction, and the (ii) issuance of license shall not exceed 3 months.		
Notes:	According to the Directive, the maximum time limit between request for individual right of use and the issuance of the individual right of use shall not exceed 6 weeks. In case of limited number or rights (i.e. auctions), the maximum time period shall not exceed 8 months. Since we propose to implement the regime for individual rights of use in the later stages of the project (please see action plan for gap 5), we currently only propose to implement the maximum period for the issuance of license based on an auction. We propose to keep the current procedure time limits under the GAC stipulating that the maximum period for issuance of an administrative act shall be 3 months.		
Art 7/5	5. This Article is without prejudice to the transfer of rights of use for radio frequencies in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).	Art 51/1,2 ECA	<p>1. A holder of a licence for using a radio frequency spectrum may assign the right to use a radio frequency spectrum to another person, fully or partially, by direct assignment, without conducting an auction, by entering into an agreement for direct assignment. The Commission shall commence public administrative proceedings on the assignment of a licence on the basis of a joint application for assignment.</p> <p>2. By decision of the commission, the</p>

			<p>assignment of a licence may be restricted for a holder of a licence for using a radio frequency spectrum if:</p> <p>a) the assignor has not paid an overdue regulatory fee payable to the Commission or an overdue fee for using an exhaustible resource payable to the State Budget of Georgia;</p> <p>b) when transferring, fully or partially, a licence for using an exhaustible resource by direct assignment, a person independently and/or jointly with interdependent (affiliated) persons becomes the owner of more than the maximum limit of the radio frequency resource determined by a substantiated decision of the Commission on the basis of a study and analysis conducted within the scope of the public administrative proceedings commenced regarding the assignment of a specific section of the radio frequency band (radio frequency range) or of a set of specific sections of the radio frequency band (radio frequency ranges) with similar characteristics.</p> <p>c) an end-user is provided with telecommunication services through exhaustible resources specified by the licence and the licence recipient has not confirmed the obligation to provide him/her with services, under the agreement entered into with the end-user, for the</p>
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			period of validity of the agreement.
		Art 34/1 GAC	A collegial public institution shall be obliged to announce publicly one week earlier about a coming session, including the place, time and agenda of the session, and upon making the respective decision, announce about concluding the session as well.
<p><u>Gap 18 – Publicity of intention to transfer license</u></p> <p>Article 9b paragraph 2 of the Framework Directive stipulates that the intention to transfer spectrum rights shall be made public.</p> <p>The ECA stipulates that the GNCC shall commence “public” administrative proceedings in relation to a spectrum transfer. Article 34 par. 1 of the General Administrative Code of Georgia stipulates that in relation to a decision (for example on the approval of transfer), an upcoming agenda shall be publicly announced..</p> <p>We assume that making available of the agenda is generally compliant with the Authorisation Directive as well as the referenced Framework Directive. We propose to include a specific provision stipulating that the intention to transfer be published on GNCC’s website.</p>			
<p><u>Action plan</u></p> <p>Legislation: ECA</p>			

Section:		51	
Proposed change:		When an authorized person intends to transfer a license, the intention must be made public. We propose that the authorized person inform the GNCC and the GNCC publishes such information on its website.	
Notes:		The new regime for the transfer and assignment of licenses is proposed in the action plan for Gaps 7, 8, 9 above. We propose to implement GNCC's competence to subject license transfers to conditions stipulated in the license (set by GNCC upon license award). If transfer is allowed under the license conditions, it should not be subject to further approval by the GNCC. On the other hand, the GNCC may also prohibit the transfer in the license conditions or limit it in terms of minimum duration or other conditions. To ensure publicity of such new regime and allow concerned parties to submit their standpoint to GNCC, we propose to implement the obligation to make the intended transfer public.	
Art 8	Harmonised assignment of radio frequencies Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio frequencies shall be assigned have been selected in accordance with international agreements and Community rules, Member States shall grant the right of use for such radio frequencies in accordance therewith. Provided that all national conditions attached to the right to use the radio frequencies concerned have been satisfied in the case of a common selection procedure, Member States shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of	N/A	

	such radio frequencies.		
Art 9	<p>Declarations to facilitate the exercise of rights to install facilities and rights of interconnection</p> <p>At the request of an undertaking, national regulatory authorities shall, within one week, issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article 3(2) [<i>application for general authorisation</i>] and detailing under what circumstances any undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection in order to facilitate the exercise of those rights for instance at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following the notification referred to in Article 3(2).</p>	Art 18/4 ECA	4. Within three working days, authorised persons shall be issued an extract from the departmental registry of authorised persons.

Gap 19 – Declarations of general authorization

The Directive requires that regulators shall, upon request, issue declarations detailing the rights of the undertaking. Such declarations may also be issued as an automatic reply to notification.

The ECA does anticipate that an authorised person will be given a confirmation of authorisation in the form of an extract from the registry. However, such confirmation is limited to the time following the registration and is not anticipated to be provided throughout the duration of the authorisation. We consider this compliant with the last sentence of Article 9 of the Directive. On the other hand, we consider it a gap that the extract does not include specification of conditions to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection and would recommend that it be remedied

Action plan

Legislation: ECA

Section: 18

Proposed change: Implement obligation of the GNCC to issue declarations upon request pursuant to the Directive.

Notes: /

Art 10/1	<p>1. National regulatory authorities shall monitor and supervise compliance with the conditions of the general authorisation or of rights of use and with the specific obligations referred to in Article 6(2), in accordance with Article 11.</p> <p>National regulatory authorities shall have the power to require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies</p>	Art 43/1,3 ECA	<p>1. The Commission shall monitor the activities of authorised persons in the field of electronic communications and their compliance with the requirements and obligations determined in the field of electronic communications by the legislation of Georgia, including by resolutions and decisions of the Commission.</p> <p>3. The Commission shall monitor the observance of a license and/or permit conditions by a holder of the license and/or permit to use exhaustible</p>
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	<p>or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11 [<i>information obligations of authorized persons</i>].</p>	<p>Art 44/1,2,3 ECA</p>	<p>resources. If license and/or permit holders fail to comply with the licence and/or permit conditions, the Commission shall apply the sanctions defined in Article 45 of this Law.</p> <p>1. The Commission shall monitor the performance by authorised persons of the requirements and obligations determined by the legislation of Georgia, including the resolutions and decisions of the Commission in the field of electronic communications, in a continuous and systematic manner.</p> <p>2. The Commission shall check the performance of licence conditions by a license holder through a random inspection of licence conditions and/or regular reporting by the license holder. In addition, the Commission may conduct an inspection on the basis of a complaint, ex parte notification, and information from newspapers or other sources.</p> <p>3. When monitoring the performance of the the requirements and obligations determined by the legislation of Georgia, including by the resolutions and decisions of the Commission in the field of electronic communications, as well as when checking the licence conditions, the Commission may not inspect or request the submission of such factual circumstances that are not directly related to the performance by the</p>
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			license holder of the license conditions, or of the requirements and obligations provided for in the legislation, including in the resolutions and decisions of the Commission.
Art 10/2	2. Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use, or with the specific obligations referred to in Article 6(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.	Art 44/6 ECA	6. A person authorised to conduct an inspection shall prepare an inspection report in the form approved by the Commission, which shall be entered into a register specially maintained for this purpose. An inspection report shall contain: the date, time and place of inspection; the grounds for the inspection; the name of the person(s) present during the inspection from the side of the inspected person; a list of inspected documents if they were inspected on site (if a copy was made, the copy shall be attached to the report); a list of the inspected equipment and their technical parameters; a summary of oral explanations received (if in writing, the written materials shall be attached to the report); comments, if any, of the person authorised to conduct the inspection; other explanations, if any, of the person (his/her representative) being inspected; the signature of the person (his/her representative) being inspected, or in the case of refusal to sign, signatures of at least two attending witnesses.

		Art 45/1 ECA	<p>1. If a person fails to comply with the legislation of Georgia in the field of electronic communications, including with the resolutions and decisions of the Commission and/or if a license holder fails to observe the licence conditions, the Commission may warn the violator in writing, and in the case of failure to eliminate a continuous violation within the time limit specified by the Commission, or in the case of the commission of a new single infringement within a year, the Commission may impose a fine in the amount of 0.5 per cent of the of the last 12 months' income of the authorised person (total income without VAT as determined by the Tax Code of Georgia), but the amount shall not be less than GEL 3 000 nor more than GEL 30 000.</p>
		Art 95/1,2 GAC	<p>1. An administrative body may invite an interested party to participate in the administrative proceedings at its request, and if provided by law, the administrative body shall be obliged to ensure participation of the interested party in the administrative proceedings.</p> <p>2. An administrative body shall be obliged to notify an interested party of initiation of the administrative proceedings if an individual administrative act may negatively affect the legal status of the interested party in order to ensure that party's participation in the administrative</p>

			proceedings.
<p><u>Gap 20 – Notification on shortcomings</u></p> <p>The Directive requires that GNCC notify undertakings of any identified shortcomings in compliance with the general authorisation.</p> <p>The ECA seems to give the GNCC a choice (<i>may</i> instead of <i>shall</i>) to notify the allegedly breaching undertaking.</p> <p>Under General Administrative Code an administrative body shall be obliged to notify an interested party of initiation of the administrative proceedings if an individual administrative act may negatively affect the legal status of the interested party.</p> <p>We assess this as a partial gap and recommend that express notification by GNCC be included in the ECA as mandatory allowing the operators to have a right to remedy the breach and express their views also otherwise than “only” in the course of formal administrative proceedings.</p> <p>In addition, the ECA (Article 44 paragraph 6) implies that the GNCC shall give the inspected person an opportunity to comment on the inspection and the potential breach of the ECA. It is not clear whether the inspected person is given a reasonable time limit to do so. We would recommend clarifying this.</p>			
<p><u>Action plan</u></p> <p>Legislation: ECA</p> <p>Section: 44, 45</p> <p>Proposed change: We propose to expressly implement that the GNCC shall have an obligation to inform the monitored (inspected) authorized persons about identified shortcomings prior to imposing a fine or other sanction, unless in cases of serious or repeated breaches. In such cases the GNCC may issue an interim measure to remedy such serious breach.</p> <p>Notes: /</p>			
Art 10/3	3. The relevant authority shall have the power	Art 45/1 ECA	1. If a person fails to comply with the legislation

	<p>to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.</p> <p>In this regard, Member States shall empower the relevant authorities to impose:</p> <p>(a) dissuasive financial penalties where appropriate, which may include periodic penalties having retroactive effect; and</p> <p>(b) orders to cease or delay provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive).</p> <p>The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.</p>		<p>of Georgia in the field of electronic communications, including with the resolutions and decisions of the Commission and/or if a license holder fails to observe the licence conditions, the Commission may warn the violator in writing, and in the case of failure to eliminate a continuous violation within the time limit specified by the Commission, or in the case of the commission of a new single infringement within a year, the Commission may impose a fine in the amount of 0.5 per cent of the of the last 12 months' income of the authorised person (total income without VAT as determined by the Tax Code of Georgia), but the amount shall not be less than GEL 3 000 nor more than GEL 30 000.</p>
Art 10/4	4. Notwithstanding the provisions of paragraphs 2 and 3, Member States shall empower the relevant authority to impose financial penalties where appropriate on	Art 45/1 ECA	1. If a person fails to comply with the legislation of Georgia in the field of electronic communications, including with the resolutions and decisions of the Commission and/or if a

	<p>undertakings for failure to provide information in accordance with the obligations imposed under Article 11(1)(a) or (b) of this Directive and Article 9 of Directive 2002/19/EC (Access Directive) within a reasonable period stipulated by the national regulatory authority.</p>		<p>license holder fails to observe the licence conditions, the Commission <u>may</u> warn the violator in writing, and in the case of failure to eliminate a continuous violation within the time limit specified by the Commission, or in the case of the commission of a new single infringement within a year, the Commission may impose a fine in the amount of 0.5 per cent of the of the last 12 months' income of the authorised person (total income without VAT as determined by the Tax Code of Georgia), but the amount shall not be less than GEL 3 000 nor more than GEL 30 000.</p>
Art 10/5	<p>5. In cases of serious or repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.</p>	Art 19 ¹ /1 ECA	<p>1. The Commission may suspend authorisation:</p> <p>a) on the basis of a request of an authorised person for the period indicated by the authorised person;</p> <p>b) on its own initiative, if for more than one year, the authorised person fails to perform the following activities concurrently:</p> <p>b.a) carry out an authorised activity;</p> <p>b.b) submit to the Commission regulatory fee estimates or submits a zero sum estimate;</p> <p>b.c) pay a regulatory fee;</p> <p>c) on its own initiative, if an authorised person violates the requirements of the legislation of Georgia and if a written warning and a fine has</p>

			already been used against the person as a sanction for such violation.
		Art 54/1 ECA	<p>1. The grounds for revocation of licences/permits shall be:</p> <p>a) a request of the licence/permit holder;</p> <p>b) termination by the licence holder of the use of the resource covered by the licence or, of the practical activity carried out using such resource, for three consecutive months or for six months during one year.</p> <p>c) failure to commence the practical activities within the period determined by the licence;</p> <p>d) violation of the licence conditions in the case of the commission by the licence holder of a continuous violation and/or of a new single violation within one year after having been fined;</p> <p>e) violation of permit conditions in the case of the commission by the permit holder of a continuous violation and/or of a new single violation within one year after having been fined;</p>
Art 10/6	6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use or of the specific obligations referred to in Article 6(2)	N/A	

	<p>that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services or other users of the radio spectrum, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.</p>		
<p><u>Gap 21 – Interim measures</u></p> <p>The Directive provides that the regulators may take urgent interim measures to remedy a general authorisation breach in advance of reaching a final decision</p> <p>Under the ECA, the GNCC is not entitled to take interim measures in order to remedy serious breaches of the law and/or the authorisation and/or the licence conditions.</p> <p>We assess this as a gap and recommend that the competence to issue interim measures is implemented in the ECA.</p>			

<u>Action plan</u>			
Legislation:	ECA		
Section:	44 et seq.		
Proposed change:	<p>Implement a new competence of the GNCC to issue interim measures in order to remedy breach prior final decision.</p> <p>We propose to implement an additional procedural competence of the GNCC to issue interim measures in the form of temporary obligations imposed on parties within the current framework of administrative proceedings in circumstances requiring urgent safeguards. The GNCC will thus be entitled to apply interim measures after or along with the commencement of the administrative proceedings, provided that there is a an immediate and serious threat to public safety, public security or public health and such situation needs to be remedied in advance of reaching a final decision. The final decision will then revoke such interim measure; the length of an interim measure will thus be generally set to cover the duration of the proceedings before the GNCC or a shorter period if the GNCC decides so (when the GNCC finds that the interim measure is no longer needed).</p>		
Notes:	/		
Art 10/7	7. Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 4 of Directive 2002/21/EC (Framework Directive).	Art 46/1 ECA	1. Decisions of the Commission relating to a warning and fine shall be made in simple administrative proceedings. The person concerned shall be notified in writing of the decision within seven days after the decision is made.
		Art 6/1 Administrative Code	1. A district court, serving as a superior court, shall hear lawsuits relating to: <ul style="list-style-type: none"> (a) Legitimacy of an administrative decree issued by the President of Georgia, (b) Legitimacy of an administrative decree issued

			<p>by a government agency, government institution under the President, chief of any other high government agency, or the President's special representative to any region of Georgia,</p> <p>(c) Legitimacy of a normative administrative act adopted (issued) by the Sakrebulo [elected local council] or Mayor's Office (Mayor) of Tbilisi, Kutaisi, Rustavi, Sukhumi, Batumi, or Poti.</p> <p>(d) Conclusion or implementation of an administrative contract, or compensation of damages by an administrative agency if the cost of the lawsuit exceeds 500000 lari.</p> <p>(e) Decision of an independent regulatory body.</p>
Art 11/1	<p>1. Without prejudice to information and reporting obligations under national legislation other than the general authorisation, national regulatory authorities may only require undertakings to provide information under the general authorisation, for rights of use or the specific obligations referred to in Article 6(2) that is proportionate and objectively justified for:</p> <p>(a) systematic or case-by-case verification of compliance with conditions 1 and 2 of Part A, conditions 2 and 6 of Part B and conditions 2 and 7 of Part C of the Annex and of compliance</p>	Act 44/2,3 ECA	<p>2. The Commission shall check the performance of licence conditions by a license holder through a random inspection of licence conditions and/or regular reporting by the license holder. In addition, the Commission may conduct an inspection on the basis of a complaint, ex parte notification, and information from newspapers or other sources.</p> <p>3. When monitoring the performance of the the requirements and obligations determined by the legislation of Georgia, including by the resolutions and decisions of the Commission in the field of electronic communications, as well as when checking the licence conditions, the</p>

	<p>with obligations as referred to in Article 6(2)</p> <p>(b) case-by-case verification of compliance with conditions as set out in the Annex where a complaint has been received or where the national regulatory authority has other reasons to believe that a condition is not complied with or in case of an investigation by the national regulatory authority on its own initiative;</p> <p>(c) procedures for and assessment of requests for granting rights of use;</p> <p>(d) publication of comparative overviews of quality and price of services for the benefit of consumers;</p> <p>(e) clearly defined statistical purposes;</p> <p>(f) market analysis for the purposes of Directive 2002/19/EC (Access Directive) or Directive 2002/22/EC (Universal Service Directive);</p> <p>(g) safeguarding the efficient use and ensuring the effective management of radio frequencies;</p> <p>(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors.</p> <p>The information referred to in points (a), (b), (d), (e), (f), (g) and (h) of the first subparagraph may not be required prior to, or as a condition</p>		<p>Commission may not inspect or request the submission of such factual circumstances that are not directly related to the performance by the license holder of the license conditions, or of the requirements and obligations provided for in the legislation, including in the resolutions and decisions of the Commission.</p>
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	for, market access.			
Art 11/2	2. Where national regulatory authorities require undertakings to provide information as referred to in paragraph 1, they shall inform them of the specific purpose for which this information is to be used.	N/A		
<p><u>Gap 22 – Scope of information provided to GNCC</u></p> <p>The Directive requires that regulators may only require proportionate and objectively justified information from authorised persons, for a limited list of purposes. The Directive requires that the regulator informs the operators of the purpose of any information request.</p> <p>The ECA does not limit the GNCC’s right to request information to information “proportionate and objectively justified” for listed causes/reasons. To the contrary, Article 44 ECA allows the GNCC to request all information directly related to the authorised person’s performance, obligation or requirements. The scope of such possibly requested information seems broader than the scope anticipated by the Directive.</p> <p>This partial gap could be remedied by limiting the scope of the requested information and imposing an obligation on the GNCC to inform the authorised party about the purpose of such information request.</p>				
<p><u>Action plan</u></p> <p>Legislation: ECA</p> <p>Section: 44</p> <p>Proposed change: We propose to implement, in accordance with the Directive, that any information requested by the GNCC from authorized persons shall be limited to information proportionate and objectively justified for a limited list of purposes. In addition, GNCC shall inform the relevant authorized person about the purpose of requested information.</p> <p>Notes: /</p>				

Art 13	Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC (Framework Directive).	Art 2/i ECA	i) fee for using exhaustible resources - a sum payable by a permit seeker for using a radio frequency spectrum and/or numbering resources; the amount and the rules for payment of the fee are determined on the basis of an auction and/or in accordance with the Rules for the Issuance and Usage of and the Payment for the Numbering Resources approved by resolution of the Georgian National Communications Commission or another rule determined by this Law, and which is fully transferred to the State Budget of Georgia;
Art 14/1	1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Except where proposed amendments are minor and have been agreed with the holder of the rights or general authorisation, notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except	Art 53 ECA	1. The grounds for the modification of a licence may be: a) amendments to the legislation of Georgia on electronic communications; b) a substantiated request of the Commission or of a licence holder. 2. A decision to modify a licence shall be made by the Commission.
		Art 16 INRA	1. The sessions of an independent regulatory Authority shall be open to public, except for the cases provided for by the applicable law. The decisions of an independent regulatory Authority shall be published pursuant to the established procedure.

	in exceptional circumstances.		<p>2. An independent regulatory Authority must retain the minutes of its sessions and other relevant documentation for the period of at least 7 years. Commissioner and interested persons may have unrestricted access to all records and other documentation available at the relevant regulatory Authority.</p> <p>3. All decisions, records and other documentation of an independent regulatory Authority shall be available for public discussions. The procedure for the maintenance of confidentiality of the information kept by an independent regulatory Authority shall be determined by the regulatory Authority concerned in conformity with the Georgian Legislation.</p>
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Gap 24 – Amendment of authorization

The Directive requires that any general authorisation (to provide networks and services or to use spectrum) and the right of spectrum use may only be amended in objectively justified cases. Such amendment may only be admissible following a public consultation.

The ECA seemingly gives the GNCC a very broad competence to amend any spectrum license based on GNCC's substantiated motion. Such broad competence is not compliant with the Directive. In addition, the ECA does not anticipate any public consultation prior to the decision on a licence amendment. The Law on Independent Regulatory Authorities only anticipates that the licence itself shall be published and available for public discussions but does not extend this requirement to the licence amendments. We consider this to be a gap and recommend that it be remedied by implementing a limited set of grounds and public consultation requirement in relation to any licence amendment.

If a regime of general authorisations be introduced in the ECA, any amendment to the general authorisations should follow similar rules.

<u>Action plan</u>			
Legislation:		ECA	
Section:		53	
Proposed change:		We propose to specify the reasons for amendment of the authorization, i.e. only in objectively justified cases.	
Notes:		The wording of current ECA seems to allow GNCC to decide by itself to amend the authorization. According to the discussions with the GNCC amendments to the licenses are currently in reality carried out only in justified cases, therefore we agree to reflect this in the law.	
Art 14/2	2. Member States shall not restrict or withdraw rights to install facilities or rights of use for radio frequencies before expiry of the period for which they were granted except where justified and where applicable in conformity with the Annex and relevant national provisions regarding compensation for withdrawal of rights.	Art 47 ³ /1-3 ECA	2. The Commission may substitute a radio frequency resource provided on the basis of a licence, before the expiry of the validity period of such licence, by another radio frequency resource of the same volume existing within a specific section (radio frequency range) of the same radio frequency band determined by the National Plan for the Allocation of Radio Frequency Spectrum if the licence holder is able to continue its activity and the provision of services without changing the technology used. If expenses arise due to changing a radio frequency resource, a licence holder shall be entitled to apply to the Commission with a reasonable request to reimburse the expenses. The amount of the expenses, the payment method and conditions shall be determined by the Commission by a decision made to change a radio frequency resource. In that case, the

			<p>Commission shall be authorised to rely on the opinion of an audit company selected from the list of persons providing audited financial reports and/or expert and audit opinions for enterprises determined by the Government of Georgia.</p> <p>3. When for the purpose of planning and distributing radio frequency ranges in accordance with the harmonised technical norms and parameters, the National Plan for the Distribution of Radio Frequency Spectrum is changed in such a way that it is impossible to ensure the simultaneous maintenance of the technical norms and parameters of existing, newly planned or allocated radio frequencies, also the co-existence of electronic communication technologies, the Commission may have the following rights with respect to a license holder using such a radio frequency resource:</p> <p>(...)</p> <p>c) require from the licence holder full or partial transfer of the radio frequency resource covered by the licence before the expiry of that licence in lieu of appropriate compensation. The amount of compensation, payment conditions and methods shall be determined by a decision of the Commission in agreement with the Government of Georgia, and compensation shall be paid from the State Budget of Georgia. When determining</p>
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			<p>the amount of compensation, the Commission shall rely on the opinion of an audit company selected from the list of persons providing audited financial reports and/or expert and audit opinions for enterprises determined by the Government of Georgia. To purchase the services of an international audit company, the Commission shall announce a tender. Expenses associated with the purchase shall be covered from the budget of the Commission or from the State Budget of Georgia, as agreed with the Government of Georgia;</p>
		<p>Art 54 ECA</p>	<p>1. The grounds for revocation of licences/permits shall be:</p> <ul style="list-style-type: none"> a) a request of the licence/permit holder; b) termination by the licence holder of the use of the resource covered by the licence or, of the practical activity carried out using such resource, for three consecutive months or for six months during one year. c) failure to commence the practical activities within the period determined by the licence; d) violation of the licence conditions in the case of the commission by the licence holder of a continuous violation and/or of a new single violation within one year after having been fined;

			<p>e) violation of permit conditions in the case of the commission by the permit holder of a continuous violation and/or of a new single violation within one year after having been fined;</p> <p>2. Only the Commission shall be authorised to revoke a licence/permit.</p> <p>3. If a licence/permit is revoked, the licence/permit holder shall not be refunded the fee paid for the use of the exhaustible resource.</p> <p>4. Upon the expiry of the licence the licence shall be considered revoked.</p>
<p><u>Comment</u></p> <p>The Directive does not allow for a withdrawal of spectrum rights except where justified and in line with the conditions of the license.</p> <p>The ECA does stipulate several mechanisms for withdrawal or limitation of licenses. Article 47³ stipulates specific reasons for “changing of spectrum under license” based on the GNCC’s decision. Such changes are subject to compensation, and thus generally in line with the Directive. In Article 54, the ECA also anticipates license withdrawal without any compensation for a breach or upon request of the authorised person. We therefore understand this to be “justified” and in line with the Directive.</p>			
Art 15/1	1. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.	Art 16 INRA	<p>1. The sessions of an independent regulatory Authority shall be open to public, except for the cases provided for by the applicable law. The decisions of an independent regulatory Authority shall be published pursuant to the established procedure.</p> <p>2. An independent regulatory Authority must retain the minutes of its sessions and other</p>

			<p>relevant documentation for the period of at least 7 years. Commissioner and interested persons may have unrestricted access to all records and other documentation available at the relevant regulatory Authority.</p> <p>3. All decisions, records and other documentation of an independent regulatory Authority shall be available for public discussions. The procedure for the maintenance of confidentiality of the information kept by an independent regulatory Authority shall be determined by the regulatory Authority concerned in conformity with the Georgian Legislation.</p>
		Art 17 ECA	<p>1. The Commission shall maintain a departmental registry of authorised persons, in which it shall enter application data.</p> <p>2. Any person may review the data recorded in the departmental registry of authorised persons.</p>
		Art 52/5 ECA	<p>5. A successful bidder in an auction shall be selected by a decision of the Commission. The criterion for identifying a successful bidder in an auction shall be the maximum price offered for the use of an exhaustible resource, 30 per cent of which shall be paid within one month after a decision identifying the successful bidder is made. A decision of the Commission identifying</p>

			the successful bidder in the auction shall be disseminated via mass media or the Internet.
		Decree of the GNCC on “Regulatory rules of Georgian National Communications Commission” (Article 16)	All the decisions and decrees of the Commission are published on the web-site of GNCC.
		Art 28/2 GAC	A public institution shall be obliged to ensure proactive publication of public information in the manner and under conditions determined by the relevant subordinate normative act.
<p><u>Gap 25 – Public availability of decisions</u></p> <p>The Directive requires that all decisions be published and kept publicly available.</p> <p>The ECA includes a general obligation of the GNCC to issue all decisions in a public manner. In the GNCC’s decree on Regulatory rules of Georgian National Communications Commission it is stipulated that all GNCC’s decision shall be published. We therefore recognize no gap in the Georgian legislation.</p> <p>In relation to the general authorisation, there is an obligation to keep the registry, but not to have it publicly available at all times. Although the registry is available upon request, we would propose to include specifically that such information is available at all times for instance via GNCC’s website.</p>			
<p><u>Action plan</u></p> <p>Legislation: ECA</p>			

Section:			
Proposed change:			
Notes: Following discussion with the GNCC we understand that all GNCC's decision are published on their website. Therefore, we do not propose any changes.			
Art 15/2	2. Where information as referred to in paragraph 1 is held at different levels of government, in particular information regarding procedures and conditions on rights to install facilities, the national regulatory authority shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of all such information, including information on the relevant levels of government and the responsible authorities, in order to facilitate applications for rights to install facilities.	N/A	
<u>Comment</u>			
The Georgian law does not include such obligation on GNCC.			
However, we understand that the GNCC has control over all information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities as the GNCC is the independent regulatory authority in these matters.			
Art 16	The Commission shall periodically review the functioning of the national authorisation systems and the development of cross-border service provision within the Community and report to the European Parliament and to the	N/A	

	<p>Council on the first occasion not later than three years after the date of application of this Directive referred to in Article 18(1), second subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.</p>		
Art 17/1	<p>1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and the Annex of this Directive 19 December 2011 at the latest.</p>	N/A	
Art 17/2	<p>2. Where application of paragraph 1 results in a reduction of the rights or an extension of the general authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights until 30 September 2012 at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor.</p>	N/A	

<p>Art 17/3</p>	<p>3. Where the Member State concerned can prove that the abolition of an authorisation condition regarding access to electronic communications networks, which was in force before the date of entry into force of this Directive, creates excessive difficulties for undertakings that have benefited from mandated access to another network, and where it is not possible for these undertakings to negotiate new agreements on reasonable commercial terms before the date of application referred to in Article 18(1), second subparagraph, Member States may request a temporary prolongation of the relevant condition(s). Such requests shall be submitted by the date of application referred to in Article 18(1), second subparagraph, at the latest, and shall specify the condition(s) and period for which the temporary prolongation is requested.</p> <p>The Member State shall inform the Commission of the reasons for requesting a prolongation. The Commission shall consider such a request, taking into account the particular situation in that Member State and of the undertaking(s) concerned, and the need to ensure a coherent regulatory environment at a Community level. It shall take a decision on whether to grant or reject the request, and where it decides to grant the request, on the scope and duration of the prolongation to be</p>	<p>N/A</p>	
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	<p>granted. The Commission shall communicate its decision to the Member State concerned within six months after receipt of the application for a prolongation. Such decisions shall be published in the Official Journal of the European Communities.</p>		
Art 18/1	<p>1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 24 July 2003 at the latest. They shall forthwith inform the Commission thereof.</p> <p>They shall apply those measures from 25 July 2003.</p> <p>When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.</p>	N/A	
Art 18/2	<p>2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions.</p>	N/A	

This document has been prepared in connection with the project "**Georgia - Information Communication Technology Sector Development**" financed by the **European Bank for Reconstruction and Development**. Any legal advice contained in this document has been provided under the EU law. Georgian legislation has been taken into account based on the English translations provided to us by GNCC. We are not qualified to provide legal advice under Georgian law.

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