Independent and Regulatory Agencies in Moldova
and their Interaction with Parliament

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DISCLAIMER

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# Acronyms

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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ACC</td>
<td>Audiovisual Coordination Council in Moldova</td>
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<td>BEREC</td>
<td>Body of European Regulators for Electronic Communications</td>
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<td>CAA</td>
<td>Civil Aviation Authority</td>
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<td>CAAM</td>
<td>Civil Aviation Administration in Moldova</td>
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<td>CoA</td>
<td>Court of Accounts of Moldova</td>
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<td>CEER</td>
<td>Council of European Energy Regulators</td>
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<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<td>DG</td>
<td>Directorate-General</td>
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<td>EBRD</td>
<td>European Bank for Reconstruction and Development</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECTA</td>
<td>European Competitive Telecommunications Association</td>
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<td>ERG</td>
<td>European Regulators Group</td>
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<td>ERGEG</td>
<td>European Regulators’ Group for Electricity and Gas</td>
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<td>ERRA</td>
<td>Energy Regulators Regional Association</td>
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<tr>
<td>ETSI</td>
<td>European Telecommunications Standards Institute</td>
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<td>ICT</td>
<td>Information and Communication Technologies</td>
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<td>IERN</td>
<td>International Energy Regulation Network</td>
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<td>MA</td>
<td>Medicines Agency in Moldova</td>
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<td>MAIRT</td>
<td>Moldovan Agency for International Road Transportation</td>
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<td>MOJ</td>
<td>Ministry of Justice of Moldova</td>
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<td>NAER</td>
<td>National Agency for Energy Regulation in Moldova</td>
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<td>National Agency for Protection of Competition in Moldova</td>
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<td>NARECIT</td>
<td>National Agency for Regulation in Electronic Communications and Informatics Technology in Moldova</td>
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<td>NBM</td>
<td>National Bank of Moldova</td>
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<td>NCFM</td>
<td>National Commission of Financial Market in Moldova</td>
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<td>NRA</td>
<td>National Regulatory Agency</td>
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<td>SEE</td>
<td>South-Eastern Europe</td>
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<td>SMP</td>
<td>Significant Market Power</td>
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<td>UNSCR</td>
<td>United Nations Security Council Resolution</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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<td>UNDP</td>
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This report has been commissioned by UNDP Moldova upon the request of the Committee on Economy, Finance and Budget of the Parliament of the Republic of Moldova.

The report constitutes one of the key programmatic activities of the “Support to Parliamentary Development in Moldova” Project, UNDP’s parliamentary assistance project (December 2009-December 2013). The project aims to enhance parliamentary efficiency in carrying out its functions and responsibilities thus contributing to viable democracy and open society in Moldova. The project adopts a comprehensive, long-term approach to parliamentary development including strengthening of the legislatures law-making, representation and oversight roles.

Considering the Parliament’s current cooperation with the independent and regulatory agencies in Moldova, it was deemed necessary and urgent to review the current legal framework and working practices; with the aim to update them and bring them into accordance with European/international standards.

For this purpose, UNDP hired an international consultant with experience in parliamentary strengthening assessments and parliamentary program development (Franklin De Vrieze, Belgium); and a local consultant with knowledge on Moldova’s independent and regulatory agencies (Ludmila Ieseanu, Moldova).

This report has been drafted by Franklin De Vrieze, with the input from Ludmila Ieseanu, and based upon the assessment mission to Moldova on 25 April – 7 May 2011. During this mission, the team of both consultants conducted meetings with the leadership of 10 independent and regulatory agencies as well as the parliament Committee chairpersons and staff which were available. On 20 – 24 June 2011 a second mission took place. It enabled finalization of the draft report, based upon feedback received on the draft report from all interlocutors.

The report has been developed based upon the policy documents of the Organization for Economic Cooperation and Development (OECD) in Paris, and following consultations with the OECD – staff working on regulatory reform across the OECD.
I. Executive Summary

How do Moldova’s independent and regulatory agencies exercise their role and responsibilities and interact with parliament? How can the independence and the accountability of the agencies be strengthened simultaneously? What initiatives can parliament undertake to optimize its interaction with the agencies?

These are the key questions which the authors want to address in the current report. The report has four main chapters, the key findings of which are summarized below.

I. The first chapter of the report provides the conceptual framework to analyze the functioning and the main institutional characteristics of independent and regulatory agencies. The framework is based upon principles and policy guidelines for regulatory agencies issued by the Organization for Economic Cooperation and Development (OECD).

The last decennia have seen an unprecedented global rise in the use of regulatory agencies, especially in transitional economies like Moldova. These agencies regulate a number of economic sectors with network characteristics where technical specialization and prudential oversight are essential, such as civil aviation, energy and telecommunications.

The effectiveness of these regulatory agencies is primarily a function of the degree to which their mandate strikes a balance between their ‘independence’ from industry and the government, and their ‘accountability’ towards the public.¹

A key driver of this balance lies in the interaction between the agencies and parliament. Therefore, the central challenge outlined in this report is to design this interaction in a way that optimizes the equilibrium between independence and accountability. This means that the agencies are neither fully independent from the government and parliament, nor fully subordinate to parliament, but operate ‘at arm’s length’, at an appropriate distance.

¹ Downsides of too little and too much independence are discussed in the conceptual chapter of this report.
Practically, the need for such a balance has direct consequences for the type of accountability and the choice of instruments we recommend in this report. Whilst it appears logical to demand more outcome accountability (e.g. specific target output deliverables against which the performance of the agencies is measured, such as contribution to growth in GDP), such performance-related demands open the door to a degree of interference that may impinge on the independence and effectiveness of the agencies. Consequently, and in line with European and international best practices as discussed in our chapter on international benchmarking, this report recommends primarily to improve the coherence and quality of the instruments of procedural accountability.

Procedural accountability is strengthened through instruments of transparency and control, such as systematic annual and progress reporting, public consultation and access to information, and open and inclusive process of decision-making, within the legal provisions and the goals set.

Because of the recent growth in regulatory and independent agencies, the establishment of best practices, norms and principles is still ‘sui generis’. In this respect, Moldova’s search for improvements reflects a wider trend within advanced EU and OECD economies, and is to be commended.

We propose a set of eight instruments to review the independence and accountability of the agencies. Four instruments are contributing to independence: institutional design, actual independence from politics and industry, budget and staffing. Four instruments are contributing to accountability, focusing on procedural accountability: reporting, financial and performance audit, appeal procedures and consultations.

Il. The second chapter of the report analyzes in detail the extent to which these eight instruments of independence and accountability are reflected in the functioning of the 10 agencies in Moldova. Our analysis of Moldova’s agencies reveals a lack of consistency and coherence in the application of the instruments of independence and accountability among the ten agencies. Consequently, transparency and oversight by parliament are cumbersome, difficult to achieve and cumbersome. Therefore, there is a clear need to improve consistency and coherence among the agencies.
First, the four instruments contributing to independence (institutional design, actual independence, budget and staffing) are applied incoherently across the ten agencies. For instance, the board members of most agencies have a fixed term in office, which can be renewed once or more than once in five of the ten agencies. Whilst some of the differences in provisions -- e.g. a four-year, five-year or six-year tenure for members of the Board or Commission governing the agency – appear justified by sector-specific requirements, the majority of differences between agencies are the result of “sui generis” creation of the laws regulating these agencies, and are therefore currently redundant. Across agencies, different practices occur when the mandate of a member of the Board expires. Currently, the Court of Accounts has five out of its seven board positions vacant because the mandate of the previous Board members had expired. This highlights differences in practice with other agencies that keep their board members in place until new members have been appointed (e.g. National Commission for Financial Markets). Each agency has determined conditions of incompatibility for holding other official positions within the state apparatus; and has determined the requirements to cease relationship with the industries regulated by the agency in order to avoid conflict of interest. However, many agencies have no specified “grace period” to avoid conflicts-of-interests generated by the “revolving door practice” (a practice in which agency officials switch jobs between regulatory institutions and the industries they regulate). On the other hand, several agencies mentioned interference from the government with their decisions, in particular in relation to the registration and publication of their decisions.

Second, the four instruments contributing to accountability (reporting, financial and performance audit, appeal procedures and consultations) are equally applied incoherently across the agencies. From the ten agencies, six submit an annual report to parliament, four don’t. Also, the practices in relation to financial audits are quite divers. Only three agencies have their financial reports audited by the Court of Accounts. Further, an external performance assessment is only conducted for the National Bank and foreseen to be conducted for the Civil Aviation Agency. Finally, the appeals procedures for all agencies are handled by the courts. However, several agencies raised the concern that courts suspend decisions of agencies in a way which undermines the effectiveness of their work because courts often take a long time before making a final judgment after the imposed suspension. These provisional court rulings often result in a court
injunction or temporary annulment of the provision, a practice that de facto favors the complainant and disadvantages the defendant. In combination with lead times of up to a year for final court rulings, such an appeals procedure seriously constrains the independence that the agencies require to be effective, a practice that runs contrary to European benchmarks.

III. The following two chapters of this report conduct an international benchmarking exercise for two of the most significant regulatory sectors: the energy sector and the telecommunications sector. The benchmarking is based upon a review of international principles and an in-depth analysis of various country surveys for the relevant sectors of energy and telecommunications.

As far as the energy regulatory framework is concerned, three country surveys have been analyzed: one survey on the (“old”) 15 EU member states, one comparative analysis of energy regulators in 23 countries across the OECD-area, and a review of practices in the three Baltic States. Against the background of these three surveys, Moldova is largely in line with European practices on issues such as the conditions for appointment and dismissal of the members of its board, enhancing transparency through an annual report, and conducting consultations. However, the principles detailed in the European Commission Directives would require Moldova to adjust some of its practices or the legal framework for some other issues. For instance, the EC Directives require that decisions of the Agency are immediately binding and directly applicable without the need for any formal or other approval or consent of another public authority or third party. In Moldova, the requirement to register all regulations of the Agency at the Ministry of Justice, before they enter into force, and the subsequent discussions with the Ministry of Justice on content and policy is incompatible with this provision from the European Directives.

As far as the telecommunications regulatory agency is concerned, all EU countries have completed a process of separation of the roles of 1° policy making (government), 2) sector regulation (regulatory agencies) and 3) ownership and management (private sector). As part of the liberalization process, almost all countries in South-Eastern Europe (SEE) have also established an independent regulatory authority that meets the conditions defined in our assessment model. This is the conclusion of an extensive survey, presented and discussed in this
report, on the progress made by the SEE countries towards compliance with the EU rules for electronic communications and information society services, together with their convergence with the EU internal market. Further, for Moldova, the extent to which dispute resolution has been settled satisfactorily can probably be improved. Finally, it is unclear why the Directors are appointed by the government and not by parliament.

IV. Following a short chapter to review the parliament’s capacity to increase its interaction with the independent and regulatory agencies in Moldova, the report offers a set of recommendations to optimize the balance between independence and accountability of the agencies and to fine-tune the interaction with the parliament of Moldova. Recommendations address the eight instruments mentioned earlier, as well as the capacity of parliament.

The recommendations outline how to overcome a series of anomalies, inconsistencies and legal gaps in relation to European requirements to be addressed by the Parliament of Moldova. The number of anomalies, inconsistencies and legal gaps, and their content, indicate the urgency of the required review. This review can be addressed through framework legislation for all agencies and/or specific amendments to legislation of individual agencies.

If Moldova wants to move forward on the process towards better functioning and more accountable independent and regulatory agencies, the required reforms should be initiated as soon as possible.
II. Introduction:
Moldova country context for regulatory reform

The UNDP-commissioned assessment on Moldova’s independent and regulatory agencies and their interaction with parliament has been prepared against the background of an increasing importance of the European Union regulatory framework for a number of sector policies.

Since the EU’s enlargement in 2004 and 2007, an ever deeper relationship is being built between the Union and the countries on its Eastern borders within the European Neighborhood Policy (ENP), including Moldova. The aim of the ENP is to bring these neighbors closer to the EU and support their efforts for economic, social and political reform.

On 12 January 2010, the EU and Moldova started negotiations on an EU-Moldova Association Agreement. The new agreement will be an innovative and ambitious document going beyond the established framework of cooperation and opening a new stage in their relations, notably by enhancing political dialogue and deepening sector cooperation. The Association Agreement will replace the EU-Moldova Partnership and Cooperation Agreement which entered into force in July 1998 and sets at present the framework for EU-Moldova relations. The EU and Moldova intend to establish a Deep and Comprehensive Free Trade Area (DCFTA), when the conditions are met and expressed their commitment to make progress in line with the agreed set of steps towards that objective.

In this context, a good understanding of the process of regulatory reform in Moldova is an important requirement to assess the current functioning of the Moldova agencies. Regulatory reform involves the stages of deregulation and regulatory quality improvement. Regulatory reform, up to the creation of regulatory agencies, often involves public authorities and the representatives of the private sector and other stakeholders.
The deregulation represents the complete or partial withdrawal of government control and restrictions to a specific activity. Deregulation can be seen as a process by which governments remove, reduce, or simplify restrictions on business and individuals with the intent of encouraging the efficient operation of markets. The stated rationale for deregulation is often that fewer and simpler regulations will enhance competition, increase productivity and efficiency, improve the quality and reduce prices of products and services.

In Moldova, deregulation started with the approval in 2005 of the Law referring to the revision and the optimization of normative regulatory code of the entrepreneur activity. This law established the principles and necessary actions to revise the existent regulatory code, in order to optimize the regulatory code of entrepreneurial activity and to eliminate the regulations which do not correspond to the legislation and present barriers for the development of the business environment. The revision of normative acts in the Republic of Moldova was developed through various stages and in consultation with ministries and a state Commission created for that purpose.

The improvement of the quality of regulation is based upon the principles of proportionality, accountability, consistency and transparency. In Moldova in 2006, the Law referring to the basic regulatory principles of the entrepreneur activity was approved. According to these principles, the implementation of an effective system of corporatist government should lead to a transparency and efficiency of markets, to be compatible with the rule of law and to define clearly the division of responsibilities between the competent instances in monitoring, regulation and application of the provisions. The implemented strategies for the improvement of the quality of regulation include, amongst others, the use of Regulatory Impact Analysis (RIA). RIA is a term used to describe the process of systemic analysis of the benefits and the costs of a new regulation, with the aim to improve the quality of the regulatory politics. The respective analyses appreciate the negative or positive impact of a new regulation or of the existent regulations. From 01 January 2008, the implementation of RIA procedure in the Republic of Moldova became compulsory.

According to the most recent European Commission progress report, Moldova continues to strengthen the supervisory framework in the field of financial services. The main elements of the banking supervision structures follow largely

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the Basel I principles for effective banking supervision. Some amendments to banking regulations, notably in the field of information disclosure were made in July 2009. Moldova has continued the implementation of the IMF’s Financial Sector Assessment Program recommendations. The National Commission on the Financial Market, as a unified supervision authority for nonbanking financial services, took over licensing activities in October 2009. Also in October 2009, Moldova became a member of the International Association of Insurance Supervisors (IAIS).

The same European Commission progress report makes a number of other observations in relation to the Strategy for the Development of the Non-Banking Financial Sector, a new law on Competition, the National strategy for development of auditing and accounting, public internal financial control, and the entry-into-force of the new law on Court of Accounts in January 2009.

These initiatives are an important part of the political context in which the agencies function and against which our assessment took place. The assessment as such has been developed based upon the policy documents of the Organization for Economic Cooperation and Development (OECD) in Paris. Therefore, this assessment will focus on questions of independence and accountability of the agencies, as outlined in the first and conceptual chapter of this report.

The agencies selected by the Committee on Economy, Finance and Budget of Parliament for this assessment are:

1. NAER - National Agency for Energy Regulation
2. NRAECIT - National Regulatory Agency for Electronic Communications and Informatics Technology
3. NAPC - National Agency for Protection of Competition
4. NCFM - National Commission of Financial Market
5. ACC - Audiovisual Coordination Council
6. NBM - National Bank of Moldova
7. MA - Medicines Agency
8. CoA - Court of Audit of Moldova
9. CAA - Civil Aviation Authority
10. MAIRT- Moldovan Agency for International Road Transportation.
III. Conceptual framework on independent and regulatory agencies

“How can the independence and accountability of Independent and Regulatory Agencies be strengthened and what is the role of Parliament?”

These are the key questions, which the authors of this report had in mind when reviewing the relationship between the Parliament of Moldova and the independent and regulatory agencies.

Introduction

In order to answer these questions, a clear conceptual framework on the balance between the agency’s independence and accountability was developed. The framework draws primarily on principles and best practices as documented by the Organization for Economic Cooperation and Development (OECD). The OECD “Guiding Principles on Regulatory Quality and Performance” (2005) call for ensuring adequate institutional frameworks and the need to ensure that regulatory institutions are accountable and transparent.

According to these guidelines, regulatory agencies are semi-autonomous agencies within the state, with delegated powers to oversee and regulate a number of economic sectors. They are found in sectors with outspoken network characteristics, such as utilities and telecommunications, and sectors were prudential oversight and technical specialization are essential, such as the regulation of civil aviation, financial services and central banking.

The last 30 years have seen an unprecedented global rise in the use of regulatory agencies. In Moldova, as in much of Europe, the growth of these agencies

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5 Independent regulators as key tools for regulatory reform was reflected early on in the 1997 OECD recommendations, which advised governments to, inter alia, “Create effective and credible mechanisms inside the government for managing and co-ordinating regulation and its reform.” Since then, independent regulators have been considered in various ways as part of the OECD work on regulatory reform.
follows the liberalization of erstwhile state monopolies and the transition to market economies. The rise of ‘regulatory agencies’ is accompanied by a shift in the role of the state from an interventionist state, which ‘owns’ and ‘manages’ these sectors and industries towards a ‘regulatory state’, which establishes ‘regulatory agencies’ that are at ‘arms length’ from the government and from the sectors and industries the agencies oversee and regulate.6

The primary responsibility of regulatory agencies is to deliver high quality regulation of the sectors or industries they oversee. As is detailed in our conceptual framework below, the effectiveness of these agencies to achieve their task is primarily a function of the degree to which their status within the state’s institutions achieve an optimal equilibrium between two competing principles: ‘independence’ and ‘accountability’.

Independence and accountability are both vital conditions for the effectiveness of regulatory agencies, but there is a trade-off between them: too much independence from the Government exposes the agencies to capture by the industries they oversee and regulate and too little independence exposes the agencies to political interference that runs contrary to the economic and technical fundamentals of the industries or sectors concerned. For instance, overly independent regulatory agencies are vulnerable to capture by special interest groups, such as powerful bureaucracies or business cartels, which may seek to influence regulations in ways that serve the interests of a small minority, but contravene the public good. On the other hand, a frequent pattern of political interference is to squeeze these companies by simultaneously raising their production costs, e.g. through overstaffing or staffing with less qualified clients, whilst pressuring these companies to sell goods at a price point below cost, which undermines their long-term financial viability.

While we note that independent and regulatory agencies in Moldova are characterized by a rather uneven and disparate balance between independence and accountability and that standardization and streamlining would be welcome, we also caution against a hurried shift to bolster the accountability to parliament without also increasing the level of independent functioning of the agencies.

The relationship between the agencies and Moldova’s Parliament is one of the primary levers to maintain accountability of the agencies towards the public interest. We note that, although it is the focus of this report, Parliament is not the sole driver of accountability.

From the viewpoint of Parliament, this relationship can be upgraded in two ways: by adapting the legislation and practice that governs the ‘regulatory agencies’ in Moldova and by improving the Parliament’s ‘Rules of Procedure’ in order to specify clear guidance on how Parliament internally organizes the interaction with the agencies.

The first chapter of the report examines the conceptual framework for the review of the Moldova independent and regulatory agencies. The challenge outlined in this report is to design the relationship between parliament and the agencies in a way that optimizes the equilibrium between independence and accountability. This means that the agencies are neither fully independent from the Government and Parliament, nor fully subordinate to Parliament, but operate ‘at arm’s length’, at an optimal distance.

Practically, the need to find this balance has direct consequences for the type of accountability and the choice of instruments we recommend. Whilst one could opt for requirements of outcome accountability (e.g. specific output deliverables against which the performance of the agencies is measured, e.g. contribution to a percentage of growth in economic development in a specific sector), the requirements of procedural accountability provide the best match with the requirements of the independence of the agencies. Such an approach is in line with international best practices, e.g. European Commission Directives. Procedural accountability is strengthened through instruments of transparency and control, such as systematic annual and progress reporting, public consultation and access to information. In this way, actors, even if they disagree with a particular decision of an agency, should accept it as legitimate if it was taken in a way considered fair, if it originated from an open and inclusive process, transparent, within the legal provisions and the goals set.  

Other instruments to improve accountability may be important but should be exercised with caution: consist of clear goal setting, performance evaluation, availability of performance reports to the public, production of customer satisfaction surveys, review meetings and parliamentary hearings with agencies.

Technically, the relationship between parliament and the agencies can be broadly upgraded in two ways: by adapting the legislation and practice that governs the ‘regulatory agencies’ in Moldova and by improving the Parliament’s
‘Rules of Procedure’ in order to specify clear guidance on how Parliament internally organizes the interaction with the agencies (the latter is discussed in Chapter 7 of this report).

The rise and novelty of regulatory and independent agencies explains why the search for best practices in the regulation and practice of these agencies is a continuing project that is ‘sui generis’, with improvements in even highly advanced EU/OECD economies. Whilst some clear patterns emerge in the form of general principles from our comparative analysis, our research did not identify one way to achieve effective, independent and accountable regulatory agencies. In this respect, Moldova’s experience reflects the experience of many countries.

Rather than looking for one ‘best practice’ or one ‘ideal country’, we analyzed – based upon the OECD relevant documents - a set of instruments contributing to independence and accountability, such as reporting, financing, selection and appointment of governing boards, audits, etc. We find that improvements in these areas will contribute to the legislation and practice of the Agencies.

Finally, in terms of the methodology for our assessment of the agencies, we relied on a Survey developed by Stéphane Jacobzone from the OECD Secretariat. His team designed and tested a conceptual framework with an extensive checklist to assess the characteristics of the independence and accountability of agencies. In addition, the OECD framework for the evaluation of independent regulators was useful for structuring our research and analyzing the findings.

The chapters below will discuss the requirements for independence and accountability and the institutional set-up within the government in further detail. For an overview, we refer to the summary table provided at the end of this chapter, as well as the bibliography annexed to this report.

# The need for independence

The key rationale for the independence of regulatory agencies can probably be grouped into two factors. Firstly, the economic sectors that these Agencies

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regulate require a high degree of technical expertise, specialization and adaptations to rapidly changing markets. This may be easier to achieve for a nimble but specialized agency. Often, government deems itself unable to muster all the technical and scientific expertise necessary to regulate highly complex areas of market integration and market correction. As a result, delegation to specialized agencies reduces decision-making costs by allowing legislators and government executives to economize on the time and effort required to identify desirable refinements to legislation, and to reach agreement on those requirements. As a result of technical specialization, regulatory agencies are often more flexible and speedy in adjusting to new and complex challenges.

Yet, the most important rationale for the independence of regulatory agencies is the need to achieve credible long-term policy commitments.¹⁰ In a democratic system, politicians cannot propose long term measures because there is no guarantee of re-election. Policies lack credibility if the long-term prospects cannot be guaranteed by future governments. However, the credibility of regulation emerged as an important issue because of the particular nature of some of the industries being regulated. This is particularly the case for public utility regulation. Because of their distinctive features, such as the extreme specificity of their assets and the fact that their customers often comprise the entire voting population, public utilities are particularly fragile industries. Following the initial investment stage, politicians may be tempted to use regulation to set prices below long-run average costs, de facto expropriating the utilities’ sunk costs. Hence, lacking a credible regulatory commitment, companies will refuse to invest, making it impossible for competition to flourish. Thus, independence is necessary to avoid political interference which may result in policies that run contrary to market fundamentals and long-term financial viability. For instance, the high level of infrastructure investments in e.g. utilities and telecoms requires long-term planning and investments that are best detached from the relatively short-term political cycle of elections.

Thus, the key benefits sought from independent regulators are to shield specific economic sectors from short-term political interventions in order to ensure long-term market stability and economic objectives, and to avoid the influence and capture by particular interests, either by the entities being regulated or other non-governmental groups. Such economic regulators are expected to ensure
market discipline, to protect consumer interests, to facilitate open access to the core infrastructure of the network, whilst stimulating primate investments in the network and to preserve social objectives. The independence of regulatory agencies from direct political intervention has often been cited as an essential requirement for building trust among investors in newly liberalized and privatized sectors.

In summary, the key benefits sought from independent regulators are to 1) enable technical specialization and know-how, 2) to enable long-term capital investments, and 3) to shield markets from short-term political interventions.

The need for accountability

A strongly designed system to guarantee independence is only half of the equation. In order to prevent abuse and private/interest group capture, the extensive powers and responsibilities entrusted to regulatory bodies must be balanced by accountability. In order to simultaneously safeguard the independence of these agencies, the instruments of accountability must be sophisticated or balanced. This explains the importance attached to procedural accountability and other indirect means of disciplining regulatory agencies into delivering high-quality regulation. Procedural accountability means that the Regulatory Agencies must explain and justify how and through which procedures they took certain decisions.

Independent regulators represent a new challenge to the powers of government and parliament. They constitute a special form of institution in most OECD countries, which is neither directly elected by citizens nor managed by elected officials, yet is responsible for overseeing economic sectors with clear and direct public good/interest implications. Independent regulators exist at the border between policy formulation, which remains the remit of the elected public authorities under a rule of law, and enforcement of the regulation which is delegated to them.¹¹ They operate independently but at arm’s length of the government.

Defining the respective roles of the regulators and the executive raises a number of political and institutional considerations, in particular how the exercise of regulatory power is to be controlled. Independent regulators can never be fully independent from the political process. They will always operate under the

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authority of laws and governance structures that can be altered. Thus, effective regulators have to be able to respond to the long-term political direction which will ultimately justify their continuing existence.

While some critics might consider that the independence of regulators represents a threat to the democratic process, that is not necessarily the case. The success of the model of the independent Central Bank shows that the quality of democratic governance may actually be improved by removing some issues from the arena of partisan politics, just as the country’s Constitution keeps certain matters off the public agenda. In the same way, independent regulatory bodies can support, rather than threaten, the democratic process.\textsuperscript{12}

\section*{Regulatory Agencies in the governance system}

Independent regulators represent a key feature of modern regulatory governance. They are part of building a state where the regulatory function is clearly distinct from the ownership and policymaking function. Provided with significant independence, they belong to a system of “checks and balances”, designed to match the powers of ministries and interest groups. Regulatory institutions are thus at arm’s length from the ministries and the executive power.

Setting independent regulators involves political challenges and institutional design issues, such as the design of the governing structures of the regulatory bodies and the reporting channels.

At the same time, there are concerns of potential fragmentation of public authority, and the difficulty to ensure proper accountability for these institutions. Within OECD, it is being recognized that there is a division of labor between the political responsibility of making trade-offs between various policy goals in order to win the support of a large majority, and the technical responsibility, devolved to experts, of reaching the best concrete decisions to enforce regulations.

Taking advantage of the expertise embodied in each agency, the success of the institutions relates also to the general public governance framework (i.e. courts, parliament and other levels of government). This relates to the ability of courts to deal with appeal procedures to decisions of regulators in a timely and competent manner, and the ability of parliament to set the right legislative framework without interfering in policy implementation.

\textsuperscript{12} Majone, p. 127.
Various institutional settings exist across countries. Principles of best practice have been documented by OECD as reference for policy makers. The 2005 OECD “Guiding Principles on Regulatory Quality and Performance” call for ensuring adequate institutional frameworks with appropriate staffing for regulatory units, avoiding overlapping responsibilities among regulatory authorities. These principles also underline the need to ensure that regulatory institutions are accountable and transparent. As mentioned above, Stéphane Jacobzone designed an extensive checklist to assess independent regulatory bodies. This checklist has been taken as the conceptual guidance note for our report.

Regulatory agencies operating at arms’ length from the government encompass a wide range of institutional settings. They can be classified in four distinct groups.

First, ministerial departments are agencies that are part of the central government and do not have the status of a separate corporate body. They are part of the civil service and headed by or report directly to a minister. They are typically and largely funded from tax revenue. They can have statutory independence in carrying out some regulatory functions, and can have considerable administrative autonomy from other ministries.

Second, ministerial agencies are executive agencies, set at arm’s length from central government, which may or may not have a separate budget and autonomous management. They may be subject to different legal frameworks (where administrative procedures laws or civil service regulations may not apply). They may have a range of powers, but are ultimately subordinate to a ministry and subject to ministerial intervention.

Third, independent advisory bodies are agencies with the power to provide official and expert advice to government, lawmakers, and firms on specific regulations and aspects of the industry. They may also have the power to publish its recommendations. The scope for public decisions to depart from this advice or recommendations may vary.

Finally, independent regulatory authorities are agencies charged with the regulating specific aspects of an industry. They are typically under autonomous management, and their budget may be under a Ministry. However, there is no scope for political or ministerial intervention with the body’s activities, or

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14 Jacobzone, p. 82.
intervention is limited to providing advice on general policy matters rather than specific cases. These bodies have a varying range of powers. Independent regulatory authorities in OECD account for approximately two thirds of regulatory agencies operating at arms’ length from the government.

When we analyze the Moldova agencies in the following chapter, we will refer back to above four categories.

**Balance between independence and accountability**

As mentioned in the introduction, independence and accountability are the two key concepts in reviewing the functioning of the regulatory bodies. Balancing them is one of the conditions of success in setting up independent regulators. These two concepts will provide guidance to this report.

Independence can be achieved through various formal and informal arrangements. Much depends on the political cost of reversing or ignoring an independent regulator’s decision. If the political cost is low, it will be tempting for politicians to limit or frame the independence. If the cost is high, one is more likely to remain committed to the agencies’ independence. Moreover, independence depends on the institutional design of the agency (in particular the governing structures and powers), the financial and human resources available, political independence and independence from regulated industries.

Accountability can be achieved through a proper system of checks and balances, a set of control instruments (reporting, public consultation and access to information, performance evaluation) and the possibility of judicial appeal. In addition, clearly defined objectives, transparency and public participation can enhance accountability without compromising the agency’s independence. However, too strict requirements for accountability could also be inefficient by reducing regulatory discretion, or effectively transferring it to the parliament or the courts.

Replacing direct political accountability based on ministerial responsibility with procedural accountability between regulators, ministries and parliament is a true challenge. This means that, on the one hand, parliamentary oversight can be very loose, allowing the regulator too much or inappropriate discretion. This is particularly true when existing parliamentary staff is overburdened.
and cannot adequately support parliamentary review functions in relation to complex, technically driven regulatory missions. On the other hand, accountability requirements should not compromise the necessary operational independence of the regulators. A highly interventionist parliament may have the effect of driving the regulator towards making specific market decisions not linked to its regulatory mission.

Instruments of Independence

To have a clear understanding of the concept of independence in regulatory decision making, it is worth considering the challenges to independence, which can be both external as well as internal challenges.\textsuperscript{16}

External challenges may include unwarranted interaction and attempts to influence regulatory decision making by individual politicians and political groups, by licensees and vendors, and by interest groups. The qualification ‘unwarranted’ is an important one, because each of the groups mentioned has legitimate types of interaction with the regulatory body. However, some stakeholders may seek other ways than the legitimate types of interaction to influence regulatory decision making in order to further various political and economic interests, thereby challenging independence in regulatory decision making and the integrity of the decision makers.

There may also be internal challenges to achieving independent regulatory decision making. Such challenges relating to the internal characteristics of the regulatory body may include: (1.) A lack of clearly defined objectives and criteria, which renders it more difficult to achieve consistency and predictability in regulatory decision making and, at the same time, makes the decision making process more susceptible to unwarranted external influence; (2.) Insufficient competence to ensure that regulatory decisions are firmly based on relevant experience. Again, this makes regulatory decision making more susceptible to unwarranted external influence; (3.) Too great a dependence on a few individuals as decision makers and their individual approaches to preparing for and taking decisions. Although the personal integrity and ethics of individual decision makers are highly important, the quality and independence in regulatory decision making should not be susceptible to changes in a few positions in senior regulatory management; (4.) A lack of clearly defined procedures and criteria for the appointment (by selection or promotion) of staff to managerial roles.

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and decision making positions in the regulatory body. Deficiencies in this respect can make the regulatory body susceptible to unwarranted external influence in the appointment of senior staff.

A number of measures can be taken in order to ensure that the regulatory body is well equipped to meet the challenges to independence in regulatory decision making as mentioned above. Some of these measures need to be taken by the relevant political decision makers (government and parliament). Others are the responsibility of the senior management of the regulatory body. These measure relates to four factors: (1.) the institutional features and governance structure, (2.) political and actual independence, (3.) budget and financial resources, (4.) staffing policy and human resources. We will analyze these factors in the following pages.

**Institutional features and decision making**

The institutional design or the way in which institutional features are structured determines to a large extent the independence of the regulatory bodies. Governance structures matters for independent regulatory authorities. In theory, a board, council or commission is supposed to offer more opportunities for collegial decision making, thus ensuring a greater level of independence and integrity in decision making. The collegial decision making in the boards offers the possibility of internal discussions before adopting a decision, increases the decision’s legitimacy and reinforces independence. This is also an advantage given the complexity of the problems that regulators must solve, which justifies not only the involvement of several people but also the representation of several types of expertise.

The nomination process for the heads of the independent regulatory agencies is also a relevant criterion. Independence will be higher when the nomination is confirmed by the parliament, or by a mix interaction of the executive and the legislative, and based upon a professional competency test. Key aspects to ensure independence are the conditions for reappointment and removal from office. For example, independence is strengthened if the head of the body can be removed from office only in case of official misbehavior, and not for disagreement with a president’s or a minister’s policy.

A guaranteed term of office for the head of the regulatory body is another key element to ensure the independence of the regulator. With a guaranteed term
of office, the head of the regulatory body can exercise regulatory power without being undermined by short term political interests. Conversely, if the head of the regulatory body is a civil servant, who can be replaced by the minister at any time, the regulator’s independence is weak. Members of the Board of Regulatory Agencies are usually appointed for 4-6 years with the opportunity to have the contract renewed once or twice. Where individual instructions exist, they most often confirm the independence of the regulators.

**Political independence and independence from regulated industry**

Another criterion is the explicit provision in laws or statues of the political independence of the regulators. A particular concern is if politicians are appointed as members or heads of boards of regulatory agencies. Throughout the OECD there are different practices. Interestingly, according to one study, throughout the last 20 years in the largest European countries such as UK, France and Germany, elected politicians are using less and less their appointment powers to choose party activists, but are increasingly choosing for sector specialists. If individuals with public ties to political parties are selected for leading positions in the regulatory bodies, they need to cease all involvement with the political party.

As important as formal independence is the actual independence. The best measure of actual independence would be to examine the outcomes of disagreements between the executive and the regulatory agency over concrete decisions. This information is, however, difficult to collect. Another possible indicator of independence is the pattern of turnover at the regulatory agency’s head. The probability that the head is replaced shortly after a political change of government is, to some degree, related to actual independence.

Independence from the regulated industry is also highly relevant for the performance of a regulator. “Capture” by interest groups is a main concern of those who criticize strong regulators in general. To ensure that the regulator will not be easily captured by economic interests in the regulated industry, one can require that the regulator’s head and board members do not hold shares or have other interests in regulated firms, or, as in the case of the Italian telecom

and energy regulators, a prohibition to take a job in regulated firms for several years after the end of the office term.\textsuperscript{18}

### Budget & financial resources

Budgetary “autonomy” is also a significant practical dimension for independence. The regulator’s budget can have several sources, including state or public funds, fees imposed on the regulated industry, and tariffs on consumption of regulated goods or services. The budgetary autonomy may be constrained by the nature of the agency, or the possibility of levying sufficient fees from the sector. It may also be influenced by the need to reduce the risk of capture. Financial regulators are those which are most likely to be funded by fees, which also reflect the strong economic opportunities of the sector. This is also the case but to a more limited extent for telecommunication regulators. Several institutions or organizations can be involved in controlling the agency’s budget (e.g. the governmental auditing office, an external auditing office, etc).

Another practical dimension of independence is whether the agency can prepare and adopt its own budget, or if it is prepared and/or adopted by government or parliament. In some countries, parliament only adopts the main budget lines of the agencies’ budgets, leaving it up to agencies to determine the details within a set framework.

### Staffing policy & human resources

Human resources requirements are another determining factor for the agencies’ independency. Independent supervisory authorities need to be able to recruit staff with the appropriate qualifications, to establish their authority and independence, and to match the technical competence of the regulated parties. Staff in the regulatory bodies is generally recruited under civil service rules and is subject to regular civil service pay. However, some flexibility in implementing the remuneration schemes of the civil service might help to retain the adequate level of expertise as well as to minimize the risk of capture.

The number of staff varies greatly between sectors and across countries. This is due to the supervisory structure chosen by individual countries (integrated, separated, partly included in the relevant ministry, etc.). Financial sector regulators and competition authorities generally have higher staff numbers.
than the sectoral regulators of energy and telecommunication. The economies of scale and fixed costs in setting up independent regulatory bodies pose a specific challenge for very small countries. Therefore, the regulatory framework has to take into account both the scarce financial and human resources in smaller countries.

The head of the regulatory agency is generally free to appoint staff as long as they have the appropriate qualifications. Typically, there is a set of selection criteria: citizenship, number of years of professional expertise, independence, integrity, etc. Also, there must be no conflict of interest. This means that staff of the agency cannot be members of the Government, Parliament or be officials in local authorities and businesses.

**Instruments of accountability**

Given the independence of regulatory agencies and their ability to decide on issues of public concern/welfare, there is also a clear need for accountability. Accountability, in this context, means an obligation to explain, answer for, and bear the consequences of the manner in which the regulator has discharged duties, fulfilled functions and utilized resources. The traditional notion of ministerial accountability that prevails in a democratic system is here of little help, due to the independence features of the agencies. The alternatives to the traditional ministerial accountability are mainly “procedural” and can be classified under four main headings: (1.) reporting, access to information and transparency; (2.) a proper system of appeals; and (3.) performance assessment ex-post. (4.) In addition there are some horizontal issues related to consultations and coordination, which also contribute to accountability. We will analyze these factors in the following pages.

**Reporting and transparency**

Regulatory authorities generally hold a high level of expertise together with data over the regulated sector. Legislation on freedom of information is often only applicable to individual files, and do not necessarily include the right to statistical information of a general nature. However, statistical information represent important contributions to transparency and clarity in decision making by independent regulatory authorities. Accountability and the public debate need to be based on facts. The periodic release of these statistical data could also represent a significant step towards transparency, holding regulatory authorities accountable for their decisions.\(^\text{19}\)
It is therefore important that this information is included in the regular annual report or semi-annual progress report of the agency to parliament and/or government. To assess the agencies' accountability on the issue of reporting, one needs to assess what are the formal obligations (in law or statute) of the regulatory agency vis-à-vis the government and parliament, if the reporting requirements are for information only, or if the reports need to be approved. Accountability is strengthened if the reports should not only cover finances, but also performance, and an annual work plan for the next year. Accountability is also strengthened if the regulator can present, at own initiative, reports or statements to the government or to parliament; and if reports are published on the web site of the agency and/or parliament.

**Performance review**

Performance assessment is crucial for the justification of the regulatory agency's mission and existence. Evaluation of the regulator's performance implies, firstly, that the objectives of regulatory policy are clearly identified. In addition to defined objectives, an external evaluation procedure is also necessary to gauge the extent to which those objectives have been met. If the agency subject to regular external audit, this increases accountability.

A consumer satisfaction survey can also be a useful component of a performance review, but it must be well-designed.

It is clear that a financial audit as such is insufficient for a true performance assessment. The key dimension is the overall economic assessment, whether regulators contribute to the overall economic efficiency/productivity by the quality of their regulations, and what has been the result in terms of economic success. This constitutes often the reason for which they have been created. An overall economic assessment can be ensured through instituting a mandatory release of performance assessment reports, to check whether the regulator provides high quality regulation and reaches the broad policy objectives that justified its establishment.

The performance reports can (eventually) be prepared by regulatory authorities themselves in their annual reports. It is however preferred that they result from

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20 Regulatory quality can best be expressed through the following requirements derived from the OECD reference checklist for regulatory decision making: Do the benefits of regulation justify the costs? Is the distribution of effects across society transparent? Is the regulation clear, consistent, comprehensible and accessible? Have all interested parties had the opportunity to present their views? How will compliance be achieved? See: Stability Pact, Independent Regulators in the South East European Countries, paper prepared by the OECD Public Governance and Territorial Development Directorate, October 2003, p. 17
an external assessment, by external auditing agencies. Their availability can be considered as an important element for transparency and efficiency in public decision making. Throughout OECD countries, these performance assessment reports are more frequently available and mandated in those sectors where the independence of the agencies is the greatest.\footnote{Jacobzone, pg. 86.}

\section*{Appeal to decisions}

The possibility for judicial review of regulators’ decisions guarantees ultimate accountability and is likely to improve the decision-making process ex ante, but it is not without its risks. As we described below, it must be balanced. However, on average, it is preferable to ministerial appeal. If appeals against regulatory authorities go to ministers, such a system of appeal risks undermining the political independence of a regulator. There are different practices in OECD countries if ministerial appeal is possible in an exceptional case of last resort under specific circumstances.\footnote{On exceptional cases when elected politicians overrule decisions of regulatory bodies, see: Thatcher, p. 211.}

As noted above, defining accountability for regulatory authorities through the normal court system may involve a different set of challenges. Decisions made by a regulatory authority over a rapidly evolving market are highly time-dependent. The time that might be required for judicial decisions under many judicial systems may represent a first practical obstacle. Another important element is whether judges have the knowledge to judge the decision on its merits, effectively revisiting the decision making process of the regulator, or whether they are restrained to purely procedural aspects.

Finally, the judicial review process for regulatory authorities depends also on the judicial system as a whole. These systems may only be marginally adapted to accommodate the specific needs for accountability of independent regulatory authorities. A possibility chosen by some countries is to create special courts, or appeal bodies, with a mix of judicial, legal, economic and technical expertise.\footnote{Jacobzone, pg. 75211.}

\section*{Public consultation}

Public consultation is one of the key regulatory tools employed to improve transparency, efficiency and effectiveness of regulation. Consultation improves the quality of rules and programs and also improves compliance and reduces
enforcement costs for both governments and citizens subject to rules. Public consultation increases the information available for government policy-making. The use of other policy tools, particularly the Regulatory Impact Assessment (RIA), and the weighing of alternative policy tools, has meant that consultation has been increasingly needed for collecting empirical information for analytical purposes, measuring expectations and identifying non-evident policy alternatives when taking a policy decision.

OECD countries have developed five basic instruments or different forms to perform public consultation. Informal consultation includes all forms of discretionary, ad hoc, and non-standardized contacts between regulators and interest groups. The key purpose is to collect information from interested parties. The disadvantage of informal procedures is their limited transparency and accountability.

The circulation of regulatory proposals for public comment is a relatively inexpensive way to solicit views from the public and it is likely to induce affected parties to provide information. Furthermore, it is fairly flexible in terms of the timing, scope and form of responses. It is among the most widely used form of consultation.

Public notice-and-comment is more open and inclusive than the circulation-for-comment process, and it is usually structured and formal. The public notice element implies all interested parties have the opportunity to become aware of the regulatory proposal and are thus able to comment. There is usually a standard set of background information, including a draft of the regulatory proposal, discussion of policy objectives and the problem being addressed and, often an impact assessment of the proposal and, perhaps, of alternative solutions.

A public hearing is a meeting on a particular regulatory proposal at which interested parties and groups can comment in person. A hearing is seldom an independent procedure; rather, it usually supplements other consultation procedures. A key disadvantage is that they are likely to be a single event, which might be inaccessible to some interest groups, and thus require more co-ordination and planning to ensure sufficient access.

The use of *advisory bodies* is the most widespread approach to public consultation among the OECD countries. Advisory bodies may themselves carry out extensive consultation processes involving hearings or other methods. There are many different types of advisory bodies under many titles – councils, committees, commissions, and working parties. Their common features are that they have a defined mandate or task within the regulatory process (either providing expertise or seeking consensus) and that they include members from outside the government administration.

**International networks and network accountability**

The delegation of high-expertise regulatory tasks to independent regulatory authorities is a new mode of governance that has spread rapidly in Europe and beyond. Regulatory networks at the European level emerged in highly complex areas of market integration such as energy, telecommunications and financial markets in order to facilitate the exchange of information among national regulators and to render national regulations mutually compatible.

The emergence of transnational networks of regulators might additionally contribute to the accountability of the type of regulatory governance exercised by independent and regulatory agencies. A number of European networks of regulatory authorities have been created, promoted by the European Commission, such as the Committee of European Securities Regulators, the European Regulators Group, and the European Platform of Regulatory Authorities. These European networks of regulators include domestic regulatory agencies together with scientific committees, business actors, representatives of member states, the Commission and other European actors.

According to recent research, these networks can contribute to horizontal or procedural accountability, which involves checks and balances, transparency and stricter procedural requirements by peer review. It is therefore considered that if these institutional arrangements are effective, they could reinforce agencies’ accountability, and contribute to the social construction of their legitimacy.\(^{25}\)

The energy sector is an example of the emergence of network accountability. A forum of stakeholders met in the Florence Energy Forum for Electricity, created in 1998, followed by the Madrid Forum for Gas in 1999. The European
Commission created the Committee of European Energy Regulators (CEER), a network of independent national regulators of electricity and gas in 2000, and established the European Regulators' Group (ERGEG) as an advisory group of independent national regulatory authorities in 2003. Networks of regulators, such as the Forum of European Securities Commissions and the Independent Regulators’ Group have been established in financial market regulation as well.

As our report will focus on the Moldova agencies, the interaction with international networks will only be taken into account to the extent that it contributes to our understanding of the accountability and independence in practice of the Moldova agencies.

**Overview chart**

Above pages have outlined the conceptual framework on independence and accountability, based upon a number of identified characteristics and indicators. These characteristics will be analyzed in more detail for the Moldova agencies as well. We summarize it in below chart, as starting point for the next chapter.

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IV. Analysis of Moldova’s independent and regulatory Agencies

Based upon the eight indicators and instruments of independence and accountability as identified in the first conceptual chapter of this report, the current chapter will analyze in detail each of the ten Moldova Agencies under review: National Agency for Energy Regulation, National Regulatory Agency for Electronic Communications and Informatics Technology, National Agency for Protection of Competition, National Commission of Financial Markets, Audiovisual Coordination Council, National Bank of Moldova, Medicines Agency, Court of Audit of Moldova, Civil Aviation Agency, and Moldova Agency for International Road Transportation.

The data for this chapter have been gathered through three methods: an analysis of the laws regulating each of the Agencies, in-depth interviews with the leadership of each of the Agencies and an extensive written questionnaire (see document in annex to the report).

All Agencies have accepted the invitation for an in-person meeting with the authors of this report. All Agencies have returned the completed questionnaire. This has enabled the authors to include more detailed information than originally anticipated. A number of Agencies, such as the National Bank and the National Regulatory Agency for Electronic Communications and Information Technology, have provided additional documents.

The structure of each of the sub-chapters reflects the four instruments for independency and four instruments for accountability as identified in the conceptual chapter of the report. Each sub-chapter starts with an overview of bullet points on the interaction with Parliament, followed by a short introduction to the Agency’s legal framework; and the main analysis on the characteristics of the Agency.

Following the review of the ten Agencies, this chapter will present a detailed overview chart and comparative analysis across all Agencies. The findings in the comparative analysis will be instrumental in preparing the ground for the recommendations in the final chapter of this report.
4.1. **NATIONAL AGENCY FOR ENERGY REGULATION (ANRE)**

**Relations and interactions with the Parliament:**

- The annual report on the Agency’s activity is submitted to the Parliament, and discussed by Parliament. Possibility to present reports upon own initiative.
- At the request of Members of Parliament (MPs), the Agency provides relevant information and explanations related to its activity.
- The General Director and Directors of the Administrative Board are appointed and may be dismissed by the Parliament.
- The Regulation of the Agency is approved by the Parliament.
- Every year the Agency’s budget is approved by the Parliament.

**Other key-points:**

- Extensive practice of consultations with stakeholders.
- Independence under pressure due to requirement to submit the regulations approved by the Agency to the Ministry of Justice to perform the legal expertise and register regulations at the State Registry of the Ministry of Justice and to publish at the Official Gazette of the Republic of Moldova prior to entry-into-force, and due to methodology on calculation of tariffs. Resolutions on approved regulated tariffs for electricity, natural gas, heat and technical water are not submitted to the Ministry of Justice for legal expertise and registration in the State Registry.

The National Agency for Energy Regulation in Moldova (NAER) is an independent regulatory authority that is not subordinated to any other public or private authority, except the cases stipulated in the law. It regulates and monitors the economic and commercial activities in the electricity, natural gas and petroleum products sectors; was established as a permanent authority of public administration, acting as legal entity.

The Regulation of the Agency has not been approved yet by the Parliament.

Following is an assessment of the independence and accountability of the NAER based upon the conceptual framework established in the first chapter of this report.

**Independence**

*Institutional design and decision-making*

The Agency is managed by an Administrative Board, consisting of 5 members, who are appointed by the Parliament. The General Director of the Administrative Board is appointed by the Parliament, following the nomination by the President of Parliament and with the positive opinion of the relevant committee of the Parliament. The other Directors of the Administrative Board are appointed by the Parliament following the nomination by the relevant committee of the Parliament (Committee of Economy, Budget and Finance). All the Directors of the Administrative Board are appointed for six years and none of the Board members may stay in office for more than 12 years. At the first designation, the General Director is appointed for 6 years, 2 Directors – for 4 years and 2 Directors – for 2 years and for the next designations – for 6 years.

The Director of the Administrative Board has to be a citizen of the Republic of Moldova, have technical, economical or legal university degree, relevant working experience, including at least 3 years in administrative management.

The Director of the Administrative Board may prematurely be dismissed by Parliament in cases when he loses Moldovan citizenship, show inability to exercise powers because of health problems, elected or appointed to another office, sentenced to imprisonment by a final Court ruling.

The decisions of the Administrative Board are adopted with a majority of votes and every Administrative Board member has one vote.

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Political independence and independence from regulated industry

The relevant law stipulates that the Agency is independent from all participants of the energy market, as well as other authorities, companies or individuals.

The independence from governmental authorities of the Agency seems to be under pressure by the Ministry of Justice (MoJ), in charge for registration of the regulations approved by the Agency. According to the Government decision No. 1104 dated 28.11.1997 on legal expertise and state registration of departmental normative acts, the MoJ provides legal expertise of the regulations adopted by the ministries, other public authorities, including independent agencies, and decides then to register the regulations in the State Register of Legal Acts of the Republic of Moldova. Normally the expertise and registration procedure lasts 30 days. The review by the MoJ apparently goes beyond a review of terminology or of definitions, but touches upon the necessity and content of the Agency’s regulations approved by the agency. As a result, registration and entry-into-force of the regulations is being delayed or rejected. Additionally, the publication at the Official Gazette of the Republic of Moldova of decisions or regulations, necessary for them to enter into force is a cause for further delay, though this is a legal requirement established by the Law on Electricity and law on Natural Gas.

Another issue affecting the independence from the Government relates to the Methodology on calculation of tariffs for district heating, water and sewage. According to the Law on Public Utilities, no. 1402 as of 24.10.2002, these tariffs can only be approved after coordination with the Government. Also in the field of petroleum products, the Agency is bound to approve its Methodology on calculating prices for petroleum products after coordination with the Government. Also, tariffs for technological water supplied in a centralized manner in cities, towns and districts (‘Raion’) should be approved by the Agency after coordination with local public authorities.

The Directors of the Administrative Board cannot be remunerated at enterprises regulated by the Agency or have other advantages, be shareholders, have financial or material gains, facilitate employment of any person or for himself.

Within two years as of the date of the end of the term of office, the Directors of the Administrative Board cannot hold positions in the companies that are regulated by the Agency.
Every year the Agency prepares its annual budget for the following year based on the regulatory obligatory fees. The amount of the regulatory fees is set by the Agency within the limits sufficient to cover expenses necessary to ensure its functions and duties in accordance with the Law. Regulatory fees are paid to the Agency's separate account by the license holders from the energy sector. The Agency has the exclusive right to use the funds from its budget. In 2010 the Agency's budget was around 1 million EURO and for 2011 - 1,1 million EURO.

The Agency's budget is approved by the Parliament within the limits of 0,15% of the annual cost of electricity, natural gas supplied to consumers, main petroleum products and liquefied gas.

Last year, controversy on the high salary scales of the leadership of the Agency emerged. The Parliament reviewed in detail the draft budget structures and salary remunerations of the Agency, and adopted a decision outlining the financial framework for salaries of senior management and employees of the Agency.

At present, the Agency enjoys a fair financial situation. However, there is still a pending risk related to political changes. In spite of this controversy, the Agency advocates that the average salaries and social package of the other staff should be still increased in order to be competitive in comparison with the industry. Following this logical framework as well as the objective to create a really independent institution, one could consider the position that the Agency approves its own budget, given the 0.15 % limit of the annual cost of electricity, natural gas supplied to consumers, main petroleum products and liquefied gas, laid down in law.


The General Director of the Administrative Board employs the Agency staff with the consent of at least one Director of the Administrative Board. Staffing structure and number of staff should be decided by the Agency; and should not necessarily be topic of review by the Parliament.
Accountability

Reporting and transparency

The General Director of the Administrative Board submits on an annual basis to the Parliament the report on the Agency’s activity. The Parliamentary Commission on Economy, Budget and Finance takes note of the report, without the formal requirement to approve it.

The Financial Report of the Agency is drafted separately. Annually, by March 1st, the Agency prepares its Financial Report for previous year, which includes both the accounting data of the regulatory fees transferred on its bank account, and the Agency’s expenditures from this account. The Financial Report identifies all loans contracted by the Agency, as well as other funds used by the Agency.

No requirements for content or structure of the Report. The Agency’s annual report is publicly available on the Agency’s web site.

The General Director of the Administrative Board meets at least once a year with different Committees in Parliament to introduce and defend the proposed budget for the following year and answer eventual questions on the annual report from the past year.

The Agency has the possibility to present, upon own initiative, reports or statements to the Government and to Parliament.

Performance Review

A financial audit is being conducted by an independent audit company, selected by the Agency. The Parliament and the public should have the possibility to ask questions about the Agency’s expenses, including the results of the financial audit.

The Agency has no objection that in future the financial audit would be performed by an international audit company. The possibility of an audit by the Court of Auditors is not preferred, because the Court of Auditors only audits institutions financed by the state budget. The relevant legislation makes no reference to performance review of the Agency. The Agency has no objection against the prospect of a performance review, possible in conjunction with the financial audit by an international audit company.
The Agency was however noted that important parts of the strategy on energy (e.g. on the gasification program) have been decided by the Ministry of Economy and are not always considered economically sound. A performance review of the Agency, in charge for implementing such strategy, needs to take such concerns into account, the Agency stated.

**Appeal to decisions**

According to the law, the Agency’s decisions and regulations can be appealed to the competent Court. The Agency however questions a practice by which Courts decide to suspend a decision of the Agency, as a safeguarding measure, without hearing a representative of the Agency and before the final decision was adopted by the Court. Suspension of Agency’s decisions take place on very short notice, without reasonable timelines to examine the substance of the matter. The Agency is of the opinion that suspension or cancellation of Agency’s decision should only be possible for procedural issues, not on content basis.

**Consultations and coordination**

The draft of the Agency decisions need to be consulted with interested parties and public, including consumer organizations, enabling them to express their opinions. During 2010, a total of 48 consultations have been organized.

Also, the Agency has to make publicly available the consultation results, including the reasons for rejecting the objections and/or proposals submitted by the concerned parties. The Agency decisions representing public interest, as well as information regarding issued licenses are published in the Official Gazette of the Republic of Moldova.

Usually during consultations, stakeholders submit proposals and comments on the discussed matters. During 2010 there were received 297 comments and proposals, out of which 150 were accepted and included in the draft decisions. Also, natural persons can send to ANRE their proposals on amending ANRE regulations any time they decide.

Transparency is ensured by the Agency in accordance with the Law No. 239-XVI of 13.11.2008 on transparency in the decision-making process. The Law stipulates that public authorities shall publish decisions taken on their official web-page. The authority has to publish the draft decision on its web page,
allowing the interested groups to submit recommendations on the draft within 15 days from the day it was published. Thereafter, the issuing authority examines the recommendations received and decides on whether to take them into consideration or not. Finally, the synthesis of recommendations is published, with the proper reasoning for those recommendations which were not taken into consideration. Additionally, decisions have to be placed in a visible place within the central office of the authority or can be published in mass media or can be published and disseminated by any other legal means.

Through an amendment to existing legislation, or through a Parliament resolution, it would be useful to create a platform for discussion and interaction between different stakeholders, including Government, Parliament, Agency, Civil society (incl. consumers) in order to discuss the policies in the sectors.

### 4.2. NATIONAL REGULATORY AGENCY FOR ELECTRONIC COMMUNICATION AND INFORMATION TECHNOLOGY (ANRCETI)

**Relations and interactions with the Parliament:**

- At the request of MPs, the Agency has to provide relevant information and explanations related to its activity.
- The Agency does not have the right for legislative initiatives. All legislative initiatives and modifications to the legal framework have to be done through the Ministry of Information Technology and Communications or Government. A possibility to work with the Parliament directly on legislative initiatives would facilitate the Agency’s activity in improving the legal framework on electronic communications and harmonizing it with the EU requirements.\(^2\)

**Other key-points:**

- Directors are appointed by the Government.
- No time limit – “grace period” – for senior staff to move to industry after leaving the Agency.
- Before an Agency’s decision enters into force, those decisions with general impact on the market have to be registered at the State Registry and published at the Official Gazette of the Republic of Moldova.

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\(^2\) The Electronic Communications Act no. 241-XVI of 15.11.2007; The European Directives (2002) on electronic communication package
The central public regulatory authority empowered to regulate the field of electronic communications and information technology in Moldova is the National Regulatory Agency for Electronic Communications and Information Technology (the Agency). The Agency is an independent state body, structurally and legally independent from the Ministry of Information Technology and Communications, independent of network and/or service providers, electronic communications equipment manufacturers and from the Government.

The Agency as an independent regulatory authority performs its functions and duties based on the Electronic Communications Act no. 241-XVI of 15.11.2007 and its Regulation is approved by the Government. The Agency contributes to the development of the internal electronic communications market, promotes competition in the provision of electronic communications networks and services and performs its regulatory duties with the view of implementing the strategy of electronic communications development, approved by the Ministry of Information Technology and Communications.

Following is an assessment of the independence and accountability of the NRAECIT based upon the conceptual framework established in the first chapter of this report.

**Independence**

**Institutional design and decision-making**

The Agency is managed by an Administrative Board, consisting of the Chairman of the Board, represented by the Agency Director and two Board members - Deputy Directors. The Director and Deputy Directors are appointed by the Government for four years and none of the Board members may stay in term of office for more than 8 years.

Any citizen of the Republic of Moldova can be designated as Director or Deputy Director, who has university degree, high professional qualification and experience in the field of electronic communications.

The Government may prematurely dismiss the Director or Deputy Directors in the following exceptional circumstances: loss of Moldovan citizenship, resignation, fail regularly to perform duties, show inability to exercise powers because of health problems, elected or appointed to another office, sentenced to imprisonment by a final Court ruling.

The Agency decisions are adopted by the Administrative Board sessions. The Administrative Board sessions are public and the Board adopts resolutions with a majority of votes, in an open voting and every Board member has one vote. The Agency Board ensures transparency of the Agency activity and decisions by making the sessions of the Administrative Board public, organizing public consultations every time when a new decision, regulation or normative act is elaborated, providing free access for both interested parties and public at large to the examination of issues included in the agenda, except for confidential matters, but even in this case the adopted decisions shall be available to any interested person. The Agency decisions of public interest as well as the list of issued licenses shall be published in the Official Gazette of the Republic of Moldova.

**Political independence and independence from regulated industry**

The Director or Deputy Directors do not have the right to hold high-level positions, shares and/or social parts, have material or financial gains or interfere in the employment of a person or negotiate their own employment after their term of office expires with enterprises of which the activity is regulated by the Agency.

The Administrative Board of the Agency has sufficient space to function independently, but the absence of policies and strategies in the field of electronic communications hampers the activity of the Agency.

A problem that affects the Agency independence is that, before an Agency’s decision enters into force, it has to be registered at the Ministry of Justice in the State Registry of Legal Acts of the Republic of Moldova and has to be published at the Official Gazette of the Republic of Moldova. Sometimes the Ministry of Justice delays registration of decisions or overturns the decision of the Agency.
**Finances**

Every year the Agency draws up its annual budget for the following year. The Agency budget is approved by the Administrative Board within the limits necessary to ensure its adequate activity and financial independence.

The regulated entities - electronic communications networks and/or service providers - pay annual regulatory and monitoring obligatory fees and payments for the assigned numbering resources. The regulatory and monitoring fees and payments are transferred to the Agency’s separate bank account. The amount of the regulatory and monitoring fees is established by the Agency Board on the basis of an estimation of revenues, generated by activities in electronic communications, up to 0.3% of the estimated revenue. The Agency has the exclusive right to use the funds from its account.

The quantum of regulatory and monitoring fees was determined by the Agency for 2010 and it was settled as 0.17% of total volume of revenues generated form activities performed by network/services providers. The Agency’s budget for 2010 was estimated at MDL 14,570,000.

**Staffing**

The Agency Director employs the Agency staff with the consent of at least one Deputy Director. Employed persons have to be citizens of the Republic of Moldova, have a university degree, high professional qualification and experience in the field of electronic communications. The Agency is exempted from civil service salary limits. The salary of staff is approved by the Agency Board.

**Accountability**

**Reporting and transparency**

Every year, by April 30, the Agency publishes an annual report on its activity regarding the implementation of the electronic communications development strategy and enforcement of its regulations, as well as a statistical yearbook on the electronic communications development in the Republic of Moldova in the previous year.
Financial and performance audit

The administration of the Agency budget is verified by an independent audit (a private consulting firm), whose report is presented by the Agency to the Government. Every year the Agency submits to the Government a financial report, which is published in the official press. Performance audit of the Agency activity is not conducted.

Appeal to decisions

The Agency decisions and regulations can be appealed at the competent Court. If the Agency has applied administrative sanctions under the law and has issued a decision requiring that the violation be stopped, the license holder or the person acting under the general authorization regime may appeal against such a decision. Pending the outcome of any such appeal, the decision of the Agency shall stand, unless the appeal body decides otherwise. The refusal to issue a license can be appealed against in Court within 6 months as of the date of the refusal.

Consultations and coordination

The Agency approves, after preliminary consultation with the Government, tariffs for public electronic communications services, provided to end-users - natural persons by service providers with significant market power on the fixed telephony market.

The draft Agency decisions are consulted with interested parties and public, enabling them to express their opinions. Also, the Agency has to make publicly available the consultation results, including the reasons for rejecting the objections and/or proposals submitted by the concerned parties.

One of the problems that have to be solved is a need for more coordination between the Agency and the Executive on subjects that deal with the social problems (tariffs, prices, services…).
4.3. NATIONAL COMMISSION OF FINANCIAL MARKET (NCFM)

**Relations and interactions with the Parliament:**

- All members of the Administrative Council are appointed and dismissed by the Parliament.
- The Commission’s budget is approved by the Parliament, after its examination and positive approval by the specialized Parliamentary commission. Every year the audit report over the economic and financial activity of the Commission is presented to the Parliament.
- The Chairman of the Commission takes part in the sittings of the Parliament with the agenda related to regulation and functioning of the non-banking financial market. The current way of interaction allows for efficient and flexible communication with the Parliament.
- At the request of MPs, the Commission has to provide relevant information and explanations related to its activity.

**Other key-points:**

- Detailed provisions on decision-making procedures.
- Performance criteria count for dismissal. Several early dismissals occurred.
- Audit by Court of Accounts.

The Law On the National Commission on Financial Market establishes that the National Commission on the Financial Market (the Commission) is an independent body of the central public administration reporting to the Parliament. It regulates and authorizes the activity of professional participants of the non-banking financial market and supervises the compliance with the law.

The authority of the Commission refers to the issuers of securities, investors, the participants of the non-banking financial market, insurance companies, insurance brokers, non-state pension funds, micro-financing organizations, savings and loan associations, mortgage credit organizations and credit history bureaus. Attributions of the Commission regarding regulation, authorization and supervision of professional participants do not interfere with the attributions of the National Bank of Moldova.

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The core objective of the Commission is to enhance the stability, transparency, security and efficiency of the non-banking financial sector, reduce systemic risks and prevent manipulation on the non-banking financial market with the scope of protecting the rights of participants of the non-banking financial market.

Following is an assessment of the independence and accountability of the NCFM based upon the conceptual framework established in the first chapter of this report.

**Independence**

**Institutional design and decision-making**

The Commission is managed by the Administrative Council, a collegial body composed of five members, including the chairperson and deputy chairperson of the Commission. All members of the Administrative Council are appointed for a period of five years by the Parliament according to the proposal of the President of Parliament and pursuant to prior positive consent of the respective Parliamentary commission. For the first appointment the Chairperson of the Administrative Council is appointed for a period of 4 years, Deputy chairperson for 3 years, one member for 3 years and other two members for 2 years. Each member of the Administrative Council has the right to be reelected for two consecutive terms.

Any citizen of the Republic of Moldova can be designated as member of the Administrative Council, who has at least 10 years experience in finance, economy or banking, good civic and professional reputation. If a candidate to the Administrative Council is a member of a party or any other social-political organization, he should quit membership with the party or any other social-political organization.

Members of the Administrative Council are not eligible in cases when they are a close relative or are in close relations with the President of the Republic of Moldova, the Speaker of the Parliament, the Prime Minister, the Governor of the National Bank of Moldova, have previous convictions, undertake any other paid activity, with the exception of scientific, teaching and art activity, are members of administrative boards, board of Directors, managing committee, inspection commission and other managing bodies of legal persons, which are subject to supervision on behalf of the National Commission, hold more
than 0,5% stake (participation share) or of other securities with the professional participants of the financial market and the issuers, abuse their plenary powers for the purpose of publicity.

Members of the Administrative Council are independent in exercising their service duties and abide by the law exclusively and they cannot be detained, arrested or called for administrative or criminal responsibility only at the request of the General Prosecutor and with due consent of the Parliament.

The Commission makes decisions in the form of resolutions or decrees and signed by the Chair person. The Decisions of the Commission are made in the course of the sittings of the Administrative Council, which could be ordinary or extraordinary and public or closed. Closed sittings are held when there is a danger to cause damages to the financial market or its members. The sittings of the Administrative Council are considered deliberative when at least 3 members are taking part and they are managed by the Chairman. The decisions of the Commission are approved by the majority of voting present at the sitting of the Administrative Council. In the event of equal votes, the vote of the Chairman or, in his absence, of his Deputy is considered the casting vote and members of the Commission have the right to express special opinion on specific questions.

Resolutions and decrees of the Commission are published in the “Official Gazette of the Republic of Moldova” and come into force from the day of publication, if there are no other terms stipulated. Decrees of the Commission come into force from the date of their issuance. Also the decisions of the Administrative Council are published on the official website of the Commission.

**Political independence and independence from regulated industry**

The Parliament may prematurely dismiss members of the Administrative Council in cases of inadequate exercise of their competencies, actions or failure to act, committed with grave consequences to the financial market inflicting substantial prejudices to the clients and investors, they have a record of prior Court verdict that was not lifted, they become negligible towards emergence of certain incompatibilities, they fail to exercise their competencies due to physical or mental incapacity proven by medical examination certificate.

The members of the Administrative Council are revoked by simple majority of votes (50 % + 1 vote) from the total number of deputies of the Parliament and
members of the Administrative Council whose mandates have expired and they remain in the office until the appointment of their successors.

The following members of the Administrative Council have been dismissed prematurely: I. Robu 11.07.2002 - 27.04.2006; D. Ursu 28.04.2006 - 26.07.2007;

**Finances**

The Commission is financed entirely by the regulatory fees and charges. The specific size of fees and charges within the limits specified in the Law are established in the annual budget of the Commission. The Commission presents the draft of its budget for the next financial year and its budget is approved by the decision of the Parliament, after its examination and positive approval by the specialized Parliamentary commission.

Regulatory fees and charges are transferred to a settlement account of the Commission. The management and use of financial resources accumulated in the account represents the exclusive competence of the Commission.

The Commission budget for the 2010 was MDL 11,014,800. The budget for 2011 year has not yet been approved.

**Staffing**

The Council of Administration approves the structure and staff of the Commission and determines the forms and methods of retribution of the members of the Administrative Council and employees of the Commission within the approved budget by the Parliament.

The salary of the Chair person of the Commission is determined by the Council of Administration in size ranging from 3 to 5 average monthly salaries of employees of the Commission, except for technical personnel, calculated in relation to the last three months of its activity. Salary of the members of the Administrative Council is determined by the Council of Administration in an amount varying between 3 and 4 average monthly salaries of employees of the Commission, except for technical personnel, calculated in relation to the last three months of its activity.

The Chairperson of the Commission hires and fires employees of the Commission and territorial Agencies and if it is necessary, imposes disciplinary penalties.
Executives of the Commission are not eligible in cases when they undertake any other paid activity, with the exception of scientific, teaching and art activity, are members of supervisory boards, board of Directors, managing committee, inspection commission and other managing bodies of legal persons, which are subject of supervision on behalf of the Commission, hold more than 0,5 % shares (participation share) or of other securities of issuers and license holders, abuse their plenary powers for the purpose of publicity.

Accountability

**Reporting and transparency**

The National Commission presents to the President of the Republic of Moldova, the Parliament, Government and the public the annual report on its activity and operation of the financial market. The report must be approved by the Parliament and is published yearly by the beginning of June.

The structure, content and format requirements of the report are subject to approval by the Council of Administration.

The audit report over the economic and financial activity prepared by the Commission is shared with the Parliament.

**Financial and Performance Audit**

The control over the economic and financial activity of the Commission is done by the Court of Accounts. The audit report is presented to Parliament. In the NCFM opinion the current level of financial scrutiny is sufficient for the effective functioning of the NCFM.

The National Commission is an active member of the Financial Stability and Security Committee created after the signing of the Memorandum of Understanding regarding the financial stability. Based upon this, it can present upon its own initiative information to the Government.

**Appeal to decisions**

Decisions of the National Commission may be appealed in the Court of Appeal of Chisinau. This fact does not suspend the execution of the decisions of the National Commission until the final result is adopted by the Courts.
Consultations and coordination

The Government, the National Bank of Moldova, the Ministries and the other public administration entities are coordinating the projects of the normative and regulatory acts governing the non-banking financial market in order to avoid the situation of reversal of decisions. The Chairman of the Commission takes part in the sittings of the Parliament and the Government, with the agenda related to regulation and function of the non-banking financial market.

The members of the Expert’s council, a consultative body that includes representatives of the business, academia and fellow regulatory institutions alongside general public and market participants, are engaged in discussions regarding the legislation drafted by the Commission. Their arguments are taken into consideration.

4.4. AUDIOVISUAL COORDINATING COUNCIL (ACC)

Relations and interactions with the Parliament:

- The Parliament discussed the council’s annual report.
- At the request of MPs, the Council has to provide any additional relevant information on its activity.
- The Council members are appointed and may be dismissed by the Parliament.
- Council’s Regulation is approved by the Parliament.
- The draft budget and estimated staff of the Council is submitted annually and is discussed and approved in the Parliament plenary session.
- Financial oversight of the Council is exercised by the Parliament.

Other key-points:

- Council members can serve for only one mandate; not renewable.
- All funds received from sources other than State budget must be paid into the “Broadcasters’ Support Fund”, which may not be used for the remuneration of Council members and employees.
The Audiovisual Coordinating Council (ACC) is responsible for the implementation and enforcement of the Audiovisual Code of the Republic of Moldova and of international agreements on broadcasting to which Moldova is a party. The Audiovisual Coordinating Council is being consulted in the process of defining the position of the country for international negotiations on audiovisual matters.

Following is an assessment of the independence and accountability of the ACC based upon the conceptual framework established in the first chapter of this report.

**Independence**

*Institutional design and decision-making*

The Council consists of 9 members, appointed by Parliament. Candidates can be nominated by community associations, foundations, trade unions, employers’ associations, and religious organizations. The nominations are assessed by the relevant thematic Parliamentary committee and the Parliamentary Committee for Legal Issues, Appointments and Immunities. Both committees prepare a report and forward candidates’ names to the Parliament. The Council members are appointed by a Parliamentary decision.

Candidates must possess a diploma of higher education and have at least five years of experience in one of the following areas: broadcasting, communication technology, law, finance, accounting, enterprise management, elaboration of programs or information in any creative related institution. Candidates need to be between 25 years old and the legal age for retirement, speak the official language of Moldova and have no criminal record.

Council members serve in their personal capacity for staggered terms up till 6 years, and may not be reappointed. At the first appointment three candidates to the Council were appointed for a term of 6 years, another 3 candidates were appointed for 4 years and another 3 candidates were appointed for 2 years. For the next appointment all Council members have been appointed for six years.

The Council member has no right to hold two consecutive terms as a member of the Council. The Council members elect amongst themselves a President of the Council and a Deputy President of the Council by a simple majority of votes.
The Council members' mandate is irremovable, except in the following situations: 1) resignation; 2) expiration of the term of holding the position; 3) conviction through a final Court decision; 3) loss of citizenship of the Republic of Moldova; 4) mental or physical incapacity; 5) reaching the legal retirement age.

The Council adopts its decisions by majority of votes. The Council meetings are public, the decisions are accompanied by explanations and published in the Official Gazette and on the website of the Council.

**Political independence and independence from regulated industry**

Council members may not hold any other public or private position, except for scientific or didactical purposes. They may not be affiliated to political parties or structures. Neither Council members nor their relatives (by blood or marriage) may own, directly or indirectly, shares in enterprises which could create a conflict of interest, or use the title of member of the Coordinating Council for personal financial gain. Newly appointed Members have 30 days to resolve any existing incompatibilities, during which time they may not participate in voting. In all other cases, incompatibility will lead to dismissal.

As the Council members hold public positions obtained by appointment, they are guarantors of the public interest and they do not represent the authority that proposed them to the post.

The Council is an autonomous public body, with all the attributes of public legal entities and develops its own Regulation, approved subsequently by the Parliament.

**Finances**

The Council gets its funding from the State budget as well as from license fees, regulation fees paid by the broadcasters in the amount of 1% of the annual turnover and grants. The total level of funding is calculated to cover the estimated costs of all activities, so that the Council can fully, effectively and efficiently exercise its attributions.

The Council submits annually the draft budget and estimated staff to the Parliament. This is discussed and approved in plenary session. All funds received from sources other than the State budget must be paid into the so-
called “Broadcasters’ Support Fund”, which is governed by a regulation adopted by the Council, and may not be used for the remuneration of members of the Council and employees.

Members of the Council are paid a salary equivalent to 90% of the Council’s President’s salary. The salaries of the members of the Council and employees are established by the Law on Salaries in the Public Sector no. 355-XVI of 23 of December 2005. According to this Law, the salaries of the President of the Council and the members of the Council respectively are MDL 6,500 and MDL 5,850.

In 2011 the budget of the Audiovisual Coordinating Council is MDL 4,720,100, of which MDL 2,520,100 are from the state budget and MDL 2,200,000 - sources other than the state budget (Broadcasters’ Support Fund).

From sources that are allocated from the state budget the Council can cover expenses related to payment of utilities and salaries that are low and do not allow to hire qualified staff. In case of an additional need of financial resources from the state budget, the Council requests from the Ministry of Finance the needed amount by providing accurate calculations and explanatory notes of expenses that need to be funded. Because of the existing state budget deficit, additional allocations of financial resources are usually rejected by the Ministry of Finance.

Due to this reason the Audiovisual Coordinating Council’s financial independence is not ensured and the Council is forced to discontinue some activities due to the lack of financial resources.

**Staffing**

The Council sets up its own functional structure, including territorial control and monitoring structures stipulated in the statute.

**Accountability**

**Reporting and transparency**

The Council’s activity is supervised by the Parliament by discussing the annual report. The Council’s annual report is submitted to the Parliament before February 1. If the Parliament rejects the annual report, the Council is obliged, within 30 days,
to present a program of concrete measures to remedy the noted deficiencies. With the submission of the Council’s report, the relevant Parliamentary committee presents its opinion on the legality of the council activities, the accuracy and transparency of financial operations.

The Council has the obligation to publish quarterly reports on how it exercises its mission. There is no requirement on the structure and content of the Report on the activity of the Council presented to the Parliament.

**Financial Audit and Performance review**

The financial audit of the Audiovisual Coordinating Council is carried out by the Court of Accounts. A performance audit on the Council’s activity is not conducted.

**Appeal to decisions**

The Council decisions can be appealed in an administrative Court by any person who considers to be disadvantaged.

**Consultations and coordination**

The drafts of the Council decisions are consulted with interested parties and public, enabling them to express their opinions.
4.5. **NATIONAL BANK OF MOLDOVA** (NBM)

Relations and interactions with the Parliament:

- The Governor of NBM, the First Vice-Governor and the Vice-Governors of NBM are nominated and may prematurely be dismissed by the Parliament, in accordance with the Law.
- NBM coordinates the Regulation on NBM expenditures with the Budget and Finance Committee of the Parliament.
- NBM delivers to the Parliament a statement, the forecast of executing the state balance of payments for the current and the following years, a summary financial statement for the previous month.
- At the request of MPs, the NBM has to provide relevant information and explanations related to its activity.
- At the request of the Parliament, the Governor of NBM or members of the Council of Administration appear before the Parliament or standing committees thereof to explain the policies of the National Bank or to comment on proposed legislation.
- The interaction with the Parliament is frequent, as often as deemed necessary by both entities, but it is desirable to enhance the interaction with the Parliament within the framework of the legislative process. Thus, several laws concerning the National Bank of Moldova’s competences have been adopted by the Parliament, without any prior consultations with the National Bank. This is the case of the Law on free economic zones, amendments to the Law on foreign exchange regulation, as well as several others. Closer cooperation of the Parliament with the National Bank of Moldova in the process of drafting laws aiming at regulating banking sector would mutually benefit both entities and shall ultimately benefit the entire banking regulatory framework.

Other key-points:

- Appointments by Parliament, for 7-year term, meets international standards.
- Dismissal criteria open to interpretation and interference, e.g. ‘personal misconduct’.
The National Bank of Moldova (NBM) is the central bank of the Republic of Moldova. The objective of the NBM is to achieve and maintain price stability; and foster and maintain a stable market-based financial system and support the general economic policy of the State. NBM is an autonomous public legal entity, is not subject to registration in the state Register of enterprises and in the State register of organizations.\(^{30}\)

NBM is responsible to the Parliament. It has the capacity to enter into contracts and issue obligations, for the purpose of its business, acquire and dispose property, whether movable or immovable, institute legal proceedings and be subject to such proceedings. NBM acts as banker and fiscal agent of the Republic of Moldova and its Agencies and instrumentalities.

The Governor of NBM and the bank are responsible for formulating, promoting and implementing the monetary and foreign exchange policy. The NBM has the right to issue decisions, regulations, instructions and directives within its competence. NBM is the independent regulatory authority in the financial- banking sector and has rule-making, licensing, supervisory and advisory duties and powers in this domain.

Following is an assessment of the independence and accountability of the NBM based upon the conceptual framework established in the first chapter of this report.

**Independence**

**Institutional design and decision-making**

The NBM is managed by the Council of Administration, consisting of five members: Governor of NBM who is the Chairman of the Council, First Vice-Governor of NBM- Vice-Chairman of the Council and three vice-governors.

The Governor of NBM is nominated by the Parliament at the proposal of the Chairman of the Parliament. The First Vice-Governor and the Vice-Governors of the NBM are nominated by the Parliament at the proposal of the Governor of NBM. The term for each member of the Council of Administration is 7 years, provided that the completion dates of the terms of individual members of the Council, as far as practicable, are spread evenly over each seven year period. Members of the Council of Administration are eligible for reappointment for many times.

Candidates for membership on the Council of Administration should be citizens of the Republic of Moldova; they must be persons of recognized integrity and professional experience in monetary and financial matters, have ten years of experience.

The Parliament, following the proposal of the Chairman of the Parliament, may prematurely dismiss the Governor and other members of the Council, in cases when they become ineligible to serve in the Council of Administration, pursuant to being convicted of a criminal offense, become insolvent or have been declared bankrupt and their debts have not been discharged, have, on grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession.

Additionally, the members of the Council of Administration may be removed from office following the proposal of the Governor, if they have been absent from three or more successive meetings of the Council without a good reason, are unable to perform the functions of such office because of an infirmity of body or mind, have engaged in serious misconduct in the office, substantially prejudicing the interests of the NBM.

The Governor is removed from office by the Parliament with the vote of two thirds of the total number of deputies. The members of the Council of Administration are removed from office by the Parliament with the simple majority of votes cast (50 % +1) of the total number of deputies. Members of the Council and the Governor shall not be arrested, confined or sued on criminal or contravention grounds unless there is a relevant request of the General Prosecutor.

The Governor, or in his absence, the First Vice Governor chairs the meetings of the Council of Administration. The decisions of the Council of Administration are adopted by a simple majority of the votes cast by the members of the Council who are present at the meeting. Each member of the Council of Administration has one vote. A quorum at any meeting of the Council of Administration consists of the presence of more than half of the members of the Council of Administration then serving, including the presence of the Governor or the First Vice Governor.

Only members of the Council who are present in person have the right to vote. In the event of a tie, the chairman of the meeting shall have the deciding vote.
**Political Independence and practical independence**

The members of the Council of Administration shall not serve another financial institution during a period of one year immediately following their departure from NBM.

The Law on the National Bank of Moldova ensures personal independence of the members of the Council and provides that the Bank is independent in exercising its tasks and shall neither request nor receive instructions from any authority.

Moldova legislation does not provide for any right of appeal to the Court against the dismissal decision for the members of the Council or the Governor. According to the Annex to the Law No. 793 - XIV of 10.02.2000 on administrative proceedings, Members of the Council of the National Bank of Moldova and the Governor are qualified as persons holding a special public or political office and cannot appeal against the decisions taken by the Parliament. Nevertheless, according to the decision No. 29 of 21.12.2010 of the Constitutional Court the dismissal decision can be appealed against in the Constitutional Court, but only for reasons related to procedure or form.

An indirect mechanism for overturning NBM's decisions is provided for in the Government Decision No. 1104 dated 28.11.1997 on legal expertise and state registration of departmental normative acts. According to this Decision, normative acts issued by public authorities have to be registered with the Ministry of Justice. Entry into force of the acts of National Bank of Moldova is conditioned upon the registration at the Ministry of Justice and publication in the Official Gazette of Republic of Moldova. This procedure can be cumbersome and long-lasting. In practice, this registration amounts to a formal revision of the acts of the National Bank of Moldova, since the Ministry of Justice can refuse registration upon multifarious grounds. The obligation to have its acts registered with the Ministry of Justice ultimately jeopardizes National Bank of Moldova’s decisional independence, since the Ministry of Justice can refuse registration until the acts are revised as the Ministry deems necessary. Fruitless efforts of the National Bank to register its Regulation on the requirements to banks’ administrators are an eloquent example of this kind. For several times, the Regulation has not been registered and has been returned to the National Bank for further revision. The Ministry based its refusals on its assessment of the rules provided in the Regulation.
as inappropriate or unclear. Such reasoning interferes with the decision-making authority of the National Bank of Moldova and disregards the high standards of independence applicable to any central bank.

**Finances**

NBM is not financed from the state budget. All expenditures of NBM are reported in the annual budget to be approved by the Council of Administration in accordance with a regulation coordinated with the Budget and Finance Committee of the Parliament. The legality and regularity of expenditure estimates of NBM is heard by the Court of Accounts.

The NBM budget (operational expenditures, inclusive monetary policy related expenditures) for the year 2010 was approved by the Council of Administration in amount of MDL 479 mil. and executed in amount of MDL 472 mil. Unrealized losses from foreign currency stock revaluation and from revaluation of financial instruments are not included in the above-mentioned amount. Functional expenditures were about MDL 111 mil.

The more significant NBM's income is generated by the investment portfolio (management of foreign currency reserves and securities issued by Moldovan Government) and by monetary policy operations. Also, there are some revenues from fees related to services offered by the NBM (i.e. documents processing in Interbank Automated Payment System, cash operations, foreign exchange transactions, commemorative and jubilee coins etc.), but they have an insignificant share of total revenue (about 5%).

The fact that NBM is an autonomous legal person and does not benefit from the state budget ensures the financial independence of the NBM. However, considering the primary objective and general functions of the NBM, its activity may generate losses at the end of the year and in this way the NBM may be undercapitalized. In this regard, there is a provision in the Law on the NBM that the Government should issue securities in the amount of the undercapitalization of the NBM. Nevertheless, during the 2009 and 2010 years this has not happened. At the moment NBM has a negative general reserve fund in the amount of MDL 745 mil. The fact that the Ministry of Finance has not fulfilled its obligations can pose significant financial pressures on the NBM. This may affect the independence of the NBM, yet it is largely outside the scope of this report.
Also, there is a draft Law on the Management of public resources, which stipulates that the Ministry of Finance will be in charge with monitoring the financial resources management of the autonomous public institutions. In the explanatory note attached to that draft Law NBM is mentioned as one of such institution.

### Staffing

The Regulation on the staff of the NBM is adopted by the Council of Administration and the Governor appoints and terminates the appointment of the staff in accordance with the general terms and conditions of employment prescribed by the Council of Administration.

The Council of Administration decides upon the remuneration of the staff in accordance with the legislation. According to the art. 39 of the Law regarding the remuneration system in the budgetary sector nr. 355 as of 23.12.2005, remuneration of the NBM's personnel is made according to the Law on remuneration nr. 847 as of 14.02.2002 and according to a Regulation approved by the Council of Administration of the Bank and coordinated with the Parliament.

No member of the Council of Administration or staff of the NBM can act as a delegate of any commercial, financial or other business interest, or otherwise put himself in a position where his personal interest conflicts with his duties to the National Bank. Members of the staff cannot simultaneously have other employment and are not allowed to accept any remuneration from natural or legal persons (except honors for publications and payments for lecturing at educational institutions). Any credit, other than from NBM, received by a NBM staff has to be reported by the staff member to the Audit Department, which maintains records. The Council of Administration may place limits on credit received from financial institutions by NBM staff.

### Accountability

#### Reporting and transparency

Annually NBM delivers to the Parliament and to the Government and publishes a statement that contains an assessment of the economic and financial conditions of the State, a description and an explanation of the reasons therefore, the
monetary and foreign exchange policies that NBM intends to follow during the next year and for such longer period of time as NBM may decide, a review and assessment of the monetary and foreign exchange policies during the previous year. Also NBM in collaboration with the Government submits to the Parliament the forecast of executing the state balance of payments for the current and the following years.

Within four months after the closing of each of its financial years, NBM submits to the Parliament a copy of its financial statements certified by external auditors, a report of its operations and affairs during that year, a report on the situation of the state economy.

Also, NBM submits to the Parliament and the Government, a summary financial statement of the financial sector for the previous month, by the 25th day of each following month. NBM publishes the financial statements and reports, as well as any other financial and economic reports and studies. Also NBM may publish information and data that it collects, in whole or in part, in an aggregate form.

The transparency is respected by the NBM according to the Law. The Law No. 239-XVI of 13.11.2008 on transparency in the decision-making process, stipulates that public authorities shall publish decisions taken on their official web-page. The authority has to publish the draft decision on its web page, allowing the interested groups to submit recommendations on the draft within 15 days from the day it was published. Thereafter, the issuing authority examines the recommendations received and decides on whether to take them into consideration or not. Finally, the synthesis of recommendations is published, with the proper reasoning for those recommendations, which were not taken into consideration. Additionally, decisions have to be placed in a visible place within the central office of the authority or can be published in mass media or can be published and disseminated by any other legal means.

Financial and performance audit

The annual financial statements, accounts and records of NBM is subject to annual external audit in accordance with international standards on auditing conducted by a reputable independent external audit firm with recognized experience in the auditing of central banks and major international financial institutions that is selected by the NBM on a tender basis. The external auditor Report is published together with the annual financial statements of NBM. No
an external audit firm can be appointed consecutively for a cumulative period exceeding five years. For the financial years 2010-2012 as the external auditor is appointed KPMG Moldova SRL.

External audit of the Court of Accounts is limited to the examination of the efficient operational decisions taken by the NBM’s management, excluding the ones related to items of expenditure related to monetary and foreign exchange policy of the National and foreign exchange reserves management. This restriction is imposed to ensure the independence of the NBM in promoting monetary and foreign exchange policy.

Every four years, the central bank’s safeguards assessment is assessed by IMF experts to get insurance in the implementation and operation by the central bank of some control systems, accounting, reporting and audit on the management of resources, adequate to the integrity of unfold operations. The assessment covers five key areas relevant to the control and governance within the central banks according to the ELRIC acronym: i) E - external audit mechanism, ii) L - legal framework and central bank independence, iii) R - financial reporting; iv) I - internal audit mechanism v) C - the system of internal controls. The off-site update safeguards assessment for the National Bank of Moldova by the IMF was concluded in June, 2010.

Another important instrument of mitigating risks is the Internal Control System (ICS) designed in NBM. The NBM has a well organized ICS, structured and regulated. The functioning of the system is based on the responsibility of all personnel involved in the NBM activity, and is organized on several levels. The auditing and evaluation of the ICS in the NBM is a key element of managerial control and falls under the competence of the Internal Audit Department. The 2010 Report on the ICS and risk management, prepared by the Internal Audit Department, was placed on the National Bank of Moldova web-page.

In accordance with the requirements of International Standards for the Professional Practice of Internal Auditing developed by the Institute of Internal Auditors (IIA, USA), the first external quality assessment mission of the NBM’s internal audit function was carried out in 2010 by a team of experts certified in the field from “De Nederlandsche Bank”. As a result of external quality assessment, the Internal Audit Department has achieved the maximum rating of “Generally Conforms” to the Standards and the Code of Ethics of the Institute of Internal Auditors.
During years 2004-2007, as well as during next years, financial sector of the Republic of Moldova, including banking sector was subject to an assessment performed by the World Bank and International Monetary Fund within the Financial Sector Assessment Program (FSAP). The assessment aimed at examining the degree of compliance of national financial system with generally accepted standards and codes on monetary and financial policy transparency, including transparency of banking supervision, Basel core principles for effective banking supervision, corporate governance principles. According to the assessment’ results banking legislation was found to be compatible with the banking Directives of the European Union and modern practices of central banking and in line with basic principles of the Basel Committee.

**Appeal to decisions**

The NBM decisions can be appealed to the Court. Nobody other than the Court, can overturn the decisions of the NBM.

**Consultations and coordination**

Each year, the Government consults the NBM on its objectives on domestic and external public sector borrowing during the next financial year, including the amounts to be contracted and the terms and conditions of such borrowings.
4.6. COURT OF ACCOUNT (COA)

Relations and interactions with the Parliament:

- The President, the Deputy President and the members of the CoA are appointed by Parliament.
- The termination or suspension of the mandate of the Members of the CoA is approved through the Parliament Decision, at the proposal of the President of the Court of Accounts.
- The CoA’s budget and the budget for at least the following 2 years is approved by the Parliament.
- The annual external audit of the financial statements of the CoA is carried out by an independent, renowned and experienced external audit organization selected by the Parliament based on a tender.
- The Parliament or Parliamentary factions may request the CoA to perform audit work. The audit work may be requested without the decision of Parliament, at the request of any Parliamentary fraction, once a quarter.
- As regards the improvement of the relationship with the Parliament, it is necessary to enforce the capacity of the CoA and the Parliament to better interact in order to increase the efficiency of management of public finances and public property management.

Other key-points:

- Criteria for dismissal do not include performance in office.
- Open vacancies at the Court of Accounts severely hamper the functioning of the Court.

The Court of Account (CoA) was established in 1994. The CoA is a legal entity of public law and its main objective is the assessment of the regularity, legality,
conformity, economy, efficiency, and effectiveness in the management of public financial resources and public property, promotion of the internationally recognized standards on the transparency and accountability in the area of public financial management. It is the only public authority that carries out external audits in the public sector as a Supreme Audit Institution. According to the relevant laws, the CoA has organizational, functional, operational and financial independence.

Following is an assessment of the independence and accountability of the CoA based upon the conceptual framework established in the first chapter of this report.

**Independence**

**Institutional design and decision-making**

The Plenary of the CoA is a collegiate body consisting of 7 members, including the President and Deputy President of the Court of Accounts.

The President of the CoA is appointed by the Parliament for a five-year period, at the proposal of the Parliament Speaker, based on a majority vote of the elected Members of Parliament. The Parliament Speaker proposes the candidate for the position of the President of the CoA after the mandatory consultation of the Parliamentary fractions. The Deputy President of the Court of Account is appointed by the Parliament, at the proposal of the President of the CoA out of its members.

The members of the CoA are appointed by the Parliament, at the proposal of the President of the Court of Accounts, for a five-year mandate with the majority vote of the elected Members of Parliament. The mandate of CoA member may be renewed only once in succession.

Any person may apply for the position of Member of the Court of Accounts, if he/she is a citizen of the Republic of Moldova and does not hold the citizenship of another state, holds a higher education degree in economics, finance or law and whose professional qualifications and experience gained over the past 10 years are appropriate for the performance of Court of Accounts' tasks.

A person is not eligible for the position of Member of the Court of Accounts, if he/she reached the retirement age, during the past years was member of the
Government, manager of a central public authority or held another position of the highest importance, whose appointment or selection is regulated by the Republic of Moldova Constitution and organic laws, empowered with the tasks of managing public financial resources, is condemned through a final and irrevocable Court ruling or has outstanding criminal record, or is or has been a member of organizations, unauthorized under the law in the Republic of Moldova.

The position of the Member of the CoA is incompatible with any other remunerated activity, except for didactic, scientific and creative work and it will cease any political activity, including in political parties or other social and political organizations during the exercise of their mandate.

The mandate of a member of the CoA ceases upon expiry of the period he/she was assigned for, revocation; deliberate resignation and decease. The mandate of the members of the CoA may be revoked when he/she looses the Republic of Moldova citizenship; convicted through final and irreversible ruling of a Court of law for a committed offence; unable, for health reasons, to perform his/her duties for more than 4 months consecutively; declared as missing incompatible with another remunerated activity, activities in a party or another social-political organization.

The activity of the CoA member is suspended upon initiation of criminal proceedings in his/her respect, when registered as a candidate for an elective position. The termination or suspension of the mandate of the Members of the CoA is approved through the Parliament Decision, at the proposal of the President of the Court of Accounts.

The meetings of the CoA Plenary are deliberative, if attended by at least 5 members of the Court of Accounts, and the Court decision is approved with the vote of at least 4 members. The Plenary meetings are public, but the President of the CoA may arrange closed-door meetings, if this is necessary to keep the state, commercial or other secrets protected by the law. When taking the decisions, the Plenary of the CoA keeps the secret of deliberations and vote. During the Plenary meeting, the CoA approves the policies and strategies of the Court, audit reports, internal documents and the judgments of the Court of Accounts’ Plenary are issued in the form of Court of Accounts’ Decisions.
**Political independence and independence in practice**

In exercising its duties and powers, the CoA is independent and not subject to direction or control of any other natural person or legal entity. The CoA is non-political and neither supports nor assists any political party.

Currently, out of seven members of the CoA Plenary only two are in place, one of them is the President of the CoA recently appointed (15/04/2011) and a member of the Court of Accounts. For the other 5, the mandate has expired and the seats are vacant.

The Members of the CoA are independent in carrying out their mandate and immovable during the mandate period. They have functions of public dignity through appointment and comply with the regulations of the law on public service. The Members of the CoA may not be investigated, retained, or arrested unless requested by the Prosecutor General, with the consent of the Parliament.

The decisions of the CoA on audit reports are formal and binding for all public authorities, legal entities and natural persons.

The CoA decides independently on its Activity Program, and on the way of its implementation. The Audit Activity Program of the CoA is planned for one and/or three years. No public authority may request or force the CoA to change its Audit Activity Program, to carry out or stop certain audit activities, only the Parliament or Parliamentary factions may request the CoA to perform some audit work. The audit work may be requested without the decision of the Parliament, at the request of any Parliamentary fraction, once a quarter.

**Finances**

The CoA is fully financed from the State budget and has its own budget. The CoA estimates the costs of its activity and plans its own annual budget and the budget for at least the following 2 years. The Parliament approves it before 1st of July of the current year. The Parliament submits to the Government the approved budget of the CoA to include it in the draft State Budget Law for the following budget year. The President of the CoA manages the financial means in accordance with the approved budget of expenditures.
The salaries of the CoA employees are set according to the Law on Salaries in the Public Sector no. 355-XVI of 23rd of December 2005, the Government Decision on the Wages of Civil Servants and Persons Performing Technical Services no. 525 as of 16.05.2006 and also according to the Regulation of Human Resources Management within the Court of Accounts, approved by the Court of Account’s Decision no.62 as of 05.10.2010.

In 2010 the budget of the CoA was MDL 33,8 millions, of which MDL 16,1 million are from the state budget and MDL 17,7 million - sources from external grants.

**Staffing**

The CoA is managed by the President of the CoA and he approves the organizational structure and chart of positions of the Court of Accounts, appoints and dismisses the staff of the Court of Accounts. In the Regulation on Human Resources Management within the Court of Accounts, approved by the Court of Account’s Decision no.62 as of 05.10.2010, the staff policy of the CoA is provided.

The public audit and specialized staff fall under the public service legislation. The number of staff of the CoA is decided by the Parliament. By the Parliament Decision no. 116-XVIII as of 23.12.2009, the CoA staff was in the number of 150 units, including 7 positions that have the level of public dignity, 108 - civil servants and 13 units of staff that ensure the functioning of the Court of Accounts.

The terms for the remuneration of the Court of Accounts’ staff are specified in the law.

**Accountability**

**Reporting and transparency**

The CoA submits annually by 15 March to Parliament: the financial report on the implementation of its own budget during the expired budget year; and the Report on the Management and Use of Financial Resources and Public Property (by 15 July), reviewed in the Plenary Meeting of the Parliament. This Report is published in the Official Gazette of the Republic of Moldova within 15 days after its submission and review in the Parliament.
The CoA may also submit to the Parliament other reports, that it believes are necessary to be submitted. There is no standard reporting form.

The audit reports are examined during the meetings of the CoA Plenary, where besides the entity’s responsible person for auditing and debating the report, if needed, the opinion of other experts and specialists from related areas can be requested.

The audit reports, as well as the CoA decisions are published in the Official Gazette of the Republic of Moldova within 10 days following the expiration of the appellate term; in case of appeal they are published only after the adoption of the final Court ruling.

**Financial report**

The annual financial statements of the CoA are subject to external audit to be carried out, in accordance with the international standards of auditing, by an independent, renowned and experienced external audit organization selected by the Parliament based on a tender.

The Members of the CoA have to declare their income and property under the laws in force.

**Appeal to decisions**

The CoA decisions on the audit reports may be appealed in the Supreme Court of Appeal during 30 days since their approval. The applications for appeal, requiring a calculation of the prejudice or other negative consequences, resulting from the actions of the audited entity shall be examined by an independent expert team, consisting of uninterested specialists.

**Consultations and coordination**

When performing the audit, the CoA may contract or involve qualified specialists to assist it accordingly in the fulfillment of its tasks, as well as request some specialized state institutions to carry out specialized verifications that will facilitate the clarification of some findings.
4.7. NATIONAL AGENCY FOR THE PROTECTION OF COMPETITION (NAPC)

Relations and interactions with the Parliament:
- At the request of MPs, the Agency has to provide relevant information and explanations related to its activity.
- General Director and 2 Deputy Directors of the Administrative Board are appointed and may be dismissed by the Parliament.
- The financial report is presented to the Parliament.

Other key-points:
- Although Parliament does three appointments in the Administrative Board, it leaves four contractual appointments to the Agency itself.
- Financial independence is not ensured, due to strong dependence on the Ministry of Finance.

The National Agency for Protection of Competition (NAPC) was created by the Parliament Decision No. 21-XVI as of 16.02.2007. The National Agency for Protection of Competition promotes the state policy in the field of the protection of competition, limits and suppresses the anti-competitive activity of economic entities and public administration authorities, as well as exercises control over the implementation of the Law on the Protection of Competition. The Agency performs its functions in accordance with the Law on the Protection of Competition no. 1103 as of 30.06.2000.

The Agency is a permanent authority in public administration, operates and issues decisions independent from other Government authorities.

Following is an assessment of the independence and accountability of the NAPC based upon the conceptual framework established in the first chapter of this report.

Independence

Institutional design and decision-making

The National Agency for Protection of Competition is headed by an administrative board. It is a collegial body and consists of seven members, including the General Director and two deputies.
The General Director and 2 Deputy Directors of the Administrative Board are appointed by the Parliament after the nomination of the President of Parliament and with the positive opinion of the relevant committee of the Parliament for a period of five years. Other 4 members of the Administrative Board are appointed by the Director General on a contract basis for a period of five years.

The decisions of the Administrative Board are adopted with a majority of votes and every Administrative Board member has one vote.

The members of the Administrative Board have to be citizens of the Republic of Moldova, have economical or legal university degree and at least 5 years of working experience in the economic sector.

The General Director and 2 Deputy Directors of the Administrative Board may prematurely be dismissed by the Parliament on the proposal of the President of Parliament in cases of resignation; expiration of the mandate, cessation of the Moldovan citizenship, inability to exercise the powers due to health problems, elected to another office, sentenced to imprisonment by a final Court ruling, infringements.

The Parliamentary decision on the appointment, dismissal or removal from office of the members of the Agency’s Administrative Board is adopted by the majority vote of the present MPs at the session.

**Political independence and independence from regulated industry**

The members of the Administrative Board are not eligible to be members of administrative councils, boards of directors, departments, committees and other management structures of the companies, undertake any other paid activity, except scientific activity, teaching and creative work, receive financial or material reward from companies and entrepreneurs, exercise their powers in advertising.

**Finances**

The Agency prepares its annual budget based on the sources from state budget, the fees for examining applications, a percentage of imposed fines, collections from publications.

The salaries of the General Director, Deputy Directors and the members of the Administrative Board’s are established by the Law on Salaries in the Public
Sector no. 355-XVI of 23rd of December 2005 and respectively are 6,500 lei, 6,000 lei and 4,000 lei. This is in line with other Agencies.

The budget of the Agency was MDL 3,159,300 in 2010, 2% of which were the revenues from fees for examining applications.

The Agency’s financial independence is not ensured for the reason that the Agency is mainly financed from the state budget and thus depends on the decision of the Ministry of Finance in allocating funds for the Agency.

All the expenditures of the Agency have to be done with a prior agreement of the Ministry of Finance. As experience has shown, the Agency hasn’t enough capacity to negotiate its budget with the Ministry of Finance. It should be mentioned that the Agency performs the control over execution by the Ministry of Finance of the Law on the Protection of Competition that leads to a conflict of interest between these two institutions. The current situation affects the salary levels of the Agency employees, which is below the salary of the ministries employees and much lower that salary levels of other regulatory authorities in the country. The monthly salary for a new employee in the Agency is about MDL 1,500 per month, which generates a large fluctuation of the Agency staff, particularly staff in the operational departments. In 2010, for example, 11 new persons were employed in the Agency and 11 have resigned.

**Staffing**

The Agency’s staff, forms and systems of remuneration are determined by its Administrative Board of Directors. Currently 41 persons are working at the Agency, out of which 38 hold public posts.

**Accountability**

**Reporting and transparency**

The annual Report on the activity of the Agency is submitted to the Committee of Economy, Budget and Finance of the Parliament. There is no requirement on the structure and content of the Report on the activity of the Agency presented to the Parliament by the Agency.

The annual report is published in the Official Gazette and in the central press.
Financial and performance audit

Annually, the Agency prepares financial reports with data on all collections made to its account and on the expenses that it had incurred over the last year. The financial report is presented to the Parliament.

Quarterly, the Agency submits its financial reports to the Ministry of Finance with detailed data on income and expenditure. Performance audit of the Agency activity is not conducted.

Appeal to decisions

The Agency decisions and regulations can be appealed to the competent Court. The procedure for submitting requests for appeals and revision of the Agency decisions is regulated in the legislation on civil procedure. Bringing the action to the Court does not suspend the execution of the Agency’s decision, during the period of its examination in the Court, except if the Court decides in a different manner. The Agency’s decision may be appealed within six months from the date of issue.

Consultations and coordination

All interested parties are notified in advance on the agenda of the Administrative Board meetings. The Agency decisions with a general interest are published in the Official Gazette of the Republic of Moldova.
4.8. CIVIL AVIATION AUTHORITY (CAA)

Relations and interactions with the Parliament:

- At the request of MPs, the still-to-be-established CAA has to provide relevant information and explanations related to its activity to Parliament.
- At present, the State Civil Aviation Administration has no direct interactions with the Parliament.

Other key-points:

- Need to implement the Civil Aviation Law no. 1237-XIII of 09.07.1997 (amended in 2010), so that a Civil Aviation Authority can be established and a Director and board be appointed.
- The annual report of CAA is presented to the ministry, there is no fixed term of office for the Director, organization and staffing are determined by the ministry. As a result, the Agency cannot be considered independent.

The Civil Aviation Authority (CAA) is responsible for the implementation and enforcement of the civil aviation legislation and for overseeing the implementation of development strategies. The Civil Aviation Authority is the public authority responsible for certification, supervision and control in civil aviation. It’s a ministerial Agency under the Ministry of Transport and Road Infrastructure. It has legal personality and an autonomous budget. According to the relevant legislation\(^\text{32}\), the CAA exercises its functions and powers under a regulation approved by the Government. The CAA conducts aircraft inspections, provides expertise and ensures surveillance procedures, certification, authorization or approval.

Following is an assessment of the independence and accountability of the CAA based upon the conceptual framework established in the first chapter of this report.

Independence

**Institutional design and decision-making**

Although the Civil Aviation Law no. 1237-XIII of 09.07.1997 was amended in 2010 in order to create the Civil Aviation Authority, the Law is still not being implemented. As a result, the State Civil Aviation Administration continues to carry out its responsibilities, instead of an independent Civil Aviation Authority. Therefore, no Director of the Civil Aviation Authority has yet been appointed.

According to the mentioned law, the Director of the Civil Aviation Authority ought to be appointed by the Minister of Transport and Road Infrastructure. The law foresees no fixed term of office. The Director of the Civil Aviation Authority must have higher education and work experience in civil aviation of at least three years. No specific provisions for dismissal are mentioned in the law.

**Political independence and independence from regulated industry**

The activities and items that are subject to inspections by the Civil Aviation Authority are established by the Ministry of Transport and Road Infrastructure. Also the status of the aeronautical inspectors is set by the Ministry of Transport and Road Infrastructure.

**Finances**

The budget of the Civil Aviation Authority is formed from the payments related to the surveillance of the certification conditions of air navigation services, airline operators and airports. The amount of these payments is established by the Government decision and payments are transferred monthly by the certified undertakings to the Authority’s banking account.

Every year until the 15th of November, the Authority prepares the draft budget for the next year, which consists of payments related to surveillance. The budget is annually approved by the Government within the limits that are sufficient to cover expenses necessary to ensure the Authority’s functions and duties and its financial independence. The Authority has the exclusive right to use the funds from the account according to the approved budget.

The State Civil Aviation Administration’s budget for 2010 was MDL 33,000,000. Because the Civil Aviation Authority wasn’t established, fees for services are determined currently by the State Civil Aviation Administration.
**Staffing**

The internal organizational structure of the Civil Aviation Authority and the system of remuneration is approved by the Ministry of Transport and Road Infrastructure. The total number of employed persons by the State Civil Aviation Administration is currently 64 (including subcontracted staff).

**Accountability**

**Reporting and transparency**

The audit report on the Authority’s budget is presented to the Ministry of Transport and Road Infrastructure. Annually, until the 1st of May and the Authority submits its financial report to the Ministry of Transport and Road Infrastructure.

**Financial and performance audit**

The administration of the Authority’s budget is verified by an independent audit. The audit report is presented to the Ministry of Transport and Road Infrastructure. Before the 1st of May, the Authority submits its financial report to the Ministry of Transport and Road Infrastructure.

The State Civil Aviation Administration is subject to performance audit and has been audited by international organizations audits (ICAO, EASA).

**Appeal to decisions**

The decisions of the Authority are challenged in Court in accordance with existing legislation. The appeal does not suspend the execution of the contested decision, if the decision is related to ensuring the flight safety and aviation security.

**Consultations and coordination**

The Civil Aviation Law and pertinent acts prescribe the obligation to explain the decisions to the applicants and according to national legislation in force, consultations with the industry or public are a mandatory part of the rulemaking process.
4.9. MEDICINES AGENCY

Relations and interactions with the Parliament:

- At the request of MPs, the Agency has to provide relevant information related to its activities.
- The Agency interacts with the Parliament Committee for Social Protection, Health and Family in the process of drafting new legislation. This interaction is done through the Ministry of Health.

Other key-points:

- The Director General is appointed and dismissed by the Government and the Deputy Directors are appointed and dismissed by the Minister of Health. The Agency reports to the Ministry of Health. The Medicines Agency can hardly be considered an independent Agency.
- The procedure for appeals is not specified clearly.

The Medicines Agency is a ministerial Agency that is subject to the Ministry of Health and aims to achieve the basic state policy in the field of medicines and pharmaceutical activity. The Agency is a legal entity, has its own balance sheet, treasury accounts, enters into contracts or assumes liabilities, and the applicant may be claimed in Court (what does this mean?). The main directions of activity of the Agency are the authorization (expertise, approval and recording) of medicines, medicinal quality surveillance, pharmaceutical surveillance and control activities, monitoring and coordinating the supply of pharmaceutical care medicine nationwide. The Medicines Agency Regulation is approved by the Government.

Following is an assessment of the independence and accountability of the Medicines Agency based upon the conceptual framework established in the first chapter of this report.

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Independence

Institutional design and decision-making

The Agency’s management is performed by the Director General, the first deputy Director and another deputy Director. The Director General is appointed and dismissed by the Government at the proposal of the Ministry of Health. The main requirement to appoint the head of the Agency is selection of a candidate from the related professional area.

The Director General manages the Agency and is responsible for all the activities. He implements the Ministry of Health’s decisions and ensures compliance with legislation in the Agency’s work. The deputy Directors are appointed and dismissed by the Minister of Health at the proposal of the Director General of the Agency. The Director General and the deputy Directors do not have a fixed term of office.

Deputy Directors of the Agency perform and organize the management and control of subdivisions, ensure due process and discipline and enforcement Agency directives. The Deputy Director of Quality Assurance runs one of the subdivisions of the Agency. The rights and obligations of the Deputy Directors are determined by the Director General of the Agency.

The Agency issues decisions and orders in the field of medicine and pharmaceutical activity and publishes them in the Official Gazette of the Republic of Moldova. It also approves documents on quality, efficiency and safety of medicines. The Agency approves and issues authorizations and certificates of registration for drugs. The Agency submits the draft orders in the field of drugs authorization to the Ministry of Health, which subsequently are approved by the Ministry of Health.

A College of 11 members, that includes representatives of the Ministry of Health, Ministry of Informational Technologies and Communications, Custom Departments, Republican Pharmaceutical Associations NGO and Local Manufacturer “Farmaco”, acts in the Agency.

The nominal composition of the College is approved by the Ministry of Health, and Regulations on the activities of the College are approved by the Director General of the Agency. The College examines key issues in its meetings deriving from the basic tasks and functions of the Agency, examines the most important legislative projects, methodological documents, regulations, instructions.
The College decisions are enforced by the orders of the Director General of the Agency. All regulations developed by the Agency must be transparent (website, official paper of the Agency).

At the Ministry of Health proposal, the Government approves, modifies, completes and repeals the Regulation of the Agency.

**Finances**

The Agency’s Regulation stipulates that the Agency’s budget is created from the state budget resources, sources obtained from the provision of paid services, and other means that do not contravene the legislation. However, no allocations are transferred from the state budget to the Agency and the Agency’s budget is formed from sources obtained from the provision of paid services. The Agency’s account is in the State Treasury.

In 2003, the fees for services provided by the Agency have been determined and fixed by the Government Decision no. 1135 of 18.09.2003. Currently, the same fees still apply; and are considered quite low. As a result, the Agency has insufficient financial sources, which does not allow a proper remuneration of qualified staff, which consequently leads to failure to maintain or employ highly qualified specialists in the Agency.

The Agency develops the draft budget for the next year and submits it to the Ministry of Health for approval. After approval by the Ministry of Health, the Agency’s budget is approved by the Ministry of Finance and is included in the Budget Law, which subsequently is approved by the Parliament. The Agency budget in 2011 is MDL 26,000,000 and for 2010 was MDL 20,456,000.

Director General of the Agency manages the funds of the Agency and other material resources.

**Staffing**

The Director General of the Agency, in accordance with applicable law and under contract, employs, transfers and fires Agency’s subdivisions staff, sets the base salary of employees in accordance with the evaluation results. The Director General of the Agency approves, by the order, the distribution of functions, powers, duties and responsibilities of the Agency managers.
The Director General’s salary is established by the Law on Salaries in the Public Sector no. 355-XVI of 23rd of December 2005 and the salaries of the Agency employees are set according to the salary scale determined by the Government Decision on the Conditions for Staff Remuneration in the Public Sector Units no. 381 of 13.04.2006. A Salary Commission operates within the Agency that sets the salary supplements for the employees.

### Accountability

#### Reporting and transparency

Before 25 January of each year, the Director General of the Agency submits to the Government and the Ministry of Health the annual Report on the activity of the Agency and the Agency’s financial report is presented to the Ministry of Health. The annual Report must be approved by the Ministry of Health. The Agency’s financial report is submitted quarterly and annually and there are standard reporting forms approved by the Ministry of Finance. There is no standard reporting form for the activity report.

#### Financial and Performance audit

The financial control over the economic activities of the Agency is carried out by the Court of Accounts. A performance audit of the Agency activity is not conducted.

#### Appeal to decisions

According to the relevant legislation, the decisions of the Agency on procurement of drugs for public needs can be challenged in Court. There were cases when the public procurement on drugs was suspended prior to the Court’s final decision. As far as other Agency decisions is concerned, one may request explanations. If the disagreement remains, one may address appeal to the Ministry of Health or to the Court. In summary, the Agency’s Regulation does not stipulate the manner how the Agency decisions may be attacked, suspended or canceled.

#### Consultations and coordination
4.10. INTERNATIONAL ASSOCIATION OF ROAD TRANSPORTERS OF MOLDOVA (AITA)

Relations and interaction with the Parliament:
- Its Council is accountable to its own General Assembly, rather than towards the Government or Parliament.

Other key-points:
- AITA is not a classical ‘regulatory Agency’, but rather an Association of transport companies. It is a self-financed and self-governed organization, with internal governance structures that comprise a ‘general assembly’, a ‘council’ and a ‘president of the council’. As a result, AITA has considerable independence.
- It therefore provides an interesting illustration of ‘internal accountability’, rather than ‘external accountability’.

The International Association of Road Transporters of Moldova (AITA) is the non-Governmental and non-commercial organization that brings together transportation enterprises and professional organizations from Moldova. AITA was founded in 1992 on democratic principles in accordance with the Regulation on household companies in Moldova, approved by Government Decision no. 500 from 10.09.1991.34

AITA is one of the biggest associations from Moldova. Currently, AITA accounts for more than 825 transport operators of which 63 companies are the members-founders of AITA, 414 transport operators are the TOR CARNET holders, and 341 are using the services provided by AITA without a right to use TIR CARNETS.

AITA’s role is to represent and defend its members in relations with national and international bodies in the road transport sector. Within territory of Moldova AITA is accredited and is a guarantor of the Customs TIR Convention of 1975.

AITA provides international road haulers with the documents necessary for the transports such as: TIR CARNETS, CMR notes, Compliance Certificates, as well as the services necessary for the daily business of the transport operators: tachograph installation, ESSO fuel cards, insurance services, professional training for drivers and managers, provides road-traffic related information, issues the authorizations for the vehicles to be admitted to the transport of goods under

the customs seals, etc. More than 200 enterprises and organizations benefit from the services provided by the AITA.

Following is an assessment of the independence and accountability of the AITA based upon the conceptual framework established in the first chapter of this report. This chapter on the AITA is compiled based upon two sources of information: analysis of the relevant national legislation for this sector, information and comments from the in-person meeting with the president of AITA.

**Independence**

**Institutional design and decision-making**

AITA’s structure includes the: General Assembly, Council of the Association, President of the Association who is also President of the Council of the Association.

AITA is managed by the Council of the Association, which consists of the President and 10 members of the Council.

The President of the Council of the Association is elected by 65 companies - active members of Association for a period of five years. The President of the Council of the Association presents the report on the Association’s activities and its financial report to the General Assembly.

**Finances**

AITA’s budget is created from sources obtained from the provision of paid services by AITA. Prices for services offered by AITA are established by the Council of Association. According to its Articles of Association – all the profit remained after tax payment and other obligatory payments is not distributed between the members of the Council but according to the Council decisions is invested in the development of the road transport in Moldova.

**Accountability**

**Reporting and transparency**

The President of the Council of the Association presents the report on activity and financial report to the General Assembly. No report is provided to Parliament or Government.
Appeal to Decisions

The International Association of Road Haulers of Moldova has founded an arbitration chamber which solves disputes between the members or between the Association members and other entities – legal or individuals.

Comparative Analysis and Overview Table of Moldova Agencies’ Application of Instruments of Independence and Accountability

Based upon the conceptual framework as outlined in the first chapter of the report, and the in-depth review of the functioning and the legal framework of the ten Agencies in previous pages, a comparative analysis across the Agencies is presented here. The table (next page) gives an overview of the 34 indicators relevant to the independence and accountability instruments, as described in above pages. These 34 indicators have been examined for each of the ten Agencies under review.

The table indicates that for only 4 out of 34 indicators there is full consistency among all 10 Agencies. This means that all 10 Agencies have the same characteristics for only four indicators. For 8 out of 34 indicators there is consistency among only 8 Agencies. These figures illustrate the lack of coherence and consistency in the application of the instruments of independence and accountability across the ten Agencies. This represents a loss of efficiency and transparency. Consequently, it makes oversight by Parliament unwieldy, and impossibly costly to manage with the Parliament’s current capacity, whereas for large capacity increases, there is currently no budget. It is also a clear impediment to transparency of the Agencies.

Whilst some of the differences in provisions -- e.g. a four-year, five-year or six-year tenure for members of the Boards of various Agencies – appear inspired by sector-specific requirements, it appears that many of the inconsistencies are the result of “sui generis” creation of the laws regulating these Agencies, and could therefore be harmonized.

The table further demonstrates that the four instruments contributing to independence (institutional design, actual independence, budget and staffing) are being applied with little coherence across the ten Agencies.
On institutional design issues, the legislative framework foresees that most Agencies are governed by a Board or Commission, whose head and members are selected or appointed by Parliament. For the Electronic Communications Agency, it is unclear why the Government and not Parliament appoints the members of the Agency. For the Competition Agency, it is unclear why Parliament appoints three persons to the board (Director and Deputy-Directors) but leaves it to the Director to appoint four other members of the administrative board, which are also recruited on a contract basis. This is inconsistent with the requirements for internal good governance and not in line with practices in other Agencies.

Across Agencies, most board members have a fixed term in office, which can be renewed once or more often in five of the ten Agencies. Following the previously discussed need for harmonization, we would recommend a five-year tenure, as a general rule, for Directors of all Agencies, while keeping a longer seven-year tenure for the Board of the National Bank. This would meet the requirements of domestic Agencies and be consistent with international standards. The tenure of appointment however should not coincide with the electoral cycle and have a life span beyond one term of Parliament and Government.

The Moldova legislation has established clear criteria for eligibility for membership of the board or council of the Agencies. In most cases it has determined clear and objective criteria for dismissal or removal from the board or council. In a few cases however, the grounds for dismissal are vague and open to abuse as they pertain to ambiguously defined criteria of performance of duties in office and personal conduct. This is the case for e.g. the National Bank of Moldova and the Financial Markets Agency. As a result, for instance, between 2000 and 2010 the Telecommunications Agency witnessed five cases of premature dismissal. On some occasions, the dismissing authority has failed to substantiate its decisions to dismiss board members, which is clearly inconsistent with best practices. Additionally, procedures for clarification and appeal against dismissal are not always clearly specified. As we remarked before, such provisions and breaches opens the door to abuse.

Across Agencies, different practices occur when the mandate of a member of the Board expires. Currently, the Court of Accounts has five out of its seven board positions vacant because the mandate of the previous Board members expired and Parliament did not succeed in timely appointing their successors. This highlights differences in practice with other Agencies that keep board
members in place until new members are appointed (e.g. National Commission for Financial markets)

In terms of actual independence, each Agency has outlined conditions of incompatibility for Board members holding other official positions within the state apparatus. Agencies have also determined the requirements to cease relationship with the industries regulated by the Agency in order to avoid conflict of interest. However, many Agencies have not specified time limits on the “grace period” to avoid the “revolving door practice” in which previous Agency officials leave the Agency to work in the previously regulated, private sector, or shift from the private sector to the regulating Agency, etc. The provisions for conflicts-of-interests are therefore present for simultaneous conflicts-of-interests, but not for consecutive one’s and may therefore be in some cases insufficiently stringent. One of the few exceptions is the Energy Regulatory Agency, where a two-year grace period exists during which Directors of the Administrative Board cannot take positions in the companies regulated by the Agency after they leave the Agency.

Several Agencies mentioned interference from the Government on their decisions, in particular on the question of the registration and publication of their decisions. This seriously impedes the independence of the Agencies, as it hands de-facto veto powers to the Ministry of Justice over decisions of regulatory Agencies.

The sources of the Agencies’ budget also vary. One Agency relies on state funding only (Court of Accounts). Six Agencies rely only on incomes from non-state budget courses, such as fees and taxes on regulated industries. Three Agencies rely on both sources of incomes. All Agencies prepare their own draft budget. Parliament reviews and approves the draft budget of only four Agencies. In the other cases, a Government ministry or the Agency itself approves the budget.

The picture in terms of staffing policy and human resources is very mixed across the ten Agencies. While the selection criteria for staff are mostly determined by the Agencies, in only half of the cases are the decisions on remuneration of staff determined by the Agencies themselves. In the other cases, it is determined by specific legislation in force. Only three out of ten Agencies decide themselves on the remuneration for the head of Agency. Staffing policy and remuneration of
several Agencies follow the staffing policy of the 2005 Law on remuneration of civil servants. It is not clear why this law is applicable to some Agencies and not applicable to different Agencies. The salary levels for staff at the Competition Agency are below the salary levels of the relevant ministry and are much below the salary levels of other regulatory Agencies in Moldova, which leads to large staff turnover.

The table also reveals that the four instruments contributing to accountability (reporting, financial and performance audit, appeal procedures and consultations) are being applied inconsistently across the ten Agencies.

From the ten Agencies, six are sending an annual report to Parliament. Other reports are sent to the Government. Content or structure requirements for the annual reports are not in place for any of the Agencies reporting to Parliament. In general terms, reports are being published and available to the public. All Agencies (except the Road Transport Association) are submitting a financial report to either Parliament or Government. Since the Road Transport Association is not an Agency, but a professional association, there are no external reporting obligations to any of the state institutions and reporting is to its own General Assembly.

Also the practices in relation to financial audits are quite divers. Only three Agencies have their financial reports audited by the Court of Accounts. An external performance assessment is only conducted for the National Bank and foreseen to be conducted for the Civil Aviation Agency. An international auditing firm inspects the Court of Accounts.

The appeal procedures for all Agencies are foreseen with the Courts. However, several Agencies raised the concern that Courts suspend decisions of Agencies in a way which undermines the effectiveness of their work as Courts often take a long time before making a final judgment after the imposed suspension. The provisional Court rulings structurally favor of the complainant and disadvantage the defendant. In combination with the long lead time to arrive at final rulings by the Court, this effectively undermines the execution of Agencies decisions.

Most Agencies foresee formal and informal consultations on their decisions; and they also publish the outcomes of these consultations.
Overview table of Moldova independent Agencies’ application of instruments of independence and accountability

<table>
<thead>
<tr>
<th>Instruments</th>
<th>Indicators</th>
<th>NAER</th>
<th>NRAECIT</th>
<th>NAPC</th>
<th>NCFM</th>
<th>ACC</th>
<th>NBM</th>
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<td>Incompatibility with other functions</td>
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<th>Independent and Regulatory Agencies in Moldova[^5]</th>
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<td><strong>Accountability</strong></td>
<td><strong>NAER</strong></td>
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<td>Reporting and transparency</td>
<td>Salary head of Agency: Agency decides</td>
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<td>Annual report submitted to Parliament</td>
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<td>Structure &amp; content requirements report</td>
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<td>Own initiative to submit info to Parliament</td>
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<td><strong>Financial and performance assessment</strong></td>
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<td>Report published on web, Official Gazette</td>
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<td>Financial Audit by Court of Accounts</td>
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<td>Clear objective</td>
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<td><strong>System of appeals</strong></td>
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<td>Reports publicly availability</td>
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<td>Appeal to Court</td>
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<td>Timely processing of appeals by Courts</td>
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<td></td>
<td><strong>Consultations and coordination</strong></td>
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<td>Court appeals suspend Agency decisions</td>
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<td>Informal and formal consultations</td>
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<td>Conclusions consultations published</td>
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* not specified in the Law

XX – no information. Moldovan Agency for International Road Transportation.
V. International practices and European policy framework for the energy regulatory agency

The objective of this chapter is to provide an initial basis for international benchmarking of the energy regulatory agency in Moldova. It puts the institutional design and the functioning of the Moldova energy regulatory agency in a double, comparative perspective.

Firstly, we will analyze selected international practices for energy regulatory agencies, insofar related to the characteristics of independence and accountability of agencies as outlined in the first, conceptual chapter of this report. Secondly, we will give the perspective of the most relevant provisions of the European policy framework for energy regulatory agencies, also insofar related to the independence and accountability of agencies.

The information on the European policy framework and practices in selected countries will thus provide a framework against which the energy regulatory agency in Moldova can position itself.

I. SURVEYS ON INTERNATIONAL AND EUROPEAN PRACTICES

In order to get a better picture of international and European practices in the energy sector, we have identified and reviewed three surveys. Reviewing their findings makes us realize that comparing different practices is a delicate exercise, due to the different political, societal and legal context. Nevertheless, in relation to the features of independence and accountability, a number of interesting trends emerged, in particular as the timeframe spans a period of 10 years.

While the first survey provides interesting findings from the “old Europe” (EU 15), the third survey provides recent insights from the “new Europe” (Baltic States).
The second survey provides information on practices from across a number of European and non-European OECD countries.

1.1. SURVEY ONE: THE “OLD EUROPE”

Empirical data of European electricity regulators for 14 out of the (old) 15 EU member states, and Norway, were published in 2004.\(^{36}\) It surveys the members of the Council of European Energy Regulators (CEER). It gives a good picture of the energy agencies prior to EU-enlargement. Although some of the institutional design-issues in the EU 15 countries might have slightly evolved, due to the EC Directives of 2002 and 2009 mentioned further in this chapter, we believe it is useful to understand how energy regulators were functioning in the beginning of the years 2000, since our perspective on Moldova stems from a similar perspective where these EC Directives are not (yet) in force.

Leadership of regulator

There are two main types of leadership: boards and directors. All South European authorities (Greece, Portugal, Spain and Italy) as well as Great Britain, Belgium, France and Denmark have commission/board type leadership. In Portugal and Italy there are three-person commissions, consisting of a president and two members. The Irish authority is formally a commission, but there is only one commissioner. In Austria the regulatory tasks are divided between a company owned by the government and a three-person commission. Other countries have larger commissions. In most North European countries, i.e. Sweden, Finland and Norway, the regulatory authority is organized as an agency with a director as leader.

Appointment and dismissal of commission or person in charge

The survey researchers regard regulators with a long tenure, who are appointed by the legislature, who cannot be dismissed for policy reasons and who are not allowed to hold offices in government as more independent than regulators with a short tenure, appointed by a minister, who can be dismissed for policy reasons and hold offices in government.

Most regulators in the survey are appointed by the government or by one or two ministers for a period of 4-7 years. In France, Greece, Italy and Spain the legislature is involved in the appointment. Dismissal for policy reasons is not

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possible in most countries and the commissions and heads are not allowed to hold offices in government.

**Finances and human resources**

The electricity regulator can be financed either by a fee levied on the regulated firms or from the state budget. The survey researchers consider the former as more independent than the latter.

France and Norway are cases of purely government finance whereas the other regulators are financed by fees or by a mixture. In most countries the regulator controls the budget after it has been appropriated. The exception is Spain whereas Austria and Denmark have mixed government-agency control. When it comes to matters of internal organization and personnel policy most regulators decide by themselves. Only in Austria, Denmark, Greece and Luxemburg does the government participate in decision-making.

**Independency from industry**

The European directives state that the regulator shall be independent of the industry. This obligation is interpreted in different ways in the member states. Most countries apply restrictions on the former and future affiliation of the commissioners and agency heads with the electricity industry. In some countries they are not allowed to have held a position in the industry or in its associations in the years preceding the appointment (this is the case in Austria, Italy, Luxemburg and Portugal) and some put restrictions on accepting a job in the years after their term (in France, Italy, Portugal, Spain and Ireland). The commissioners and agency heads are also forbidden to have any personal interest in the industry, a restriction that is applied in all countries.

**Independency in decision-making**

When it comes to independent decision-making most regulators are fully competent with respect to the approval or determination of network tariffs and network access conditions and the terms of delivery issued by the network companies. Exceptions are France, Spain, Greece and Luxemburg where the regulator only has an advisory role in some of these matters. In some countries the regulator has the authority to issue licenses and in most countries they can settle disputes between companies and between companies and their
customers (the main exception is Finland). Finally, most regulators possess the powers to enforce their decisions (exceptions are Austria and Spain).

1.2. **Survey two: Selected OECD countries**

A second survey studied the design and functions of energy regulators from a cross-country analysis of energy regulators in OECD countries.\(^\text{37}\) The survey, published in 2009, makes a comparative analysis of energy regulators in 23 countries. It categorized countries in groups; thus countries where:

- independent, regulatory agencies have concrete regulatory powers: Australia, Canada, Czech Republic, France, Denmark, Ireland, Italy, Portugal, UK and US;
- the ‘line ministry’ retains regulatory powers but delegates the management of some regulatory functions to an independent advisory agency: Belgium, Greece, Luxembourg and Spain;
- management is delegated to ministerial agency: Finland, Hungary, Netherlands, Norway & Sweden;
- no specialized regulatory organization apart from the line ministry.

Analyzing the institutional design of the energy regulators in the selected countries, a number of striking similarities emerge. A collegial body, commission or council, with an odd number of members governs the independent regulatory agencies, except in the Czech Republic. Appointments are for a fixed term of between three and seven years. In all countries, except Italy, the mandate can be extended at least once.

The author of the analysis, Carlos Ocana, observed that, with few exceptions, industry stakeholders are not appointed as regulators, but this does not seem to obey formal rules. Formal independence safeguards generally include that it is not possible to revoke appointments except in extreme circumstances such as serious misconduct.

While all regulators and advisory agencies have a stable funding mechanism, the source of funding differs considerably. As indicated in the table on the next page, the sources of funding include the state budget, annual fees of the regulated companies, fees for services, taxes on utilities, surcharges on transmission tariffs, or charge on the income of the regulated parties.
On the other hand, the working procedures of regulatory agencies show significant similarities. These are a decision-making process that includes an obligation to conduct hearings and consultations with affected parties and to make reasoned decisions, and to make these decisions public. For all countries with regulatory agencies, there is an appeals mechanism, which establishes that either an administrative court or an ordinary court of justice is the appeals body. In all countries there are established mechanisms to make these institutions accountable, which include an obligation to submit a report of activities to the parliament or other political body, and some form of auditing and control of performance by the relevant administrative body.

The chart on the following page also indicates that the advisory agencies (in the four mentioned countries: Belgium, Greece, Luxembourg and Spain) have jurisdiction only on economic regulation (in other words, they do not deal with health, safety or environmental aspects of the energy policy). They cover electricity and gas issues. They also set the end-user tariffs. They monitor the industry, provide advice to the minister in charge for energy policy, and are often in charge for arbitration cases.

In conclusion, the most regulatory agencies share a common blueprint concerning decision making structure, procedure and core activities. This suggests that “international benchmarking and identification of best practices can help improve the performance of regulatory agencies.” The analysis also suggests that differences among legislators reflect not only legal and administrative traditions, but also the regulatory framework adopted in each country.

Regulatory agencies have generally more power and independency in countries and industries practicing active competition policies, such as those requiring the unbundling of networks and active regulatory policies, such as ongoing regulation of network prices. On the other hand, regulatory agencies do not exist in countries that practice ‘light-handed’ regulation. So, the choice and design of regulatory organizations reflects to some extent the scope of the functions that regulators have to manage.
### Table 1: Institutional design and functioning of independent regulatory energy agencies in selected OECD countries

<table>
<thead>
<tr>
<th>Regulator Advisory Ag.</th>
<th>Australia</th>
<th>Canada</th>
<th>Czech Republic</th>
<th>France</th>
<th>Denmark</th>
<th>Ireland</th>
<th>Italy</th>
<th>Portugal</th>
<th>UK</th>
<th>USA</th>
<th>Belgium</th>
<th>Greece</th>
<th>Luxembour</th>
<th>Spain</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SCOPE</strong></td>
<td>Energy, telecomm., airport</td>
<td>Electricity, gas, oil</td>
<td>Electricity and gas</td>
<td>Electricity, gas</td>
<td>Electricity</td>
<td>Electricity, gas</td>
<td>Electricity, gas</td>
<td>Electricity, gas, oil</td>
<td>Electricity, gas</td>
<td>Electricity, gas</td>
<td>Electricity, gas</td>
<td>Electricity, telecom</td>
<td>Electricity, gas, oil</td>
<td></td>
</tr>
<tr>
<td><strong>BOARD MEMBERS</strong></td>
<td>7</td>
<td>9</td>
<td>1</td>
<td>6</td>
<td>7</td>
<td>1 – 3</td>
<td>3</td>
<td>3</td>
<td>5 + 6 non-exec. member</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td><strong>LENGTH APPOINTMENT</strong></td>
<td>Up to 5 years</td>
<td>7 years</td>
<td>5 years</td>
<td>6 years</td>
<td>Up to 7 years</td>
<td>7 years</td>
<td>5 years</td>
<td>5 years</td>
<td>5 years</td>
<td>6 years</td>
<td>5 years</td>
<td>3 years</td>
<td>6 years</td>
<td></td>
</tr>
<tr>
<td><strong>POSSIBILITY FOR RENEWAL</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes (only once)</td>
<td>No</td>
<td>Yes</td>
<td>Yes, one time</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, one time</td>
<td>Yes</td>
<td>Yes, one time</td>
<td></td>
</tr>
<tr>
<td><strong>MAIN SOURCE OF FUNDING</strong></td>
<td>Treasury Budget</td>
<td>Annual fees from companies</td>
<td>State budget</td>
<td>State budget</td>
<td>Charge on regulated companies</td>
<td>Paid by electricity undertakings</td>
<td>Tax on utilities</td>
<td>Surcharge on transmission tariffs</td>
<td>Charge income of regulated parties</td>
<td>Fees for services, annual charges utilities</td>
<td>Surcharge on transmission tariffs</td>
<td>Surcharge on electricity and gas consumption</td>
<td>Surcharge on consumption</td>
<td></td>
</tr>
<tr>
<td><strong>MAIN FUNCTIONS</strong></td>
<td>Network regulation; market rules</td>
<td>Regulation of electricity exports</td>
<td>Licensing, network regulation, end-user tariffs</td>
<td>Network Regulation</td>
<td>Network Tariffs, supervision end-user tariffs</td>
<td>Network regulation, licensing</td>
<td>End-user tariffs, network regulation</td>
<td>End-user tariffs</td>
<td>End-user tariffs, licensing</td>
<td>Rules inter-state electricity sales and transmission</td>
<td>Advice on regulatory issues, monitoring, end-user tariffs</td>
<td>Advise on regulatory issues and mergers, acquisitions, monitoring and arbitration</td>
<td>Advice on regulatory issues and arbitration</td>
<td></td>
</tr>
</tbody>
</table>

Source: Carlos Ocana, pg. 23-24.
1.3. **Survey three: Baltic States**

A third set of countries whose energy regulators are worth analyzing is the Baltic countries. Following are the main features of the energy regulators from the three Baltic countries, based upon information from prof. Jankauskas and our own research.

The *Estonian Energy Regulator* is the Estonian Competition Authority (ECA) since 2008. The ECA is headed by a Director General nominated by the Minister on the recommendation of the Ministry of Economic Affairs and Communication. The division specifically assigned to energy regulation has a staff of 12, and is headed by a deputy to the Director General. The Director General’s term is indefinite and he can be dismissed by the Minister, in accordance with the Public Service Act which precludes dismissal on political grounds. The absence of rotation means that the regulator is not assured of continuity of the regulator decisions and does not get the benefit of new, varied points of view as often as other regulators with boards with staggered terms. General public servant rules regarding conflicts of interest include prohibition on a public officer’s participation in the management of a for-profit enterprise.

The ECA’s budget is not separate from the central budget. In accordance with the state budget, the ECA submits a budget application to the Ministry of Economic Affairs and Communications. The final budget is firstly approved by the Government and afterwards by the Parliament.

Salaries are set according to the public service act and are competitive with the market. From an enforcement perspective, the ECA can revoke licenses, reduce rates of return and initiate fine proceedings. ECA decisions may be appealed to the administrative court. The ECA's decisions cannot be altered by the Government.

The *Latvian public utilities commission* is a multi-sector regulator including energy sector. It is an independent authority, with five Commissioners proposed by the Government and appointed by the Parliament for a 5 year term.

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*http://www.konkurentsiamet.ee*

period. A council member, for three years after termination of the term of office as council member, may not be an owner, a stockholder or an employee of the provider of public utilities who is entitled to take decisions or act with the property or financial resources of the provider of public utilities with respect to which the council member has taken a decision.

The decisions can be challenged only by the court. Its objectives include promotion of the competition, protection of the consumers’ interests, determination of the pricing methods, approval of tariffs, issuing licences and register of authorisations for the service providers, quality control, etc.

In Lithuania, the Energy regulator is the National Control Commission for Prices and Energy (NCC). It has 5 Commissioners appointed by the President of the country for 5 year term. They cannot be removed, only in certain cases. Decisions taken by the NCC were never reversed by the Government. It receives its funding from the State budget. According to Lithuanian Energy expert Jankauskas, there were however several attempts to include into the NCC “own people” and attempts to revise decisions of the NCC (in 2002 and 2006).

The methodologies and regulations are openly discussed. Decisions are taken after consulting all interested parties. Documents are available for interested people, and there are annual reports. There exist clear appeal in courts procedures.

From the three Baltic countries, the Latvian public utilities commission seems to be the most relevant for the energy regulator in Moldova. The involvement of parliament in the appointment of Board members, the staffing policy and conflict-of-interest legislation, budget allocation and the appeal procedure are the most significant similarities with the set-up of the energy regulator in Moldova.
### Table 2: Baltic States’ Energy Regulators – characteristics of independence and accountability

|----------------------------------------|------------------------------------------------------------------|----------------------------------------------------------|--------------------------------------------------------------------------------|
| **INSTITUTIONAL FEATURES AND GOVERNANCE** | • Estonian Competition Authority (ECA) is energy regulator since 2008  
• ECA is headed by a Director General nominated/dismissed by Minister  
• Indefinite term for the Director  
• Absence of rotation for Board | • Public utilities commission is Independent authority, since 2001, supervised by Ministry of Economy  
• Five Commissioners proposed by government, appointed by parliament  
• Fixed period of 5 years | • National Control Commission for Prices and Energy (NCC), since 1998  
• Five Commissioners appointed by President  
• Fixed period of 5 years  
• 2010 decision to merge NCC, the State Energy Inspectorate and the Communications Regulatory Authority. |
| **POLITICAL AND ACTUAL INDEPENDENCE** | • Conflicts of interest rules prohibit a public officer’s participation in the management of for-profit enterprise | Law On Prevention of Conflict of Interest in Activities of Public Officials applicable. Council members incompatability rule for three years in public utilities companies on which decisions were taken. | No info available |
| **BUDGET AND FINANCIAL RESOURCES** | • ECA financed from the state budget  
• Budget approved by government and parliament | • Financed from fees on turn-over of regulated entities | Payments of regulated economic entities made for regulatory and surveillance activities, and by other legally available funds. |
| **STAFFING POLICY AND HUMAN RESOURCES** | Salaries are set according to the public service act. | • Civil Service Law shall not apply to a regulator;  
• Remuneration of council members and employees are determined in accordance with Law On Remuneration of Officials and Employees of State and Local Government Authorities. | No info available |
| **REPORTING AND TRANSPARENCY** | Annual Report prepared in Ministry | Annual activity report submitted to parliament, along with audited financial statement. Decisions by Regulator are open and published. | Annual reports  
Documents from consultations and decisions are published and publicly available |
| **PERFORMANCE ASSESSMENT** | Financial audit | Financial audit | Financial audit |
| **SYSTEM OF APPEALS** | • Only appeal through court, not government. | • Only appeal through court, not government, but long and unpredictable appeal process in court | • Only appeal through court, not gov. appeal; clear court procedures |
| **CONSULTATIONS AND COORDINATION** | Consultations take place. | Regulator invites all involved in regulation process to participate in preparation of draft decisions. | Consultations take place. |
II. European policy framework

Analyzing the European policy framework relevant to the energy regulatory agencies, one needs to primarily take into account the Directive 2009/72/EC Concerning Common Rules For The Internal Market In Electricity, and the Directive 2009/73/EC Concerning Common Rules For The Internal Market In Natural Gas. On 22 January 2010, the European Commission published an interpretative note to those two directives, focusing on the regulatory authorities.\(^4^4\) This interpretative note contains valuable analysis and constitutes the basis for the following overview.

Both Directives have enhanced the independence of national regulatory authorities (NRAs). They stipulate that: “Each Member State shall designate a single national regulatory authority at national level.”\(^4^5\)

Following is the overview of the instruments of independence (marked with “I”), followed by the instruments of accountability (marked with “A”), as outlined in the two EC Directives.

It was noted that the EC Directives put most emphasis on the need to achieve the independence instruments, and slightly less emphasis on the accountability instruments.

Independence of the organization and staff [I]

Both directives spell out in more detail the independence requirements that need to be met by the NRA, both as an organization and as NRA staff and persons responsible for its management.

The two Directives stipulate that “the regulatory authority needs to be legally distinct and functionally independent from any other public or private entity” when carrying out the regulatory tasks conferred upon it by the Electricity and Gas Directives. Legally distinct means that the NRA must be created as a separate and distinct legal entity from any Ministry or other government body. This provision is closely linked to the requirement that the NRA should be able to take autonomous decisions. Notwithstanding national administrative rules, it is the sole responsibility of the NRA to determine how it operates and is managed,
including staffing-related matters. These provisions thus seem to rule out any hierarchical link between the NRA and any other body or institution. Moreover, the NRA can no longer be part of a Ministry.

These provisions on the independence of the NRA’s staff and persons responsible for their management are key requirements because they are aimed at ensuring that regulatory decisions are not affected by political and specific economic interests, thereby creating a stable and predictable investment climate. The aim of the provision is to guarantee that all staff and the persons responsible for NRA’s management (directors, board members, etc.) act independently from any market interest.

In the view of the Commission’s services, the two Directives require States to develop rules preventing all staff and the persons responsible for their management from pursuing any activity or holding any position or office with an electricity or gas undertaking, and from holding shares or having any other interests in an electricity or gas undertaking. In practice, the requirement to be independent from any private or public entity makes it impossible for NRA’s staff or management to work part-time for the regulator and part-time in the private or public sector.

### Independence of decisions [I]

Both directives provide for two specific sets of rules aimed at protecting the independence of the NRA. They require that “the regulatory authority can take autonomous decisions, independently from any political body, and has separate annual budget allocations, with autonomy in the implementation of the allocated budget, and adequate human and financial resources to carry out its duties.”

The requirement of NRA being able to take independent decisions means that the decisions of the NRA are immediately binding and directly applicable without the need for any formal or other approval of another public authority. Moreover, the NRA decisions cannot be subject to review, suspension or veto by the government. This precludes neither judicial review nor appeal mechanisms before any other bodies independent of the parties involved and of any government.

### Budget and financial allocation [I]

The EC Directives require that the NRA has separate annual budget allocations. In some countries, the budget of the regulatory authority is paid directly by the
electricity and gas consumers (in which case there is a clear separate annual budget allocation). In other countries, the budget of the NRA is part of the total state budget. The Directives continue to allow the regulatory authority’s budget to be part of the state budget; however, there is now a clear need for separate annual budget allocations for the NRA.

The EC Directive also requires that the NRA has autonomy in the implementation of the allocated budget. This means that the NRA, and only the NRA, can decide on how the budget is spent. It may neither seek nor receive any instruction on its budget spending. The Commission’s services are of the opinion that the role of the national parliament in approving the NRA’s budget is to grant a global financial allocation to the NRA, which should enable the NRA to carry out its duties in an efficient and effective manner. Criteria to assess this could be the budget of similar regulators and the budget of NRAs in other countries.

Nothing in the two Directives prevents national parliaments from taking a decision on whether the draft budget proposed by the NRA is, in total, commensurate with the duties and powers of the NRA. In the view of the Commission’s services it follows from the respective provisions of the Directives that the approval of the budget cannot be used as a means of influencing the NRA’s priorities or to jeopardize its ability to carry out its duties and exercise its powers in an efficient and effective manner.

**Staffing and human resources**

The EC Directives require that the NRA has adequate human and financial resources to carry out its duties. Given the complexity of (energy) regulation, an NRA must be able to attract sufficiently qualified staff with various backgrounds (lawyers, economists, engineers, etc.).

**Institutional Set-up: Appointment of board members**

The EC Directives require that “the members of the board of the regulatory authority or, in the absence of a board, the regulatory authority’s top management are appointed for a fixed term of five up to seven years, renewable once”. An appropriate rotation scheme to be put in place. This means that the end date of the term of office of the board members cannot be the same for all members.

The members of the board may be removed from office during their term only if they no longer fulfill the conditions set out in the Directives as regards their
independence or have been guilty of misconduct under national law. Although the Directives leave room for rules adopted at national or regional level as far as misconduct is concerned, it has to be stressed that the possibility to remove a member of the board during his or her term will apply in special cases only, such as fraud, bribery and breaches of the independence or impartiality of the NRA.

**Transparency [A]**

In addition to outlining instruments of independence, the EC also stipulates instruments for enhanced accountability, and requests that Member States ensure that the regulatory authority “exercises its powers impartially and transparently”. Impartiality is aimed at guaranteeing that the NRA acts and takes decisions in a neutral way, based on objective criteria and methodologies. In the view of the Commission’s services this requirement means that states must provide for dissuasive civil, administrative and/or criminal sanctions in case of violations of the provisions on impartiality.

It is also stated that the NRA must carry out its tasks in a transparent manner. In the view of the Commission’s services this means first that the NRAs must adopt and publish their Rules of Procedure, including at least procedures for decision making, and publish information on their own organization and structure.

A second aspect of transparency, in the view of the Commission’s services, is that the NRAs should consult stakeholders before taking important decisions. This should at least include publishing documents ahead of public consultations and organizing public hearings. Preferably this would also include the obligation, for the NRA, to publish a document after public consultation giving an overview of the comments received, of those that were taken into account and the reasons why other comments were not taken into account.

Thirdly, NRA decisions must be made available to the public.

**Consultations [A]**

The EC Directive stipulates that the provisions on independence do not deprive the NRA of the possibility (and duty) to consult and cooperate with other relevant (regional, national and European) authorities, and to collaborate on cross-border issues.
**Reporting [A]**

In accordance with the transparency requirement, the NRAs must report on the way they spend their budget. Ideally, this reporting will go hand-in-hand with NRA annual report on its activities.

**Parliamentary supervision [A]**

As stated in the two Directives, the independence of the NRA precludes neither judicial review nor parliamentary supervision in accordance with the constitutional laws of the country.

The Commission’s services consider that the power of parliaments to appoint members of the NRA board, the power to approve the budget and any measures of accountability set up by a country should not result in any instruction being given concerning the regulatory powers and duties of the NRA.

**National Energy Policy.**

The Directives do not deprive the government of the possibility of establishing its national energy policy. Depending on the country’s constitution and laws, it could be the government’s competency to determine the policy framework within which the NRA must operate, e.g. concerning security of supply, renewable or energy efficiency targets.

However, general energy policy guidelines issued by the government must not encroach on the NRA’s independence, the EC Directives stress.

**III. Conclusion**

The European directives and country surveys have provided us a valuable comparison to issues relevant for the Moldova energy regulator.

On the one hand, Moldova seems to be in line with several European countries in terms of a number of issues, such as the choice for a Board of the Agency, conditions for appointment and dismissal of the commission or of persons in charge, transparency through an annual report, and conducting consultations.

From the analysis of the three Baltic countries, we noted that Latvia foresees incompatibility rules up to three years after the end of their mandate for
Council members who wish to hold a position in a company regulated by the Agency. In Moldova, only within two years as of the date of the end of the term of office, the Directors of the Administrative Board cannot hold positions in the companies that are regulated by the Agency.

The survey from selected OECD countries reveals that, although comparisons are delicate due to the different political, societal and legal context in each of the countries, nevertheless in relation to the features of independence and accountability, Moldova seems to be in line with the most relevant trends, such as choice for a council / board, to have a mandate of board that is renewable and the main tasks of network regulation and setting market rules.

On the other hand, analyzing some issues mentioned in the EC directives, Moldova can still strengthen its legal framework in a number of currently weak provisions.

Firstly, the EC directives mention the need for rules preventing all staff and the persons responsible for their management from pursuing any activity or holding any position or office with an electricity or gas undertaking, and from holding shares or having any other interests in an electricity or gas undertaking. The Moldova legal framework mentions only that one cannot be “remunerated” at enterprises regulated by the Agency or have other advantages, be shareholders, have financial or material gains, facilitate employment of any person or for himself. The gap identified is that unpaid positions and other forms of non-financial influence for members of the Agency with Moldova energy companies is not excluded according to current legislation.

Secondly, the EC directives require that decisions of the NRA are immediately binding and directly applicable without the need for any formal or other approval or consent of another public authority or any other third parties. In Moldova, the requirement to register all decisions of the Agency at the Ministry of Justice, before it enters into force, and the subsequent discussions with the MOJ on content and policy, go against the provision in the European Directives.

Thirdly, the EC directives require that the NRA, and only the NRA, can decide on how the allocated budget is spent; and that the national parliament, in approving the NRA's budget, is to grant a global financial allocation to the NRA, which should enable the NRA to carry out its duties and exercise its powers.
Since in Moldova there are concerns on specific issues as the salary of senior staff, the Moldova parliament can take a decision on the budget as a whole, to accept or reject it, rather than outlining detailed budget provisions for the exact amount for salary of top management. It seems that providing guidelines on the principles to be applied for calculating the top salaries (as we suggest in the recommendations) does not go against the European directive.

In conclusion, one can observe that most regulatory agencies share a common blueprint concerning decision making structures, procedure and core activities. The analysis of the three surveys confirms that the process of international benchmarking and identification of best practices goes firmly in the direction of a specific European Commission view on a considerate balance between independence and accountability. It is thus in the interest of Moldova to have the EC view on the independence and accountability instruments above any comparisons with individual countries, which anyhow constitute different practices.
VI. European policy framework and international practices for the telecommunications regulatory agency

The objective of this chapter is to provide an initial basis for international benchmarking of the telecommunications regulatory agency in Moldova.

To that effect, we discuss the findings of a Survey of Telecommunications regulatory agencies in South-Eastern Europe (SEE) and analyze the most relevant provisions of the European policy framework for telecommunications regulatory agencies insofar related to the instruments of independence and accountability as described in the first, conceptual chapter of the report. The information on practices in South-East Europe and EU rules will thus provide a framework against which the telecommunications regulator in Moldova can position itself.

As an introduction to this chapter, we’ll provide a short overview of the European Commission’s growing involvement in the area of telecommunications.

1. Introduction

Prior to the telecommunications sector reforms undertaken in many countries telecommunications services were largely provided under monopoly conditions, either by state entities or, to a lesser extent, by private companies.

During the final two decades of the 20th century, technological advances allowed alternative ways of offering telecommunications services, thereby challenging the sector’s traditional monopoly structure.
was the first country in Europe to liberalize its telecommunications market. With the Telecommunications Act of 1984, the UK government privatized *British Telecom*, removed its monopoly over telecommunications services [which forced it to open up its network to other telecommunications companies] and established a sector regulator to oversee network competition.

In addition to the UK, the European Commission was also a driving force of liberalization. In 1990, the first European *Directive on Open Network Provision*[^46] created a single market in telecommunications services in the European Union. More liberalizing directives followed in the 1990s.

In 1998, the EU made full liberalization a legal obligation for all member states and since then its policy and regulatory framework has become increasingly recognized as the global benchmark. As part of the liberalization process, the regulatory function has been separated from the policy making function. Sector-specific, independent institutions were established to perform regulatory functions in the context of new ICT policy frameworks. An increasing number of countries followed this path. While in 1990 only 14 countries had created a national regulatory authority for their ICT sector, by the end of 2009, the number of countries and territories with such regulatory authority had increased to 153.[^47] The Inter-Telecommunication Union (ITU) has outlined a number of requirements for an effective and independent regulatory authority in the telecommunications sector, similar to the OECD conceptual framework on independence and accountability of independent regulatory agencies.[^48]

To ensure the proper policy framework for the enhanced role of regulatory agencies in the telecommunications sector, the European Commission issued in 2002 a Directive on a common regulatory framework for electronic communications networks and services.[^49] The objective of this Directive is to establish a harmonized framework for the regulation of electronic communications networks and services in the European Union. The framework is no longer limited to telecommunications networks and services but covers all electronic communications networks and services. This includes traditional fixed-line voice telephony, mobile and broadband communications and cable and satellite television.

[^46]: The objectives of the Open network Provision rules are threefold: a) to facilitate the market entry of new operators, or alternatively to prevent distortions of competition; b) to ensure a certain level of service quality for consumers; and c) to lay down a system that will enable the financing of the universal service obligation.


Against the background of the European Directive, we identified an appropriate survey of telecommunication regulation in a group of EU Candidate countries, and provide a useful framework for benchmarking and comparison for Moldova. The chapter will first analyze the findings of the survey, followed by an analysis of the 2002 EU Directive on the regulation of Telecommunications.

2. Survey of EU Candidate Countries in South-East Europe (SEE)

As part of the preparation for a possible, future EU enlargement, monitoring of telecommunication markets in South-East Europe has been performed for several years. The European Commission Directorate General for Information Society and Media contracted the company 'Cullen International'\(^{50}\) to assist the Commission and the authorities in South-East Europe in monitoring the progress made towards compliance with the EU rules for electronic communications and information society services, together with their convergence with the EU internal market.\(^{51}\)

Cullen International conducted a three year (2008-2010) monitoring and analysis project. The countries analyzed are Croatia, Turkey, Macedonia, Serbia, Montenegro, Kosovo, Bosnia & Herzegovina and Albania. The analysis included information society services in addition to electronic communications.

The analysis of Cullen International focused to a large extent on the characteristics of independence and accountability of independent regulatory agencies.\(^{52}\) Based upon the information available in the three most recent progress reports of the project - Report III of March 2010, Report IV of December 2010 and the final report of March 2011 – we decided to carry out an analytical deep-dive on the liberalization and regulation of telecommunication in the countries of South-East Europe. Moreover, these countries constitute closest proximity to Moldova in terms of both geography as well as the policy process towards the European Union in anticipation of possible future enlargement.

The following pages analyze 9 features on the functioning of National Regulatory Agencies (NRAs), based upon the mentioned reports. To a large extent, the 9 features correspond with the instruments of independence and accountability outlined in the first, conceptual chapter; but they also add some specific analysis relevant to the telecommunications sector.

\(^{50}\) www.cullen-international.com


Political independence and independence from industry

The establishment of an independent NRA is a cornerstone of the EU regulatory framework for electronic communications. Independence involves two main elements: (i) separation of the NRA from the regulated firms and (ii) isolation of the NRA from political intervention. The first aspect of independence (from industry) is generally more straightforward to assess than the second (independence from political influence).

Regarding political influence, the mere possibility of political intervention may put the NRAs under pressure. The new EU 2009 regulatory framework (mentioned further in this chapter) reinforces national telecoms regulators’ independence by eliminating political interference in their day-to-day duties and by adding protection against arbitrary dismissal for the heads of national regulators.

In general, the concept of NRA independence is being progressively introduced in the national regulatory frameworks in SEE alongside the adoption of new laws on electronic communications. The key functions of the government and the regulator were redefined in the laws adopted in 2008 in four countries: Croatia, Turkey, Albania and Montenegro, and the new Law on Electronic Communications adopted in Serbia in June 2010. The common objective was to make a clearer division between the legislative and policy-making tasks carried out by the government (or the relevant ministry) and the regulatory tasks performed by the NRA. In June 2010, the Macedonian Law on Electronic Communications was also amended to clarify the role of the NRA and the scope of its responsibilities.

The degree of progress varies substantially from country to country. Relative effective independence of the NRA has been achieved in Croatia, where the ministry is no longer involved in adoption of regulatory decisions and is restricted from influencing the NRA decisions in individual cases. The institutional frameworks in Macedonia, Turkey, Albania, Bosnia & Herzegovina, Montenegro and Serbia foresee involvement of the ministry (or government) in adopting decisions on tender procedures for spectrum authorizations and designation of universal service providers. In Montenegro, the Law on Electronic Communications gives the ministry the powers of administrative review of the NRA decisions as the first appeal instance, effectively undermining the NRA independence.
Relative effective independence of the NRA has been achieved in Croatia, where the ministry is no longer involved in adoption of regulatory decisions and is restricted from influencing the NRA decisions in individual cases.\textsuperscript{53} In Kosovo, the Law on Telecommunications was amended in 2008 to remove the provisions enabling the ministry to issue instructions to the NRA to amend a license.

To conclude, the degree of progress towards effective independence of the NRAs is not completely satisfactory but in the last three years there has been a general positive trend with the adoption of a series of new laws aimed at increasing the political independence of the NRAs.

\textbf{Appointment and dismissal of the directors of the NRA}

The rules and procedures for the appointment and dismissal of the management of the NRAs are an important factor facilitating the effectiveness of the independence. The mentioned report of Cullen International measured the eligibility criteria, procedures of appointment and government bodies involved, term in office and procedures for removal in SEE countries. They found that the situation varies across countries as far as eligibility criteria is concerned, but still with the same objective of ensuring the selection of qualified candidates.

The appointment procedures for the board members also vary from country to country, with appointment (i) by the Parliament only (Macedonia), (ii) appointment by the Parliament following a government proposal (Albania, Croatia, Bosnia & Herzegovina, Serbia, and Kosovo), (iii) by the government only (Montenegro). Consequently, the Parliament is often included in the appointment process. One exception is found in Turkey where the appointment is the result of a complex mechanism with board members nominated by operators with more than 10% market share, the Ministry of Industry & Trade, the Union of Chambers and Industry and the Minister of Transport followed by the appointment via the Council of Ministers with the approval of the President of the Republic.

The term in office is generally 4 to 5 years with the possibility of one renewal.

However, even in the presence of clear and transparent rules for appointment of the NRA management, in some countries there have been undue delays in the appointment procedures. As a result, the management functions often are carried out without a formal mandate which undermines overall regulatory
certainty for the sector. Particularly striking example is Bosnia & Herzegovina, where the office term of the executive director expired in 2007 and the mandate of the NRA council members ended in early 2009, while no new appointment has taken place so far. A similar situation is observed in Serbia, where the board members of the NRA remain to be appointed.

**NRA budget and sources of financing**

The financial resources available to the NRA, the number of employees and its ability to attract and retain suitably qualified staff are particularly important aspects in assessing the capacity of the NRA to operate effectively. The EU 2009 regulatory framework establishes a requirement that NRAs must have their own separate annual budgets and have adequate financial and human resources.

The sources of the NRA funding tend to become more diversified. Spectrum usage fees are the main source of financing of the NRAs in Albania (98 %), Turkey (86 %) and FYROM (73 %). Annual revenue-based and numbering usage fees are the main funding source for the NRA in Bosnia & Herzegovina, while the funding sources for the NRAs in Croatia, Montenegro and Serbia are distributed between annual revenue-based and spectrum usage fees. The NRA in Kosovo, which previously relied almost exclusively on one-off authorization fees, is now by 66 % funded from revenue-based fees. In practice, the NRA in Kosovo, however, does not have an independent budget and is subject to the same financial constraints and procedural rules as any other administrative institution funded from the state budget.

**Staffing and salary for top management**

The average number of staff of the telecommunications regulatory agencies ranges between 50 and 100. The small country of Kosovo with a team of 33 staff and the largest country of Turkey with a team of over 650 staff members are two outliers.

Throughout SEE, there are a number of restrictions on the NRA’s ability to set salary standards. The issue of setting the salary for the top management of the agency seems to be sensitive in a number of SEE countries. The following table provides interesting materials for comparison.

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<table>
<thead>
<tr>
<th>Country</th>
<th>Number staff</th>
<th><strong>NRA ability to set salaries for staff and for top management of Agency</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>CROATIA</td>
<td>159</td>
<td>The annual financial plan and the annual financial statement of the Agency must be approved by the government.</td>
</tr>
<tr>
<td>MACEDONIA</td>
<td>105</td>
<td>No legal restrictions</td>
</tr>
<tr>
<td>TURKEY</td>
<td>656</td>
<td>The salary of the President of the ICTA Board may not exceed that of the Undersecretary of the Prime Minister cabinet. Salaries of the other Board members may not exceed that of the President. Total amount of the payments made to the ICTA personnel shall not exceed the total amount of payments made to Board members. Salary levels of the personnel are set according to an internal system of grades.</td>
</tr>
<tr>
<td>ALBANIA</td>
<td>60</td>
<td>The structure and the level of salaries are stipulated as part of the Law No. 9584, dated July 17, 2006.</td>
</tr>
<tr>
<td>BOSNIA &amp; HERCEGOVINA</td>
<td>100</td>
<td>The Law on Salaries and Allowances for Civil Servants of June 23, 2008 brings the salary level of the NRA staff within the pay scales for civil servants. The NRA has to follow the established scales for the basic salary levels and is only be able to increase salaries of its staff through an additional “regulatory” bonus scheme.</td>
</tr>
<tr>
<td>MONTENEGRO</td>
<td>60</td>
<td>Amendments to the Budget Law modified the provisions of the Law on Electronic Communications (LEC) so that the EKIP Financial Plan instead of being submitted to the government now is to be submitted to the Parliament. In December 2009, the Parliament, by its decision on adopting the Financial Plan, reduced by 40% the salaries of the Council Members and of the Executive Director, and obliged the Agency to decrease subsequently their salaries, thus bringing them down to the pay level of government officials.</td>
</tr>
<tr>
<td>SERBIA</td>
<td>98</td>
<td>Due to the financial crisis the government issued a decree which defines the salary cap and additional salary tax for all state institutions the end of 2009. The maximum salary is set at 3 times the average salary in state, and additional tax is in range from 0% to 15%, depending on the amount of the salary.</td>
</tr>
<tr>
<td>KOSOVO</td>
<td>33</td>
<td>Salary levels are regulated subject to pay scales and a system of grades that applies to all civil servants in Kosovo and are set based on the TRA budget approved by Parliament.</td>
</tr>
</tbody>
</table>
**NRA enforcement powers**

In order to ensure effective compliance, the NRAs sanctioning power allows them to impose fines with a sufficiently deterrent effect and to order the suspension of non-compliant commercial offers.

In general, the NRAs in SEE have the power to impose fines directly with an exception of Croatia, Macedonia and Serbia where the NRAs are required to initiate a misdemeanors procedure before the relevant court.

When the amount is calculated as a percentage, the level varies from 1% up to 10% of the total annual revenues with no maximum limit. However, it seems that financial penalties are not used very often, except in Bosnia & Herzegovina. All the NRAs have the power to suspend commercial offers. However, only in Croatia, Turkey and Serbia, this enforcement power has been applied in practice.

**Dispute resolution**

Dispute resolution mechanisms cover disputes between operators but some countries also give the NRA the power to settle disputes between providers and end users (Croatia, Bosnia & Herzegovina, Montenegro, Serbia, Kosovo).

In general, the deadline for the NRA to resolve a dispute is two to four months. Some countries specify a minimum unsuccessful negotiation period from 45 days up to 90 days before the dispute is passed to the NRA. Two countries impose a short deadline: in Bosnia & Herzegovina, the NRA has to issue a binding decision within six weeks (in exceptional cases, ten weeks) from receiving the request. In Kosovo, the NRA issues a binding decision within six weeks.

Croatia, Macedonia, Albania, Montenegro and Serbia have included a specific provision in the law that obliges the NRAs to publish their decisions. The other countries do not have legal provisions requiring the NRAs to publish their decisions.

**NRA accountability and reporting**

Independence needs to be reconciled with measures to ensure that the NRAs are accountable for their actions via (i) publication of an action plan, (ii) financial and regulatory reporting and (iii) review of the NRA performance.
Regarding the publication of the action plan, Croatia, FYROM, Turkey, Albania, Montenegro and Serbia request the NRA to publish it on its website. The law in Montenegro requires the NRA to publish its action plan along with the financial plan, after both have been approved by the government. In Croatia, the action plan must respect the priorities and the long-term guidelines adopted by parliament following a government proposal. In Albania, Bosnia & Herzegovina and Kosovo, the NRA must plan its activities in accordance with the telecommunications sector policies adopted by the government.

All the countries include a reporting mechanism. A general trend shows the emergence of a central role left to Parliament alone or jointly with the government in terms of reporting. Bosnia & Herzegovina is an exception where the NRA only reports to the government on the tasks performed.

**Appeal procedures**

All the countries have appeal procedures in place. The appeal body is typically a court acting as first instance or as second instance after an appeal in first instance has handled by the NRA managing board. The exception is Montenegro, where the NRA decisions are not final in the administrative procedure and the first appeal instance is the ministry responsible for telecom policies.

In order to avoid weakening the NRA and abuse of the appeal procedure, an appeal of the NRA decision should not automatically suspend the application of the appealed decision. In Albania and Kosovo, the NRA decision is automatically suspended for 30 days while an administrative appeal is first considered by the NRA managing board (there is, however, no automatic suspension when the appealed decision is submitted to the court as the next instance). In other countries, there is no automatic suspension of the appealed decision, unless the appeal body or the NRA decides to grant a suspension upon the complainant’s request.

The appeal body should be able to consider the merit of the case and not only the procedural matters. This is the case in most of the countries, except FYROM where the court is limited to the correct application of the law. All countries allow a third party to appeal a decision if it has a legal interest in the case.

In order to be effective, the duration of such a procedure must be reasonable. Croatia reported an average duration of the appeal proceeding in the court
of five years... Unfortunately, insufficient data does not allow a comparative assessment of the length of the appeal procedures across the monitored countries.

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**NRA transparency and participation**

The rules and procedures vary from country to country but, to a certain degree, all NRAs have an established practice to organize public consultation on specific decisions. The average period for comments is 30 days with a maximum of three months in Montenegro and a minimum of 14 days in Bosnia & Herzegovina. However, it does not seem to be a common practice for the NRAs in SEE to publish a summary of the received responses to the consultation along with their reasoned opinion.

In all countries there is an obligation for the NRAs to publish their decisions on the website.

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**Conclusion for the study on SEE**

Telecommunications policies have come to occupy an important position in the economic development of South-East Europe. There is a broad consensus within the OECD and the European Union that these policies should be based on competitive markets and that this is best achieved within a stable but evolving legal framework, with markets supervised by a regulatory authority that is separate from and independent of telecommunications operations and reasonably independent from political pressure. The degree of regulatory independence is affecting views of regulatory risk by market players and potential investors.

Formally, all of the monitored countries have legal frameworks in place that establish independent regulators. However, such institutions have existed in these countries for a relatively short period of time. Experience in the EU member states has demonstrated that legislation only provides for the possibility of independence, but it cannot be immediately created.\(^\text{56}\)

Independence is earned over time by the actions of the regulator and the reactions of the government, the incumbent and the appeal bodies. The regulator has to demonstrate that its decisions are fair, transparent and non-discriminatory, after taking into account the market conditions and consulting with the stakeholders. Only as all parties come to understand and trust the new
structure does regulation acquire the independence that investors equate with assurance of objective decisions based on facts and evidence.

The research by Cullen International concludes that, so far, only Croatia and to some extent Macedonia have established institutional frameworks that ensure sufficient degree of regulatory independence and adequate administrative capacity of the regulator. Other countries have still a set of further reforms to implement.

3. European framework for telecommunications agencies and EU country examples

The 2002 EC Directive has a number of specific provisions on national regulatory authorities, which are important to our research. The EC Directive classifies them under five headings: 1) independence, 2) right of appeal, 3) impartiality and transparency, 4) dispute resolution, and 5) consultations.

We will illustrate the application of these provisions of the EC Directive through a couple of EU country examples. These examples are based upon the most recent European Commission progress report on the single European electronic communications market, released in August 2010.

As the examples indicate what are the contentious issues for some of the current member states of the EU, they also constitute a catalogue of potential challenges for Moldova as it moves closer in the direction of the EU policy framework.

Agency Independence – a distinct entity and budget.

The 2002 EC Directive states that Member States must guarantee the independence of national regulatory authorities (NRAs) by ensuring that they are legally distinct from and independent of all organizations providing electronic communications networks, equipment or services. This requirement for structural separation between the regulatory function and activities associated with ownership and control is particularly relevant when Member States retain ownership or control of electronic communications undertakings. In 2009, this was still an issue in certain countries. For example, in Romania, it appears that the Ministry carries out regulatory tasks while also being involved in the management of electronic communications undertakings or activities. For that reason, the European Commission sent a letter of formal
notice to Romania in October 2009. In Latvia and Lithuania, the Ministries were considered to be vested with regulatory powers while also being involved in activities associated with ownership and control of state-owned undertakings. After the Commission sent reasoned opinions to these Member States in April and June 2009, the respective authorities adopted legislation providing for transfer of the regulatory functions to other ministries. It is clear that the European Commission will continue monitoring potential problems with regard to the independence of the NRAs. To ensure the independence of the national regulatory agency, EU legislation adopted in 1997 clarified further what needs to be understood under the provision that national regulatory authorities are “legally distinct from, and functionally independent of, all organizations providing telecoms networks, equipment or services”. One of the messages was that the regulator and the incumbent operator may not share personnel and/or facilities; and that the telecoms regulator or any of its employees may not perform any tasks associated with the representation of the shareholders or the management of the incumbent operator. The need for these clarifications arose from the fear that, despite a nominal separation, there were still strong links between the two organizations corroborated by a continuous transfer of personnel, ambiguity in the definition of tasks, and sharing of various facilities (for example scientific laboratories and measurement instruments).

An additional element essential to ensure the independence of the regulatory authority is its financing. The nature of the business permits this NRA to be self-financed if properly managed and organized. Frequency fees and license fees can ensure a continuous flow of capital and so permit the agency to be totally self-sustained and potentially profitable. The only problem, the EBRD rightly outlined, is to gain the political support needed to create such a genuinely independent, self-financed regulatory authority.

**Right of appeal.**

The 2002 EC Directive states that effective national mechanisms must allow any user or provider of electronic communications networks or services the right of appeal to an independent appeal body in the event of any disputes.

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with an NRA. Member States need to provide information related to appeals to the Commission and to BEREC, the Body of European Regulators for Electronic Communications.\(^6\)

In 2009 in Sweden, the government adopted an amendment to its legislation, enabling all market players to appeal NRA decisions. In Greece, a judicial decision is pending at the Supreme Administrative Court concerning which instance is constitutionally empowered to handle appeals against the regulatory decisions of the NRA. By settling the jurisdiction of the administrative Appeal Court, to which the appeals are currently addressed, such a decision should determine the effectiveness of the appeal mechanism.

The European Commission has observed that systematic appeals, often combined with lengthy proceedings, create ambiguity and legal uncertainty in some Member States (Belgium, Greece, Luxembourg, Poland, Portugal, Sweden). A significant increase in the number of appeals has been reported in the United Kingdom putting a strain on the regulator’s resources. Uncertainty in the market is becoming especially apparent when operators do not comply with obligations or when new regulations imposed are not able to fully replace annulled decisions as they are not always applied retroactively. On the other hand, the European Commission stated that the situation in Belgium has improved as new legislation allows the NRA to adopt retroactive decisions under specific conditions.\(^6\)

**Impartiality and transparency.**

The 2002 EC Directive states that Member States must ensure that national regulatory authorities exercise their powers impartially and transparently. They must also ensure that the NRAs make arrangements for consultation of the interested parties if they intend to take measures which could have a significant impact on the market. The NRAs are responsible for making the results of the consultation public.

The 2009 amended EC Directive\(^6\) takes these general principles a bit further. It stipulates that the independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the

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regulatory framework and to increase their authority and the predictability of their decisions. To this end, the Commission requires that express provision be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority responsible for ex-ante market regulation or for resolution of disputes between undertakings is protected against external intervention or political pressure which might jeopardize its independent assessment of matters coming before it. Such outside influence would make a national legislative body unsuited to act as a national regulatory authority under the regulatory framework.

For that purpose, the Commission requires that clear rules be laid down regarding the grounds for the dismissal of the head of the national regulatory authority in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. The latest Progress Report on the Electronic Communications Market mentions a number of legal actions by the Commission against member states, the so-called infringement proceedings, to uphold the provisions of the EC Directive on the independence of the NRAs, as well as subsequent legal reforms introduced by member states themselves. In 2009, the Commission was able to close infringement proceedings regarding the NRA’s independence in Luxembourg. In two Member States, Romania in January 2009 and Slovakia in May 2009, infringement proceedings were launched because of the dismissal of the head of the NRA before the terms of office had expired. At the same time, the Romanian authorities restructured the NRA by means of emergency decrees, providing for a clear and stable legal basis for the functioning of the NRA. In Slovakia, new legislation was adopted in February 2010 restricting the grounds for dismissal of the head of the NRA. In Slovenia, the NRA’s director was dismissed before the end of his term, which is currently being analyzed by the Commission. The Polish authorities reintroduced a fixed term of office for the president of the NRA. At the same time, a list of conditions for dismissal was established so as to avoid arbitrary intervention in the NRA’s functioning.

The EC Directive states that it is also important that national regulatory authorities responsible for ex-ante market regulation should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this budget should be published annually.
**Dispute resolution.**

The fourth issue outlined in the 2002 EC Directive, after the issues of independence, right of appeal, impartiality and transparency, is the issue of dispute resolution. In the event of disputes arising between providers of electronic communications networks or services, the NRA should be able to issue a binding decision. The dispute should in principle be resolved within four months. However, in many Member States this timeframe is still not respected.

The EC progress report reveals that dispute resolution is sometimes used as a regulatory tool to address perceived incomplete regulation. In particular this was observed in Poland and has in the past been seen in Austria. However, the Austrian NRA now includes the details of the remedies in the draft decisions from the very beginning, avoiding the need for further clarification through disputes. If an NRA, instead of issuing specific regulation, would tend to adopt different decisions for operators at different points in time, this would lead to discrimination and regulatory uncertainty among market players. An increased number of disputes have been observed in the United Kingdom, where a Court judgment of 2008 required the NRA to depart, where appropriate, from earlier decisions when exercising its dispute resolution powers. In Ireland, where market players voiced concerns about the NRA’s implementation and enforcement capabilities, the NRA recently launched a new consultation on its dispute resolution procedures. In Sweden, the competence of the NRA to settle disputes regarding interconnection agreements remains limited in scope.

**Consultation with stakeholders.** The consultation mechanism at national level, as required by the EC regulatory framework, appears to function well in Member States. Yet, in 2009 some criticism was raised by stakeholders. In Hungary, Romania and Latvia some interested parties considered that the consultations lacked the necessary dialogue with stakeholders.63

One of the key areas which has been subject to intensive consultation recently concerns the regulatory treatment of New Generation Access Networks (NGAs)64. Stakeholders are expecting these consultations to be carried out in full transparency and in a timely manner.

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64 European Commission, Progress Report, p. 50.
4. General Conclusion

The adoption of the EU telecommunications framework in SEE countries is regarded as a well-defined and clear step towards better functioning telecommunications markets and an essential part of the EU accession process. The progress that some countries in this region have made in recent years has been remarkable, given earlier records of relatively low investment and poor economic management.

However, policy-makers and market regulators in most countries of the CIS have yet to fully embrace the necessary independent regulation and competitive safeguards to successfully complete the liberalization of the sector. In the CIS region, Georgia has already scored high compliance, followed by Moldova, according to a recent EBRD-study. Nevertheless, continuing growth of mobile telecommunications services and strong demand for broadband services drives home the need to adapt regulation to current developments.

The key success factor in the EU (and in the transition countries that demonstrated high compliance in the assessment) is the existence of an independent regulator with powers of secondary legislation that enable it to enforce effective market access and proper competitive safeguards.

The prevailing government policy in most low compliance countries is still one of “managed competition” rather than “liberalization”. Under managed competition, the government allows competitors to enter the market under strict conditions and state-defined terms. Common features of implementation are excessive government control and state ownership. Government-driven National Plans are still used to manage markets.

In terms of regulatory independence, in the EU countries the separation of the role of government (as policy maker), from independent sector regulator and also from the market players themselves has been a fundamental part of the liberalization process. In South-Eastern Europe, almost all countries have established an independent regulatory authority that meets the conditions defined in our assessment model. However, there remain concerns in some countries about the weakness of appeals and dispute resolution procedures.

Most telecommunications regulatory agencies in Europe have determined conditions of incompatibility for Board members to hold other official positions within the state apparatus; and they have determined the requirements to cease relationship with the industries regulated by the agency in order to avoid conflict of interest. In Moldova, legislation does not yet foresee a specified “grace period” to avoid the “revolving door practice” in which previous Agency officials leave the Agency to work in the regulated, private sector. In addition, it is unclear why the Directors are appointed by the government and not by parliament.

Currently, the Agency does not have the right to propose legislative initiatives. All legislative initiatives and modifications to the legal framework have to be done through the Ministry of Information Technology and Communications or the Government. The possibility to work with the Parliament directly on legislative initiatives would facilitate the Agency’s activity in improving the legal framework on electronic communications and harmonizing it with the EU requirements.66

In conclusion, the EU experience supports the main conclusions of the above-mentioned EBRD communications sector assessment report: 1. The legal and regulatory environment is an important determinant of overall investment and market effectiveness; 2. An independent sector specific regulatory authority can add to that success.67

66 The Electronic Communications Act no. 241-XVI of 15.11.2007; The European Directives (2002) on electronic communication package
VII. Parliament of Moldova and independent and regulatory agencies

The current chapter will provide a short overview of the legal framework (Constitution of Moldova and parliament Rules of Procedure) relevant for the parliament’s interaction with the independent and regulatory agencies. The chapter will also make some indicative observations on parliament’s capacity to interact with the independent and regulatory agencies.

The Constitution of the Republic of Moldova has a number of provisions which relate to the oversight role of parliament in general (art. 65, paragraph f. and n.). By extension, this is relevant for parliament’s role vis-à-vis the independent and regulatory agencies. Article 126 of the Parliament’s Rules of Procedure (RoP) mentions the role of the plenary session in hearing the reports and presentations of the government, ministries and agencies. Articles 123, 124 and 125 of the RoP speak about asking questions in the parliament plenary session or submitting written questions. These questions can cover, among others, issues discussed in the reports of the independent agencies. The constitution also stipulates that the plenary session may, upon the decision of the parliament’s Standing Bureau, organize a hearing on the activity of the executive, public authorities and adopt a decision on the annual activity report of the respective authority (art. 128). And art. 133 explicitly states that the plenary session may have hearings on the reports by the institutions responsible to parliament, such as e.g. the Court of Accounts.

The parliamentary Rules of Procedure provide some guidance on how parliamentary oversight in general and oversight on the independent institutions can be exercised. Standing Committees can issue consultative opinions on the uniform enforcement of legislation (art 27.3 of the RoP). The Standing Committees can create a sub-committee to inform parliament on the activity of a public authority (art. 27.7 of the RoP). Or Standing Committees can
hold inquiries on specific matters (art. 31 of the RoP). Upon a proposal of the Standing Bureau, of the parliamentary standing committees or parliamentary factions, the Parliament can also initiate hearings on other matters of great public interest (art. 126 of the RoP). As far as the Annual Reports of public authorities are concerned (art. 128 of the RoP), the Standing Bureau puts it on the agenda within 30 days from the receipt of the report; and parliament may decide to adopt a resolution on the matter. Rule 28 speaks about the creation of a sub-committee for exerting parliamentary control over the activity of the Security and Intelligence Service (S.I.S.) which operates within the National Security, Defence and Public Order Committee. This is an interesting model which eventually can be explored for the parliamentary oversight over (some of the) independent and regulatory agencies as well.

Various Committees in the Parliament interact with the independent and regulatory agencies. The Committee on Economy, Budget and Finance (CEBF) has the largest agenda in this respect, interacting with the National Bank, National Commission for Financial markets, the National Agency for Regulation in the Energy Sector, and the National Agency for Protection of Competition.

The Committee for legal Affairs, Appointments and Immunities deals, amongst others, with the question of appointments of members of boards & councils in independent and regulatory agencies, in terms of reviewing if the applicants meet the legal requirements.

The Committee on Culture, Education, Mass-media, Youth and Sports follows the work of the Audiovisual Coordination Council.

The Committee for Social Protection, Health and Family oversees the work of the Ministry of health and subordinated agencies, thus including the Medicines Agency.

As indicated before, assessing parliament’s role in interacting with the independent and regulatory agencies is much related to parliament’s overall oversight capacity and practice. The “Viitorul” report “The Audit of the Democratic System of Republic of Moldova”68 states that the practice of parliamentary oversight over the government, despite the relevant provisions in the constitution, is seriously deficient. It mentions that the traditional control

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instruments of the Parliament, such as information sessions, hearings, questions, motions and parliamentary inquiries are not treated in an appropriate manner by the government, whichever party constitutes the ruling majority.69

Against this background, parliament’s capacity to interact and substantially engage with the independent and regulatory agencies is limited. Whilst the agencies have a large number of qualified and specialized staff at their disposal, the parliament Secretariat has only a handful of staff working in support of the Committees. For instance, currently three staff persons work with the Committees in overseeing the functioning of six independent agencies, in addition to a number of other tasks related to the work of the Committee which these three staff persons perform. An increase in staff capacity has been requested by all parliamentary staff persons interviewed during this assessment.

Not included in the above-mentioned overview is the need for better guidelines on the structure and content requirements for the annual reports submitted to parliament. Currently, the structure and the quality of content of the reports is uneven.

Also not included in the parliamentary Rules of Procedure are more clear rules on how parliament organizes itself in receiving, processing, reviewing, deciding and communicating on the annual reports of the agencies, and any other documents received from the agencies. According to the RoP, reports of agencies need to be dealt with in the Assembly plenary. However, the practices differ from agency to agency. Often the Committee on Budget and Finances reviews a report of one of the agencies; and then decides if it is useful and necessary that the plenary sessions reviews the report as well. While it may not be really useful to review all these reports in the Assembly plenary session, the RoP could be adjusted to assign this responsibility to the Committees.

69 “The formal attitude of the executive regarding these instruments was not specific only for the Communist governance, but continued also during the AEI governance. Two cases illustrate with eloquence the weakness of the Parliament to exercise its control attributions. The first case refers to the results of the inquiry committee for investigation of events following 5 April 2009. Up till now, the persons involved in the organization and management of that situation have not been identified and charges have not been brought against anyone. The second case refers to the dissensions between the legislative and executive powers in the fall 2010 regarding the indexation of pensions, a legislative project through which the government engaged its responsibility before the Parliament, adopting it by Government Decision, avoiding its debate in the Parliament. Even if this fact dissatisfied strongly the leaders of the parties in the composition of AEI, they did not undertake anything to sanction the Government. In these conditions, the legislative authority had the possibility to express the vote of non-confidence to the Government within 3 days from submission of the project, by initiating a motion of censure at the initiative of ¼ members of the Parliament, but they did not use this right. This proves the inefficiency and limits of parliamentary control over the executive power during the last decade.” ("Viitorul" report, pg. 154-157)
Thus, while most reports are already debated in the committees currently, these reports are then filed in the archives, and not systematically published on the parliament’s web site. Transparency can be enhanced by publishing all reports of agencies reporting to parliament on the parliament web site. In addition, it would make sense to send a notification to all MPs that these reports are accessible on the parliament’s intranet and internet. While Committees take primarily responsibility for reviewing the Committee reports, all MPs should have access to all reports if they wish to do so. The RoP are currently silent about distribution of the reports to all MPs and about publishing them on the web.

Further to annual reports, parliament has the possibility to interact with the independent and regulatory agencies on other occasions as well, such as in relation to the annual work plans of the agencies or on specific questions emerging during the course of the year. However, a number of agencies mentioned that they interact with parliament only once a year, on the occasion of the approval of the budget or the presentation of their annual report.

Finally, the parliament can take a much more active role in relation to the policy field regulated by the agencies in terms of oversight over the Ministry which is setting the broad policies relevant to the specific sector (e.g. energy policy, audio-visual and media policy, etc.)

The above-mentioned suggestions, as well as the recommendations of this report included in the last chapter, can assist in the implementation of the parliament’s Strategic Development Plan, in particular priority number 4: strengthening research capacity of parliament.
Independent and Regulatory Agencies in Moldova and their Interaction with Parliament

VIII. Recommendations on independent and regulatory agencies in Moldova

‘Independence’ and ‘accountability’ are the key drivers of the effectiveness of regulatory agencies. Yet, there is a trade-off between them: excessive independence can undermine accountability and, vice versa, excessive accountability can undermine independence. Therefore, finding the right balance between accountability and independence is the challenge that Moldova’s Parliament and its regulatory and independent agencies must master if they want to optimize the effectiveness of the independent and regulatory agencies.

Based upon an in-depth review of current practices in Moldova, an analysis of the European policy framework for a sample of regulatory agencies and established practices in other countries, we put forward a set of recommendations for initiatives which the Parliament of Moldova and the agencies can take to optimize the right balance the independence and the accountability of the agencies, and to streamline their interaction with parliament.

Upon the request of the parliament of Moldova, we have reviewed ten agencies, some of which have regulatory powers, others not. The five agencies with regulatory powers are:

1. National Agency for Energy Regulation (ANRE)
2. National Regulatory Agency for Electronic Communication and Information Technology (ANRCETI)
4. Audio Visual Council (CCA) and
The five agencies without regulatory powers are:

1. Court of Accounts (CCRM) – or CoA
2. National Agency for the Protection of Competition (ANPC)
3. Civil Aviation Authority (CAA)
4. Medicines Agency (AMED)
5. International Association of Road Transport (AITA).

As indicated in the conceptual, first chapter of this report, the following issues were reviewed in making our assessment and preparing the recommendations. Instruments of independence are: 1) the institutional set-up, 2) practical and political independence, 3) budget design and approval, and 4) staffing issues. Instruments of accountability are: 1) the reporting, 2) financial and performance auditing, 3) appeal to decisions, 4) consultations and coordination.

RECOMMENDATIONS ON: INSTRUMENTS ENHANCING INDEPENDENCE

1. Institutional Set-up

Referring to the conceptual chapter of the report, the first instrument affecting the independence of the agency is its institutional design, the way how the agency is governed and decisions are taken.

- Parliament often plays an important role in selecting and appointing the heads of independent regulatory bodies and the members of the boards or councils of the agencies. We recommend that parliament adjusts the relevant legislation, ensuring minimum professional requirements of qualifications and technical knowledge for the head of the agencies (e.g. 10 years relevant professional experience in the technical area regulated by the agency), in case such requirements are not yet clearly stipulated in the relevant legislation of the agency.

- We also recommend that candidates for leading functions in boards of agencies undergo a professional competency test on the technical area of expertise of the agency, to be evaluated by non-political, sector experts, as well as a review of their interpersonal and management
skills, to be evaluated by professional human resources experts. In this way, parliament has additional guarantees that they select and appoint highly qualified and skilled persons to the management of the agencies.

- The heads of independent and regulatory agencies should **cease all political functions** and activities within political parties from the moment their mandate commences.

- In some of the agencies and institutions (e.g. National Bank and Court of Accounts), functions in the Board remain vacant for a long time because the **mandate of members of the board** expires before parliament is able to appoint new people or confirm / extend the mandate of persons in the Board. We therefore recommend that members of Boards and Councils, when their mandate expires, remain in place until new people are appointed. This rule is already in place for the Financial Markets Agency and needs to be extended to the other agencies as well. In this way, the parliament can ensure that no governing vacuum emerges due to delays in appointment procedures.

- Although many of the agencies have regulatory powers to implement primary legislation, they often have no **right to propose legislation** to the parliament. Based upon their experiences and expertise, it would be worthwhile to enable agencies the possibility to directly approach parliament with a draft legislative initiative, rather than having to go through a ministerial review and approval process for their proposals.

- Currently, members of the Board of the Audio Visual Council are limited to one term, not **renewable**. We recommend that members of Board be allowed to serve for more than one term. Independence of the Board is also strengthened if members are appointed for a fixed term of 4 to 6 years (which is thus longer than the term in office of one government).

- The **Audio Visual Council Board** elects the Director from among its members. The Director can be dismissed by the other members of the Board and needs to carefully negotiate to keep majority support within the Board, thus hampering the independence and functionality. We recommend that the Director of the Audio Visual Council is appointed by parliament, thus strengthening the independence of the Director and the Agency. We also recommend that the Board of the National Regulatory Agency for Electronic Communications be appointed by the Parliament, instead of the Government as is currently the case.
2. Practical and Political Independence

A series of issues is currently seriously affecting in a practical way the independence of the agencies in Moldova. Following are the issues and our recommendations.

- According to a government decision\(^7\), Ministries and governmental agencies need to have their decisions and regulations registered at the Ministry of Justice before they can enter into force. The independency of regulatory agencies is considerably reduced as the requirement for government agencies being made applicable to them as well. It leads to substantial policy discussions between the Ministry of Justice and the Agency, and subsequent delays before the decisions enter into force. We recommend that the entry-into-force of the Regulatory Agency’s decisions be no longer conditioned upon their registration at the Ministry of Justice. The review by the MoJ of Agency’s decisions should not touch upon the content of the regulations and decisions but respect the independence of the Agency, as stipulated in the law.

- Upon registration at the Ministry of Justice, Agency’s decisions are published in the Monitor or Official Gazette. Due to lack of time and space at the Monitor, a second delay in the entry-into-force occurs. While upgrading the capacity of the Monitor to publish decisions as soon as possible, we recommend that agencies can make their decisions known in a valid way through other, modern ways of communication such as the agency’s web site and email communications. Entry-into-force of regulatory decisions should not be conditioned to timing of their publication in the Official Gazette.

- A new law on State Aid is being prepared, giving the National Agency for the Protection of Competition the task to execute its implementation. We consider that a conflict of interest can occur when the Ministry of Finance decides to give state aid to an entity / company, while the National Agency for the Protection of Competition could be of the opinion that such aid violates competition rules. We recommend that this draft legislation be reviewed.

\(^7\) Government Decision on the Registration of Legal Acts of Republic of Moldova No. 1381 from 07.12.2006
The Electronic Communication Agency noted that relevant legislation stipulates that some tariffs for public services are determined by the agency “after preliminary consultation with” the government. Due to un-clarity what the consultation mechanisms means exactly, the Agency considers that tariffs would be better set by the Agency itself, without government involvement. We agree that this would strengthen the independence of the Agency. Alternatively, one can also opt to more clearly define the procedures and timelines for consultations with the government, while still leaving the final decision on tariffs with the Agency alone.

The Civil Aviation Authority (CAA) is facing uncertainty due to the fact that the Regulations on Organization and Functioning of the CAA are not approved by the Government for more than 3 years, although this is foreseen in the Law. In addition, the Director for this Agency has not been appointed for over two years. While this causes uncertainty within the Agency, the parliament -- as part of its duty for oversight of the government -- should question the Minister for Transport on those substantial delays. According to the Government Decision n. 1057 of 19 October 1998, the Civil Aviation Administration of Moldova (CAAM) is in charge for the regulatory function until today. According to 2008 amendments to the Civil Aviation Law N. 1237 (of 09 July 1997), this regulatory function was transferred to the Ministry; but this has not been implemented because the above mentioned Government Decision has not been withdrawn. After Moldova signs the European Common Aviation Agreement (which includes safety, security, economic and social rules, etc.)

Expected by end of 2011 according to a statement of the Prime Minister on 17 June 2011
3. Budget Design and Approval

The way how regulatory agencies can design and/or decide upon their budget is a vital instrument to strengthen and guarantee their independence. Following are a number of recommendations to strengthen the independence.

- The government has prepared a new **Draft Law on Public Financial Management**. According to article 51 of the draft law, all independent authorities should have feedback from the government on their budget in order for it to be approved. If the law is adopted in its current format, the parliamentary commission would not be able to approve the budget of agencies until the government provides its opinion, thus giving the government a de-facto veto power on the budget of the regulatory agencies. This is a deep cut into the independence of the agencies and against international standards which seek to encourage budgetary independence.

- There are different practices on approving budgets of agencies. Some agencies approve their own budget; other agencies have their budget approved by parliament. One could make a determination that in case the parliament does only approve the main items of the budget such as the percentage of revenues to be received from tariffs and taxes (e.g. 0,11 % for the Energy Agency) or in case the budget is approved by the agency themselves, this is conditional to (1.) a financial audit of the expenditures; (2.) an international performance audit, and (3.) clear rules on determining the salary of the top management of the agency (as mentioned in below chapter).

4. Staffing and Human Resources

The way a regulatory agency is allowed to determine its staffing and human resources policy to a large extent influences its independence.

- The question of the **salaries of the top management** of regulatory agencies has been a topic of intense controversy in recent months. Without micro-managing the individual salaries of the management of each agency, we recommend that parliament sets **clear principles and rules** which agencies need to respect in setting the salaries for the top management. These principles include, amongst others, horizontal and vertical salary adjustments. The horizontal salary adjustment means
that the head of agency needs to receive a salary comparable to the average salary in the sector regulated by the agency, multiplied by factor x. (in order to make the person less corruptible). The National Bureau of Statistics of the Republic of Moldova can determine the average salary in a specific sector over a period of 12 months and indicate the top salaries as well. The vertical adjustment means that the salaries of top management are connected to the average salaries of all staff in that agency. The parliamentary decision approving the most recent budget of the Audio-Visual Council and Energy Agency determines that the Director / Head of Board can have a salary up to maximum 5 times the average salary in the Agency. In addition to the horizontal and vertical adjustments, the parliament can also consider additionally an adjustment in terms of maximum remuneration related to years of relevant experience in the professional technical area. **We recommend that parliament creates an expert working group to develop concrete proposals on salary scales and grades based upon these principles. The expert working group would include selected MPs, civil servants and international experts on behalf of international institutions as the World Bank and OECD.** Once these principles are determined, there will be less need for parliament to engage in detailed discussions on salary scales of the top management. Parliament will then be able to allow agencies to adopt their own staff salary policy within the framework of clear criteria and salary adjustment provisions. Under salary is meant the monthly remuneration and the additional bonuses often provided as well.

- Staff of several regulatory and independent agencies (e.g. competition agency) receive low salaries, making it difficult to keep qualified staff, which is often tempted to move to the private sector. We recommend that for salary of staff of these agencies, the agencies are allowed to **depart from the civil servants regulations and their salary scales**; and develop a flexible but transparent, accountable and legally determined framework for salary scales and remuneration of their staff.

- According to the relevant legislation, State officials in Moldova are required to **disclose their incomes and assets**. We recommend that this requirement be also applicable to the management of regulatory and independent agencies; thus providing complete transparency on their incomes.
RECOMMENDATIONS:
INSTRUMENTS ENHANCING ACCOUNTABILITY

1. Reporting

As mentioned in the first, conceptual chapter of the report, one of the first instruments of accountability for independent and regulatory agencies is the regular narrative activity report, often the annual report and possible progress reports.

- From the agencies required by law to report to parliament, parliament receives very diverse and, quality-wise, rather uneven narrative reporting. In order to streamline the reporting and enhance its quality, the parliament is advised to issue quality guidelines on reporting by the agencies. The guidelines can outline such requirements as: 1) the structure of the report, 2) mandatory elements for content, 3) quantitative and qualitative performance indicators, 4) required statistical data, 5) number of regulations / decisions and consultations on decisions, 6) recommendations received during consultations and how many were accepted or rejected, 7) number of sanctions/ fines issued, 8) number of appeals in court lodged, resolved and pending. The Parliament’s Secretariat can be tasked to prepare draft guidelines in consultation with the agencies.\(^{73}\)

- The annual report of the Court of Accounts (CoA) includes a wide range of issues on the way how government institutions spent state money. We recommend that the report be sent to the government for a mandatory answer, within a specified period, on all observations and recommendations included in the CoA report. The government’s answers are then to be evaluated by the relevant thematic commission of parliament. International projects can assist the CoA in presenting information to parliament in an accessible and relevant way.

- By the end of every year the parliament sends to the Court of Accounts its requests for financial audits during the following year. Parliamentary groups have the right to make to the CoA one request per quarter. For purposes of quality assurance, it would be useful if parliament includes in its Rules of Procedures minimum guidelines for drafting audit requests, such as the format of the request, the need for a justification.
or background, and indication of expected outcomes. For planning purposes, it is advisable that parliamentary groups announce their requests as much as possible at the same time as Parliament’s requests to the CoA; thus enabling a more smooth work planning at the CoA.

- Parliamentarians need to make better use of the findings and recommendations of the reports from regulatory agencies to enhance their oversight over the government. In order to ensure this, the parliament’s Rules of Procedure need to specify in greater detail how the follow-up to the annual reports of the agencies will be organized. The Rules of Procedure need to stipulate that reports be put mandatory on the agenda of the relevant thematic committee within a specific time period; that the parliamentary question time, the public hearings and the other oversight techniques need to follow-up on issues mentioned in the annual reports of regulatory agencies. The reports of agencies need to be distributed to all MPs in parliament (not only to the members of the thematic commission) for their information, and put on the parliament’s web-site. One possible exception to the rule of wide distribution are the reports from the National Bank, due to sensitivities on the vulnerability of the country to international financial markets.

- In order to ensure the proper follow-up to the reports of independent and regulatory agencies, as outlined above, new capacity building and awareness raising initiatives for MPs on the role and responsibilities of regulatory bodies would be advisable, including on practices in other countries. We recommend for UNDP to design a specific program on this, as follow-up to the current assessment.

2. Financial and Performance Auditing

A second instrument of accountability for the agencies are financial and performance auditing.

- The Court of Accounts conducts a financial audit for all institutions financed from the state budget. Therefore, independent and regulatory bodies financed from the state budget are being audited by the CoA. We recommend that this provision in the relevant legislation be kept as it stands. For independent and regulatory bodies which are not financed from the state budget because they have their own incomes from
revenues, taxes and levies, we recommend that the financial audit be conducted by either an international audit institution (if the agency has the means to do so, e.g. the National Bank and the Energy Regulator) or by a local and credible auditing company, in both cases selected through an impartial, competitive and transparent bidding process.

- The performance audit is relatively new issue in Moldova. Its correct application requires more in-depth understanding among a number of regulatory and independent agencies and parliamentarians. Further awareness raising and explanations are advisable.

- We recommend that a **performance audit be made mandatory** for all independent and regulatory agencies. For agencies financed from the state budget, we recommend that the Court of Accounts conducts the performance audit every three years. Taking into account CoA capacity, we consider this a realistic time-frame. For agencies not financed from the state budget, we recommend that the performance audit be conducted by either an international auditing company or by the Court of Accounts.

- Since the Court of Account currently has insufficient human and financial resources to conduct performance auditing for independent and regulatory agencies, we recommend that the parliament of Moldova makes **the required financial means for the CoA** available from the state budget, including for international staff training on performance auditing. By supporting an increase in financial and human resources for the CoA, the parliament will thus confirm that the CoA continues to develop from a merely financial control institution to a full-fledged audit institution.

- Considering the limited capacity for performance evaluation at the Court of Accounts currently, we recommend that the Swedish twinning project and UNDP make **international experts available to the CoA** to work alongside the CoA experts in conducting performance evaluations in the initial phase, before the CoA takes on the full workload of performance evaluations. By strengthening the CoA, which is fully financed by the state budget, the sustainability of the performance audits will be ensured. Moreover, the CoA has a clear comparative advantage over local private companies, since these have insufficient technical expertise and they
lack a professional auditing policy frameworks. The CoA has also a comparative advantage over international private companies, since those audits are very expensive for the agency requesting them.

The **financial audit of the National Bank** by the CoA currently focuses on the legality of the Bank's expenditures and on the Bank’s operational, administrative expenditures. Such financial audit, leaving aside the Bank’s monetary policy and its policy on the country’s reserves, respects the independence of the National Bank and needs to be maintained as such. It is to be noted that the National Bank also undergoes an international audit and is being supervised by the IMF, which provide additional guarantees on the Bank’s administrative functioning. Also, there is a draft Law on the Management of public resources, which stipulates that the Ministry of Finance will be in charge with monitoring the financial resources management of the autonomous public institutions. In the explanatory note attached to that draft Law NBM is mentioned as one of such institution. And this will affect the independence of NBM.

### 3. Appeal to Decisions

A third instrument of accountability of independent and regulatory agencies are the procedures for appeal to the decisions and regulations of the agencies.

- Appeals to decisions and to regulations of the agencies can be made at the courts, as foreseen in the law. However, several agencies mentioned that some of their decisions are **suspended by courts**, often immediately after the decision had been issued, upon the request of an individual or company and without hearing the opinion of the relevant agency. Putting on hold the decisions of agencies in this way, often delays the implementation of a decision or regulation for over a year. Interestingly, the Law establishing the Financial Markets Agency explicitly states that a decision of the agency remains in force until the final decision of the courts. In order to ensure the functionality of agency’s decisions, we recommend that similar provisions be included in relevant legislation applicable to all other independent and regulatory bodies.
4. Consultation and Coordination

A fourth instrument to enhance accountability are the legal provisions and actual functioning of consultations and coordination mechanisms.

- As part of the accountability framework, agencies need to consult with relevant sector stakeholders, beneficiaries and citizens. While this report only focuses on the interaction with parliament, we recommend another survey on legal obligations and current practice of the agencies’ consultation and coordination with non-parliamentary stakeholders. This will allow a more complete picture on the application of all mentioned characteristics of accountability by the Moldova agencies.

- Several agencies stressed the need to be consulted by parliament when draft laws and amendments to legislation are being considered and in case they directly touch upon the area of responsibility of the agency. We therefore recommend that the parliament establishes in its Rules of Procedure clear provisions, responsibilities and timelines for consultations with Regulatory Agencies on issues relevant to their expertise.

- The International Association of Road Transport (AITA) is a membership-based association of commercial companies. Based upon the relevant national and international instruments to access to the TIR system, membership is mandatory, incomes are gathered through taxes, and the leadership is selected from among the membership. Similar associations exist for hunting, tourism and chamber of commerce. As their existence, incomes and decisions are based in laws, accountability needs to be ensured. Currently there is no interaction with parliament. We recommend that the issue of mandatory, membership-based associations in Moldova be analyzed in a separate survey, enabling the parliament of Moldova to identify the most appropriate approach to their oversight.
RECOMMENDATIONS: CAPACITY IN PARLIAMENT

In view of the aforementioned analysis and recommendations, the parliament of Moldova needs more human resources and expertise in order to follow up with sufficient competence the technical and budgetary policy discussions.

- Without excluding the option to recruit additional core staff for parliament to support the work of the Committees engaging with the regulatory and independent agencies, we recommend that the parliament establishes a special budget line for consultancies and framework contracts with specialized agencies. This will allow the Committees to call upon highly specialized technical expertise when needed and in a timely manner.

- We recommend the creation of an expert roster of persons knowledgeable on specific agencies, which can be contracted by parliament. We recommend a similar roster of Civil Society Organizations whose expertise and views can be consulted by parliament.

- In order to ensure sustainability for the enhanced capacity by parliament, we recommend to strengthen the parliament’s future Department ‘Support to Parliamentary Committees’, in particular the future section on parliamentary research and impact assessment.74

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74 This department was not established yet. It is part of the new institutional structure of the Secretariat of Parliament, which is foreseen to be in place this year.
Annexes:

**Annex 1. Short biography of the authors of the report in Moldova**

**FRANKLIN DE VRIEZE**

Franklin De Vrieze (Belgium, 1967) has worked on parliamentary development and good governance issues worldwide for over 15 years.

He joined UNDP in 2009 as Program Manager of the UNDP “Global Programme for Parliamentary Strengthening” (GPPS). He managed the global, regional and national parliamentary program components, including parliamentary evaluation and programming missions. He provided policy advice on issues such as Benchmarks for Democratic Parliaments and the Global Parliamentary Report.

Since early 2011, he works as international consultant on parliamentary strengthening and institutional development. He recently completed parliamentary missions to Trinidad & Tobago, Suriname, Vietnam, Solomon Islands and Montenegro.

From 2001 until 2008, he worked for the OSCE Mission in Kosovo as Head of the Central Assembly and Political Parties Section. He coordinated the parliamentary capacity building programs and technical assistance projects with the Assembly of Kosovo.

He studied political science and international relations at the University of Antwerp in Belgium.
Ludmila Ieseanu (Moldova, 1951) is an independent consultant with engineering background, having an extensive experience in Government institutions and public bodies, such as the Ministry of Transport and Communications, State Chancellery, National Regulatory Agency in Electronic Communications and Information Technology.

During her over 35 years of activity, she was involved in policy formulation and analysis, legal drafting and harmonisation with EU directives. She specialized in areas such as ICT policy, regulatory and development, public sector governance, e-Governance, WTO trade in services (telecommunications sector).

As an independent expert contracted by international organizations, Mrs. Ieseanu analysed the legal framework of several countries and providing recommendations for its improvement and regulatory adjustment, as well as institutional cooperation based on the best practices of the EU countries.
Annex 2. Bibliography

International literature:


Filipovic, Sanja, Driving the growth and competitiveness agenda, Podgorica 2008, 8 p.


Majone, Giandomenico, Independence vs. accountability?: non-majoritarian institutions and democratic government in Europe, European University Institute, 1994.


Short, Judge Emile Francis, Accountability, oversight institutions, media and civil society, Commonwealth Parliamentary Association workshop, Trinidad and Tobago, 2005, 16 p.


Tweede Kamer van Nederland, Wet houdende regels betreffende zelfstandige bestuursorganen, 2006, Den Haag.


Legislation of Moldova:

Aviation Security Law no. 92-XVI of 05.04.2007, published in Official Gazette of the Republic of Moldova no. 90-93/393 of 29.06.2007


Government Decision of the Republic of Moldova on legal expertise and state registration of departmental normative acts no. 1104 dated 28.11.1997;


Government Decision of the Republic of Moldova on the Conditions for Staff Remuneration in the Public Sector Units no. 381 of 13.04.200;


The Electronic Communications Act of the Republic of Moldova no. 241-XVI of 15.11.2007;

The Energy Efficiency Law of the Republic of Moldova no.142 as of 02.08.2010;


The Law on Electricity of the Republic of Moldova no.124 as of 23.12.2009;

Law of the Republic of Moldova on approval of the Parliament Regulation no. 797-XIII as of 02.04.1996;

Law on Status of Members of the Parliament of the Republic of Moldova no.39-XIII as of 07.04.1994;


Law on Foreign Exchange Regulation of the Republic of Moldova no 62-XVI, as of March 21, 2008;

The Law on Natural gas of the Republic of Moldova no. 123 as of 23.12.2009;

The Law on the Protection of Competition of the Republic of Moldova no.1103 as of 30.06.2000;


Law on Savings and Credit Associations of the Republic of Moldova no.139-XVI from 21.06.2007;

The Law on Petroleum Products of the Republic of Moldova no. 461 as of 30.07.2001;

The Law on Public Utilities of the Republic of Moldova no. 1402 as of 24.10.2002;


Annex 3. List of interlocutors

Parliament of Moldova:

Cojocari Tudor, Senior Consultant of the Parliamentary Committee for Culture, Education, Research, Youth, Sports and Media;

Cojșescu Andrei, Senior Consultant of the Parliamentary Committee for Economy, Budget and Finance;

Creangă Ion, Head of Legal Department of the Parliament Secretariat;

Ionita Veaceslav, Chairman of the Parliamentary Committee for Economy, Budget and Finance;

Osadcii Galina, Senior Consultant of the Parliamentary Committee for Economy, Budget and Finance;

Sclearov, Nelea, Senior Consultant of the Parliamentary Committee for Economy, Budget and Finance;

Independent and Regulatory Agencies of Moldova:

Aurica Doina, Vice-chairman of the Administrative Council of the National Commission of Financial Market;

Ciocan Dinu, Head of the Monitoring Department of the Audiovisual Coordinating Council;

Ciuvalschii Sofia, Director of the Audit department II: Regulatory audit (CHIF and SSIB) of the Court of Accounts;

Cojocaru-Toma, Maria, General Manager of the Medicines Agency;

Cuhal Veronica, Head of Foreign Relations and Development Directorate, the National Commission of Financial Market;

Curnic Dorina, Secretary of the Audiovisual Coordinating Council;
Dragutanu Dorin, Governor and Chairman of the Council of administration of the National Bank of Moldova;

Florea Vladimir, President of the International Association of Road Hauliers of Moldova;

Ivanov Sergiu, Senior Consultant in the International Relations Division of the Court of Accounts

Leahu Galina, Head of economics department, finance and accounting of the Medicines Agency;

Lupu, Mihail, Deputy Director, Head of pharmaceutical activity department of the Medicines Agency

Maxim Ion, Member of the Administrative Board, Head of the Legal Department of the National Agency for Protection of Competition;

Morari Vladimir, Member of the Administrative Council of the National Commission of Financial Market;

Nistiriuc Irina, Head of the International Relations and European Integration Department of the Audiovisual Coordinating Council;
Echim, Ion, Member of the Administrative Board, Deputy Director of the National Agency for Protection of Competition;

Paknehad Ecaterina, Member of the Court of Accounts;

Parlicov, Victor, General Director of the National Agency for Energy Regulation;

Pocaznoi Marian, President of the Audiovisual Coordinating Council;

Pui Elena, Member of the Administrative Council of the National Commission of Financial Market;

Pușcaș Alexandra, Member of the Administrative Council of the National Commission of Financial Market;

Sirbu Natalia, Head of the Legal Department of the National Bank of Moldova;
Sitnic Sergiu, Director of the National Regulatory Agency for Electronic Communications and Information Technology;

Tabıra Emma, Deputy Governor of the National Bank of Moldova;

Trofim Natalia, Director of the Audit department I: Regulatory audit (state budget and property) of the Court of Accounts;

Zidu Iurie, Acting General Director of the Civil Aviation Administration;

**International Organizations:**

Galitchi Sergiu, Parliamentary Project Manager, UNDP Moldova

Hommes Johan, Chief Parliamentary Advisor, UNDP, Moldova

Jacobzone Stephane, Researcher at the Regulatory Unit, OECD, Paris

Malyshev Nick, Head of the Regulatory Unit, OECD, Paris

Razlog Lilia, Consultant at The World Bank Moldova
Annex 4. Questionnaire to independent and regulatory agencies in Moldova

Name Institution: …
Year of Creation: …
Year operational: …
Web site: …

INSTITUTIONAL DESIGN

1. Laws/orders that established the agency and define/grant the agency’s powers and activities:

2. Overall objectives of the regulatory agency:

3. What powers does the agency have? Choose one or more among the five categories:
   - **Advisory power**: Power to give unbinding advice to line Ministries or other agencies that are responsible for policy development and/or regulation of the industry on how to set the broad policies for and/or to regulate the industry
   - **Supervisory power**: Power to monitor compliance with guidelines and standards, to sanction the regulated and to enforce sanctions to ensure compliance
   - **Licensing, pricing, administrative powers**: Power to issue and revoke licenses, set prices, review and approve contracts between regulated companies
   - **Adjudicatory powers**: Power to review regulations and decisions and to hear and resolve any disputes pertaining to the functioning of the regulated industry
● **Rule-making powers**: Power to create rules and regulations pertaining to the functioning of the regulated industry.

4. **Which body is competent for regulation in the relevant domain?**

   ● Agency only
   ● Agency and another independent regulatory authority
   ● Agency and parliament
   ● Agency and government
   ● Agency has only consultative (advisory) competencies

5. **Institutional & legal status of the agency. Indicate to which category the agency belongs.**

   1. **Ministerial department**: Bodies that are part of the central government, report directly to a Minister in Cabinet. They are largely funded from tax revenue, and are part of the civil service. They can have statutory independence in carrying out some regulatory functions.

   2. **Ministerial agency**: Executive bodies, set at arm’s length from central government, which may or may not have a separate budget and autonomous management. They may be subject to different legal frameworks (civil service regulations may not apply). They may have a range of powers, but are ultimately subordinate to a ministry and subject to ministerial intervention.

   3. **Independent advisory body**: Agencies with the power to provide official and expert advice to government, lawmakers, and firms on specific regulations and aspects of the industry. The agency may also have the power to publish its recommendations.

   4. **Independent regulatory authority**: Public bodies charged with the regulating specific aspects of an industry. There is no scope for political or ministerial intervention with the body’s activities, or intervention is limited to providing advice on general policy matters rather than specific cases.
INDEPENDENCE

Institutional and Legal Independence

6. Is the highest governing authority of the regulator a single individual, or a board/commission?

Comment on how the individual/board makes decisions. For example, the five commissioners of the Regulatory Energy Commission of Mexico deliberate in a collegiate manner and their decisions are kept on public record. The five commissioners meet as a group and decide matters with a majority vote (vs. consensus-based), although the chairman of Commission has veto power.

7. How does the highest decision making authority within the regulator make decisions?
   - By majority vote
   - By majority veto, with veto of the chair
   - By consensus
   - Other (explain)

Status of head of agency

8. Does the regulator’s head have a fixed term of office?

9. If yes, what is the length of the term? (Give the number of years, precise if it is at the discretion of the appointer.)

10. Who appoints the head?
   - One or two ministers
   - The executive collectively
   - The Parliament
   - A complex mix of the Parliament and government
   - Members of the board/commission in charge
   - Other, specify

11. Is the appointment renewable?
   - No
12. Are there any explicit limitations on the type of person who can be appointed head of the regulatory agency? Please describe the grounds on which the head may be chosen.

13. Is political independence a formal requirement for the appointment? (no)

14. What is the dismissal procedure for the head?
   - Dismissal is impossible
   - Dismissal is possible, but only for reasons not related to policy
   - No specific provisions for dismissal exist
   - Dismissal is possible at the appointer’s request

15. May the Head of Agency hold other offices in government?
   - Yes, or no specific provisions
   - Yes, only with the permission of the government
   - No

16. Do you consider that the head of Agency your (yourself) have sufficient space to function independently? What ensures your independency and what is hampering your independency?

   **Status of the members of the board (or commission) of the regulator**

17. Do the board (or commission) members have fixed terms of office?

18. If yes, what is the length of the term? (Give the number of years, noting if it is at the discretion of the appointer.)

19. Who appoints the board members?
   - One or two ministers
   - The executive collectively
   - The Parliament
   - A complex mix of the Parliament and government
Members of the board/commission in charge
Other, specify

20. Is the appointment renewable?
- No
- Yes, once
- Yes, more than once (indicate how many times)

21. Is the terms of the board members “staggering”, so that they can be replaced only gradually by each successive government?

22. Are there any eligibility requirements for appointment to the board or commission governing the regulatory agency? Describe the eligibility criteria.

23. Is political independence a formal requirement for the appointment?

24. What is the dismissal procedure for the member of the board?
- Dismissal is impossible
- Dismissal is possible, but only for reasons not related to policy
- No specific provisions for dismissal exist
- Dismissal is possible at the appointer’s head

25. Are members allowed to hold other offices in government?
- Yes, or no specific provisions
- Yes, only with the permission of the government
- No

26. Do you consider that the members of your Agency’s Board have sufficient space to function independently? What ensures their independency and what is hampering their independency?

Political independence

27. Is the political independence of the regulatory agency from the government, from Parliament explicitly stated in law or statutes?
28. Can the executive overturn the regulator’s decision? In which circumstances?

In the case of an independent or semi-independent regulatory or advisory agency, “individual instructions” refers to the power of a minister, or other body, to directly instruct the agency and thereby undermine its independence.

29. Is it formally stated in law or statutes that the regulator can receive “individual instructions” from the government, or other body, on specific decisions?

30. Have individual instructions by the executive happened in your Agency, and how? What is your assessment?

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**Actual independence**

Actual independence is as important as formal independence. The best measure of actual independence would be to examine the outcomes of disagreements between the executive and the regulatory agency over concrete decisions. This information is difficult to collect. Another possible indicator of independence is the pattern of turnover at the regulatory agency’s head. The probability that the head is replaced shortly after a political change of government is, to some degree, related to actual independence.

31. Please detail all changes (notably dates of start and end of office) at the head of the regulator.

32. Has the executive effectively overturn the regulator’s decision, and how often, which cases?

33. How do you assess in practice the independency of your Agency?

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**Independence from the regulated industry**

“Capture” by interest groups is a main concern of those who criticize strong regulators in general. Provide information on any provisions which exist to ensure that the regulator will not be captured by economic interests in the regulated industry. (For example, a requirement that the regulator’s head and board members do not hold shares or have other interests in regulated firms, or, as in the case of the Italian telecom and energy regulators, a prohibition to take a job in regulated firms for several years after the end of the office term.)
34. Are there any formal laws or statutes which exist to ensure that the regulator will not be easily captured by economic interests of the regulated industry? Please describe these provisions.

35. Has anyone criticized your agency for being close to industry, and what is your reply on that?

**Financial Resources**

The independence of the regulator is affected by its fiscal and administrative autonomy. The purpose here is to gather information on the agency’s budget, financing, staff policies, and internal organization. The regulator’s budget can have several sources, including state or public funds, fees imposed on the regulated industry, and tariffs on consumption of regulated goods or services. Several institutions or organizations can be involved in controlling the agency’s budget.

36. Budget: What is the regulatory agency’s total annual budget? (Please indicate the year of the information.)

37. What are the regulatory agency’s revenue and/or funding sources?
   - Fees levied on the regulated industry
   - State budget and fees
   - State budget only
   - Other (specify)

38. If possible when there is a mix of sources, please note how much each source provides, or at least indicate the primary source.

39. If funds come from the state budget, what are specific procedures to protect the independence of the regulator as part of the budgetary process?

40. If funds are raised through levies or fees imposed on the regulated industries, goods, or services, then specify if the levies can be directly determined by the regulator, or whether they need to be approved by a ministry.

41. Is the budget of the regulatory agency approved and controlled by the:
   - Agency itself, only
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42. To what extent do you consider that the financial resources have effectively ensured the independency of your agency?

43. Where would you welcome more financial scrutiny by parliament on the budget of your agency?

**Staffing and internal organization**

Several institutions can be involved in decisions over the internal organization of the regulator. What is relevant here is whether the government intervenes, or whether the regulator decides alone. For staffing policy, pay and recruitment rules are the most important points. The staff of the regulator can be completely subject to regular civil service pay and recruitment policies, or it can enjoy partial or full exemptions. Exempting the regulator from civil service salary limits can help to attract and retain the best qualified staff and to ensure adequate good governance incentives.

44. **Staffing policy: Confirm whether the staff:**
   a) Is subject to regular civil service pay completely
   b) Enjoys partial exemptions [please specify how]
   c) Enjoys full exemptions [please give details]

45. **What body is in charge of the agency’s staffing policy (recruiting, allocation and composition)?**
   a) Agency itself
   b) Both the agency and the government
   c) Government only
   d) Other (please specify)
46. Internal organization: What body is in charge of the internal organization of the regulator?

- Agency itself
- Both the agency and the government
- Government only
- Other (please specify)

47. What are the European Directives relevant to your Agency?

48. Do you know similar regulatory authorities from another country as best practice for your work?

ACCOUNTABILITY

Accountability, in this context, means an obligation to explain, answer for, and bear the consequences of the manner in which the regulator has discharged duties, fulfilled functions and utilized resources. Accountability involves relationships with political powers, particularly Parliament, as well as notions of procedural fairness and transparency, performance assessment, and appeal mechanisms. The purpose of the questions is to obtain an understanding of the mechanisms through which the regulatory agency is held accountable. For example:

- A regulator dependent on a ministry can be accountable directly to the minister.
- A fully independent regulator might be directly accountable to Parliament.
- A minister could be accountable to Parliament, or to the President

Reporting

49. What are the formal obligations (in law or statute) of the regulatory agency vis-à-vis the government?

- No formal obligations
- Reporting requirement, for information only
- Reporting requirement, and report must be approved
- Fully accountable to government
50. What are the formal obligations \((in\ law\ or\ statute)\) of the regulatory agency vis-à-vis the Parliament?

- No formal obligations
- Reporting requirement, for information only
- Reporting requirement, and report must be approved
- Fully accountable to Parliament

51. If there is a reporting requirement, should reports cover finances, performance, both?

52. What is the periodicity of reports: annual reports, quarterly, monthly,…

53. Are there content requirements or structure / format requirements for the reporting?

54. Can the regulator present, upon own initiative, reports or statements to the government or to Parliament?

55. How often in the past year has your agency / head of agency interacted with the parliament?

56. In which way would you wish to enhance the interaction with the parliament?

**Transparency and procedural requirements**

The extent to which the decision-making process is transparent and open to all interested parties is important for accountability. Transparent and open procedures are enhanced through the publication of reports or decisions, through the establishment of advisory groups and the involvement of less-organised groups such as consumer interest associations.

57. What are the obligations of the regulatory agency in regard to publishing its formal reports to government or parliament, or any other documents relating to markets and regulations?

58. What obligations exist to explain decisions, deliberations, and proceedings?

59. How often has your agency organized consultations with interested groups, including citizens associations?
60. Are interested parties allowed to make submissions to the regulator on matters under review, and how often has this happened?

**Performance assessment**

Performance assessment is crucial for the justification of the regulatory agency’s mission and existence. Evaluation of the regulator’s performance implies that the objectives of regulatory policy are clearly identified. An external evaluation procedure is also necessary to review the extent to which those objectives have been met.

61. Do governing laws stipulate the objectives of regulation? (YES/NO) Explain

62. Is the basic data relevant for the conduct of regulatory policy (e.g. the calculation of price caps – max prices) publicly available? (YES/NO) Please explain.

63. Is the regulator subject to a regular external audit? (YES/NO)

64. If so, is this audit:
   a. Financial audit
   b. Performance audit
   c. both

65. If the regulator is subject to audit, is it audited by:
   - A national audit office
   - Private consulting firms
   - Independent academic research
   - Other (explain)

66. What do you consider the best way to assess the performance of the regulatory body, thus the quality and quantity of the output of the regulatory body?
**Appeal mechanisms**

are particularly important to accountability. Information required on how (in court, special appellate bodies, or ministries) the regulator’s decisions can be appealed.

67. Through whom (court/special body/ministries) can the decisions of the regulatory agency be appealed or challenged?

68. Which body, other than a court, can overturn the decisions of the regulatory agency where the latter has exclusive competence?
   - No body
   - A specialised body (please specify)
   - Governmental or ministerial body, with qualifications
   - Governmental or ministerial body, unconditionally

69. Have there been cases of interference, reversal of decisions, etc. of the decisions of your regulatory body; and what is your assessment of it?

**Co-ordination with other authorities, including competition authorities.**

For example in Norway, specific agreements have been signed between the regulators for energy and telecommunications and the competition authority to assure that the implementation of competition law occurs in a coordinated way.

70. Does the regulatory agency have any formal agreements to co-operate with other regulators? (YES/NO) Please note the agencies involved and the types of agreements.

71. Do informal co-operative arrangements exist? With which regulators or state bodies?
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