

ASSESSMENT OF INTERACTION OF
THE **PARLIAMENT OF GEORGIA** WITH
INDEPENDENT INSTITUTIONS AND
REGULATORY AGENCIES

2022



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საქართველოს პარლამენტი



WFD



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TABLE OF CONTENTS

Acronyms	5
Executive Summary	7
1. Introduction	9
2. Conceptual framework on independent and regulatory agencies.	11
I. Instruments of independence	12
1. Institutional design and governance	12
2. Actual autonomy in conducting its mandate	13
3. Budget and financial resources	13
4. Human Resources policy	14
II. Instruments and indicators of accountability	14
1. Reporting	14
2. Performance review	15
3. Consultations and institutional cooperation	15
4. Ethics and transparency.	15
3. Analysis of Georgia’s independent institutions and regulatory agencies.	17
3.1. Public Defender (Ombudsman) of Georgia	17
3.2. State Audit Office of Georgia	24
3.3. State Inspector’s Service	29
3.4. Georgian National Communication Commission	33
3.5. Georgian National Energy and Water Supply Regulatory Commission	38
4. Comparative analysis and overview table of Georgia independent institutions and regulatory agencies’ application of instruments of independence and accountability	42
5. Parliament of Georgia and independent institutions and regulatory bodies	47
6. Recommendations on independent and regulatory bodies in Georgia	50
1. Recommendations on the institutional design.	50
2. Recommendations on the actual autonomy in conducting the mandate	51
3. Recommendations on budget and financial resources	51
4. Recommendations on human resources	52
5. Recommendations on the reporting.	52
6. Recommendations on performance review	54
7. Recommendations on ethics and transparency	54
8. Recommendations: Capacity in Parliament	54
7. Annexes	56

LIST OF TABLES, CHARTS AND BOXES

Box 1: Selection and appointment of the Ombudsman in Belgium . . . . .	.18
Table 1: Public Defender Annual Budget . . . . .	.19
Table 2: Technical assistance provided to Public Defender Office by external partners. . . . .	.20
Chart no.1 – General rules for consideration of reports in the Parliament . . . . .	.22
Table 3: SAO Annual Budget . . . . .	.26
Table 4: Technical assistance provided to SAO by external partners . . . . .	.26
Table 5: Number of audit reports appealed during 2019-2021 . . . . .	.28
Table 6: SIS Annual Budget . . . . .	.31
Table 7: Technical assistance provided to SIS by external partners . . . . .	.32
Table 8: Reports submitted by ComCom to the Parliament in the last 3 years ⁰³ . . . . .	.36
Table 9: Annual Reports submitted by GNERC to the Parliament in the last 3 years . . . . .	.40
Table 10: Overview table of Georgia independent oversight institutions and regulatory agencies’ application of independence and accountability instruments . . . . .	.44
Table 11: Analysis of committee staffing in European parliaments. . . . .	.48
Annex 1: List of interlocutors and persons consulted . . . . .	.56
Annex 2: Bibliography . . . . .	.58
Annex 3 Questionnaire to the Independent Regulatory and Oversight Institutions in Georgia . . . . .	.59

ACRONYMS

AOA	Asian Ombudsman Association
AOM	Association of Mediterranean Ombudsmen
ASOSAI	Asian Organization of Supreme Audit Institutions
BEREC	Body of European Regulators for Electronic Communications
BRAF	Black Sea Broadcasting Regulatory Authorities Forum
CEER	Council of European Energy Regulators
CEPT	European Conference of Postal and Telecommunications Administrations
ComCom	National Communications Commission
EaPeReg	Eastern Partnership Electronic Communications Regulators Network
ECTA	European Competitive Telecommunications Association
ENNHRI	European Network of national Human Rights Institutions
ENOC	The European Network of Ombudspersons for Children
EOI	European Ombudsman Institute
EPRA	European Platform of Regulatory Authorities
ERG	European Regulators Group
ERGEG	European Regulators' Group for Electricity and Gas
ERRA	Energy Regulators Regional Association
ETSI	European Telecommunications Standards Institute
Equinet	European Network of Equality Bodies
EUROSAI	European Organization of Supreme Audit Institutions
HRCIC	Human Rights and Civil Integration Committee
ICOAF	International Conference of Ombuds Institutions for the Armed Forces
IERN	International Energy Regulation Network
INTOSAI	International Organization of Supreme Audit Institutions
IOI	International Ombudsman Institute
ISSAIs	International Standards for Supreme Audit Institutions
ITU	International Telecommunications Union
NHRI	National Human Rights Institutions

NPM	National Preventive Mechanism
OECD	Organization for Economic Cooperation and Development
OGP	Open Government Partnership
OPCAT	Optional Protocol to the UN Convention Against Torture
GANHRI	Global Alliance of National Human Rights Institutions
GNERC	Georgia Energy and Water Supply Regulatory Commission
PDoG	Public Defender of Georgia
SI	State Inspector
SIS	State Inspector Service
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review
WFD	Westminster Foundation for Democracy

EXECUTIVE SUMMARY

This analysis has been undertaken by the Westminster Foundation for Democracy, between November 2021 and February 2022. Due to restrictions imposed related to COVID-19, most of work was conducted on-line.

How do Georgia's independent regulatory and oversight institutions exercise their roles and responsibilities and interact with parliament? How can the independence and the accountability of the institutions be strengthened? What initiatives can parliament undertake to optimize its interaction with these institutions?

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

The **first Chapter** of the report provides the conceptual framework to analyse the functioning and the main institutional characteristics of independent regulatory and oversight institutions. The framework is based upon “Guiding Principles for Regulatory Quality and Performance” issued by the Organization for Economic Cooperation and Development (OECD)¹.

In Georgia, as in many European countries, liberalization and transition to market economies has triggered the growth of regulatory agencies. 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. A key driver of this balance lies in the interaction between the institutions 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 independent oversight and regulatory institutions are neither fully independent from the government and parliament, nor fully subordinate to parliament, but operate ‘at arm’s length’, at an appropriate distance.

The extent to which the independence and accountability are reflected in the functioning of the five selected institutions in Georgia is analysed in **Chapter two and three**. Having considered the OECD standards, the functioning of independent oversight and regulatory institutions in Georgia seems to be largely appropriate.

¹ <https://www.oecd.org/fr/reformereg/34976533.pdf>

In the last decade, the institutional and legal framework underpinning the functioning of these institutions was substantially improved and harmonized to international and EU standards. Still, a partial lack of coherence and consistency in the application of the instruments of independence (institutional design, actual independence, budget, and staffing) and accountability (reporting, financial and performance audit, appeal procedures and consultations) across the five selected institutions was attested. The right for the nomination of candidates, eligibility criteria, approval threshold, immunity during and after the terms in office are applied incoherently across the five institutions. For instance, there are no specific requirements for the Public Defender and Auditor General positions, comparing to the State Inspector Service and the two regulatory agencies for which the law provides clear and objective selection criteria. There are different practices on approving budgets of institutions. Some institutions approve their own budget, in particular when they generate their own resources; other bodies have their budget approved by parliament, if it is part of public resources. The practices in relation to financial and performance audits are quite diverse too. Consequently, transparency and oversight by parliament are cumbersome and difficult to achieve. Therefore, there is a clear need to improve consistency and coherence among the institutions.

In terms of accountability, the annual activity reporting to parliament is diverse and rather uneven. Discussing reports from Independent Regulatory and Oversight Institutions in the Parliament is a crucial part of transparency and accountability. Any delays or cancellations of such discussions weakens the representative role of Parliament and its oversight function. It is recommended the parliament's Rules of Procedure specify in greater detail how the follow-up to the annual reports of the institutions is organized along with setting clear reporting requirements in terms of content and format in case such requirements are not yet clearly stipulated in the relevant legislation of the institutions. This should be one of the top strategic priorities of parliament.

In our view, the Parliament needs to further enhance its oversight function, fully taking advantage of the work of independent regulatory and oversight institu-

tions. The legislature should also provide a framework within which adequate scrutiny of policy and draft laws takes place, including through post-legislative scrutiny (PLS) to make it possible to assess the performance of the government and its agencies. This requires improving parliament's internal arrangements and enhancing staff competence and skills.

The public debt ratio in Georgia has further grown as a result of pandemic, and it was projected to equal 52.1 percent of the GDP by the end of 2022. The Parliament should be provided with detailed information on the structure, sources and long-term estimated effects of debts as well as the conditions attached to credits and loans. In Georgia, the State Audit Office provides part of this analysis for the benefit of parliament and other stakeholders. It is recommended to further incorporate parliament's oversight of debt and debt management in to the four phases of the budget cycle – formulation, approval, execution and oversight.

In **Chapter four**, the report reviews the parliament's capacity to increase its interaction with the independent regulatory and oversight institutions in Georgia. **Chapter five** provides a set of recommendations to optimize the balance between independence and accountability and to fine-tune the interaction with the Parliament of Georgia. Recommendations address the eight instruments mentioned earlier, as well as the capacity of parliament.

1. INTRODUCTION

The governance of public institutions determines the overall performance of the public administration. The rules established for their creation, operation, and possible termination by political actors shape the architecture and overall organisational landscape of the public administration. These rules should also specify the autonomy needed for each type of public institution to function well, and the accountability mechanisms needed to ensure that the institution is held to account for its performance and that it uses public funds effectively and efficiently for their intended purpose. However, many countries encounter various challenges striving to find the right balance between autonomy and accountability mechanisms.

The UNDP Georgia, a long-standing partner of the Parliament of Georgia, is working to strengthen its evidence-based policy and law-making capacity and enhance the oversight function over the Government. To advance this work further, UNDP, in the frames of the Parliamentary Project, supported by the European Union, commissioned the Westminster Foundation for Democracy (WFD) to conduct an assessment on interaction of Parliament of Georgia with three independent oversight institutions (Public Defender, State Audit Office, State Inspector Service) and two regulatory agencies (Energy and Water Supply Regulatory Commission and Georgian National Communication Commission). This study explores independent regulatory and oversight institutions and their relationships with parliament as a step towards understanding how these relationships can be enhanced to strengthen both oversight institutions and parliaments. It explores the institutional and legal frameworks of institutions providing a comparative analysis with international recognised standards and best practices. It concludes by proposing approaches that can help strengthen the relationship between parliament and regulatory and oversight institutions in Georgia.

The subject is particularly important considering the country's commitments to align its legislative and institutional frameworks with the European Union regulatory framework in a number of policy sectors. Both Parliament and the Government of Georgia work to reduce or simplify restrictions on business and individuals with the intent of encouraging the efficient operation of markets that would enhance competition, increase productivity and efficiency, improve the quality and reduce prices of products and services.

On the other hand, independent oversight institutions work to strengthen the quality of democracy through providing specialised oversight of key aspects of governance such as public financial management, respect for human rights, and the fight against corruption. To this effect, independent oversight institutions and specialised regulatory agencies were created to provide the potential for an effective balance of powers between the executive and the legislature.

A key driver of this balance lies in the interaction between the independent institutions and regulatory agencies and Parliament. The central challenge 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. That is how the system would look, at its best, but in practice in many countries, there is undue political interference in the work of the institutions and their work is not always sufficiently transparent.

Over the past years, the democratic governance in Georgia has been further strengthened. The Constitutional reform (2017) and the new parliament Rules of Procedure (2018) enhanced the oversight role of Parliament setting new mechanisms for interaction with independent oversight institutions and regulatory agencies. While the Parliament of Georgia has undertaken steps towards improvement of its oversight function, one can say that the oversight function still suffers from underperformance. Insufficient in-depth analysis of some reports provided by independent oversight institutions and regulatory agencies, lack of proper monitoring and follow-up on approved recommendations by parliament, little discussion around required budget resources and legislative proposals are just a few examples of issues reported to us.

This analysis provides recommendations aiming to strengthen the interaction of parliament with independent institutions and regulatory agencies, particularly in the following core areas: the institutions and agencies’ reports and their follow-up by Parliament; appointments to the boards or the leadership of the institutions and agencies; and the institutions and agencies’ budget and financial responsibilities.

In conducting this analysis, the expert team considered the OECD “Guiding Principles on Regulatory Quality and Performance”² as well as WFD Toolkit³ and similar assessment reports on parliaments’ interaction with various independent and regulatory agencies carried out in Ukraine, Moldova, Serbia, Lithuania, etc. The Venice Commission and EU regulatory frameworks were analysed too. It was, therefore, considered wider developments to be able to recommend arrangements which are likely to improve the interaction of the Georgian Parliament with independent and regulatory bodies, and provide competent, expert, and dedicated support for a parliament that will be capable of being in the front rank of European and world legislatures.

The methodology includes the following approaches:

- Desk review of the relevant written documentation (Annex 2)
- Interviews with representatives of independent institutions and regulatory bodies in Georgia, Members of Parliament, and committees’ staff, CSOs (Annex 1)
- Survey on the roles and responsibilities of independent institutions and regulatory bodies in Georgia (Annex 3)
- Validation sessions with selected institution and Parliament

² The Organization for Economic Co-operation and Development, “Guiding Principles on Regulatory Quality and Performance”, <https://www.oecd.org/fr/reformereg/34976533.pdf>

³ Franklin De Vrieze, Independent oversight institutions and regulatory agencies, and their relationship to parliament, WFD, 2019. The document was designed as a toolkit for parliamentary assistance programmes at three levels: 1. to assess the functioning of independent oversight institutions and regulatory agencies, 2. to review parliaments’ relationship with the institutions and agencies 3. to identify the opportunities for policy advise and technical support to parliament.

2. CONCEPTUAL FRAMEWORK ON INDEPENDENT AND REGULATORY AGENCIES

In the last decades, many countries have established independent oversight institutions and regulatory agencies. Though there are no definitive definitions of such institutions, there are some common characteristics that allow to make a distinction between these two categories:

Independent oversight institutions – these are public institutions that exercise oversight over the democratic functioning and integrity of the executive and state administration. They provide specialised oversight of key aspects of governance such as public financial management (Supreme Audit Office), respect for human rights (Public Defender Office), and the fight against corruption.

Independent regulatory agencies – they are semi-autonomous bodies with delegated powers to oversee and regulate specific economic sectors such as energy (Georgia Energy and Water Supply Regulatory Commission), communications (National Communications Commission), civil aviation, or financial services. The primary responsibility of regulatory bodies is to deliver high quality regulation of the sectors or industries they oversee.

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 'arm's length' from the sectors and industries they oversee and from the government⁴.

How can the independence and accountability of Independent and Regulatory Institutions be strengthened and what is the role of Parliament?"

These were the core questions the authors of this report sought to find answers for when analysing the interaction of the Parliament of Georgia with independent institutions and regulatory bodies. To answer these questions, a clear conceptual framework on the balance between the institution's independence and accountability was developed. The framework draws primarily on principles and

⁴ Adrienne Héritier and Dirk Lehmkuhl, *New Modes of Governance and Democratic Accountability*, in: *Government and Opposition*, published by Blackwell Publishing (Oxford), Vol. 46, No. 1, pp. 126-144, 2011. http://www.astrid-online.it/l-nuovi-pr/Studi--ric/H-ritier_Lehmkuhl_Gov-and-Op-pos_1_2011.pdf

best practices as documented by the Organization for Economic Cooperation and Development (OECD). The OECD “Guiding Principles on Regulatory Quality and Performance”⁵ call for ensuring adequate institutional frameworks, adequate human and financial resources, to ensure that independent and regulatory institutions are accountable, transparent, independent and effective in conducting their core functions.

Independence and accountability are both vital conditions for the effectiveness of regulatory institutions, but there is a trade-off between them: too much independence from the Government exposes the institutions to be captured by the industries they oversee and regulate, and too little independence exposes them to political interference that runs contrary to the economic and technical fundamentals of the industries or sectors concerned. For instance, overly independent regulatory bodies are vulnerable to be seized by special interest groups, such as powerful business cartels, which may seek to influence regulations in ways that serves the interests of a small minority which contravene the public good.

The OECD Guiding Principles as well as WFD Toolkit⁶, and some of the Venice Commission judgments and EU regulatory framework were employed to develop a conceptual framework that would assess the functioning of independent institutions and regulatory bodies and their interaction with the Parliament of Georgia. Due to COVID-19 travel restrictions during 2021, the assessment framework has been designed to cover just the most important aspects that could be verified with counterparts through virtual meetings and desk review of relevant national policy and legal framework. To this effect, a common assessment framework was designed consisting of 4 instruments for independence (19 indicators), and 4 instruments for accountability (18 indicators), allowing different options or additional indicators which are more relevant for these two categories of institutions. Such an approach ensured consistency avoiding duplication while recognizing the specificity of some indicators for regulatory agencies due to the nature of their relationship with the regulated industry.

⁵ <https://www.oecd.org/fr/reformereg/34976533.pdf>

⁶ Franklin De Vrieze, Independent oversight institutions and regulatory agencies, and their relationship to parliament, WFD, 2019

I. Instruments of independence

The assessment framework includes 4 instruments and 19 indicators for independence. They analyse the extent to which an independent oversight institution or regulatory agency has all required features to function independently and remain accountable. We will analyse these factors in the following pages.

1. Institutional design and governance

The institutional design and governance of the institution determine to a large extent the independence of an independent oversight institution or regulatory agency. Establishing an institution based upon a *secure legal foundation* is a first indicator for independence. The legal foundation needs to prevent that the institution can be easily abolished or its governance arrangements inappropriately amended. Establishing a secure legal foundation for the institution is an issue where parliament has primary responsibility.

Clarity in mandate and institutional objectives is the second indicator for independence. As different institutions may have a very different role and responsibility, clarity in the mandate reinforces an institution’s ability to exercise its role with the required independence. The mandate, role and responsibilities can be determined by the legal document establishing the institution as well as additional government decrees, protocols or court rulings. Establishing an institution with a clear mandate and strong objectives is an issue where parliament has a primary responsibility.

Merit-based and timely selection of head of institution or agency or board members is another indicator. Recruitment based upon clear selection criteria and a professional competency test constitute the minimum basis of any human resources policy. 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.

A guaranteed / fixed term of office for the head of the institution or agency is another key element to ensure the independence of the institution or regulator. With a guaranteed term of office, and the possibility for re-

newal of the term in office, the head of the institution can exercise his/her role without being undermined by short term political interests.

In cases when an institution or agency is led by a board, which is the case for regulatory agencies and some oversight institutions in many countries, *staggering terms for board members* most often confirm the independence of the institution or agency. Staggering terms for board members reduce the risk of sudden changes in direction of decision making due to undue influence over many new board members coming in.

Collegial decision-making – 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.

2. Actual autonomy in conducting its mandate

The actual political independence of the institutions needs to be secured. A particular concern is if politicians are appointed as members or heads of boards of regulatory agencies. 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 specialists⁷. 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. *Cessation of involvement in political party* activities or official party positions can be reflected in the legal framework for the institution or in its internal *Code of Conduct*.

⁷ Mark Thatcher, Independent regulatory agencies and elected politicians in Europe, in: OECD, Designing Independent and Accountable Regulatory Authorities For High Quality Regulation. Proceedings of an Expert Meeting in London, United Kingdom, 10-11 January 2005, p. 207-208.

A relevant indicator of independence of an independent oversight institution or regulatory agency is also the *degree of ministerial / governmental interference in its decisions*. Such influence or interference can happen directly from a senior Cabinet member or indirectly through government participation or attendance at meetings of boards or commissions managing the work of the institution.

Limitations to take a job in regulated firms during several years after the end of one's term in office with the regulator strengthens the independence of the regulatory agency, as it brings transparency to lobbying and reduces conflicts of interest. Such limitations are a direct response to the so-called "revolving door practice", a practice in which officials switch jobs between regulatory institutions and the industries they regulate. In a broader sense, there can also be a "revolving door" practice when parliamentarians and regulatory officials become lobbyists and consultants for the industries they once regulated⁸. An indicator for independence from the regulated industry is the actual application of the limitations to revolving door practices.

3. Budget and financial resources

Budgetary "autonomy" is a significant practical dimension for independence. The institution'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 institution, or the possibility of levying sufficient fees from the sector. It may also be influenced by the need to reduce the risk of capture. Fi-

⁸ The revolving door phenomenon may be seen in various industries and numerous political affiliations. While it is inevitable that workers switch between the public and private sectors, the growing influence of money in politics has placed the revolving door phenomenon into the spotlight. Between 1998 and 2017 the amount of money spent on lobbying in the United States more than doubled to \$3.36 billion. It has led to the concern that corporations and special interest groups are able to leverage their money to buy influence and access to key politicians. The revolving door also may lead to conflicts of interest, as the regulatory and legislative decisions made by politicians may directly benefit them soon after they leave office and begin their private sector career. In the United States, there are detailed rules on how and how soon ex government officials may be employed in the private sector.

nancial regulators are those which are most likely to be funded by fees, which also reflect the strong economic opportunities of the sector. Another practical dimension of independence is whether the institution *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. *Predictability, security, and stability of the budget* is another important indicator of independence of the institution. A measurement period of three years is reasonable.

4. Human Resources policy

The legal framework and policies of human resources are another instrument affecting the independence of the oversight institutions and regulatory agencies⁹. The independent oversight institutions and regulatory bodies need to be *able to select and recruit staff with the appropriate qualifications* in order to function appropriately and with authority. It is an important indicator of independence if the head of the institution or agency has the authority to select and appoint staff, provided they have the appropriate qualifications and professional expertise. Seconding staff from another institution, ministry or public authority, can potentially undermine the independence of the oversight institution or regulatory agency to select its own staff if the head of the institution or agency has little influence over who is seconded to the institution or agency.

The independent oversight institutions and regulatory bodies have also to have *authority to decide on the remuneration (salary and benefits) of staff and board members*. Staff in many oversight institutions and regulatory agencies are usually subject to the salary scales applicable to the civil service. 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. Sometimes, an oversight institution or regulatory agency needs technical and specialist expertise that is more difficult to bring in through staff from the Civil Service; and the remuneration scales are often

at higher level. The extent to which an independent oversight institution or regulatory agency has the authority to decide on the remuneration of staff, and board members alike, is an indicator of its independence. Within an agreed framework, parliament or government might allow flexibility in staff remuneration, or enable "top-ups" to civil service salaries by for instance international donor programmes.

II. Instruments and indicators of accountability

Accountability of independent and regulatory institutions contributes to not only compliance but also an effective performance by these bodies, specifically the way the institution or regulator has discharged duties, fulfilled functions and utilized its resources. In general, these institutions are accountable to the Parliament (by submitting annual reports on their activities); stakeholders – they have the right to easily access information, the right to be heard and the right to appeal against institution' decisions which impact them; and the public – citizens/consumers have the right to monitor the institution's performance.

1. Reporting

The way how the reporting is organized is the first instrument of accountability, related to four indicators. A first indicator is whether there is *a requirement for a regular annual report or semi-annual progress report* of the institution to parliament and/or government. Related to this requirement, is the question if the report is tabled in parliament, actioned upon and sanctioned if not sent.

A second indicator is if there are requirements on structure and content of the annual report to the government and parliament. Accountability is strengthened if the reports should not only cover finances, but also performance, and an annual work plan for the next year.

Another aspect to explore is getting *clarity if annual report is for information or for approval*. Depending on the nature of the institution and the relevant legal framework, the report submitted to parliament and/or government is for information only or needs to be approved. In the latter, the accountability is much high-

⁹ Wettenhall, R., Integrity Agencies: the significance of the parliamentary relationship, 2012, Policy Studies 33:1, p. 69.

er – possibly infringing on the independence of the institution or agency. In some countries, non-approval of annual reports is used as an indirect pressure mechanism on the institution. However, the role of parliament is not to approve/reject the annual report of the independent institutions, but rather to draft its own parliamentary motion/resolution/statement, where parliament endorses the recommendations of the report and requests the government and other state entities to take appropriate action. Accountability is also strengthened if the oversight institution or regulator has the *authority to present, at its own initiative, reports, or statements* to the government or to parliament.

2. Performance review

Performance assessment is crucial for the justification of the oversight institution or regulatory agency's mission and existence. Accountability is strengthened if there is regular scrutiny by a *dedicated parliamentary committee*, which has been assigned to follow relevant developments with the institution or agency. Accountability is also strengthened if there is a requirement and practice of an *external performance assessment and evaluation* procedure. In some countries, the performance review of regulatory agencies can be prepared by the agencies themselves through their annual reports. However, accountability is stronger if the performance review is the result from an external assessment, by external auditing agencies. Increased involvement and sometimes pressure by civil society can contribute to enhance the performance of independent oversight institutions.

Accountability is strengthened if the oversight institution or regulator is subject to a regular financial audit. The financial audit can be conducted by the National Audit Institution, or – depending on relevant legislation – by a private auditing company, either national or international. Accountability is strengthened if it is an international auditing company. An additional feature of accountability is an established practice of budget forecasting within the institution or agency. As some regulatory agencies are levy-funded, and their revenues are not taxpayer's money, applicable legislation can require establishing accountable, transparent bookkeeping.

3. Consultations and institutional cooperation

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 policymaking. 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.

Countries have developed five basic instruments or different forms to perform public consultation on the regulatory work: informal consultation, the circulation of regulatory proposals for public comment, public notice-and-comment, a public hearing or the use of advisory bodies. If consultation is based upon written documents and if prior notice is given, that increases the accountability¹⁰.

4. Ethics and transparency

The accountability of an institution is strengthened if it proactively establishes an ethical framework for its staff and management. In crisis situations around individual or collective behaviour damaging the integrity of the institution, an established ethical framework enhances accountability and protects the institution from undue political interference, thus even contributing to its independence. A *Code of Conduct for all staff and board members* is a first step. In many organizations, the Code of Conduct is part of or annexed to the employment contract. A second step is an *ethics framework* for an oversight institution or regulatory agency is to establish corporate ethics policies against – for instance – sexual harassment, bullying, corruption, conflict of interest, discrimination, and racism, and in favour of equal opportunities, transparency, privacy and data-protection.

¹⁰ See: <http://www.oecd.org/gov/regulatory-policy/public-consultationbest-practice-principles-on-stakeholder-engagement.htm>

An indicator for institutional transparency is *availability of a comprehensive and accessible website*. The availability to the public of the annual reports, performance review report, audit findings and conclusions of public consultations can be considered as an important element for transparency and efficiency in public decision making. Accountability is strengthened if these documents are published on the web site of the independent oversight institution or regulatory agency as well as on the website of parliament. This requires the institutions to have and maintain a comprehensive and accessible website.

3. ANALYSIS OF GEORGIA'S INDEPENDENT INSTITUTIONS AND REGULATORY AGENCIES

Based upon the indicators and instruments of independence and accountability as identified in the conceptual framework presented in the previous chapter of this report, the current chapter will analyse in detail each of the five Georgian institutions under review:

- Public Defender/Ombudsman Office
- State Audit Office
- State Inspector Service
- National Communications Commission
- Energy and Water Supply Regulatory Commission

The data and evidence for this chapter have been gathered through desk review and analysis of the laws regulating each of the institutions, in-depth interviews with the leadership of each of the institutions and an extensive written questionnaire (see Annex 3).

3.1. Public Defender (Ombudsman) of Georgia

The Public Defender of Georgia is an independent constitutional body established in 1997 to oversee the observance of human rights and fundamental freedoms on the territory of Georgia, identify cases of human rights infringement and assist individuals in redressing of violations of their rights. The present Public Defender, Ms Nino Lomjaria has been occupying the position since December 2017, and is the sixth ombudsperson of Georgia since the institution was established. The Office is organised between the central office in Tbilisi and nine regional offices in: Kutaisi, Gori, Batumi, Zugdidi, Akhalkalaki, Marneuli, Ozurgeti, Telavi, and Zemo Svaneti.

Following is an assessment of the independence and accountability of the Public Defender based upon the conceptual framework established in the second chapter of this report.

INDEPENDENCE

Institutional design and decision-making

The Public Defender's core functions are to identify and reveal facts of human rights violation in Georgia, perform the function of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture (OPCAT), anti-discrimination mechanism and monitoring mechanism for the UN Convention on the Rights of Persons with Disabilities (UNCRPD). To

be able to perform its functions, the Public Defender decides on individual complaints, recommending tailor-made solutions for each case where a violation is found. Furthermore, the Public Defender can initiate general investigations into large scale or systemic issues by means of introducing legislative amendments, submitting constitutional complaints to request normative control by the Constitutional Court, or requesting the Parliament to set up a special investigation commission in relation to certain violations. The Public Defender can also decide to intervene as *amicus curiae* into a case pending in common courts or before the Constitutional Court¹¹.

Parliamentary factions or a group of at least 7 MPs can nominate a candidate for the position of Public Defender of Georgia. As a result of Constitutional reform (2017), the Public Defender's tenure was increased from 5 to 6 years, being longer than the mandate of the appointing body. The Public Defender is elected by secret ballot of at least three-fifths of the full composition of Parliament¹². This is an appropriately qualified majority threshold that corresponds to the Paris Principles¹³ that call for a broad consensus in the

¹¹ In 2020, PD filed 6 lawsuits with the Constitutional Court, drafted and sent out 11 *amicus curiae* to the Constitutional Court (2), Tbilisi City Court (3), Batumi City Court (1) and Tbilisi Court of Appeals (3). In the same year, PD also addressed the European Court of Human Rights and joined two litigations as a third party. Source: 2020 Public Defender Annual Report <https://www.ombudsman.ge/res/docs/2021070814020446986.pdf>

¹² 3/5 of MPs out of 150

¹³ <https://www.un.org/ruleoflaw/files/PRINCI~5.PDF>

parliament. The vote of parliamentary majority and opposition come to ensure the actual independence of the Ombudsperson, strengthening its authority, impartiality, independence, and legitimacy. The same person may be elected as Public Defender of Georgia for no more than one consecutive term. At the same time, Parliament may not easily dismiss the Public Defender: conditions include incapability to perform duties for four consecutive months or holding a position or carrying out activities incompatible with the status of Public Defender¹⁴. A vote of at least three-fifths of members of parliament is required for approval of Public Defender's dismissal.

Nevertheless, the selection procedure for the Public Defender position requires further improvement, by employing a competitive process (one of the Venice Commission recommendations). The Public Defender Office supports this direction, the selection procedure applied for the State Inspector and Trustee for Public Broadcaster was referred to us as positive examples. The procedure for selection of candidates shall include a public call and transparent, merit based, objective, providing proper checks against political appointments.

Moreover, the criteria for being elected Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates¹⁵. Article 6 of the Law on Public Defender provides that a citizen of Georgia

¹⁴ Organic Law of Georgia on the Public Defender of Georgia, article 10, paragraph 1

¹⁵ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)005-e)

BOX 1: SELECTION AND APPOINTMENT OF THE OMBUDSMAN IN BELGIUM

Belgium's legislative provisions related to the process of selection and appointment of the Ombudsman are designed to promote independence. The Belgian Federal Ombudsman's legislation stipulates that the Ombudsman is appointed by the federal House of Representatives, following an open invitation for candidates to apply for the post. To be appointed as Ombudsman, a candidate must be a person of irreproachable conduct, hold a degree giving access to the functions of level 1 in the Civil Service departments of the State, and have relevant professional experience of at least 5 years either in the legal administrative or social spheres.

shall be elected as Public Defender of Georgia. This is the only requirement set by the law. The international best practices require setting additional criteria such as: high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms. To this end, the Public Defender Office prepared two written opinions on the draft RoP and submitted them to the Parliament. The same issue has been discussed with parliament in 2020 and 2021 as part of preparations of Open Parliament Action Plan, however, the amendment of the law was rejected by parliament. The Venice Commission also recommends that the single term shall preferably not be stipulated below seven years.

The Art.8 of Law on Public Defender of Georgia prescribes political independence of the Ombudsman – *the Public Defender shall not be a member of a political party or participate in political activity*, meaning membership in a political party and participation in political activities are restricted to the Public Defender after his/her election only. A common measure designed to further promote the independence of the Ombudsman institution is a requirement to renounce other employment and conflicting interests upon appointment. For example, in Hungary, the Commissioner for Fundamental Rights’ legislation provides that in the four years prior to being elected as Commissioner, an officeholder cannot have held various political or public offices.

The Public Defender enjoys personal immunity. S/he may not be detained, subjected to coercion, arrested, searched (except in the case of *flagrante delicto*), without a prior consent of parliament. The Public Defender has also the right not to testify on information that has been confided to him/her and may not be prosecuted for opinions and views expressed in the exercise of his/her duties.

Actual autonomy in conducting its mandate

The Public Defender Office is an independent institution in Georgia. Many interviewees referred to Public Defender Office as a role-model oversight institution. It acts independently against alleged violations of human rights and fundamental freedoms affecting individuals or legal persons. The Law on Public Defender makes explicit the Ombudsman’s independence and

specifically prohibits attempts by others to influence the Ombudsman¹⁶. Although the Public Defender makes non-binding recommendations, these are designed to pressure public authorities into accepting and implementing them. Where a public body fails to respond to recommendations by the Ombudsman, a special report may be made to the Parliament or the case can be introduced to court (e.g., victim of discrimination).

Ombudsman has an appropriately high rank, also reflected in its remuneration which is equal to the salary of the Chairperson of the Constitutional Court of Georgia (Art.25 of Law on Public Defender). The position of the Public Defender of Georgia is incompatible with membership in central and local government authorities, any position in public service and paid activities, except for scientific, educational, expert, or artistic activities.

Budget and financial resources

The Public Defender Office is financed from the state budget. It prepares its draft annual budget and sends it to the MoF. Subsequently, the Government submits the aggregated draft law of the State Budget to the Parliament for approval. The Public Defender can then determine the budget of its Office, within the scope of funds approved by parliament (See Table 1). Over the past 3 years, the Public Defender has never been asked to explain or justify its budget proposal before any parliamentary committee.

Table 1: Public Defender Annual Budget

Year	Budget in GEL	Budget in Euro
2018	GEL 5,500,000	Euro 1,623,970
2019	GEL 6,400,000	Euro 1,889,695
2020	GEL 8,000,000	Euro 2,362,119

The Public Defender Office has also managed to establish and build excellent cooperation with international organisations present in Georgia. These organisations have contributed to the further strengthening of the

¹⁶ Art. 4, Law on Public Defender of Georgia provides that *Any influence on or interference in the activity of the Public Defender of Georgia shall be prohibited and shall be punishable by law.*

Table 2: Technical assistance provided to Public Defender Office by external partners

Projects (2020 – 2022)	Funding	Period	Total budget
Sustainable urban mobility in the South Caucasus	GIZ	2020-2021	77,520 GEL
Child rights impact assessment during Covid-19 in Georgia	UNICEF	2021	66,160 GEL
Good governance for gender equality in Georgia	UN Women	2019-2022	100,000 USD
Monitoring women’s sexual and reproductive health and well being	UNFPA	2021	15,000 USD
UN join program for gender equality	UN Women	2021	10,000 USD
Strengthening protection against torture and ill-treatment in the penitentiary system, police stations, psychiatric and other institutions	Open Society Georgia Foundation	2020-2022	39,440 USD
Strengthening protection against torture and ill-treatment in the penitentiary system, police stations, psychiatric and other institutions	Open Society Georgia Foundation	2020-2022	27,600 USD
Support to the public defender’s office in combating extreme-right policy	Open Society Georgia Foundation	2020-2022	40,800 USD
Strengthening the Capacities of the Armenian and Georgian Ombudspersons in Monitoring the Socio-Economic Rights during Emergency Situations	International Ombudsman Institute	2021-2022	5,000 Euro
Assessing health and human rights condition of prisoners and prison staff	Rehabilitation initiative for vulnerable groups	2021-2022	25,750 GEL
Support to Public Defender Office to enhance its capacities to address the Situation of Project Beneficiaries in Georgia	UNHCR	2021	40,500 GEL

Public Defender Office’s capacities through funding and implementation of technical assistance projects (see Table 2).

The amount of labour remuneration provided in the state budget cannot be reduced without a prior consent of the Public Defender. The Public Defender Office may accept grant funding as well. However, one of the major challenges for the Public Defender Office is to have proper premises, which is also a guarantee provided for by law¹⁷. The previous building in Tbilisi required improvement because of earthquake in 2018. Although this problem is well known for years, the building issue had never been discussed by par-

liament. The Public Defender Office received finances from the Government’s Reserve Fund in 2018 to rent another office, while since 2019 the Public Defender Office has been paying the rent from its own budget¹⁸. This situation has affected the Public Defender’s capacity to carry out its work effectively and independently.

Human Resources

The Public Defender Office shall be established to support the activity of the Ombudsman. The structure, rules of operation and organization of the Office shall be determined by the Statute of the Public Defender

¹⁷ Article 5 of the Law on Public Defender

¹⁸ <https://www.ombudsman.ge/eng/akhali-ambebi/gantskhadebasakhalkho-damtsvelis-aporatis-shenobastan-dakavshirebit>

Office. The Ombudsman appoints and dismisses employees from Office at their own discretion, following the provisions of Law on Civil Service. The staff of the Office is headed by the First Deputy Public Defender. Currently, the Public Defender Office counts 143 employees, hired and paid¹⁹ under public service legislation. Our interviews revealed, the institution has well appropriately qualified staff. Working for Public Defender Office is quite attractive, staff turnover being less than 10% annually.

ACCOUNTABILITY

Reporting

The Public Defender is accountable only to the Parliament of Georgia. S/he can attend the meetings of the Parliament Bureau and present opinions²⁰. For instance, in 2019, the Public Defender attended the Permanent Bureau meeting and shared opinions on the draft Law on the Appointment of Supreme Court Judges of Georgia as well as procedures related to the discussion of the Public Defender's reports within the Parliament. The Public Defender presented its opinions further in the plenary meeting²¹.

In addition, the Public Defender has the right and obligation to attend committee and plenary sittings and report on the activity performed²² (e.g., the Public Defender approached the HRCIC on the issue of the Public Defender's building on January 23, 2019²³). The Public Defender is obliged to submit a written notification to the Speaker of Parliament on the issues s/he wants to present to the Parliament but no later than three days before the plenary sitting. The Speaker of Parliament ensures immediate distribution of the written submission to political groups and independent MPs.

Once a year, in March, the Public Defender shall submit a report on Human Rights and Freedoms in Georgia. The Annual Report provides details on various

human rights violations in Georgia as well as the Public Defender's challenges and progress made in the field of protection of human rights, recommendations, and proposals. During the spring session, the Parliament adopts a decree or a resolution on the annual report presented by the Public Defender. The report shall specify those state and local self-government authorities and officials that violated human rights and freedoms or ignored recommendations. It is published on the official webpage of the Parliament. The Public Defender produces special (thematic) reports too. Only those reports that require special attention and review of standing committees are sent to the Parliament²⁴. These reports are published by the decision of the Ombudsman.²⁵

Based on the Public Defender's report findings and proposals, the Parliament formulates its own tasks for various public authorities that should further enhance human rights and freedoms in the country, including terms for their implementation. The parliamentary committee on Human Rights and Civil Integration presents information on the enforcement of the resolution first to the Bureau of Parliament and subsequently in a plenary session²⁶. The Human Rights and Civil Integration Committee (HRCIC) also monitors the execution of the European Court of Human Rights judgements and the implementation of the recommendations of the Universal Periodic Review²⁷. During a committee hearing, HRCIC shall study the opinion and evaluation of any interested individual(s) concerning the status of enforcement of decisions/judgments of the European Court of Human Rights. However, such obligation is missing when it comes to the supervision of the implementation of UPR's recommendations. We believe this is a missed opportunity for NGOs and NHRI or any other interested party to contribute to the parliamentary oversight function.

The last Report on Human Rights and Freedoms in Georgia was submitted to the Parliament on March 31, 2021²⁸. The secretariat of HRIC assist MPs in review-

¹⁹ Within the limits established by the law

²⁰ Art.25 of the Parliament Rules of Procedure

²¹ <https://parliament.ge/legislation/17833>

²² Art.40 , Art.92 and Art.154, of parliamentary Rules of Procedure

²³ <https://www.ombudsman.ge/geo/akhali-ambebi/otkhi-penitentsiuri-datsezebulebis-angarishis-tsardgena-parlamentshi> ; <https://parliament.ge/media/news/human-rights-and-civil-integration-committee-hearing-public-defender-and-minister-of-justice>

²⁴ See for example the Public Defender's Special report on the distance court hearings during pandemic

²⁵ Organic Law of Georgia on the Public Defender of Georgia, article 22

²⁶ Rules of Procedure of the parliament of Georgia, Art. 163

²⁷ Rules of Procedure of the parliament of Georgia, Art. 173

²⁸ <https://www.ombudsman.ge/geo/akhali-ambebi/sakartvelis-sakhalkho-damtsvelis-saparlamento-angarishi-2020>

ing the report. The report was distributed internally to all standing committees and political groups within the parliament. The Public Defender presented the report to the Parliament on June 23²⁹. The next day, the Chair of the parliamentary Human Rights and Civil Integration Committee presented committee's report to plenary. The Parliament adopted its resolution on the Report on 12 July³⁰ (See the Chart no.1 – General rules for consideration of reports in the Parliament). The resolution has two parts: 1. a general evaluation of the Public Defender's Report and 2. Parliament's tasks for individual public entities.

However, the Ombudsman institution in Georgia still faces several challenges in enhancing its effectiveness and impact. Just over 20% of the recommendations approved by the Parliament of Georgia are fully implemented by concerned public authorities³¹. This is the conclusion of the Public Defender's special report on the tasks approved by the parliament.

Although the Ombudsman's reports are addressed by the plenary, S/he does not possess the right of legislative initiative³². During 2013-2021, the Public Defender Office prepared and submitted to the Parliament twenty-one legislative proposals. None was adopted by parliament. A possibility to work with the Parliament directly on legislative initiatives would facilitate the Public Defender's activity in improving the legal framework on protection of human rights in Georgia. To this effect, the Parliament Human Rights and Civil Integration Committee amended its statute in 2021 providing that all the proposals addressed to the Parliament through the Annual Report of Public Defender will be reviewed by the Working Group created under the Committee. We believe this can be an effective mechanism to solve the issue. As an alternative, the Parliament of Georgia could also consider establishing

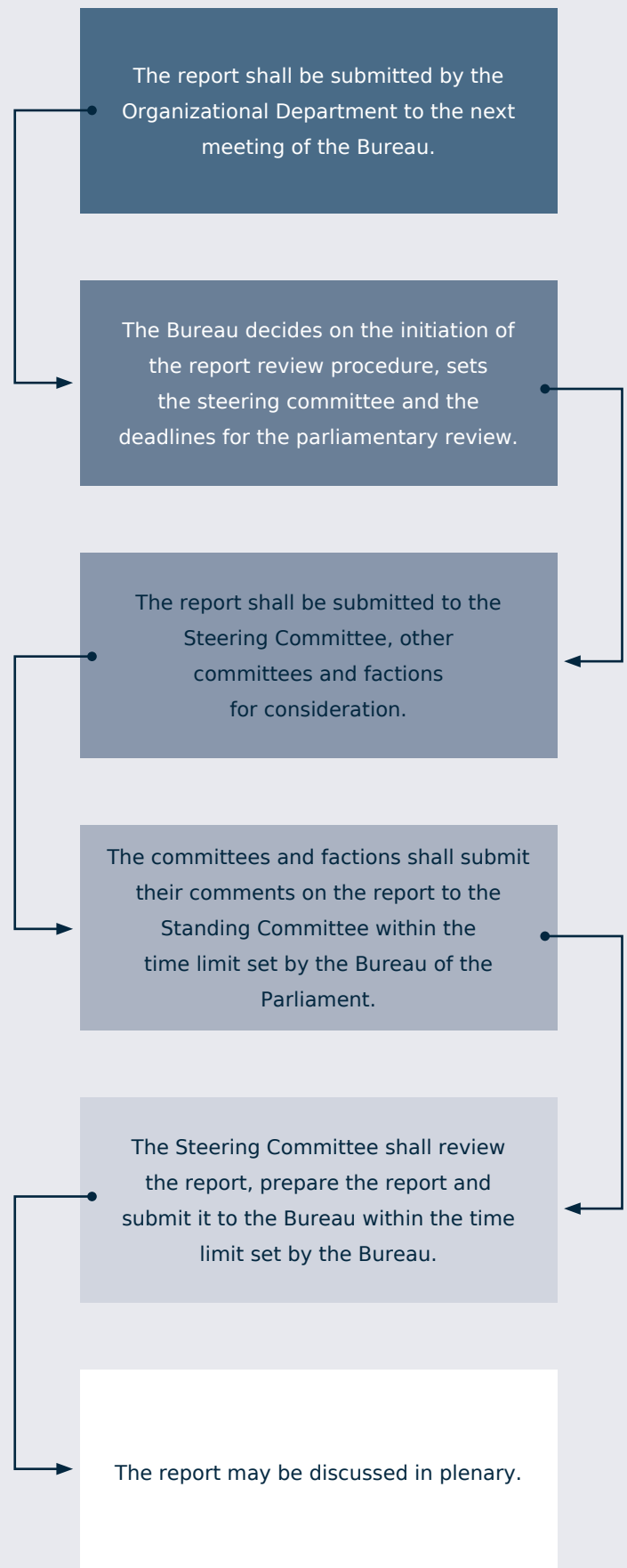
²⁹ <https://ombudsman.ge/geo/akhali-ambebi/sakhalkho-damtsvelma-sakartvelos-parlamentis-plenarul-skhdomez-tsiuri-angarishi-tsaradgina>

³⁰ <https://parliament.ge/media/news/parlamentma-sakhalkho-damtsvelis-angarishis-shesakheb-dadgenileba-miigho>

³¹ <https://www.ombudsman.ge/eng/spetsialuri-angarishebi/spetsialuri-angarishi-sakartvelos-parlamentis-2020-tslis-29-ivnisis-dadgenilebashi-asakhuli-davalebebis-shesrulebis-mdgomareobis-shesakheb>

³² The Public Defender develops opinions on necessary legislative changes and submit them to the Parliament of Georgia in the form of a legislative proposal

CHART NO.1 –
GENERAL RULES FOR CONSIDERATION
OF REPORTS IN THE PARLIAMENT



a sub-committee that would deal with Public Defender's legislative proposals. For example, the Parliament of Czech Republic, the Constitutional and Legal Affairs Committee in the Chamber of Deputies (lower house) has established in 2015 a sub-committee to deal with legislative initiatives of the Ombudsman and judgments of the European Court for Human Rights.

Performance review

The State Audit Office of Georgia carries out an independent financial audit of the Public Defender Office budget considering only the legality of financial proceedings and not the choice of priorities in the execution of the mandate. The last audit was conducted in 2018. The audit report is submitted by SAO to the Parliament. The report is further distributed internally to the Committees on Budget and Finance (and its Audit Group) and Human Rights and Civil Integration. The 2018 Audit Report was not discussed by the Parliament.

The Public Defender Office also provides standard quarterly, semi-annual and annual statements on budget execution to the Ministry of Finance.

Complaints and appeals

Citizens of Georgia, foreigners and stateless persons, as well as legal entities under private law, and political and religious associations may direct their complaints of human rights violations to the Public Defender, which can serve as grounds of an investigation into human rights violations.

The Public Defender independently decides whether to start an inspection after receiving a statement or an appeal³³. In case of citizens appeals, the Public Defender must inform the complainant about the decision of inspection as well as on the outcome. The decisions of the Public Defender made within the constitutional powers can't be appealed, except those of administrative nature (e.g., staff employment or dismissal). The authority to make decisions (admissibility of complaint, termination procedure, etc.) has been delegated to internal subdivisions and Public Defender's deputies. An internal procedure for handling complaints has been recently introduced within the Public Defender Office³⁴.

³³ Law on Public Defender of Georgia, Art. 17

³⁴ <https://www.ombudsman.ge/res/docs/2021041412580449009.pdf>

Consultations and institutional cooperation

When performing its functions, the Public Defender Office may engage external experts and NGOs to fulfil its tasks. To conduct broader consultations, the Office is establishing four advisory councils³⁵ (e.g., monitoring child's rights; NPM), which allow to collect various opinions and clarify findings as part of monitoring mechanism.

Since 2005 within the Public Defender of Georgia there has been established Tolerance Centre with aim to develop the culture of tolerance and establish an equal environment in Georgia. One of the main directions of the Centre is to coordinate the Councils of Religious and Ethnic Minorities of the Public Defender of Georgia. The Councils are a space where religious and ethnic minorities have the opportunity to discuss and work on issues that are important to them. Currently, the Council of Ethnic Minorities brings together about 100 organizations working on minority issues, while the Council of Religions unites more than 30 religious associations. The Councils represent the largest minority advisory forums today.³⁶

In order to promote the best human rights practices and standards as well as keep abreast of relevant trends, the Public Defender Office has established and expanded its cooperation with relevant human rights international organisations. The Office is a member of the following international networks: Global Alliance of National Human Rights Institutions (GANHRI); European Network of national Human Rights Institutions (ENNHRI); International Ombudsman Institute (IOI); European Network of Equality Bodies (Equinet); The European Network of Ombudspersons for Children (ENOC); Association of Mediterranean Ombudsmen (AOM); Asian Ombudsman Association (AOA); European Ombudsman Institute (EOI); International Conference of Ombuds Institutions for the Armed Forces (ICOAF). In some of these networks (IOI, ENNHRI, ENOC) the Public Defender of Georgia has leading and managerial positions.³⁷

³⁵ <https://ombudsman.ge/eng/sakonsultatsio-sabchoebi>

³⁶ <https://ombudsman.ge/eng/tolerantobis-tsentri>

³⁷ <https://www.ombudsman.ge/geo/saertashoriso-organizatsiebi>

Ethics and transparency

The Ombudsman shall not, during his or her term of office, engage in political, administrative, or professional activities incompatible with his or her independence or impartiality. The Public Defender and its office staff are bound by legislative rules of ethics in all their professional tasks. The Public Defender First Deputy and Deputy shall declare their income and property under the laws in force³⁸. The Public Defender Office also developed and approved an internal regulation covering professional ethics (adopted on 28.01.2019) as well as an internal policy to prevent sexual harassment in the Office (adopted 14.11.2017).

To ensure transparency of its activity, the Public Defender has an up-to-date website on which all relevant materials are easily accessible. These include *inter alia* the Public Defender's reports to parliament, news releases and any documents/reports relating to the Public Defender's remit and working practices. The Public Defender Office has also a proactive approach towards transparency. To this end, the Public Defender approved internal rules on issuing public information, publishing, and protecting of personal data³⁹.

3.2. State Audit Office of Georgia

The State Audit Office (SAO) is the supreme audit institution in Georgia. SAO was created and defined pursuant to Chapter 7 of the Constitution of Georgia. It aims to promote efficiency and accountability of public administration, assessing the legitimacy, effectiveness, and efficiency in the management of public financial resources and public property, including in the autonomous republics or local self-government bodies. It is the only public authority that carries out external expenditures and incomes audits in the public sector promoting internationally recognized standards on the transparency and accountability in public financial management⁴⁰. SAO has also competence in monitoring political parties' finance.

³⁸ Law on conflict of interests and corruption in the public service <https://matsne.gov.ge/en/document/download/33550/55/en/pdf>

³⁹ Order no. 98 adopted by the Public Defender on June 7, 2019, defines the list of information to be proactively published, which also refers to decisions made by Public Defender Office.

⁴⁰ International Standards for Supreme Audit Institutions (IS-SAIs)

The State Audit Office of Georgia is a highly credible, transparent, and effective Supreme Audit Institution in the region (see the World Bank Supreme Audit Institutions Independence Index 2021)⁴¹. Following is an assessment of the independence and accountability of the SAO based upon the conceptual framework established in the third chapter of this report.

INDEPENDENCE

Institutional design and decision-making

According to the Organic Law on State Audit Office, SAO has organizational, functional, operational, and financial independence⁴². The Auditor General leads the State Audit Office, presents reports to the Parliament of Georgia on the execution of the state budget as well as annual reports on the activities of SAO.

The Auditor General is elected by the Parliament for a five-year period, at the proposal of the Speaker of Parliament, by the majority of full composition of parliament⁴³. Neither the Constitution nor the Parliament RoP does not specify how many times one and the same person may be elected as Auditor General. Instead, the RoP provides that one and the same candidate shall be nominated to parliament only twice. In carrying out its roles, the Auditor General is supported by his deputies, including a First Deputy, who are appointed and dismissed by the Auditor General. The Presidium of SAO is an advisory body authorised to manage administrative disputes (e.g., appeals, complaints submitted by public authorities) concerning the audit reports of SAO. The Auditor General, the Deputy Auditor Generals and the heads of departments are members of the SAO Presidium.

The Law on State Audit Office does not prescribe specific requirements for the Auditor General position, except for his/her political independence – *The Auditor General shall not, during his or her term of office, be a member of any political party or engage in other political activities*⁴⁴. In addition, the position of Auditor General is incompatible with any other remunerated activity, except for didactic, scientific and/or creative work.

⁴¹ Supreme Audit Institutions Independence Index 2021 Global Synthesis Report

⁴² Law on State Audit Office

⁴³ Constitution of Georgia, article 69

⁴⁴ Art.9 of the Law on State Audit Office

The mandate of the Auditor General ceases upon deliberate resignation, revocation, as well as in the case when recognised by the court as a beneficiary of support⁴⁵, missing or dead. The mandate may also be revoked when he/she loses the Republic of Georgia citizenship or occupies a position incompatible with the status of the Auditor General.

The Auditor General may be removed from office by the decision of the Parliament in accordance with Article 48 of the Constitution of Georgia. None of Auditor Generals was removed from the office. A vote of at least one-third of members of parliament is required to initiate the dismissal procedure of the Auditor General.⁴⁶ The opinion of the Constitutional Court must be sought before the vote in parliament, and once issued the Speaker of Parliament, initiators of the dismissal process, factions, and independent MPs needs to be informed.

SAO doesn't have the right for legislative initiatives but has the right for legislative proposal. During 2013-2021, SAO prepared and submitted to the Parliament a package comprising 9 legislative proposals, seven out of them were adopted by parliament. In consultation with SAO, the parliament amended the following legislation:

- As a result of constitutional reform from 2017, the Law on the State Audit Office was upgraded to the status of organic law and the Auditor General was authorized to appeal to the Constitutional Court.
- Law on Labour Remuneration in Public Institutions, adopted on December 22, 2017, was amended providing the Auditor General the authority to independently determine the salaries of the employees of the audit-analytical unit.
- On December 6, 2018, the Law on the State Audit Office was amended providing that the financial audit of the SAO should be conducted by an audit company selected through a tender by the Parliament.

⁴⁵ Beneficiary of support – a person who has psychological, mental/intellectual disorders which may prevent him/her from participating in public life fully and effectively on equal terms with others; furthermore, these impediments, without appropriate advice and aid, significantly make it harder for the person to freely express his/her own will and to make an informed and conscious choice in an area defined by the court

⁴⁶ Rules of Procedure of the Parliament of Georgia, articles 178-180

- On July 2, 2020, amendments were made to the Electoral Code, the Organic Law on Citizens' Political Associations, and the Criminal Code. As a result, the function of investigating voter bribery was removed from the SAO mandate and transferred to law enforcement agencies. A number of innovations have also been implemented to ensure the effectiveness of the monitoring system of political finance.

SAO also contributed to the development of the draft Rules of Procedure of the Parliament (adopted on December 6, 2018). As a result, a permanent working group was established to review the audit reports.

Actual autonomy in conducting its mandate

SAO is non-political and neither supports nor assists any political party. The Auditor General decides on issues concerning the activities of the SAO issuing normative acts – orders – in accordance with the Law of normative acts. The Auditor General has the right to make and cancel decisions regarding the activities of the SAO, except for audit reports, which are approved by the Head of the Audit Department, and cancelled by the Presidium, which reviews disputes. The law prescribes that no one may interfere with or influence the Auditor General decisions. Any political pressure on the State Audit Office or any other actions that may infringe upon its independence is prohibited.

The Auditor General enjoys personal immunity. He/she may not be detained, subjected to coercion, arrested, searched (except in the case of *flagrante delicto*), without a prior consent of parliament.⁴⁷

The SAO designs its Annual Audit Action Plan independently. No public authority may request or force the SAO to change its audit plan, to carry out or stop certain audit activities. Only the Parliament may request the SAO to perform some audit work. Unscheduled financial and/or compliance audits can be conducted upon the request of the Parliament or a temporary investigation committee⁴⁸. For over ten years, the Parliament did not request SAO to conduct additional audit work. The last request was in 2012⁴⁹ when the parliament passed a resolution requesting the SAO

⁴⁷ Law on State Audit Office, Art. 11

⁴⁸ Law on State Audi Office, Art.18

⁴⁹ <https://parliament.ge/legislation/714>

to conduct an unscheduled audit on the spending of funds for the construction of the Parliament Palace in Kutaisi.

Auditor General has an appropriately high rank, also reflected in its remuneration which shall not be less than the salary of the Deputy Chairperson of the Parliament of Georgia (Art.32² of Law on State Audit Office). Moreover, when deciding about remuneration of auditors, the Auditor General shall consider the amount of remuneration existing in the largest audit firms operating in country. The position of the Auditor General is incompatible with membership in central and local government authorities, any position in public service and paid activities, except for scientific, educational, or artistic activities.

Budget and financial resources

SAO is financed from the state budget. According to Budget Code⁵⁰ and parliamentary Rules of Procedure⁵¹, the SAO prepares its draft annual budget and submits it for review to the parliamentary Committee on Budget and Finance. The Committee reviews the draft budget statement within 3 weeks and makes a conclusion. This conclusion is sent to the Parliament for discussion in a plenary sitting. The Parliament approves it before 15 of June of the current year. The approved budget is provided to the Government to be reflected in the draft law of the State Budget. SAO can then determine the budget of its Office, within the scope of funds allocated by parliament. In addition, the SAO prepares multi-annual budgetary plans too, as part of the Government Mid-Term Budgetary Framework (MTBF).

The Law on State Audit Office as well as parliamentary Rules of Procedure provide additional guaranty for SAO's independency. Thus, the approved budget shall not be less than the corresponding amount of the previous year. The legal requirement not to reduce SAO's budget without its consent is being followed in practice (See Table 3).

The SAO plans to enhance further the audit of incomes of various public authorities, however this requires additional human resources. The issue has been raised

Table 3: SAO Annual Budget

Year	Budget (GEL)	Budget (EURO)
2018	GEL 14,517,000	Euro 4,286,225
2019	GEL 15,831,000	Euro 4,674,333
2020	GEL 16,165,000	Euro 4,767,045

Table 4: Technical assistance provided to SAO by external partners

Projects (most recent and ongoing)	Funding	Period
Strengthening the capacity of Supreme Audit Institutions in the Eastern Partnership countries to monitor the achievement of Agenda 2030 objectives	GIZ	2019-2020
Government to Government Program (G2G)	USAID	2019-present

with Parliament and Government, but a final decision is still pending.

SAO has managed to receive additional funding from other sources than the state budget. Thus, some of institutional development needs are covered from the funds provided by the Saudi Arabia Fund, GiZ and US-AID funded projects (Table 4).

Human Resources

The Auditor General approves the organisational structure and headcount of the SAO, appoints and dismisses staff of the Office and SAO officials⁵². S/he also approves the chart of positions and the amount of remuneration within the limits of the payroll fund established for the SAO. The office staff are public servants.

The Law on remuneration in public institutions⁵³ and the Law on State Audit Office provides the SAO with the authority to independently decide on the staff pay. The Auditor General decides on his/her remuneration,

⁵⁰ Budget Code of Georgia, Art. 41

⁵¹ The Rules of Procedure of the Parliament of Georgia, Art. 146

⁵² Law on State Audit Office, Art. 10

⁵³ <https://matsne.gov.ge/en/document/download/3971683/4/en/pdf>

his/her deputies, members of the Presidium, auditors, and analysts of the SAO. The institution has approved various internal staff policies and procedures regulating rotation of staff, professional development and career management, internships, and others.

However, the SAO struggles to retain qualified employees due to limited resources the institution has available for salaries. The depreciation of the national currency (Georgian Lari) and the fact that salaries of SAO's employees were amended last time 5 years ago, triggered a high staff turnover within the institution. Due to the Covid-19 pandemic, SAO refrains from increasing staff remuneration, a measure applied across the government sector. Thus, the gap between private audit companies and SAO in terms of staff pay has substantially increased, making the work less attractive.

ACCOUNTABILITY

Reporting

The SAO submits annually its activity report to the Parliament of Georgia by 1 June. The report shall include results of the SAO's financial audit in an annex. There is no standard reporting form. The report is reviewed by the parliamentary Budget and Finance Committee and subsequently by the plenary. Upon its consideration, the Parliament shall adopt a decree providing recommendations and terms for their implementation⁵⁴. The last report on the activity of SAO was submitted to the Parliament on June 1, 2021. The report was discussed in the Budget and Finance Committee and in the plenary on 22 July 2021⁵⁵.

SAO also prepares a Statement on the Government's Annual Report on the Implementation of the State Budget (within 50 days after receiving the report on the implementation of the state budget from the Ministry of Finance). The report is reviewed first by the parliamentary Budget and Finance Committee, factions, and independent MPs and subsequently by the plenary (by the end of the parliamentary spring session). The audit report on annual budget performance covers important issues such as medium-term budgetary planning, budget preparation and approval, pub-

lic debts and loans, resource management, internal financial control and accounting-reporting. The focus is on implementation of programs of specific spending institutions, and on planned and achieved results and indicators. However, there is no in-depth discussion of budget execution report within the plenary, the core issues mainly being debated within the Finance and Budget Committee.

A major focus of the State Audit Office (SAO) of Georgia is to examine the effectiveness of the government's public debt management. Public debt management is of particular importance for ensuring fiscal and macroeconomic stability. SAO's Follow-up Performance Audit on Public Debt Management⁵⁶ found that from 2014 to 2019, Georgia's public debt doubled, to 42 percent of the projected Gross Domestic Product (GDP) at the end of October 2019. Seventy-eight percent of total public debt at that time was external, i.e., borrowed from international financial institutions or bilateral creditors in foreign currencies. This rise in public debt was driven by increased borrowing and by depreciating the national currency⁵⁷. The public debt ratio grew further as a result of the pandemic, and it was projected to equal 57.9 percent of the GDP by the end of 2020. SAO Georgia's 2020 audit also found that while the government had taken some positive steps to manage public debt, it had implemented only four of SAO's nine recommendations. It is recommended to further incorporate parliament's oversight of debt and debt management in to the four phases of the budget cycle – formulation, approval, execution and oversight⁵⁸.

The Audit Group established under the Finance and Budget Committee is effective. It develops draft decisions of the Finance and Budget Committee containing relevant recommendations and submits them to the committee. The SAO provides around 60 audit reports a year to parliament, most of these reports being processed by the Audit Group. The number of reports discussed by the Finance and Budget Commit-

⁵⁶ სახელმწიფო ვალის მართვა.pdf (sao.ge)

⁵⁷ See the IMF Report on Georgia from April 2021 <https://www.imf.org/-/media/Files/Publications/CR/2021/English/1GEOEA2021001.ashx>

⁵⁸ See the WFD Report on The Role of Parliament in Public Debt Management by Geoff Dubrow (2020) <https://www.wfd.org/what-we-do/resources/role-parliament-public-debt-management>

⁵⁴ The Parliamentary Rules of Procedure, Art.165

⁵⁵ <https://parliament.ge/legislation/22338>

tee has constantly increased so the rate of recommendations implemented by various public authorities (in average 45-50% of SAO annual recommendations are implemented⁵⁹).

Twice a year, together with the submission of preliminary and full reports on the execution of the State Budget, the State Audit Office shall submit to the Parliament its conclusions on the Government report. In addition, every 2 years, the SAO shall present to the Parliament of Georgia an aggregated audit report on the spending and execution of the budgets of local self-government units. The SAO shall submit all its reports to the Parliament. In addition, the Audit Office shall inform the Parliament twice a year about particularly important reports – by 10 September of the current year and by 10 February of the following year. The audit reports produced by SAO as well as its decisions are published on its official webpage.

SAO is also monitoring the funding of political parties (e.g., public funding, donations, membership fees) checking their expenditures and developing reports on identified violations. Political parties are required to periodically report on their finances. The annual declaration filled in by political parties shall contain information on the party's income and expenditure, including the funds used for the electoral campaign and any property held. This information must be made public and reveal the identity of donors. There are sanctions in the form of fines or loss of public funding. A seizure may be also used in proportion to the sanction provided for the relevant offenses. However, the SAO does not have the sufficient human resources to fulfil this role more effectively⁶⁰.

Performance review

The annual financial statements of the SAO are subject to external audit. The audit is 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. In 2018 and 2019 the financial audit of

⁵⁹ In 2019, the SAO created an electronic system for monitoring the implementation of recommendations www.aris.sao.ge

⁶⁰ OSCE/ODIHR, Georgia, Presidential Election, 28 October and 28 November 2018: Final Report, 28 February 2019 <https://www.osce.org/odihr/elections/georgia/412724>

SAO was conducted by Deloitte, in 2020 by PricewaterhouseCoopers (PwC). The audit report is attached to the SAO Annual Activity Report which is published on the official website of the SAO and available to all interested parties.

SAO had succeeded in finalising the implementation of ISSAI standards on financial, compliance and performance audits and had established relevant quality control and quality assurance procedures and practices.

Complaints and appeals

SAO holds in-depth hearings on key findings of audit reports with participation of audited entities. Hearings are conducted in public except for national security or similar sensitive discussions.

All auditees, within 20 days after receipt of the audit report⁶¹, may appeal the audit report to the SAO Presidium only, except those which are not an administrative body. These bodies shall also appeal the report in court (See the Table 5)

Table 5: Number of audit reports appealed during 2019-2021

	2019	2020	2021
No of reports appealed to the Presidium	4	1	3
No of reports appealed to court	3	1	2

The Presidium of the SAO reviews administrative complaints within 20 days after their submission. Considering their complexity, this term may be extended.

Consultations and institutional cooperation

When performing the audit, the SAO may contract or involve qualified specialists to assist it accordingly in the fulfilment of its tasks, as well as request some specialized state institutions to carry out specialized verifications that will facilitate the clarification of some findings. SAO organises consultations with public authorities, CSOs and other stakeholders to collect feedback and additional input on the legislative amendments suggested to the Parliament.

⁶¹ Law on State Audit Office, Art. 27

In addition, in performing its functions the SOA considers the international best practices and standards applied for audits. The SAO is a member of the International Organization of Supreme Audit Institutions (INTOSAI), being represented in different Committees, subcommittees, and working groups. The SAO is a member of the European Organization of Supreme Audit Institutions (EUROSAI), which is one of the regional groups of the International Organization of Supreme Audit Institutions (INTOSAI). The SAO is also a member of the Asian Organization of Supreme Audit Institutions (ASOSAI), one of INTOSAI's regional working groups, established in 1979 and consisting of 45 Supreme Audit Institutions (SAIs).⁶²

Ethics and transparency

The General Auditor, his/her deputy, members of the Presidium of the SAO, heads of Departments and of structural units shall declare their income and property under the laws in force⁶³. This is done regularly and in a timely manner, all the declarations are collected by the Civil Service Bureau⁶⁴. The SAO has also developed and approved a self-regulatory Code of Ethics that applies to all SAO staff on September 27, 2010. A revised version was introduced starting with November 26, 2019⁶⁵.

SAO has an up-to-date website on which all relevant information is easily accessible. These include audit reports, statements, news releases and any documents relating to the SAO's remit and working practices.

3.3. State Inspector's Service

Note: At the end of December 2021, during our analysis, the Parliament of Georgia decided to abolish the SIS, while two new state agencies – a Special Investigation Service and Personal Data Protection Service – were established to investigate offences committed by authorities and to monitor personal data process-

*ing*⁶⁶. While the analysis of such decision is beyond the mandate of the current assignment, it seems important for the Parliament of Georgia to consider the findings and recommendations presented in this report along with international best practices for independence and accountability when setting up the two new agencies.

State Inspector's Service (SIS) was established as an independent public authority in Georgia in July 2018. As a legal successor of the Office of the Personal Data Protection Inspector, SIS has the task to carry out key oversight functions of state institutions and private companies, merging the two pillars of personal data protection and investigations into crimes committed by law enforcement officers under one authority.

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

INDEPENDENCE

Institutional design and decision-making

The SIS is independent from executive and accountable only to the Parliament of Georgia. Its organisational structure has evolved over the time. In 2020 three additional departments (for supervising public sector, private sector, and law enforcement bodies) have been established to deal with data protection issues according to sectors. An Operative Unit was also established as a separate structural unit, with the main function to facilitate effective investigation of crimes.

Our interviews revealed the SIS has sufficient powers to effectively exercise its functions related to personal data protection. The situation is less obvious in terms of the investigation of crimes committed by law enforcement officials. The current legislation does not provide for sufficient guarantees of functional independence of the Service. As an independent investigative body, SIS is not entitled to independently (without the engagement of the Prosecutor's Office) decide

⁶² [https://sao.ge/en/about-us/international-partners-and-projects/Memberships-in-the-unions-of-the-Supreme-Audit-Institutions-\(SAIs\)](https://sao.ge/en/about-us/international-partners-and-projects/Memberships-in-the-unions-of-the-Supreme-Audit-Institutions-(SAIs))

⁶³ Law on conflict of interests and corruption in the public service <https://matsne.gov.ge/en/document/download/33550/55/en/pdf>

⁶⁴ <https://declaration.gov.ge/>

⁶⁵ https://sao.ge/Uploads/2020/1/etikis_kodeksi.pdf

⁶⁶ <https://parliament.ge/en/media/news/parlamentma-sakhelmtsifo-inspektoris-samsakhuris-shesakheb-kanonshi-tsvlilebebi-ganakhortsia>

on carrying out important investigative actions (such as search, seizure, or covert investigative actions). For these cases, a prosecutor is entitled to issue a mandatory instruction to an investigator concerning the conduct of investigative activities, including those that, according to current legislation are carried out by the decision of an investigator independently⁶⁷. Such dependency on another institution cannot fully guarantee the institutional independence of the Service. Thus, the investigation and prosecution functions require split.

According to the Law of on the State Inspector's Service the State Inspector and the Deputy State Inspector are entitled to submit substantiated proposals to the General Prosecutor's Office on various issues (e.g., initiation of criminal prosecution, carrying out investigative activities infringing upon private property). However, the law does not provide for the right to appeal the refusal of a prosecutor in the court. Granting such a right to the SIS would increase trust into final decisions adopted by the SIS. To this end, SIS developed legislative proposals and submitted them to the Parliament and Government for further consideration. Other two legislative proposals, submitted by SIS in the previous years, are still pending approval of parliament.

Any citizen of Georgia with no conviction recorded, who has higher legal education and at least 5 years of professional experience in the judicial or law enforcement system or in the field of human rights, and possesses high professional and moral reputation, may be elected as the State Inspector. The selection commission established by the Prime Minister of Georgia to select qualified candidates for the State Inspector's position has the following composition:

- a. a representative of the Government of Georgia
- b. chairperson of the Human Rights and Civil Integration Committee of the Parliament of Georgia
- c. chairperson of the Legal Issues Committee of the Parliament of Georgia
- d. deputy chairperson of the Supreme Court of Georgia
- e. the first deputy or Deputy Chief Prosecutor of Georgia

⁶⁷ SIS 2020 Activity Report https://stateinspector.ge/uploads/tinyMCE/documents/ENG_Personal_Data_2020.pdf

- f. Public Defender of Georgia or the representative of the Public Defender of Georgia
- g. a person with relevant experience, selected from the members of non-entrepreneurial (non-commercial) legal entity by the Public Defender of Georgia through the open competition procedure, who has the experience of working in the field of human rights and/or personal data protection

The SI is elected by the Parliament for a six-year period, at the proposal of the Prime-minister, with a majority vote of full composition of the Parliament.⁶⁸ The mandate is not renewable – the same person cannot be elected for two consecutive terms of office⁶⁹. The mandate may be revoked by parliament when SI loses the Republic of Georgia citizenship; show an inability to exercise powers due to health problems for four consecutive months; elected or appointed to another office; sentenced to imprisonment by a final Court ruling or recognised as a beneficiary of support, missing or dead. Once the Speaker of Parliament notifies the Parliament on the occurrence of such circumstances, without voting on it, the SI's mandate is then considered terminated.

The position of the SI is incompatible with membership in central and local government authorities, any position in public service and paid activities, except for scientific, educational, or artistic activities. In addition, the State Inspector shall not be a member of any political party or participate in political activity.

Actual autonomy in conducting its mandate

The Law on the State Inspector Service makes explicit the State Inspector's independence and specifically prohibits attempts by others to influence the SIS's decisions⁷⁰. The SI has immunity from legal persecution for acts performed under the law. The SI cannot be detained, subjected to coercion, arrested, searched without a prior consent of the Parliament (excepting *flagrante delicto*)⁷¹. S/he has also the right not to testify on information that has been confided to her/him

⁶⁸ Rules of Procedure of the parliament of Georgia, Art. 204

⁶⁹ Law on State Inspector Service, Art. 6

⁷⁰ Art. 11, Law on State Inspector Service of Georgia provides that any type of influence on the servants and investigators of the State Inspector Service, or illegal interference with the activities of the State Inspector, shall be prohibited and is punishable by law.

⁷¹ Rules of Procedure of the parliament of Georgia, article 181

during her/his mandate. This immunity applies even after the termination of powers.⁷²

Budget and financial resources

SIS gets its funding from the state budget. The draft annual budget proposal of the Service is developed within the pre-defined marginal volumes by the Government of Georgia. The Ministry of Finance (MoF) oversees the SIS's budget as part of the wider budget-setting for central government. Our interviews revealed, over the past 3 years, SIS has never been asked to explain or justify its budget proposal before any parliamentary committee. Thus, SIS depends on the decision of the Ministry of Finance in allocating funds for its activity.

The budget is presented to the Parliament alongside the budgets of Executive ministries and scrutinised as part of the total national finances. It is the MoF who recommend the final budget, and whose permission is required, for example, to allow in-year financial flexibility such as virement between budget lines. The SIS submits semi-annual and annual financial reports based on standard reporting forms approved by the Ministry of Finance.

Table 6: SIS Annual Budget

Year	Budget	Budget (EURO)
2018	GEL 2,000,000	Euro 590,040
2019	GEL 5,000,000	Euro 1,475,100
2020	GEL 7,000,000	Euro 2,065,715

The SIS has also managed to establish close cooperation with donor organizations: Council of Europe, EU Delegation to Georgia, GiZ, UNDP, OHCHR, USAID and US Embassy etc. The table below provides an overview of the technical assistance received by SIS so far:

The level of annual funding cannot be reduced without a prior consent of the State Inspector.⁷³ The SIS has received new investigative powers in 2019, subsequently, the annual budget was increased to cover the

⁷² Law on State Inspector Service, Art. 11 (currently Law on the Protection of Personal Data, article 40⁹)

⁷³ Law of Georgia on the State Inspector Service, Art. 10

cost for additional staff and other related expenses. Due to the COVID-19 pandemic, the SIS budget was reduced in 2020. Lack of office space, specifically in the regions is among the challenges that hamper the SIS work.

Human resources

SIS is managed by the State Inspector who approves the organisational structure, decides on the headcounts and the roles and responsibilities of SIS structural units. All the SIS staff are public servants. Part of them – the investigators⁷⁴ – are hired and paid following a separate procedure developed and approved by SIS⁷⁵. The SI decides on its own remuneration, the law does not provide an indication on the level of payment.

Currently, the SIS counts 125 employees. We were told, the current number of staff is not sufficient, the number of investigators being small. In 2020, the Service submitted a proposal to the Government of Georgia to increase the number of staff, but their number remained unchanged.

ACCOUNTABILITY

Reporting

Annually, no later than March 31, the State Inspector submits to the Parliament the SIS activity report along with the financial statement. The report provides an insight into the state of personal data protection in the country, the oversight of covert investigation and actions related to the digital communication identification central bank as well as the state of investigation of criminal cases.⁷⁶ The report shall be discussed in the Parliament, but it does not require a formal approval of parliament. At the end of discussion, the Parliament shall acknowledge the report and is authorized to adopt a decree, in accordance with the RoP. The reports are regularly presented to and discussed by parliament. The only exception in this regard is the 2020 report of the Service, which was submitted to the Parliament on 31 March 2021⁷⁷, and which has not

⁷⁴ The employees of the Investigative Department and the General Inspectorate

⁷⁵ The SIS Salary Payment Rules were adopted on 26 May 2019

⁷⁶ Rules of Procedure of the parliament of Georgia, article 169

⁷⁷ Official website of the Parliament of Georgia, <https://parliament.ge/legislation/21860>

Table 7: Technical assistance provided to SIS by external partners

Projects (most recent and ongoing)	Funding	Period
Juvenile and Adult Detainee Support (JADES) –completed	Council of Europe	2019-2021
Supporting Freedom of Media and Internet in Georgia – completed	Council of Europe	2019-2021
Human Rights Compliant Policing in Georgia (HRCPG) – ongoing	Council of Europe	2021-2023
Strengthening Media Freedom, Internet Governance and Personal Data Protection in Georgia (SMIP-GE) – ongoing	Council of Europe	2021-2023
Support to the Development of Criminal Policy, Prosecution and Investigation – completed	EU	2020-2021
Support to Security Sector Oversight in Georgia – ongoing	EU	2021-2024
Implemented by UNDP and OHCHR – Human Rights for All (phase 1) – completed	EU	2019-2020
Project funded by Norwegian Embassy and implemented by UNDP and OHCHR	Norwegian Embassy	2020-2021
Implemented by UNDP and OHCHR – Human Rights for All (phase 2) – ongoing	EU	2021-2023
Good Governance Initiative – completed	USAID	2020-2022
Department of Justice (DoJ)	US Embassy	2020-2021
Bureau of International Narcotics and Law Enforcement Affairs	US Embassy	2020-2021
Promoting Personal Data Protection in Georgia – project implemented by NGO IDFI	Embassy of Netherlands	2020-2021
Taking Georgia to a higher level of Personal Data Protection – project implemented by NGO IRC	UNDP	2021
OSGF project – implemented by NGOs IDFI and EMC		2020-2021
UN Women GEO project “Good Governance for Gender Equality in Georgia”	Norwegian Ministry of Foreign Affairs	2020-2021
“CyberEast”	Council of Europe and EU joint project	2020-2022
EU4 Security, Accountability and Fight Against Crime in Georgia (safe) – implemented by UNOPS	EU	2021-2022

been discussed at committee and/or plenary session so far. Noteworthy, the Parliament is normally considering the SIS report during its fall session leaving insufficient time to SIS to follow-up on the parliament’s recommendations. Moreover, the resolution of parliament to a large extent requires SIS addressing the reported challenges, being less demanding in the case of other public authorities concerned in the SIS annual report.

The law foresees certain standards for reporting form for the activity report. The report shall include⁷⁸:

- Information about the activities carried out in the field of personal data protection
- general assessments, conclusions and recommendations on the situation in the area of data protection
- the information on significant violations detected during the year and measures undertaken; general statistical information on the activities carried out in the field of control of the conduction of secret investigative activities
- general information on the offences under the SIS

⁷⁸ Law on State Inspector Service, Article 12

- statistical data on the ongoing investigation in the field of its powers
- general trends, assessments, conclusions and recommendations and other relevant issues.

The annual report of the State Inspector Service shall not contain information on the issues related to the investigation of a particular criminal case and/or the circumstances of the case.

Once a year, the SIS also presents a report on the results of its oversight of implemented investigative activities and covert investigative actions envisaged by the Criminal Procedure Code of Georgia. The Bureau of the Parliament shall submit the report to a relevant committee of the Parliament and Trust Group.⁷⁹ However, the parliamentary RoP has no specific provision related to the review or discussion of the SIS's report on investigative activity. This would allow the parliamentary oversight function to fully take advantage of the work of SIS.

Performance review

The performance and financial control over the activities of the SIS is carried out by the State Audit Office.

Complaints and appeals

The SIS reviews citizens' complaints and monitors the lawfulness of personal data processing by conducting inspections. SIS's decisions may be appealed only in court under standard procedures.⁸⁰ The SIS General Inspection Department reviews complaints concerning SIS staff and their conduct.

Consultations and institutional cooperation

The Service provides consultations on personal data protection to the interested legal and natural persons, contributing to public awareness-raising.

To harmonize with international standards, the SIS representatives participated in various international formats on behalf of the country such as the sittings of the Global Privacy Assembly (GPA) and working meetings of the Council of Europe's Ad hoc Committee on Artificial Intelligence (CAHAI). SIS has also established professional relationship with the Ontario Special Investigation Agency (SIU) and with the Independent Of-

fice of Police Conduct in England and Wales (IOPC). It actively cooperated with the European Committee for the Prevention of Torture (CPT).

Ethics and transparency

The SIS has an approved Code of Ethics for the employees of the Investigative Department of the SIS. Disciplinary proceedings against the investigators of the SIS shall be carried out in accordance with the procedure established by the SI⁸¹. All the other staff is bound by the general rules of conflict of interests and professional ethics that applied to public servants. The SI has established a disciplinary council to address staff disciplinary issues. Its composition and procedures are made public.

In 2019, the SIS launched a new webpage to improve public outreach and communication. The webpage on personal data protection (www.personaldata.ge) maintained its outlook and information; while, for ease of access to information on investigative function, a new webpage was set up – www.stateinspector.ge. Both pages have been merged under the main webpage of the Service (www.sis.gov.ge).

3.4. Georgian National Communication Commission

Georgian National Communication Commission (Com-Com) is the main regulatory authority empowered to regulate the broadcasting and electronic communication areas. The Commission was established as a legal entity in 2000 and is structurally and legally independent from the Government as well as independent of network and/or service providers from the sector. The Constitution of Georgia guarantees the institutional and financial independence of the national regulatory body established to protect media pluralism and freedom of expression in mass media⁸².

ComCom performs its functions and duties based on Law no.1514/2005 on Electronic Communications and Law no.780/2004 on Broadcasting. In addition, Law no.1666/2002 on National Regulatory Bodies provides guarantees for ComCom independent functioning, prohibiting any political pressure or unlawful interference from state authorities.

⁷⁹ Rules of Procedure of the parliament of Georgia, article 169

⁸⁰ Law on State Inspector Service, Art. 16

⁸¹ Law on State Inspector Service, Art. 10

⁸² Constitution of Georgia, Art.17

ComCom 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 National Strategy for Development of Broadband Networks for 2020-2025, approved by the Government in 2020⁸³. ComCom is also responsible for regulating and overseeing legal compliance in the field of broadcasting.

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

INDEPENDENCE

Institutional design and decision-making

Georgian regulatory system is well aligned with EU regulatory framework. Legal guarantees of independence of NRA have been established in the Constitution of Georgia since 2017 with further technical changes introduced in 2018⁸⁴.

The Commission consists of 5 members (commissioners), elected by Parliament by a majority of votes for a six-year term⁸⁵. Candidates are nominated by the President of Georgia, the list of candidates requiring countersignature of the Prime Minister. For this purpose, the Government is organising an open competition by publishing a decree providing selection requirements⁸⁶. As a result of the selection process, the Government submits to the President of Georgia a list of selected candidates – at least three candidates will be selected for each vacant position.

The nominations are assessed by the relevant thematic parliamentary committee, normally this is the Sector Economy and Economic Policy Committee. The committee is organizing a hearing to assess the can-

didates. It votes separately on each candidate before presenting the candidates to the plenary. ComCom members are elected by a majority of votes of the full composition of the Parliament.

Candidates must possess a Master's degree in Economics, Public Administration, Business Administration, Law, Electronic Communications or Journalism or the equivalent, and have at least 10 years of work experience, including 3 years in a managerial position. ComCom members serve in their personal capacity for staggered terms and may be re-elected for one more term. Noteworthy, the international best practices recommend establishing three distinct selection requirements for NRA heads or board members:

- adequate personal and professional qualifications, i.e. high moral standards, good reputation;
- higher education in form of a university degree (in the field of law, economics or technology);
- adequate professional work experience⁸⁷.

Thus, it is recommended supplementing Law on Broadcasting to foresee additional requirements related to personal and professional qualifications for candidates applying for ComCom membership.

The ComCom members elect amongst themselves a Chair of the Commission within 15 calendar days after expiration or termination of the term of the current chairperson. The ComCom chairperson is elected by a simple majority of votes, for 3 years and can be re-elected twice within its commissioner term (Law on Broadcasting was amended in 2019, abolishing a ban on electing the same commissioner to the post of the chairperson for more than one term). The Chair 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. It is recommended that the Chair of the NCC is appointed by parliament, thus strengthening the independence of the Chair and the institution.

A commissioner may be dismissed only by the Parliament.⁸⁸ The mandate may be revoked by parliament

⁸³ <https://eufordigital.eu/georgia-approves-broadband-development-strategy-2020-2025/>

⁸⁴ See the EU4Digital Gap assessment of Georgia regulatory system in the field of electronic communications, October 2020 <https://eufordigital.eu/library/gap-assessment-of-georgia-regulatory-system-in-the-field-of-electronic-communications/>

⁸⁵ Rules of Procedure of the parliament of Georgia, Art, 204

⁸⁶ https://www.gov.ge/print.php?gg=1&sec_id=288&info_id=79021&lang_id=ENG

⁸⁷ See CEER report on the organizational framework of Europe's national energy regulators, 26 April 2021 <https://www.ceer.eu/documents/104400/-/-/3daa9416-edc7-c741-6042-c71d4ed50bb0>

⁸⁸ Official website of the CC, <https://www.comcom.ge/en/the-commission/about-commission>

when a commissioner resigns, is sentenced to imprisonment by a final Court ruling, s/he is recognised as a beneficiary of support, missing or dead. On the occurrence of such circumstances, the mandate of a commissioner is terminated by a vote of a majority of MPs present at the plenary sitting. In case of ethics rules violation or incapacity to exercise its duties for 15 consecutive working days or for a cumulative period of more than 2 months in a year for unjustifiable reasons, 1/3 out of total Members of Parliament may initiate the dismissal procedure. The issue shall be discussed in a plenary sitting. The Parliament approves the decision on dismissal with the vote of three-fifths of the full composition of the Parliament⁸⁹.

The decrees approved by ComCom are published on the legislative herald of Georgia (www.matsne.gov.ge).

Actual autonomy in conducting its mandate

ComCom members may not hold any other public or private position. They may not be affiliated to political parties or structures. Neither Commissioners nor their family members may own, directly or indirectly, shares in enterprises which could create a conflict of interest. The same applies to ComCom office staff. In all other cases, incompatibility will lead to commissioners' dismissal.

ComCom is an autonomous public body, with all the attributes of public legal entities and develops and approves its own internal regulations. As the market evolves the relevant legal framework requires further improvement. To this end, ComCom prepared nine legislative proposals during 2014-2018, seven of them being accepted by parliament and two being rejected⁹⁰.

The Art.48 of Law on Electronic Communications authorises the Government (Ministry of Economy) to develop the national numbering system in consultation with ComCom⁹¹, which weakens ComCom's po-

sition of independent regulator (see additionally the EU4Digital Gap assessment of Georgia regulatory system in the field of electronic communications⁹²). Matters related to the use of numbering resources shall be regulated by the ComCom. Furthermore, the ComCom shall issue permits for using numbering resources and specify permit conditions⁹³.

Budget and financial resources

ComCom gets its funding from regulation fees which is 0.5% of the total annual turnover of broadcasters (excluding VAT) and 0.75% of the total annual turnover of authorized and licensed electronic communications providers (excluding VAT). The source of funding of the Commission is also the amount to be paid for the right to use the radio frequency spectrum and / or numbering resource (except for the fee for the use of the exhaustible resource fee for obtaining a license). Our interviews revealed that ComCom is facing some challenges in retaining and recruiting qualified staff. Although the institution's staff remuneration is among the highest within the public service in Georgia, their salaries are average or even lower compared to the stakeholders of the regulated sector.

The ComCom annual budget is comprised by compulsory current and capital annual expenses. After covering the expenses determined by the budget of the Commission, ComCom may transfer the remaining budget funds (if any) to the State Budget⁹⁴. However, the EU regulatory framework requires any surplus be returned to market participants⁹⁵.

Human resources

The Commission sets up its organisational structure independently. It decides on the headcount and staff remuneration. ComCom has the authority to hire and dismiss staff, based on approved internal regulations.

⁸⁹ Rules of Procedure of the parliament of Georgia, Art. 185

⁹⁰ Majority of legislative proposals were related to the amendment of legislation related to broadcasting, electronic communications, licences and permits

⁹¹ numbering system – a defined combination of symbols used in the process of providing electronic communication services for identifying an electronic communication operator's network or terminal equipment of a user

⁹² <https://eufordigital.eu/library/gap-assessment-of-georgia-regulatory-system-in-the-field-of-electronic-communications/>

⁹³ See the Gap assessment of Georgia regulatory system in the field of electronic communications, EU4Digital October 2020

⁹⁴ Law on Electronic Communications, Art. 12

⁹⁵ See Directive 2002/20/EC, Art.13

ACCOUNTABILITY

Reporting

Before 1 June of each year, the ComCom Chair submits for information to the President, Government, and Parliament its annual activity report that includes the results of ComCom financial audit. There is no standard reporting form for the activity report. The Parliament reviews the report following the general rules of procedure.⁹⁶ The last report was submitted to the Parliament on May 31, 2021⁹⁷. On 28 December 2021, the Committee on Economy and Economic Policy discussed the 2019 and 2020 Annual Activity Reports provided by ComCom⁹⁸ (see Table 8 below).

Performance review

ComCom conducts annual financial audit of its expenses and accounts in accordance with international accounting standards⁹⁹. The audit is carried out, in accordance with the international standards of auditing, by an independent, renowned, and experienced external audit organization. The results of audit are integrated into the annual activity report, which is submitted to the Parliament and discussed within the relevant Committees. The audit reports are published by

⁹⁶ See the chart #1 in annexes

⁹⁷ Official website of the Parliament of Georgia, <https://parliament.ge/legislation/22152>

⁹⁸ Official website of the Parliament of Georgia, <https://parliament.ge/en/media/news/dargobrivi-ekonomikisa-da-ekonomikuri-politikis-komitetma-komunikatsiebis-erovnuli-komisiis-sakmianobis-2019-da-2020-tslebis-angarishebi-moismina>

⁹⁹ Law on National Regulatory Bodies, Art. 17

ComCom on its official webpage. Moreover, the Parliament has the right to initiate such an audit too¹⁰⁰. However, we found no evidence that Parliament has exercised this power with ComCom so far, the situation is opposite in the case of other institutions such as the National Bank and Pension Agency. For these institutions, the annual audit is mandatory according to Parliament RoP.

Complaints and appeals

Depending on the legal document under review, the ComCom' decisions may be appealed either to the Constitutional Court or the common courts of Georgia¹⁰¹. The ComCom's decisions taken under the Law on Broadcasting enjoy no immediate effect if an appeal is submitted as there is a general suspensive effect under Georgian administrative law, while the Law on Electronic Communications Article 11 and 46¹ (amended by Parliament on 17 July 2020) introduces an exception for ComCom decisions. Once an appeal is filed in the court, only the court can decide about the suspension of the execution of the decision¹⁰².

ComCom is required to ensure that any cost recovery mechanism or pricing methodology that it mandates serves the purpose of promoting efficiency and sustainable competition and ensures consumer benefits. To this end, a Public Defender's service for consum-

¹⁰⁰ Parliament RoP, Art. 168

¹⁰¹ Law on National Regulatory Bodies, Art. 18

¹⁰² See the Venice Commission Opinion requiring the Parliament to repeal these amendments and conduct proper RIA [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)011-e)

Table 8: Reports submitted by ComCom to the Parliament in the last 3 years¹⁰³

No.	Number and date of submission	Title of the report	Status
1	1-10641/19 29.05.2019	2018 ComCom Annual Activity Report	Distributed to the committees and parliamentary factions for deliberation
2	1-8205/20 23.06.2020	2019 ComCom Annual Activity Report	Distributed to the committees and parliamentary factions for deliberation. The 2019 and 2020 reports were discussed by the Human Rights and Sector Economy and Economic Policy Committees. Discussion in a plenary sitting is still pending ¹⁰³ .
3	1-7095/21/10 31.05.2021	2020 ComCom Annual Activity Report	

¹⁰³ Parliament RoP, Art. 176.6 provides that *Discussion of a report at the plenary sitting of the Parliament is mandatory if the relevant law envisages participation of the Parliament in the staffing of the presenting body*

ers' interests has been created, which is independent from the administrative staff of Commission. The candidates for the Public Defender for Consumers' Interests position are selected through an open competition. The Economy and Economic Policy Committee of the Parliament establishes the selection commission that is composed of MPs (representatives of parliamentary majority and opposition), representatives of state and non-governmental sector, including of the Public Defender and relevant national regulatory bodies. Public Defender for Consumers' Interests reviews complaints submitted by citizens and annually reports to parliament its findings.

Consultations and institutional cooperation

The ComCom sittings are open to the public, except for the cases provided for by the corresponding law. The Commission's resolutions and decisions are made available for public discussion.¹⁰⁴ All consumers' submissions and complaints are usually discussed during public hearings, the meeting minutes being published on the ComCom' official website. Though the Administrative Code provides some horizontal rules on consultation procedures, these are not detailed in the sector specific legislation. ComCom developed and approved new Public Consultations Rules in December 2021¹⁰⁵.

To keep abreast of international best practices and standards, ComCom collaborates and participates in the decision-making process of international specialised regulatory organisations. Since 2007, Georgia became a full member of the European Telecommunications Standards Institute (ETSI). In February 2005 Georgia became 100th governmental member of the Governmental Advisory Committee of the Internet Corporation for Assigned Names and Numbers (ICANN GAC). According to the decision of the Ministry of Foreign Affairs, ComCom represents the national interests at the Committee. Furthermore, in 2020 a Memorandum of Understanding was signed between ComCom and ICANN.

¹⁰⁴ Official website of the CC, <https://www.comcom.ge/en/the-commission/about-commission>

¹⁰⁵ Based on the recommendations outlined in the EU-funded twinning project "Supporting the Georgian National Communications Commission in Developing its Electronic Communications Regulatory Framework and Operational Capacities," <https://matsne.gov.ge/ka/document/view/5304077?publication=0>

ComCom also works closely with the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT). ComCom maintaining close cooperation with these organisations. ComCom is also a member of the Eastern Partnership Electronic Communications Regulators Network (EaPeReg) that represents an independent platform of National Regulatory Authorities for Electronic Communications Networks and Services from Eastern Partnership (Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine). ComCom is one of the most active members of the EaPeReg having chaired the network in 2015 and 2019.

As to the broadcasting sector, Georgia is a member of the European Audiovisual Observatory, which is part of the European Council. The purpose of the organization is to collect and distribute information related to the audiovisual industry. ComCom represents Georgia within the organization. Moreover, ComCom is a member of and closely cooperates with the European Platform of Regulatory Authorities (EPRA) that promotes exchange among the regulatory authorities of the Member States and provides an open platform for discussions on a wide variety of relevant topics for regulators. ComCom is also a member of the Black Sea Broadcasting Regulatory Authorities Forum (BRAFA) that represents a platform for exchange of information and experiences about the broadcasting sector within the Black Sea region.

Ethics and transparency

ComCom commissioners shall declare their income and property under the laws in force¹⁰⁶. The ComCom members and staff shall observe the general rules and regulations related to conflict of interests and ethics, including those provided by Law on national regulatory bodies and Law on broadcasting. Nevertheless, ComCom should consider developing a self-regulatory Code of Conduct that would apply to all ComCom staff and members, setting out, clearly and openly, the professional standards expected by Commission. Normally, it can cover such aspects as personal interests, conflicts of interest, responsibilities as a com-

¹⁰⁶ Law on conflict of interests and corruption in the public service <https://matsne.gov.ge/en/document/download/33550/55/en/pdf>

missioner or staff, responsibilities towards employees, the use of social media, etc.

In terms of transparency, the ComCom website provides relevant information about institution functioning, annual performance, organisational structure, and regulations. All commission' hearings are public and can be attended by any interested party. The hearings are also livestreamed on YouTube. Though the minutes of the Commission hearings can be offered on request, it is recommended that ComCom publish them on their website, except those containing confidential data. This would further increase institutional transparency.

ComCom approved new Public Consultations Rules in December 2021. The new rules foresee creation of a unified information space on the Commission's website, where documents related to public consultations will be regularly published, including draft decisions, written submissions from stakeholders and responses from the Communications Commission.

3.5. Georgian National Energy and Water Supply Regulatory Commission

The Georgian Energy Regulatory Authority as an independent regulatory institution was established in 1997. In 2002, the Parliament of Georgia adopted the Law on National Regulatory Bodies by which the Georgian National Energy Regulatory Commission (current name Georgian National Energy and Water Supply Regulatory Commission, GNERC) was introduced as one of regulatory bodies operating independently in Georgia.

The Commission was established as a permanent authority of public administration, acting as a legal entity that develops and/or approves key energy and water sectors regulations, as provided by the new Law on Energy and Water Supply adopted by Parliament on December 20, 2019. Since then, the GNERC has carried out a tremendous work to develop a totally new normative base in the areas of energy and water supply, bringing it in line with EU standards. It contributes further to the law enforcement process and support the implementation of the National Energy Strategy 2021-2030.

Following is an assessment of the independence and

accountability of the GNERC based upon the conceptual framework established in the third chapter of this report.

INDEPENDENCE

Institutional design and decision-making

The Commission consists of 5 members (commissioners), elected by Parliament by a majority of votes for a six-year term¹⁰⁷. The same person may be elected as a commissioner just for two terms. The Government of Georgia is organising an open competition for selection of candidates¹⁰⁸. The law requires that 3 out of 5 members of the selection committee formed by the Government, shall not be public servants or appointed officials in public bodies of Georgia or private companies from the energy, gas, and water supply sectors. Any citizen of Georgia who has good reputation and complies with the requirements of ethics and independence, has higher education and sufficient qualification and experience to carry out the tasks foreseen by Law on energy and water supply may be elected as a commissioner. Noteworthy, the last competition carried out by the Government foreseen more specific requirements, candidates were asked to provide proof of at least 10 years of relevant professional experience¹⁰⁹.

As a result of the selection process, the Government submits to the President of Georgia a list of selected candidates, who subsequently submits the nomination to the Parliament of Georgia with a co-signature of the Prime Minister. The nominations are assessed by the relevant thematic parliamentary committee, normally the Sector Economy and Economic Policy Committee. The committee prepares a report and forward candidates' names to the Parliament. GNERC members are appointed by a parliamentary decision.

The GNERC' commissioners have different end dates of their terms in office. Once the mandate of a commissioner expires, the commission member's authority is automatically extended until the same or another

¹⁰⁷ Rules of Procedure of the parliament of Georgia, Art. 204

¹⁰⁸ https://www.gov.ge/index.php?lang_id=ENG&sec_id=288&info_id=79871

¹⁰⁹ See the announcement of Government of Georgia from 26 July 2021, <https://gnerc.org/ge/media/presrelizebi-akhaliambebi/gantskhadeba/124064>

person is elected as a commissioner. This extension is for maximum 3 months and does not apply if less than 3 members remain within the commission. In case of a pre-term termination of a commissioner's duties, the Parliament of Georgia elects a new member to serve for the remainder of the unexpired term, if this term is more than 1 year. Each member of the Commission shall have one vote in the Commission decision-making.

Since 2019¹¹⁰, the GNERC members elect amongst themselves a Chairman of the Commission within 15 calendar days from the expiry of the term of the acting chairman or termination of his/her authority. The chairperson is elected at the recommendation of at least 2 commissioners by a majority of votes of GNERC's members, for max 3 years. The same person can be re-elected unlimited times.

A commissioner may be dismissed only by the Parliament for reasons that include violation of conflict of interests and corruption legislation and incapacity of commissioner to exercise its duties for 4 consecutive months¹¹¹. The mandate is revoked by parliament by a vote of majority of its members. For all other cases (e.g., retirement, criminal conviction, missing or dead) the commissioner's term is terminated according to general legal rules¹¹².

The Commission is liable for the legitimacy of its decisions and resolutions. Legislative acts of the Commission shall be issued in a written form, with justification and, where relevant, contain explanation on their implementation. Decisions and resolutions are approved by a majority vote of all the Commissioners attending the session.

Actual autonomy in conducting its mandate

GNERC is autonomous in its decisions and does not receive instructions from the Government. Moreover, the decisions adopted by the GNERC cannot be subject to review, suspension or veto by the government or the ministry. The Commission is independent from all participants of the energy market, as well as other

authorities, companies, or individuals. The Law on National Regulatory Bodies provides GNERC exclusive authority for regulating the energy and water supply sectors. Dual, concurrent regulatory authority being prohibited.

The Governmental interference in regulatory decision-making is very limited and mainly relates to GNERC long-term strategies or work programmes but does not affect the regulators' core and daily business.

Budget and financial resources

The GNERC has high financial autonomy. The Commission's source of the budget is the regulatory fee levied on the regulated industry which shall not exceed 0.75% of the total turnover of the license holder (without VAT)¹¹³.

The GNERC annual budget is comprised of compulsory current and capital annual expenses and is approved by the Commission itself. In cases when the authority's budget has not been spent, GNERC shall use the unspent funds in the following year as calculated "income"¹¹⁴. The Commission is also entitled to make use of the state budget allocations and grants for its activities, though such allocations are rather exceptional.

Human resources

The Commission sets up its organisational structure independently. It decides independently on the functions and competences of the administrative staff, staffing plans and remuneration. GNERC has the authority to hire and dismiss staff, based on approved internal regulations. The office staff may be appointed and dismissed from office by the Chairperson, in agreement with the commissioners, in accordance with the legislation of Georgia. The remuneration of the commissioners and regulatory staff is competitive with the salaries of the regulated sector.

ACCOUNTABILITY

Reporting

The Commission shall prepare the Annual Activity Report by 1 June of each year. The Annual Report is submitted for information to the President of Georgia,

¹¹⁰ Article 21 of the Law on Energy and Water Supply regulates the management of the Commission

¹¹¹ Rules of Procedure of the parliament of Georgia (article 186) and Law on National Regulatory Bodies (article 14, p.2) defines the grounds for dismissal of a commission member

¹¹² Law on Energy and Water Supply, Art. 20, p.11

¹¹³ Law on Regulatory Fees, Art. 5

¹¹⁴ Law on Energy and Water Supply, Art. 26

Table 9: Annual Reports submitted by GNERC to the Parliament in the last 3 years

No.	Number and date of submission	Title of the report	Status
1	1-8477/19 30.04.2019	2018 GNERC Annual Activity Report	Accepted as notification by the Parliament's plenary session on June 27, 2019, extract from protocol №156
2	1-6997/20 01.06.2020	2019 GNERC Annual Activity and the independent audit report on financial statements	Accepted as notification by the extraordinary plenary session on 14 July 2020, extract from protocol №218-lis
3	1-7154/21/10 01.06.2021	2020 GNERC Annual Activity Report and the independent audit report on financial statements	Accepted as notification by the Parliament's plenary session on March 17, 2022

Parliament and Government of Georgia, as well as to the Energy Union Regulatory Council and the Energy Union Secretariat. The Commission report is published on the Commission website the same day. There are no formal content requirements or structure/format requirements for the reporting, the law requiring the Commission to report the results obtained as regards each of the objectives, duties and regulatory powers of the Commission.

The Commission shall also prepare and publish an annual financial report reflecting amounts of the regulatory fee received and the Commission's expenses during the year, as well as the loans taken, and other funds used by the Commission. The commission does not publish financial report as a separate document, this being incorporated in the annual activity report as a special chapter dedicated to institution's budget and performance. It includes information on revenues by sectors (annually and quarterly) and expenses by different parameters, including purchase of goods, services, insurance, membership fees, salaries, business trip, etc. The report also shows the dynamics of expenditures over the previous years and explains the balance compared to previous year budget.

The Annual Activity Report shall be reviewed by parliament in accordance with the general rules¹¹⁵. The last report was submitted to the Parliament in June 2021.¹¹⁶ The report was discussed at the plenary session on March 16, 2022..

¹¹⁵ See the table #9

¹¹⁶ <https://parliament.ge/legislation/22165>

Performance review

The parliamentary Committee on Economy and Economic Policy oversees energy sector developments through regular or thematic hearings with the participation of the Ministry of Economy and Sustainable Development and other stakeholders. The Environmental Committee analysis energy projects from the perspective of environmental impact. Moreover, the parliamentary Committee on Human Rights also reviews the GNERC annual report along with the report of the Public Defender for Consumers' Interests.

According to Law on Electricity and Water Supply, the Commission' accounts shall be audited annually by an independent auditor, an internationally recognized auditing company through tender. The audit report shall be prepared and published together with the financial report. The Parliament may initiate such an audit too.¹¹⁷ We found no evidence that Parliament has exercised this power with GNERC so far.

Complaints and appeals

A decision of the Commission may be appealed in a court in accordance with the procedures established by the legislation of Georgia¹¹⁸.

The GNERC is committed to protection of customers' rights. The Office of Public Defender for Consumers' Interests was created to protect the interests of electricity, natural gas and water supply consumers.

¹¹⁷ Parliament Rules of Procedure, Art. 168

¹¹⁸ Law of Georgia on Energy and Water Supply, article 156

Consultations and institutional cooperation

The Commission is monitoring the implementation of its regulations and is organising consultations with stakeholders to assess the impact. GNERC consults stakeholders before taking important decisions by publishing documents ahead of public consultations and organising public hearings. Nevertheless, it is recommended publishing a summary document as follow-up to public consultation providing an overview of the comments received.

GNERC is actively cooperating with international organisations from the energy sector. The Commission is one of the member-founder of the Energy Regulators Regional Association (ERRA). Georgia has also joined Energy Community and actively cooperates with it. The Commission has very close relations with the most of regulatory authorities from the region.

Ethics and transparency

The Commissioners may not hold any other public or private position. They may not be affiliated to political parties or structures. Neither Commissioners nor their family members may own, directly or indirectly, shares in enterprises which could create a conflict of interest. The same applies to GNERC office staff. Within one year as of the date of the end of the term of office, the commissioners cannot hold positions in the companies that are regulated by the GNERC. The Commission has a Code of Ethics approved by the Commission Resolution no. 57 of November 12, 2020. The Code of Ethics applies both to commissioners and staff.

The Commission publishes all its resolutions and decisions, orders, records, and other documents making them accessible for public examination. As a Contracting Party to the Energy Community, GNERC transposed and implemented the requirements and principles of the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) approved by the Regulation no.1227/2011 (EC) of European Parliament and Council. To this end, the Commission's webpage provides access to information about organisational structure and rules of procedure. An internal regulation on the Standard of Requesting Public Information from GNERC and the Rule of its Proactive Publication'', was approved in 2014. For the last 5 years, the GNERC used to publish annual reports on access to public

information (the last report covered year 2020). We strongly encourage the Commission to continue this positive practice.

4. COMPARATIVE ANALYSIS AND OVERVIEW TABLE OF GEORGIA INDEPENDENT INSTITUTIONS AND REGULATORY AGENCIES' APPLICATION OF INSTRUMENTS OF INDEPENDENCE AND ACCOUNTABILITY

Based upon the conceptual framework as outlined in the second chapter of the report, and the in-depth review of the functioning and the legal framework of the five independent oversight and regulatory institutions in previous pages, a comparative analysis across the Institutions is presented here. The Table 10 (next page) gives an overview of the 37 indicators relevant to the independence and accountability instruments, as described in above pages. These indicators have been examined for each of the five institutions under review.

The table indicates that for 22 out of 37 indicators there is full consistency among all 5 institutions. These figures illustrate partial lack of coherence and consistency in the application of the instruments of independence and accountability across the five bodies.

Whilst some of the differences in provisions – e.g., a five-year or six-year tenure, with or without possibility to renew it – appear inspired by sector-specific or international requirements, the other inconsistencies are the result of sui generis creation of the laws regulating these institutions 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 some coherence across the five institutions:

1. The head of institution is elected by Parliament for all 3 of the independent oversight institutions, but not for the 2 regulatory agencies.
 - *Nomination* – The right for nomination of candidates greatly varies – Parliamentary factions or a group of at least 7 MPs can nominate a candidate for the Public Defender position; the Speaker of Parliament nominates candidates for the General Audit position; the Prime-minister nominates candidates for SIS and the President of country, at the proposal of Government, nominates candidates for the two regulatory agencies – ComCom and GNERC. The level of detail in terms of minimum requirements for candidates varies across the five institutions.
 - *Eligibility criteria* – There are no specific requirements for the Public Defender and Auditor General positions, compar-

ing to SIS and the two regulatory agencies for which the law provides clear and objective selection criteria.

- *Approval threshold* – The number of votes required for candidates' approval varies as well. Thus, a vote of at least 3/5 of the full composition of Parliament (qualified majority threshold) is required for the Public Defender approval; the candidates for the rest of institutions are appointed by the majority of full composition of parliament.
 - *Immunity* – The heads of all the three independent oversight institutions enjoy personal immunity. However, in part of the testimony, the immunity of the Public Defender and the State Inspector applies even after the termination of his/her powers. The commissioners from the regulatory agencies have no immunity from legal persecution for acts performed under the law.
2. All 5 institutions have the authority to decide on their staffing, in terms of recruitment and pay. However, the oversight institutions have less flexibility compared to regulatory agencies when deciding on staff remuneration that is subject to the salary scales applicable to the civil service. In addition, the rules related to pay of heads of institutions are not sufficiently defined. The remuneration of the Public Defender *shall be equal* to the salary of the Chairperson of the Constitutional Court of Georgia; the remuneration of Auditor General *shall not be less* than the salary of the Deputy Chairperson of the Parliament. The remuneration of the head of SIS and of the two regulatory agencies is decided by themselves, considering the relevant legislation.
 3. The state budget finances all 3 of the independent oversight institutions, as approved by parliament, while the budget of the 2 regulatory agencies comes from own resources. In case of two oversight institutions, Public Defender and SIS, the parliament receives their budget proposals as part of the draft State Budget prepared by the MoF. The annual budget proposal of SAO first requires approval of parliament and only then is integrated into the draft State Budget.

4. All 5 institutions have the authority to prepare their own annual budget, and enjoyed stability of budget during past 3 years

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 5 institutions:

5. All 5 institutions are required to submit their annual report to parliament, but only for the report of the Public Defender and SIS there are detailed structure and content requirements.
6. 1 out of 3 independent oversight institutions has a collegial decision-making. SAO's decision on disputes related to audit reports shall be made by the Presidium on a collegial basis.
7. 1 out of 5 institutions does not provide a financial report to Parliament.
8. 3 out of 5 institutions have an approved Code of Conduct.
9. Most institutions foresee formal and informal consultations on their decisions; however not all of them publish the outcomes of these consultations.
10. The law also requires for the members of Regulatory Agencies to cease relationship with the industries regulated by the Agency in order to avoid conflict of interest. However, in case of dismissal, the law specifies for members of one (GNERC) out of two regulatory agencies 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.

Table 10: Overview table of Georgia independent oversight institutions and regulatory agencies' application of independence and accountability instruments

	Instruments	Selected Indicators	PDoG	SAO	SIS	ComCom	GNERC	
Independence	Institutional design and governance structure	• Secure legal foundation	Yes	Yes	Yes	Yes	Yes	
		• Clarity of mandate	Yes	Yes	Yes	Yes	Yes	
		• Head of institution appointed by Parliament	Yes	Yes	Yes	No	No	
		• Board members appointed by Parliament	N/A	N/A	N/A	Yes	Yes	
		• Fixed term in office	6 y.	5 y.	6 y.	6 y.	6 y.	
		• Renewable terms in office	No	Yes	No	twice	twice	
		• Staggering terms for board members	N/A	N/A	N/A	Yes	Yes	
		• Collegial decision making	N/A	Yes ¹¹⁹	N/A	Yes	Yes	
		• Incompatibility with other functions	Yes	Yes	Yes	Yes	Yes	
		• Government interference on decisions	No	No	No	No	No	
	Actual autonomy in conducting its mandate	• Limitations to “revolving door” between regulated industry and regulator	N/A	N/A	N/A	N/A	Yes	Yes
		Budget and financial resources	• Financial resources: state budget	Yes	Yes	Yes	No	No
			• Financial resources: own sources	No	No	No	No	Yes
Human Resources policy	• Authority to prepare its own annual budget	Yes	Yes	Yes	Yes	Yes	Yes	
	• Parliament approves the annual budget	Yes	Yes	Yes	Yes	N/A	N/A	
	• Stability of budget during past 3 years	Yes	Yes	Yes	Yes	Yes	Yes	
	• Staff recruitment – institution decides	Yes	Yes	Yes	Yes	Yes	Yes	
	• Staff remuneration – institution decides	Yes	Yes	Yes	Yes	Yes	Yes	
	• Salary head of institution – own decision	No	No	No	Yes	Yes	Yes	

¹¹⁹ A decision on disputes related to audit reports shall be made by the Presidium on a collegial basis.

	Instruments	Selected Indicators	PDoG	SAO	SIS	ComCom	GNERC	
Accountability	Reporting	• Annual report submitted to parliament	Yes	Yes	Yes	Yes	Yes	
		• Annual report also submitted to Government and President	NO	NO	NO	Yes	Yes	
		• Structure and content requirements for report	Yes	NO	Yes	NO	NO	NO
		• Own initiative to submit info to Parliament	Yes	Yes	Yes	Yes	Yes	Yes
		• Annual report requires approval of parliament	No ¹²⁰	No ¹²¹	No ¹²²	No ¹²³	No ¹²⁴	No ¹²⁴
		• Own initiative to submit info and reports to Parl.	Yes	Yes	Yes	Yes	Yes	Yes
		• Parliamentary debate and follow up actions on institution's reports	Yes	Yes	Yes	Yes	Yes	Yes
		• Report published on web, Official Gazette	Yes	Yes	Yes	Yes	Yes	Yes
		• Existence of designated parliamentary committee	Yes	Yes	Yes	Yes	Yes	Yes
		• Financial Report submitted to Parliament	NO	Yes	Yes	Yes	Yes	Yes
Performance review		• Financial audit	Yes	Yes	Yes	Yes	Yes	
		• Reports publicly available	Yes	Yes	Yes	Yes	Yes	

¹²⁰ Mandatory to be discussed in the Parliament, but the report does not require a formal approval of parliament. At the end of discussion, the Parliament shall acknowledge the report and is authorized to adopt a decree.

¹²¹ Ibidem

¹²² Ibidem

¹²³ Ibidem

¹²⁴ Ibidem

ინსტრუმენტები	ინდიკატორები	სახალხო დამცველი	აუდიტის სამსახური	ინსპექტორის სამსახური	კომუნიკაციების კომისია	სემეკი
Consultations and institutional cooperation	<ul style="list-style-type: none"> Formal and informal consultations 	Yes	Yes	Yes	Yes	Yes
	<ul style="list-style-type: none"> Conclusions of public consultations published 	N/A	N/A	N/A	Yes	Yes
	<ul style="list-style-type: none"> Engagement in international networks 	Yes	Yes	Yes	Yes	Yes
Ethics and transparency	<ul style="list-style-type: none"> Code of Conduct applicable to all staff and board members 	No	Yes	Yes	No	Yes
	<ul style="list-style-type: none"> Institutional transparency via comprehensive, accessible website 	Yes	Yes	Yes	Yes	Yes
	<ul style="list-style-type: none"> Institution is subject to Freedom of Information legislation 	Yes	Yes	Yes	Yes	Yes

5. PARLIAMENT OF GEORGIA AND INDEPENDENT INSTITUTIONS AND REGULATORY BODIES

The current chapter will provide a short overview of the legal framework (Constitution of Georgia 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 Constitutional reform (2017) and the new parliament Rules of Procedure (2018) have further strengthened the parliamentary legislative and oversight functions. Particularly, the Constitution empowered the standing committees of Parliament to oversee the activities of the bodies accountable to the Government and Parliament (Constitution of Georgia, Art. 41). The new Parliamentary Rules of Procedure clarified the oversight mechanisms as well as the rules related to the appointment of officials to manage independent and regulatory institutions in Georgia. Moreover, the current RoP provides the role of the plenary session in hearing the reports and presentations of the government, ministries and independent bodies.

The mandate of parliamentary standing committees has been further clarified too. Article 37 of the RoP specifies the committees' power to initiate new legislation and oversee the activities of bodies accountable to the Parliament. Some parliamentary committees advanced even further. The HRCIC uses a specific regulation for consideration of reports provided by the Public Defender, while the Budget and Finance Committee established an Audit Group to assess the audit report provided by SAO. These practices proved to bring efficiency to committees' work.

Post legislative scrutiny, the Ministerial Hour, Thematic and Inquiry Groups are among other novelties introduced by the new RoP (Article 38, 153, 155). Moreover, Chapter XIII of the RoP on Parliamentary Oversight speaks 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 bodies. The constitution also stipulates that a member of the Government, an official accountable to Parliament or the head of a body accountable to Parliament shall be entitled and, upon request, obliged to attend sittings of Parliament, parliamentary committees or commissions, in order to provide answers to questions raised during the sitting and to submit a report of ac-

tivities performed. Parliament, a committee or a commission shall hear such an official immediately upon request (Art. 44, p.6).

To this end, the Parliament RoP details the review process of annual activity reports provided by the Public Defender, State Audit Office, State Inspector Service but also of the National Communications and Energy and Water Supply Regulatory Commissions. The reports are discussed at the plenary sitting of the Parliament. At the end of a discussion, the Parliament shall acknowledge the report and adopt a decree or resolution (Art. 176 of the RoP) that provides recommendations and assigns tasks to concerned public authorities. Subsequently, parliamentary committees are supposed to monitor the implementation of tasks and inform the Permanent Bureau or Parliament about progress.

Various Committees in the Parliament interact with the independent and regulatory bodies. The Committee on Sector Economy and Economic Policy follows the work of Energy and Water Supply Regulatory Commission and National Communication Commission. The Legal Affairs Committee dealt with the State Inspector Service. The Committee on Budget and Finance reviews the reports provided by the State Audit Office while the Committee on Human Rights and deals follows on the report provided by the Public Defender. No later than two weeks before the opening of the spring session, each committee compiles an annual report on its activity (Art.44 of the RoP). The report is discussed by Parliament and published on the parliament’s website.

As indicated before, assessing parliament’s role in interacting with the independent and regulatory institutions is much related to availability of oversight tools and parliament’s overall oversight capacity and practice. The Parliament of Georgia carries out its oversight function through a range of procedures including questions, requests for information and financial oversight. Over the last years, the number of questions addressed by MPs to the Government and various state institutions has substantially increased, with each new convocation submitting twice more questions compared to the previous one¹²⁵. The Members

¹²⁵ During the eighth convocation of parliament (2012-2016) Members of Parliament sent 817 questions, whereas in the

of Parliament within the current legislature have already addressed, in just under two years and despite COVID-19, more than 2500 questions. However, for parliamentary oversight to be carried out effectively, other oversight tools (e.g., Post legislative scrutiny) should be also employed on a more regular basis. A more consistent follow-up to independent oversight institutions’ reports should be undertaken by the relevant standing committees.

With a total of 184 committee staff in service, committees are not obviously under resourced overall. On the contrary, in comparison with other parliaments around Europe, the Parliament of Georgia has more staff dedicated to supporting committees, with almost double the average number of staff per committee:

Table 11: Analysis of committee staffing in European parliaments

Parliament	No of committees	No committee staff	Average staff / committee
Serbia	20	50	2.5
Czech Republic	18	54	3.0
Latvia	16	67	4.2
Scotland	16	99	6.2
Lithuania	15	98	6.5
UK – House of Commons	40	266	6.7
Sweden	15	119	7.9
Germany – Bundestag	24	197	8.2
Netherlands	14	150	10.7
Georgia	16	184	11.5
Ukraine	23	353	15.3
Average			7.1

Our interviews revealed, however, the committees’ staff need for better guidelines on the structure and content requirements for the annual reports submit-

next convocation (2016-2020) this number increased to 2435 questions

ted to parliament. Currently, the structure and the quality of content of the reports is uneven. Introducing a Standard Operating Procedure (SOP) would make the review process better organised and focused and as a result MPs could have more meaningful discussion on the reports submitted by public authorities accountable to parliament. In addition, committees' staff require training on how to deal with audit reports and budget provided by independent and regulatory agencies. To this effect the parliament administration may explore the possibility of engaging the trainers of The Public Audit Institute which provides professional development programs, conducts individual and corporate trainings, provides research, analytical, expert and consulting services related to public audit.

The parliamentary RoP provides clear rules on how parliament organizes itself in receiving, processing, reviewing, deciding, and communicating on the annual reports and any other documents received from independent and regulatory bodies. The annual reports of independent regulatory and oversight institutions must be discussed by parliament in a plenary sitting. However, over the past years, the discussion of Com-Com was not organised regularly. Moreover, when it comes to the development and monitoring of recommendations made by parliament these areas require further improvement. The Parliament should revise the methodology applied by committees in preparing recommendations and decide on evaluation criteria used for monitoring the progress.

While most of the information is available on the parliament's website, the responses provided by the Government on the issues raised by MPs are not published. This information needs to be published for the sake of transparency and better tracking of progress.

Moreover, the transparency for selection and nomination for official positions within the independent institutions and regulatory agencies should be further enhanced. The Parliament shall seek to select members by consensus or by a qualified majority of members. The vote of parliamentary majority and opposition ensures the actual independence of the independent regulatory and oversight institutions, strengthening their authority, impartiality, independence, and legitimacy.

Further to annual reports, parliament has the possi-

bility to interact with the independent and regulatory agencies on other occasions as well, such as in relation to the annual work plans and budgets of the institutions or on specific questions emerging during the course of the year. However, a number of institutions mentioned that they interact with parliament only once a year, on the occasion of the presentation of their annual report. Moreover, there is a gap in terms of parliament's consideration of legislative proposals prepared by independent bodies. During 2013-2021, the Public Defender submitted 21 proposals (none of them was adopted), SAO – 9 proposals (7 adopted), SIS – 2 (none of them was adopted), ComCom – 9 (7 adopted)¹²⁶. This is another key area that needs to be enhanced to secure effective interaction between parliament and independent authorities.

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, electronic communication and broadcasting, etc.). The formal enactment of legislation is no longer the primary measure of legislative success, nor the end of the process. The Parliament is responsible for enacting legislation which provides a suitable mandate and operating framework for independent oversight institutions. In this context, the Parliament may consider carrying out post-legislative scrutiny of legislation establishing independent oversight institutions to ensure that they have been established and are functioning according to the intention of the legislators, and that all necessary regulatory and budgetary provisions have been put in place¹²⁷.

¹²⁶ Published in the draft legislative bills database: <https://parliament.ge/legislation/find-legislation>

¹²⁷ Parliaments and independent oversight institutions (WFD), Jonathan Murphy and Franklin De Vrieze, London 2020 <https://www.wfd.org/what-we-do/resources/parliaments-and-independent-oversight-institutions>

6. RECOMMENDATIONS ON INDEPENDENT AND REGULATORY BODIES IN GEORGIA

Based upon an in-depth review of current practices in Georgia, an analysis of the policy framework and established practices in other European countries, we put forward a set of recommendations which aim at optimizing the right balance of independence and accountability of the independent and regulatory bodies in Georgia, and to streamline their interaction with parliament.

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 design, 2) actual autonomy in conducting the mandate 3) budget and financial resources, and 4) staffing issues. Instruments of accountability are: 1) the reporting, 2) performance review, 3) consultations and institutional cooperation, 4) ethics and transparency.

RECOMMENDATIONS ON: INSTRUMENTS ENHANCING INDEPENDENCE

1. Recommendations on the institutional design

1.1. Parliament often plays an important role in selecting and appointing the heads of independent institutions and board or council members of regulatory agencies. It is recommended that parliament adjusts the relevant legislation **setting clear eligibility criteria** including **minimum qualifications requirements** for heads of institutions and boards members (e.g. 10 years relevant professional experience in the area overseen or regulated by the institution), in case such requirements are not yet clearly stipulated in the relevant legislation of the institutions. Parliamentarians shall not be eligible for election to independent oversight institutions for a period of 5 years after the end of their parliamentary mandate.

1.2 The candidates for leading functions in boards of regulatory agencies should undergo a **professional competency test** on the technical area of expertise of the agency, to be evaluated by non-political, sector experts ahead of the interview phase. In this way, parliament has additional guarantees that they select and/or appoint highly qualified and skilled persons to the management of the agencies.

1.3 The election procedure should be **transparent and open to civil society input and recommendations**. Parliament should

consider further enhancing the political impartiality of candidates for positions of heads of institutions and boards members. It is recommended adjusting the legislation underpinning regulatory and oversight institutions.

1.4 To ensure neutrality, impartiality, and effectiveness of independent oversight institutions, leadership should be for a **multiyear period and may be non-renewable**.

1.5 The Ombudsman Institution as well as the institution with investigative functions (SIS) are at times considered to be under different forms of attacks and threats, such as physical or mental coercion, legal actions threatening immunity, etc. Although the law guarantees the Public Defender personal immunity during the term in office, it is recommended that such **functional immunity applies both to the Ombudsman and his/her deputies during and after their terms in office**. The senior management of the SIS successor institution shall enjoy similar functional immunity.

1.6 The board members of **the National Communication Commission** and **Georgia Energy and Water Supply Regulatory Commission** elect the Chair from among its members. The Chair 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. It is recommended that the Chairpersons of ComCom and GNERC are appointed by parliament from among the members of the Commissions, thus strengthening the independence of the Chairs and the institutions.

1.7 The independent and regulatory institutions have no right of **legislative initiative**. Over the past years, a good number of proposals prepared by independent regulatory and oversight institutions were not considered by parliament. **It is recommended that the parliament committees setting up Working Groups that would analyse these proposals informing the standing committees on the outcome**. The legislative proposals could take a form of a *White Paper* that would provide a basis for further consultation and discussion with interested or affected groups and allow final changes to be made before a bill is formally presented to Parliament.

1.8 The Parliament is responsible for enacting legislation providing a suitable mandate and operating framework for independent oversight institutions. In this context, **the Parliament shall carry out post-legislative scrutiny of legislation** establishing independent oversight institutions to ensure that they have been established and are functioning according to the intention of the legislators.

2. Recommendations on the actual autonomy in conducting the mandate

2.1 The Law on Electronic Communications authorises the Government (Ministry of Economy) to develop the national numbering system in consultation with the National Communications Commission (ComCom), which weakens ComCom's position of independent regulator. It is recommended that **matters related to the use of numbering resources** shall be regulated by the ComCom. Furthermore, the ComCom shall issue permits for using numbering resources and specify permit conditions.

2.2 Clarity in mandate, role and responsibilities determines the ability of the institution to function independently. By changing it too often (e.g., SIS), the parliament is reducing the capacity of independent institutions to function effectively. It is recommended the Parliament to conduct **ex-ante impact assessments** that could inform the decisions related to the functioning of independent institutions and regulatory agencies in Georgia.

3. Recommendations on budget and financial resources

3.1 Determining the budget of independent oversight institutions normally occurs through the national budget process, where parliament both scrutinises the government's budget proposal, including for independent oversight institutions, and reviews and follow up on the supreme audit institution's report on how that budget was spent. The parliament needs to ensure the independent institutions financial autonomy from the government, so they can perform their roles effectively without fear or favour. It is recommended **the relevant standing committees hold a discussion with oversight institutions on their annual budget ahead of their approval by parliament**.

3.2 There are different practices on approving budgets of institutions. Some institutions approve their own budget, in particular when they generate their own resources; other bodies have their budget approved by parliament, if it is part of public resources. 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 Commission) or in case the budget is approved by the institutions themselves, this is conditional to (1.) an annual financial audit of the expenditures; (2.) an international, thus externally commissioned performance audit, and (3.) clear and transparent rules on determining the salary of the top management of the agency.

3.3 As reported by OECD and IMF, the pandemic is causing a dramatic economic cost worldwide, including in Georgia. Increased public debt and sizable contingent liabilities make strict adherence to the fiscal rule especially important to preserve credibility. Proactive monitoring of fiscal risks remains essential, and advancing state owned enterprise reform would help control and mitigate those risks. It is recommended that Parliament **enhance its oversight of public debt** throughout the four phases of the budget cycle – formulation, approval, execution and oversight, by holding more in-depth discussions with SAO and other relevant public authorities on this particular aspect. The support of the Parliament Budget Office should be also sought, and capacity building initiatives on the role of parliament in public debt management are recommended.

4. Recommendations on human resources

4.1 The remuneration of senior management of independent regulatory institutions varies across the sectors. Without micro-managing the individual salaries of the management of each institution, it is recommended that parliament sets **clear principles and rules** which institutions need to respect in setting the salaries for the top management (applies to the regulatory agencies, regulating a specific economic sector such as the Georgian National Communication Commission and the Georgian National Energy and Water Supply Regulatory Commission). These principles in-

clude, 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 institution, multiplied by factor X. The National Statistics Office of Georgia 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. 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, public 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.

For the remuneration of the leadership of independent oversight institutions, the criterium would be more of a comparative nature, comparing it with how other senior positions in the state administration are remunerated. The leadership of independent institutions must have sufficient security of tenure and other guarantees (such as protection against arbitrary variation of their salaries) to ensure their independence. After their appointment, any alteration to the salary payable to this category of officials, other than allowances, should be avoided.

RECOMMENDATIONS: INSTRUMENTS ENHANCING ACCOUNTABILITY

5. Recommendations on the reporting

5.1 All the independent and regulatory bodies are supposed to report annually to parliament on their work. It is recommended **setting clear reporting requirements in terms of content and format** in case such requirements are not yet clearly stipulated in the relevant legislation of the institutions.

5.2 The parliament receives very diverse and rather uneven narrative reporting. To streamline the reporting, the parliament is advised to start consultations with the independent institutions with a view to reach agreement on the content of **quality guidelines on reporting** by the independent institutions, while fully respecting their independence. Depending on the mandate of the institutions and the international sectorial standards they adhere to, the guidelines can outline such requirements as: 1) the basic structure of the report such as Executive Summary, Conclusions and Annexes, 2) required statistical data on activities, staffing and budget of the institution during the past year, 3) number of regulations / decisions and consultations on decisions as issued / conducted during the past year, 4) recommendations received during consultations, in case the institution conducted public consultations, and how many were accepted or rejected, 5) number of sanctions/ fines issued, in case the institution has the mandate to issue sanctions / fines, 6) number of appeals in court lodged, resolved and pending, in case that is part of the institution's mandate 7) relevant information for future planning. The annual report should also inform the Parliament about which measures were taken by whom to implement recommendations previously made by the plenary sitting in follow up to the annual report, as well as ones not yet addressed.

The relevant committees' secretariats can be tasked to prepare draft guidelines in consultation with the institutions. For instance, the recommendation for quality guidelines on reporting, as outlined above, is – as far as the work of the State Audit Office is concerned – in line with the International Standards of Supreme Audit Institutions (ISSAIs), and the relevant legislation which establishes the State Audit Office as independent in terms of agency, financially, functionally and organizationally. It is also in line with ISSAI Fundamental Standards, the Lima and Mexico City Declarations (INTOSAI-P 1 and INTOSAI-P 10), which confirms that the Audit Office is independent in defining, implementing, and reporting its annual audit activity.

5.3 Discussing reports from Independent Regulatory and Oversight Institutions in the Parliament is a crucial part of transparency and accountability. Any delays or cancellations of such discussions weakens

the representative role of parliament and its oversight function. It is recommended the parliament's Rules of Procedure specify in greater **detail how the follow-up to the annual reports of the institutions** is organized. Moreover, It is recommended making this one of the top priorities of parliament, including this issue in the Strategic Plan of Parliament. The Parliament should assign the responsibility to coordinate this to a dedicated staff person, who would compile an overview table or Matrix listing the recommendations of the annual reports and the follow-up actions taken, deadlines and responses provided by the government. This information would require a continuous update and be published on parliament's website so interested parties could have instant access.

5.4 The **Permanent Bureau should adopt an annual calendar of debate on the reports** of independent institutions and regulatory agencies, with allocation of the reports to various Standing Committees. The calendar is included in Parliament's Annual Activity Plan, which is approved by the plenary session. The Permanent Bureau should also adopt a **template structure for reports** of independent institutions and regulatory agencies to Parliament and communicate it to the relevant institutions.

5.5 The Parliament should **allocate the Executive time to provide opinions on the recommendations** drafted by parliament as a follow-up to independent and regulatory institutions' reporting, ahead of their approval. Therefore, it is recommended amending the Parliament Rules of Procedure to make it effective. Moreover, these opinions as well as any other contribution sent by public authorities or CSOs need to be made public by publishing them on the parliament's official website. If deemed necessary, standing committees should then hold a hearing to consider the Ministry's response, following the same procedure as that for the annual report.

5.6 Monitoring of the implementation of recommendations made by parliament as a follow-up to Parliament's consideration of independent institutions reports is uneven and requires further improvement. The Parliament should develop **a methodology that would enhance committees' capacities to prepare recommendations and evaluate the progress of their implementation**. To this effect, it is

recommended using a traffic light system, to be revised on quarterly or six-monthly basis:

Red = no progress on implementation

Orange = partial progress ongoing

Green = recommendation has been fully implemented

5.7 To increase the effectiveness of the parliamentary oversight function and keep the Government to account, it is recommended the parliamentary **standing committees organising in-depth follow-up hearings on the recommendations** approved by parliament, checking the implementation progress which shall inform various policy options under parliament's consideration. Moreover, it is recommended the **parliament reporting on the fulfilment of its own recommendations** by developing an aggregated report on its annual oversight activity.

5.8 The independent regulatory and oversight institutions **should share with parliament their Annual Work Plan for the next year** before the spring session of parliament starts. Sharing the annual plans with parliament should be for information only, not for approval by parliament. The annual plans can take various forms, such as forecast of operations, work plans, annual roadmap of implementation of a multi-year strategic plan, etc. The annual plans of independent regulatory and oversight institutions, except SAO, shall be publicly available online.

6. Recommendations on performance review

6.1 For a performance review to be meaningful, it is important to have a good understanding of what specific measures are critical to good performance of the institution or agency. It is recommended the regulatory agencies to carry out a **consumer satisfaction or citizen's perceptions surveys** (for oversight institutions) that provide useful inputs for performance assessments.

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

6.3 It is recommended that a **performance audit be made mandatory** for all independent and reg-

ulatory agencies, except for the State Audit Office. For independent institutions financed from the state budget, it is recommended that Parliament considers suggesting to the State Audit Office conducting a performance audit every three years, while recognizing that the State Audit Office is free to accept or reject this suggestion since the SAO draws up its audit activity plan independently. The performance of the State Audit Office itself is assessed using the Performance Evaluation Framework of the Supreme Audit Institutions (SAI-PMF) developed by INTOSAI IDI, which can be conducted by a peer review organization or a group of independent international experts with relevant qualifications and whose quality is validated. For regulatory agencies not financed from the state budget, it is recommended that the performance audit be conducted by an international auditing company.

7. Recommendations on ethics and transparency

7.1 ComCom commissioners shall declare their income and property under the laws in force¹²⁸. The ComCom members and staff shall observe the general rules and regulations related to conflict of interests and ethics. It is recommended that the requirement to **disclose the incomes and assets** is extended to ComCom staff too (see GNERC example).

7.2 Despite the legal framework regulating professional ethics, it is recommended the independent institutions and regulatory bodies developing a **Code of Ethics** setting aspects as personal interests, conflicts of interest, responsibilities as a head/commissioner or staff, responsibilities towards employees, the use of social media, etc. The Code should apply to institution management and staff. This will enhance the accountability and protect the institution from undue political interference.

8. Recommendations: Capacity in Parliament

8.1 The committees' staff need for better guidelines on the structure and content requirements for the annual reports submitted to parliament Introducing

¹²⁸ Law on conflict of interests and corruption in the public service <https://matsne.gov.ge/en/document/download/33550/55/en/pdf>

a **Standard Operating Procedure (SOP) for reviewing the reports** provided by public authorities accountable to parliament.

8.2 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 oversight practices in other countries. It is recommended for UNDP and WFD to design a specific program on this, as follow-up to the current assessment.

8.3 The committees' staff require **training on how to deal with audit reports** and budget provided by independent and regulatory agencies. To this effect the parliament administration should explore the possibility of engaging either the trainers of The Public Audit Institute which provides professional development programs, conducts individual and corporate trainings, provides research / analytical, expert and consulting services, creates professional literature and study guides related to public audit or any other external certified trainers in public audit.

8.4 Once a year, the SIS presented a report on the results of its oversight of implemented investigative activities and covert investigative actions envisaged by the Criminal Procedure Code of Georgia. The Bureau of the Parliament shall submit the report to a relevant committee of the Parliament and Trust Group.¹²⁹ However, the parliamentary RoP has no specific provision related to the review or discussion of the SIS's report on investigative activity. It is recommended **completing the Parliament RoP with specific provisions** that would allow the parliamentary oversight function to fully take advantage of the results **of investigative activity**.

8.5. The Parliament of Georgia has an opportunity to further **upscale the information disclosed on its website**. As is the case for the UK Parliament, the Parliament of Georgia may consider publishing on its website the responses provided by the Government on Committee reports and on the issues raised by MPs. This will enhance transparency and enable better tracking of progress on the implementation of the recommendations in the reports.

¹²⁹ Rules of Procedure of the parliament of Georgia, article 169

8.6. The format of some documents published on the parliament's website are image-based PDFs which are inaccessible and unsearchable. More and more parliaments are now making their documentation available in a range of other formats, primarily as a spreadsheet (39%), most often in a comma-separated value (CSV)¹³⁰ format or as XML¹³¹ (machine readable formats). It is recommended using one of these formats for documents published on the parliament's website, in line with OGP recommendations and practices.

¹³⁰ A Comma Separated Value (CSV) is a text file containing data in an open, readable spreadsheet format.

¹³¹ Extensible Markup Language, or XML, is a data-rich open publishing format that allows for sharing. It is designed to be read by other software but can then easily be rendered to be readable by people.

7. ANNEXES

ANNEX 1: LIST OF INTERLOCUTORS AND PERSONS CONSULTED

Parliament

Kakha Kuchava – Former Speaker of Parliament	12/08/2021
Levan Makhashvili – Head of Cabinet / Chief of Staff of the Chairman of Parliament of Georgia	18/03/2022

The Sector Economy and Economic Policy Committee

David Songulashvili – Chairperson of the Committee	12/22/2021
Tamila Shavashvili – Head of the Staff of the Committee	

The Budget and Finance Committee

Irakli Kovzanadze – Chairperson of the Committee	12/27/2021
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Legal Issues Committee

Levan Kasradze – Head of the Staff of the Committee	01/24/2022
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Independent Institutions and Regulatory Agencies

Public Defender Office

Tatuli Todua – Parliamentary Secretary of Public Defender	12/17/2021
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State Audit Office

Nato Zaalishvili – Head of the Legal Department	
Tsotne Karkashadze – Head of the Department of State Budget and Strategic Analysis	12/22/2021

State Inspector’s Service

Lana Khunashvili – Head of the Legal Department	12/14/2021
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The Communications Commission

Vakhtang Abashidze – Commissioner	
Nino Grdzelishvili – Head of International Relations and Project Management	12/30/2021

Georgian National Energy and Water Supply Regulatory Commission

Giorgi Pangani – Commissioner of GNERC	12/22/2021	12/22/2021
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Government

Ministry of Economy and Sustainable Development

Alexandre Sokhadze – Head of Legal Support and Contract Examination Division 12/27/2021

Eka Kubusidze – Head of the Communications, Information and Modern Technologies Department 12/30/2021

Ministry of Finance

Natia Gulua – Head of the Budget Department 01/20/2022

Civil Society Organisations

Georgian Young Lawyers' Association (GYLA)

Vakhushti Menabde – Democratic Institutions Support Program Director 12/14/2021

Giorgi Alaverdashvili – Analyst

Transparency International – Georgia (TI)

Lika Sajaia – Parliamentary Secretary 12/16/2021

Institute for Development of Freedom of Information (IDFI)

Giorgi Kldiashvili – Executive Director 12/22/2021

ANNEX 2: BIBLIOGRAPHY

Legal acts

- Constitution of Georgia (from 1995, including amendments from 2017 and 2018)
- Parliamentary Rules of Procedures (2018)
- Law on the National Regulatory Bodies (2002)
- Law on the State Audit Office (2008)
- Law on the State Inspector Service (2018)
- Law on Broadcasting (2004)
- Law on Electronic Communications (2005)
- Law on conflict of interests and corruption in the public service (1997)
- Law on Energy and Water Supply (2019)
- Law on Regulatory Fees (2005)
- Budget Code (2009)
- Resolution on approving of the Charter of the Georgian National Energy and Water Supply Regulatory Commission (2014)
- Resolution on approving the Rules for Licensing and Informing About Energy Activities (2020)
- Directive 2010/13/EU: General principle of independence of NRAs in the area of audio-visual media services
- Directive 2018/1808: Establishing comprehensive standards for NRAs in the area of audio-visual media services
- Directive 2018/1972: Upgrading the standards on independence of NRAs in the area of electronic communications
- Directive 2019/944: Amending provisions on independence of regulatory authorities in the area of electricity

Other documents

- OECD Guiding Principles for Regulatory Quality and Performance, 2012.
- Franklin De Vrieze, Independent oversight institutions and regulatory agencies, and their relationship to parliament, WFD, 2019.
- Jonathan Murphy and Franklin De Vrieze, Parliaments and independent oversight institutions. A global and country-specific analysis of parliaments' relationships with Supreme Audit, Anti-Corruption, and Human Rights institutions, 2020.
- Jonathan Murphy and Franklin De Vrieze, Independent oversight institutions – Guide for parliaments, 2020.
- Franklin De Vrieze, Bringing accountability to national governance: parliament interacting with independent oversight institutions, Blog post, 2020.
- Franklin De Vrieze and Luka Glusac, Combatting Corruption Capably: An assessment framework for parliament's interaction with anti-corruption agencies, 2020.
- Franklin De Vrieze and Luka Glusac (2020), Parliament relationship with anti-corruption agencies – evidence from Lithuania, Serbia, and Ukraine
- Geoff Dubrow, The Role of Parliament in Public Debt Management, 2020
- 2020 Public Defender Annual Report
- SIS 2020 Activity Report
- Principles relating to the Status of National Institutions (Paris Principles), adopted by UN General Assembly Resolution 48/134 from 20 December 1993
- Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”), adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019)
- Supreme Audit Institutions Independence Index 2021 Global Synthesis Report
- Gap assessment of Georgia regulatory system in the field of electronic communications, EU4digital, 30 October 2020

ANNEX 3 QUESTIONNAIRE TO THE INDEPENDENT REGULATORY AND OVERSIGHT INSTITUTIONS IN GEORGIA

Institution Title: _____

Year of Creation: _____

1. Please list the main laws/orders that established the institution and define/grant the institution's powers and activities:
2. Please state the overall objectives of the institution:
3. What powers does the institution 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)
 - Enforcement powers (Power to enforce laws)
4. Which body is competent for regulation in the relevant domain?
 - Institution only
 - Institution and another independent authority
 - Institution and parliament
 - Institution and government
 - Institution has only consultative (advisory) competencies
5. Please indicate to which category the institution belongs
 - 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)
 - 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)
 - Independent oversight/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 institution may also have the power to publish its recommendations)
 - 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)

6. Is the highest governing authority of the institution a single individual, or a board/commission?
- Single individual
 - Board/Commission
7. How does the highest decision-making authority within the institution make decisions?
- By decision of chairperson
 - By majority vote
 - By majority vote, with veto of the chair
 - By consensus
 - Other (please explain)
8. Does the institution's head have a fixed term of office?
- Yes
 - No
9. If yes, what is the length of the term? (Please specify the number of years)
10. Who appoints the head of institution?
- The Parliament
 - The President
 - The Government (collectively)
 - One or two ministers
 - A complex mix of the Parliament and government
 - Members of the board/commission in charge
11. Who can be appointed head of the institution? Please describe the eligibility requirements.
12. Is the appointment renewable?
- No
 - Yes, once
 - Yes, more than once
13. Is political independence a formal requirement for the appointment?
- Yes
 - 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 institution hold other offices in government?
- Yes
 - No
16. In case there is a board (or commission), do its members have fixed terms of office?
- Yes
 - No

17. If yes, what is the length of the term? (Give the number of years, noting if it is at the discretion of the appointer)
18. Who appoints the board members?
- The Parliament
 - The President
 - The Government (collectively)
 - One or two ministers
 - A complex mix of the Parliament and government
 - Members of the board/commission in charge
 - Other, please specify
19. Is the appointment renewable?
- No
 - Yes, once
 - Yes, more than once
20. Are the terms of the board members “staggering”, so that they can be replaced only gradually by each successive government?
- Yes
 - No
21. Are there any eligibility requirements for appointment to the board or commission governing the institution? Please describe the eligibility criteria.
22. Is there a legal requirement that the institution’s head and board members do not hold shares or have other interests in regulated industry?
- Yes
 - No
23. Can the executive overturn the institution’s decision?
- Yes
 - No
24. Is it formally stated in law or statutes that the institution can receive “individual instructions” from the government, or other body, on *specific* decisions?
- Yes
 - No
25. 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
26. Are members allowed to hold other offices in government?
- Yes, or no specific provisions
 - Yes, only with the permission of the government
 - No

27. Are there limitations to take a job in regulated companies during several years after the end of one's term in office?
- Yes
 - No
28. What is the institution's revenue and/or funding sources?
- Fees levied on the regulated industry. Please specify within what limits
 - State budget and fees. Please specify the share received from state budget
 - State budget only. What was the budget approved for 2018, 2019, 2020?
 - Other (specify)
29. 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.
- directly determined by the institution
 - require approval by ministry
30. Is the budget of the institution prepared by the
- Institution itself, only
 - Institution and the government
 - Government only
 - Parliament only
 - Other (please specify)
31. Is the budget of the institution controlled by the
- Institution itself, only
 - Audit Office
 - Institution and the government
 - Government only
 - Parliament only
 - Other (please specify)
32. Has the institution's budget been reduced during the past three years?
- Yes
 - No
33. Has the institution been asked to explain or justify its budget proposal before any parliamentary committee (Budget Committee or thematic committee) over the past 3 years?
- Yes
 - No
34. Who is responsible for the institution's staffing policy (recruiting, allocation, and composition)?
- Institution itself
 - Both the institution and the government
 - Government only
 - Other (please specify)
35. Please confirm whether the staff:
- Is subject to regular civil service pay completely

- Enjoys partial exemptions
 - Enjoys full exemptions
 - Other (please specify)
36. Does the institution have the authority to decide on the remuneration of staff, and board members alike?
- Yes
 - No
37. What are the formal obligations (in law or statute) of the institution vis-à-vis the Government?
- No formal obligations
 - Reporting requirement, for information only
 - Reporting requirement, and report must be approved
 - Fully accountable to government
38. What are the formal obligations (in law or statute) of the institution vis-à-vis the President?
- No formal obligations
 - Reporting requirement, for information only
 - Reporting requirement, and report must be approved
 - Fully accountable to government
39. What are the formal obligations (in law or statute) of the institution vis-à-vis the Parliament?
- No formal obligations
 - Reporting requirement, for information only
 - Reporting requirement, and report must be approved
 - Fully accountable to government
40. If there is a reporting requirement, should reports cover
- Performance
 - Finances
 - Both, performance and finances
41. What is the periodicity of reports?
- annual
 - quarterly
 - monthly
42. Are there formal content requirements or structure/format requirements for the reporting?
- Yes
 - No
43. Can the institution present, upon own initiative, reports, or statements to the Government or to Parliament?
- Yes
 - No
44. Is the Annual Activity Report submitted for
- Information
 - Approval
45. How regularly the head of institution has been asked to present and discuss the annual report before the relevant committee or parliament plenary session

Regularly

Never

46. Is the institution obliged to publish its formal reports to government, president or parliament, or any other documents relating to markets and regulations?

Yes

No

47. Has your institution organized consultations with interested groups, including citizens associations this and last year?

Yes

No

48. Are interested parties allowed to make submissions to the institution on matters under review?

Yes

No

49. Is the institution subject to a regular external audit?

Yes

No

50. If so, is this audit:

Financial audit

Performance audit

both

51. If the institution is subject to audit, is it audited by:

A national audit office

Private consulting firms

Independent academic research

Other (explain)

52. Has the institution been audited in the last 3 years?

Yes

No

53. Have the audit reports been put on the agenda or discussed by a parliamentary committee over the past 3 years?

Yes

No

54. Does the law specify that the institution's decisions need to be published?

Yes

No

55. Is the institution required by law to organize consultations?

Yes, in all cases (which have direct or indirect impact on more than one stakeholder)

Yes, but only in cases specified by law

No

56. Does the institution have a Code of Conduct applicable to all staff and board members?

Yes

No

57. Which international organisations your institution is member of? Please provide the list

58. To what extent your organisation is involved in that international network?

Vote for leadership

Peer-to-Peer exchange

No involvement

59. What does it cost to participate as member of that network?

60. Is your membership formal?

Member Status

Observer Status

61. Please provide any suggestions you have of ways in which the cooperation between your institution and Parliament could be improved

