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## Systemic capacity building of the media regulatory authorities in Georgia: A hierarchy of needs

### POLICY BRIEF

#### Executive Summary

Strengthening the media regulatory authorities in Georgia has been a commitment under the 2014-2016 Association Agenda, which called for ‘strengthening the capacity and independence of regulatory authorities/bodies for media.’<sup>1</sup> The Georgian National Communications Commission (GNCC), as the ‘regulatory authority of the media and electronic communication field’ under Georgian law,<sup>2</sup> stood to benefit from capacity building measures. However, none of the National Action Plans of the Georgian Government adopted to promote implementation of the Association Agenda in 2014 through 2016 have proposed specific activities to strengthen the GNCC.

On the whole, the GNCC has earned some recognition as a capable and active regulator. It demonstrated leadership during the digital switchover process<sup>3</sup> and took the decision to drop licensing requirement for television stations in 2014. These achievements stood out in the historical context of broadcast regulation in Georgia, which has been fraught with irregularities.<sup>4</sup> However, the GNCC's other reforms, namely, the implementation of the advertising regulations of the Audiovisual Media Services Directive – the key document governing the harmonisation of Georgia's regulatory framework with the EU in the media field – were more problematic. As the Commission established stricter rules governing the provision of sponsorship, product placement and other types of commercial content on TV in 2014, it met criticism over the timing and pace of reform. Several TV stations claimed that the speedy implementation of one of the requirements of the Audiovisual Media Services Directive, specifically the reduction of advertising limits to 12 minutes per hour, threatened their financial sustainability and negatively affected the advertising market.<sup>5</sup>

The successful harmonisation of the regulatory frameworks of the EU and Georgia is unattainable without the GNCC's strong leadership. It is therefore recommended that specific and effective capacity building measures be included in the Association Agenda for 2017-20 and resultant National Action Plans to: 1) make sure that the GNCC has sufficient resources, both human and material, to lead the harmonisation of the regulatory frameworks according to the Audiovisual Media Services Directive; 2) ensure maximum independence of the GNCC from political actors; 3) train relevant public officials; 4) raise public awareness of the mandate and activities of the GNCC; 5) ensure that sound management practices are in place in the Commission; and 6) strengthen ties between the GNCC and non-state actors, such as non-governmental organisations, media companies and the general public.

## Introduction

The EU-Georgia Association Agreement and the corresponding Association Agenda for 2014-2016 call for strengthening the country's media regulatory bodies. Article 365 of the EU-Georgia Association Agreement reads: 'the Parties shall develop a regular dialogue in the field of audio-visual and media policies ...in compliance with relevant European standards, including standards of the Council of Europe and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.'<sup>6</sup> Section 2.6 of the Association Agenda, entitled Cooperation in Audio-visual and Media Fields, sets the goal of 'strengthening the capacity and independence of regulatory authorities/bodies for media.'<sup>7</sup> These goals imply building the capacity of the GNCC, the regulatory body in the media and electronic sectors.

While the Government of Georgia has adopted and implemented two National Action Plans in 2014 and 2015 aimed at implementing the Association Agenda 2014-2016, and is in the process of implementing the National Action Plan for 2016, the Government has not proposed any specific and measurable activities to strengthen the GNCC. In the absence of specific activities, assessment indicators and expected outputs, it is difficult to judge how much progress has been achieved in building the capacity of the GNCC in the time period covered by the Association Agenda 2014-2016.

The challenges facing the Commission in the process of harmonising the regulatory frameworks of the EU and Georgia, namely, the implementation of the Audiovisual Media Services Directive,<sup>8</sup> warrant further development of its organisational capacity. The Commission will benefit from further development of its human and material capacities, greater independence from state actors and stronger ties with non-state actor.

<sup>1</sup> Association Agenda between the European Union and Georgia. Available at [http://eeas.europa.eu/delegations/georgia/documents/eap\\_aa/associationagenda\\_2014\\_en.pdf](http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf)

<sup>2</sup> The Charter of GNCC. Available at [www.gncc.ge](http://www.gncc.ge)

<sup>3</sup> IREX, 2016. Media Sustainability Index <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-georgia.pdf.pdf>

<sup>4</sup> Final Report of the Ad Hoc Parliamentary Commission on the Georgian National Communications Commission [http://www.parliament.ge/ge/ajax/download-File/25336/securedownload\\_1](http://www.parliament.ge/ge/ajax/download-File/25336/securedownload_1)

<sup>5</sup> IREX, 2016. Media Sustainability Index <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-georgia.pdf.pdf>

<sup>6</sup> The EU –Georgia Association Agreement, title VI, Chapter 18, article 365, paragraph 1. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2014:261:FULL&from=EN>

<sup>7</sup> Association Agenda between the European Union and Georgia. Available at [http://eeas.europa.eu/delegations/georgia/documents/eap\\_aa/associationagenda\\_2014\\_en.pdf](http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf)

<sup>8</sup> EU-Georgia Association Agreement, Annex XXXIII. Available at [http://mfa.gov.ge/index.php?lang\\_id=ENG&sec\\_id=30&info\\_id=17015](http://mfa.gov.ge/index.php?lang_id=ENG&sec_id=30&info_id=17015)

## Approaches and Results

The government appears to be lagging behind on its commitment to strengthen regulation in the audiovisual sector, i.e. the GNCC. Part of the reason is that the GNCC has shown substantial progress and leadership in a number of directions, including the successful digital switchover and new broadcast licensing policy, which attests to its greater professionalism and leadership. It is also likely that the government gives low priority to improving media regulation. None of the National Action Plans adopted by the government to implement the Association Agenda 2014-2016 include measures to strengthen the GNCC. The risk of this policy is that the GNCC may falter during implementation of the Audiovisual Media Services Directive, as it did when implementing the provisions of the Audiovisual Directive governing commercial advertising in the broadcast sector.

## GNCC: Evolution and Important Milestones

While the performance of the GNCC has improved greatly over the past few years, it nonetheless continues to receive mixed reviews. The GNCC was praised for its strong and 'apolitical'<sup>9</sup> leadership during Georgia's successful switchover to digital broadcasting and for dropping the licensing requirement for TV stations.<sup>10</sup> Conversely, TV stations criticised the GNCC's move to reduce the per-hour advertisement limit – in line with the Audiovisual Media Services Directive – as damaging to their financial health and the advertising market in general. The GNCC does not agree with the charges, claiming that per-hour advertising limits had been present in Georgian legislation but were subsequently abolished as a result of lobbying by the TV industry. The GNCC has also claimed that new advertising limits have not affected the advertising market negatively, and have actually benefited big TV stations. As one example, Rustavi 2 increased its advertising sales in 2015. The GNCC also explains that the large negative growth in the TV advertising market is a monetary effect produced by the exchange rate fluctuation and the depreciation of the Georgian Lari relative to the US Dollar.<sup>11</sup> Some international watchdogs also raised concerns over the lack of progress in the prevention of monopolisation and promoting of financial transparency<sup>12</sup> in the media.

In the twenty years since Georgia's independence, the reforms in the sphere of broadcast media regulation have progressed slowly. The establishment of the GNCC in 2000 set in motion the development of the regulatory framework in Georgia, but the process was fraught with irregularities. The Commission has been accused of politicising the licensing process and barring new TV and radio stations from entering the market. It has repeatedly stripped unwanted TV stations, such as TV Maestro, of licenses on political grounds and imposed unfair fines. Former chairmen and members of the Commission were accused of aligning with politicians and entering into corrupt business deals.<sup>13</sup> The GNCC 'has been accused of lacking independence' and its members criticised 'for cultivating commercial or political ties that constituted conflicts of interest.'<sup>14</sup>

<sup>9</sup> Ibid.

<sup>10</sup> IREX, 2016. Media Sustainability Index for Georgia. Available at <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-georgia.pdf>

<sup>11</sup> Rustavi 2 (2016, March 10). Conference presentation. Media Conference organised by the Open Society Georgia Foundation

<sup>12</sup> <https://freedomhouse.org/report/freedom-press/2015/georgia>

<sup>13</sup> Final Report of the Ad Hoc Parliamentary Commission on the Georgian National Communications Commission [http://www.parliament.ge/ge/ajax/downloadFile/25336/securedownload\\_1](http://www.parliament.ge/ge/ajax/downloadFile/25336/securedownload_1)

<sup>14</sup> Freedom House. (2015) Freedom of the Press in Georgia. Available at <https://freedomhouse.org/report/freedom-press/2015/georgia>

This context presents a challenge for the GNCC's current leadership, which is expected to demonstrate that it has eliminated corrupt practices, ensured its independence from the government and installed transparent management. To provide effective leadership of the regulatory framework and lead the harmonisation of Georgia's regulatory framework with the EU, the GNCC has to earn the trust and support of the media industry and the public. This is essential to the reform process.

The GNCC's first steps towards the implementation of EU Directive 2010/13/EU (Audiovisual Media Services Directive) were problematic. The Parliament of Georgia enacted the amendments to advertising regulations, limiting advertising time to 12 minutes per hour and four minutes for sponsorship services from 1 April 2015. The enactment was a 'rejection of suggestions of many media outlets and experts to postpone enforcement to 2016.'<sup>15</sup> According to several TV stations, among them TV station Rustavi 2, the swift enactment of these regulations threatened their financial sustainability and negatively affected the advertising market.<sup>16</sup> Prior to these changes, Georgian TV companies were allowed to allot 20% of their total daily airtime to advertising, and placed most advertisements during the primetime hours. The new amendments were proposed in December 2014 and implemented on 1 April 2015. Most changes were effective immediately, despite the fact that Georgia committed to implementing the Directive gradually over a three-year period. The Commission had reiterated that the provision to limit advertising to 20% of the hourly programming was nothing new. The provision had indeed been a part of the Georgian Law on Advertising, though it was never enacted.<sup>17</sup> With the adoption and enactment of the new Law on Broadcasting in 2005, the limits had been eased to 20% of the total daily airtime.<sup>18</sup>

Overall, the industry is split on the effects of the regulation to limit advertising to 12 minutes per hour. The GNCC argues that the regulations expanded the advertising market, while parts of the industry see the link between the measure and the downsize in TV advertising market from USD 43.3 mln in 2014 to USD 32 mln in 2015.<sup>19</sup> The TV advertising market did indeed shrink in 2015 when measured in US Dollars; however, the GNCC maintains that the TV advertising drop was less sizable, if expressed in Georgian Lari, due to the depreciation of the Georgian Lari relative to the US Dollar, and that overall, the advertising market expanded.. This paper assesses the move to introduce a cap on per-hour advertising regulations as hurried, insufficiently prepared and lacking the support of key stakeholders.

## **Trends in Eastern Europe**

The complexity of reforms in Georgia's regulatory sphere and demands placed on the GNCC are best understood in the context of the latest developments in the media regulatory sphere in Eastern Europe. All countries in the region have had regulatory bodies for broadcast media with varying degrees of independence. The trends in the regulatory sphere have been that of 'liberalization, privatization, and deregulation... and an increasing role for the state through... influence over regulatory bodies.'<sup>20</sup> The regulatory bodies are formally independent but informally dependent on political actors, who 'wield influence over politically-appointed

<sup>15</sup> IREX. 2016. Media Sustainability Index for Georgia. Available at <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-georgia.pdf>

<sup>16</sup> IREX. (2016). Media Sustainability Index. Available at <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2016-georgia.pdf>

<sup>17</sup> Commersant. (2015, February 24). Kakha Bekauri: Changes in the advertising legislation serve the purpose of growing the advertising market. Available at [http://commersant.ge/?m=5&news\\_id=18918&cat\\_id=7](http://commersant.ge/?m=5&news_id=18918&cat_id=7)

<sup>18</sup> Interview with the official of the Georgian National Communications Commission, 11 October 2016

<sup>19</sup> Transparency International-Georgia. Advertising Market Report 2016. Available at [http://www.transparency.ge/sites/default/files/post\\_attachments/sakartvelos\\_sareklamo\\_bazari\\_2016.pdf](http://www.transparency.ge/sites/default/files/post_attachments/sakartvelos_sareklamo_bazari_2016.pdf); Rustavi 2 (2016, March 10). Conference presentation. Media Conference organised by the Open Society Georgia Foundation

<sup>20</sup> Ibid, p. 20

ed members in the regulatory bodies.<sup>21</sup> Financially, the regulatory authorities are largely independent.<sup>22</sup>

Civil society participation in the regulatory debate and practice is weak. The industry is typically also underrepresented, especially bloggers, citizen journalists and other representatives of new media. The equal representation of women in the media regulatory bodies has also been problematic.<sup>23</sup>

Where does the GNCC stand vis-à-vis these trends? The Commission is not fully protected from political influences as its members are elected by members of parliament, i.e. vetted by politicians to serve a defined term (5 years). However, the selection process has improved from earlier years (2010-2014), when the ruling party and the main opposition party were allowed to nominate one member of the Commission each. The current selection process is inclusive, as any and all citizens of Georgia can apply for the position and be selected by the President of Georgia for inclusion on the list of nominees. There are three presidential nominees per each commissioner slot, approved by the Prime Minister, and submitted to the Parliament for a vote.<sup>24</sup> The financial independence of the Commission is ensured through revenues from the regulatory fees in the electronic communications and broadcasting field. This stable and independent source of financing, rather than funding from the state budget, is to ensure that the Commission is protected from political influences.<sup>25</sup>

Civil society participation in the regulatory debate is robust, but its influence on regulatory practice is limited. Certain segments of the media industry, such as the new media community, are underrepresented. The representation of women on the GNCC is somewhat ensured, with one female commissioner out of five.<sup>26</sup>

## **GNCC in National Action Plans 2014, 2015 and 2016**

The National Action Plans for 2014, 2015 and 2016, which were developed to propose specific activities to implement the goals set forth in the 2014-2016 Association Agenda, do not contain measures that target strengthening the GNCC. All references to the GNCC are in the context of tasks assigned to the Commission, while capacity building measures are lacking.

The analysis of the National Action Plan for 2014<sup>27</sup> found one reference to the GNCC in the context of approximation of Georgia's legislation with the EU in the field of electronic communication.<sup>28</sup> The Commission was made responsible for the analysis of the policies for radio spectrum allocation and their compliance with the respective EU directive (Decision 676/2002/EC).<sup>29</sup>

The National Action Plan for 2015<sup>30</sup> contains three activities to be implemented by the GNCC. These activities relate to cooperation in the field of information society (Directive 2002/58/EC on privacy and electronic communications) and regulation of the postal services (Directive 97/67/EC and Directive 2002/39/EC).

<sup>21</sup> UNESCO (2014). World Trends in Freedom of Expression and Media Development: Regional Overview of Central and Eastern Europe, p. 13 Available at <http://unesdoc.unesco.org/images/0022/002277/227738e.pdf>

<sup>22</sup> UNESCO (2014). World Trends in Freedom of Expression and Media Development: Regional Overview of Central and Eastern Europe, p. 13 Available at <http://unesdoc.unesco.org/images/0022/002277/227738e.pdf>.

<sup>23</sup> Ibid. p. 20

<sup>24</sup> Georgian National Communications Commission. Available at [www.gncc.ge](http://www.gncc.ge)

<sup>25</sup> Interview with the official of the Georgian National Communications Commission, 11 October 2016.

<sup>26</sup> UNESCO (2014). World Trends in Freedom of Expression and Media Development: Regional Overview of Central and Eastern Europe, p. 20 Available at <http://unesdoc.unesco.org/images/0022/002277/227738e.pdf>

<sup>27</sup> 2014 National Action Plan for the Implementation of the Association Agreement between the European Union and Georgia, Available at [http://www.eu-nato.gov.ge/sites/default/files/AA%20Action%20Plan-2014-Final-ENG\\_0.pdf](http://www.eu-nato.gov.ge/sites/default/files/AA%20Action%20Plan-2014-Final-ENG_0.pdf)

<sup>28</sup> Ibid. p. 60

<sup>29</sup> EU-Georgia Association Agreement. Available at [https://eeas.europa.eu/sites/eeas/files/association\\_agreement.pdf](https://eeas.europa.eu/sites/eeas/files/association_agreement.pdf)

<sup>30</sup> 2015 National Action Plan for the Implementation of the Association Agreement between the European Union and Georgia, p. 87-88, Available at <http://www.eu-nato.gov.ge/en/eu/association-agreement>

The 2016 National Action Plan<sup>31</sup> includes several activities involving the GNCC, namely those related to cooperation in the field of information society (Authorisation Directive 2002/20/EC, Access Directive 2002/19/EC, Framework Directive 2002/21/EC) but also to cooperation in the media and audiovisual fields (Audiovisual Media Services Directive). The latter activity calls for the approximation of legislation in the field of media and audiovisual services as per paragraph 367 of the Association Agreement. The Commission is charged with preparing a draft of legislative amendments and presenting them to the Government of Georgia by December 2016.<sup>32</sup>

Thus, the National Action Plans for the implementation of the Association Agreement and Association Agenda 2014-2016 do not directly meet the goal of 'strengthening the capacity and independence of regulatory authorities/bodies for media',<sup>33</sup> which is stipulated in Section 2.6 of the Association Agenda. While the National Action Plans assign important tasks to the Commission, and, in doing so, stimulate the development of its administrative and professional expertise, they do not propose specific and measurable actions to strengthen the capacity of the GNCC.

## Conclusion

The Georgian Government has made it a strategic priority to strengthen the GNCC and its leadership in the audiovisual sector by including the commitment to 'strengthen regulatory bodies in the media' in the Association Agenda 2014-2016.

Yet, specific objectives and activities chosen towards this goal are missing in the National Action Plans and/or the Communication and Information Strategy 2014-2017. This policy brief notes the missteps of the Commission related to the timing and handling of the introduction of per-hour advertising limits in 2015 as part of Georgia's fulfilment of the commitment to implement the Audiovisual Media Services Directive, and recommends that strengthening the GNCC become a priority for the Georgian Government. The Commission plays an important role in the implementation of the Association Agreement provisions in the media and audiovisual field, and any future missteps may result in the erosion of trust towards the association process in general. The Georgian Government's commitment to strengthen the capacity of media regulatory bodies, as per Section 2.6 of the Association Agenda,<sup>34</sup> must be honoured in the next Association Agenda 2017-2020 and resultant National Action Plans.

<sup>31</sup> 2016 National Action Plan for the Implementation of the Association Agreement between the European Union and Georgia, Available at <http://eu-nato.gov.ge/sites/default/files/AA%20NAP%202016%20ENG.pdf>

<sup>32</sup> Ibid, p. 228

<sup>33</sup> Association Agenda between the European Union and Georgia. Available at [http://eeas.europa.eu/delegations/georgia/documents/eap\\_aa/associationagenda\\_2014\\_en.pdf](http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf)

<sup>34</sup> Association Agenda between the European Union and Georgia. Available at [http://eeas.europa.eu/delegations/georgia/documents/eap\\_aa/associationagenda\\_2014\\_en.pdf](http://eeas.europa.eu/delegations/georgia/documents/eap_aa/associationagenda_2014_en.pdf)

## **Recommendations**

Strengthening the GNCC administratively and skill-wise would ensure the successful harmonisation of legislation in the media and audiovisual field. Hence, the primary recommendation is that the goal of building the capacity of the Commission must be incorporated into the Association Agenda 2017-2020 and specific and measurable activities included in the resultant National Action Plans.

More specifically, it is recommended that the Georgian Government:

- (1) Make sure that the GNCC has sufficient resources, both human and material, to lead the harmonisation of the regulatory frameworks according to the Audiovisual Media Services Directive;
- (2) Ensure maximum independence of the GNCC from political actors;
- (3) Train relevant public officials;
- (4) Raise public awareness of the mandate and activities of the GNCC;
- (5) Ensure that sound management practices, especially, the capacity to manage reforms, are in place in the Commission; and
- (6) Strengthen ties and communication between the GNCC and non-state actors, such as non-governmental organisations, media companies and the general public.

Any or all of these measures, if introduced in the context of EU-Georgia association action plan, are bound to strengthen the GNCC and the audiovisual sector in general.

