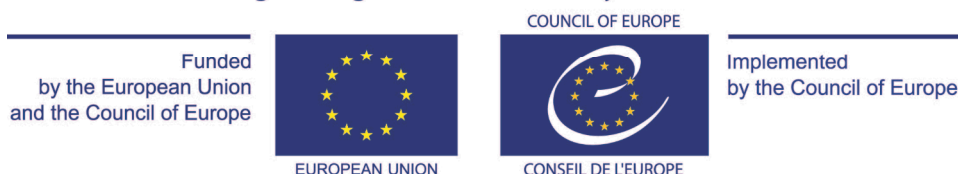


Joint Programme between the European Union and the Council of Europe Strengthening Information Society in Ukraine



Suggestions for Effective Media Ownership Transparency Provisions in Ukraine

Mathias Huter, May 18, 2015¹

This policy paper, prepared upon request of the Joint Programme of the European Union and the Council of Europe “Strengthening Information Society in Ukraine”, seeks to inform efforts by the Ukrainian Parliament to shed light on the ownership of broadcast media.² For this purpose, the paper summarizes relevant key documents by the Council of Europe and the European Union. Then the paper provides two national approaches, those of Austria and Georgia, which are among the few European countries that have put in place solid media ownership transparency requirements. Finally, the paper provides policy suggestions and recommendations, based on those case studies and on translated draft amendments that were made available to the author.

Council of Europe

The Council of Europe has on numerous occasions highlighted its commitment to media pluralism and diversity, and it has stressed that it regards media ownership transparency as a necessity to enable citizens to form an opinion about how to value information and opinions received by different media outlets. At the core of this balancing act between media freedom and necessary regulatory frameworks is Article 10 of the **European Convention on Human Rights**:

„1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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² For the relevance of media ownership transparency for freedom of speech and pluralistic media markets, see: Council of Europe: Human Rights and a Changing Media Landscape, <https://www.coe.int/t/commissioner/Activities/themes/MediaFreedom/MediaLandscape2011.pdf>; European Commission: SEC(2007) 32, Media Pluralism in the Member States of the European Union, https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/media_pluralism_swp_en.pdf; Access Info: <http://www.access-info.org/media-ownership-transparency>.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society (...).³

Recommendation CM/Rec(2007)2 of the Committee of Ministers **on media pluralism and diversity of media content** once again underlined the importance of transparency of media ownership, also allowing the authorities in charge of the implementation of regulations concerning media pluralism to take informed decisions, and to ensure that the public can make its own analysis of the information, ideas and opinions expressed by the media.⁴

The recommendation encourages member states to “adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed”, but highlights that when doing so, states “should pay particular attention to the need for effective and manifest separation between the exercise of political authority or influence and control of the media or decision making as regards media content”.⁵

Further recommended measures include provisions to ensure pluralism:

- Member states should consider the adoption of rules aimed at limiting the influence which a single person, company or group may have in one or more media sectors as well as ensuring a sufficient number of diverse media outlets.
- These rules may include introducing thresholds based on objective and realist criteria, such as the audience share, circulation, turnover/revenue, the share capital or voting rights.

In terms of media transparency, the decision recommends that member states ensure the public to have access to the following types of information on existing media outlets:

- information concerning the persons or bodies participating in the structure of the media and on the nature and the extent of the respective participation of these persons or bodies in the structure concerned and, where possible, the ultimate beneficiaries of this participation;
- information on the nature and the extent of the interests held by the above persons and bodies in other media or in media enterprises, even in other economic sectors;
- information on other persons or bodies likely to exercise a significant influence on the programming policy or editorial policy;
- information regarding the support measures granted to the media.⁶

Council of Europe Recommendation No R(94) 13 on measures to promote media transparency provides a set of guidelines to members states on how to guarantee access to information about media ownership for both, competent authorities and the general public by including relevant provisions in their domestic legislation. Six

³ European Convention on Human Rights:
http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁴ Council of Europe: Recommendation CM/Rec(2007)2,
<https://wcd.coe.int/ViewDoc.jsp?id=1089699>.

⁵ Ibid.

⁶ Council of Europe: Recommendation CM/Rec(2007)2,
<https://wcd.coe.int/ViewDoc.jsp?id=1089699>.

guidelines describe a range of different categories of formation the disclosure of which may be required under various circumstances:

- Guideline No. 1: Access by the public to information on the media
 - It should be carried out in a way which respects the rights and legitimate interests of the persons or bodies subject to transparency requirements. Particular attention should be given to the need to reconcile the requirement of transparency with the principle of freedom of trade and industry as well as with the requirements of data protection, commercial secrecy, the confidentiality of the sources of information of the media and editorial secrecy.
- Guideline No. 2: Exchange of information on media transparency between national authorities
 - National authorities should be able to share the information they hold with authorities in other countries, based on clear rules (Para 16).
 - Information reported to the regulator may be made available to the public (Para 20).
- Guideline No. 3: Disclosure of information when granting broadcasting licenses to broadcasting services
 - Disclosure requirements may include information on persons or bodies that are participating in the structure of the applicant (directors, direct and indirect owners), information on the nature and extent of interests held by these persons and bodies in other media companies, or in other sectors of the economy, and information on persons or bodies likely to exercise a significant influence on the programming policy.
- Guideline No. 4: Disclosure of information following the grant of broadcasting licenses to broadcasting services
 - It may be required that the authority is informed of any change occurring in regards of any of the information that was disclosed when the license was granted, including changes in capital/shareholders, changes in the management or supervisory bodies and possibly also of financial accounts (Para 35).
- Guideline No. 5: Exercise of the functions of the service or authorities responsible for ensuring transparency in the running of broadcasting services
 - The powers and responsibilities of authorities responsible for ensuring transparency should be clearly defined in legislation (Para 37).
- Guideline No. 6: Specific measures which may guarantee media transparency in the press sector
 - Transparency requirements for the press sector cannot be analogous to those which apply to the broadcasting sector, given that the press cannot be made subject to a licensing system (Para 41).
 - Disclosure requirements may be adopted to the identity of legal persons operating press structures, and may also be extended to all shareholders of a company, or be limited to those with significant shareholdings in the company's capital. Transparency requirements may also possibly be extended to persons who possess a power of direction or management (Para 45).
 - Measures to ensure transparency may also extend to interests held by publishing structures in other media outlets, in sectors related to the media, or possibly also, where appropriate, to shareholdings in other economic sectors (Para 46).

Ukraine signed the **European Convention on Transfrontier Television** in 1996.⁷ This binding treaty, which entered into force in Ukraine in 2009, applies to “any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a Party, whether by cable, terrestrial transmitter or satellite, and which can be received, directly or indirectly, in one or more other Parties.”⁸

Article 4 underlines that the Parties “shall ensure freedom of expression and information” and “shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention.” Governments have to ensure that all programme services transmitted by broadcasters within its jurisdiction comply with the Convention (Article 5).

Article 6 (2) states that information about a broadcaster shall be made available, upon request, by the competent authority in one country to a similar authority on another country: “Such information shall include, as a minimum, the name or denomination, seat and status of the broadcaster, the name of the legal representative, the composition of the capital, the nature, purpose and mode of financing of the programme service the broadcaster is providing or intends providing.”

The Explanatory Report to the Treaty highlights that “it is particularly necessary that information about the broadcaster is available to everyone. Because of the multiplication and diversification of programme services, on the one hand, and the transfrontier character of transmissions, on the other, it is important, both for States and viewers, to know who is responsible for what.”⁹

European Union

Article 11 of the **Charter of Fundamental Rights of the European Union** states: „1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 2. The freedom and pluralism of the media shall be respected.”¹⁰

The EU Commission’s latest progress report on the **Implementation of the European Neighborhood Policy in Ukraine** Progress in 2014 observes has observed that “the lack of transparency of ownership of media remained an issue and a proper legislative framework on media ownership was not created in 2014.”¹¹

Chapter 15 of the **EU-Ukraine Association Agreement** focuses on the area of audiovisual policy.¹² Article 396 (2.) of the Agreement states that Cooperation between Ukraine and the EU could include the training of journalists and media professionals “as well as support to the media (public and private), so as to reinforce their independence,

⁷ Council of Europe: European Convention on Transfrontier Television CETS No.: 132, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=132&CM=1&DF=&CL=ENG>.

⁸ European Convention on Transfrontier Television, <http://conventions.coe.int/Treaty/en/Treaties/Html/132.htm>

⁹ Ibid.

¹⁰ Charter of Fundamental Rights of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:en:PDF>, http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm.

¹¹ European Commission: SWD(2015) 74 final, http://eeas.europa.eu/enp/pdf/2015/ukraine-enp-report-2015_en.pdf.

¹² European Commission: EU-Ukraine Association Agreement, http://eeas.europa.eu/ukraine/docs/association_agreement_ukraine_2014_en.pdf

professionalism and links with other European media in compliance with European standards, including standards of the Council of Europe". Furthermore, a gradual approximation to the EU law and regulatory framework and international instruments in the area of audio-visual policy shall be carried out (Article 397). In particular, the Agreement refers to the Audiovisual Media Services Directive (to be implemented within two years of the Agreement entering into force) and the European Convention on Transfrontier Television of 1989.

The EU's role in media regulation and ensuring freedom of the media is largely the responsibility of the individual Member States. The EU's role mostly extends to aspects that concern the single market.

The EU's **Audiovisual Media Services (AMSD)** Directive aims to strengthen an internal market and ensure fair competition for such services. The AMSD (formerly named Television Without Frontiers Directive) highlights that it is essential for any Member State to ensure the prevention of any acts "which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole."¹³

The AMSD requires Member States to ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

- a) the name of the media service provider;
- b) the geographical address at which the media service provider is established;
- c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;
- d) where applicable, the competent regulatory or supervisory bodies.¹⁴

Case study: Austria

An amendment to the Austrian Media Act passed in 2011 introduced a requirement for all media outlets, regardless of the type of media – printed media, online, radio and television – to proactively disclose information on the media outlet and all direct and indirect owners. At the time, several publishing houses were owned trusts, making it in some cases impossible to identify the beneficial owners of major newspapers.

Full ownership disclosure required for all media

Article 25 of the Media Act now requires that all media outlets to disclose the following information on the "imprint"-section of their website (an, if applicable, in the print publication, in case of broadcast media also once a year in the official gazette or in the broadcaster's on-screen services):¹⁵

- The media owner shall be specified by name or company name, including the subject of the company's business, the residential address or registered office (branch office) and the names of the executive bodies and officers of the media owner authorized to represent the company and, if there is a supervisory board, its members.
- In addition, the ownership, shareholding, share and voting rights proportions shall be stated in respect of all persons holding a direct or indirect share in the

¹³ European Commission: Audiovisual Media Services (AMS) Directive, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:am0005&qid=1431527509959>.

¹⁴ AMS, Article 5, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32010L0013>.

¹⁵ Austrian Media Act, https://www.ris.bka.gv.at/Dokumente/ErV/ERV_1981_314/ERV_1981_314.html.

media owner. Furthermore, any undisclosed shareholdings in media owner and in persons holding a direct or indirect share in the media owner as specified in the previous sentence shall be stated, and fiduciary relationships shall be disclosed for each level. In the case of direct or indirect shareholdings of foundations, the founder and the relevant beneficiaries of the foundation shall be disclosed. If the media owner is an association or an association holds a direct or indirect share in the media owner, the management board and the purpose of the association shall be stated in respect of such association.¹⁶

- Persons holding a direct or indirect share, trust makers, founders and beneficiaries of a foundation shall be obligated, upon request by the media owner, to communicate to the media owner the details required for the media owner to comply with his/her/its disclosure obligation.
- If a person to be disclosed under the aforementioned provisions is also owner of another media undertaking or media service, the name, object and registered office of such company shall also be stated.

A failure to comply with these requirements is an administrative offence that can be reported by anybody to the police and is subject to fines of up to EUR 20,000. There are no known cases of such administrative fines actually being imposed.

These disclosure requirements have effectively managed to ensure a high level of ownership transparency in the Austrian media landscape.

Broadcasters: reporting requirements to regulator

When applying for a license or authorization, the applicant has to disclose all direct and indirect owners to the broadcasting and telecom regulator RTR.¹⁷ Broadcasters and audiovisual service providers have to report any change in their shareholder structure to the regulator within two weeks.¹⁸ Any change of more than 50% of the shareholding structure has to be approved by the regulator, whereby changes must not be split into several transactions.¹⁹ Especially small operators, such as local cable TV operators, at times fail to report these changes – often because the staff simply forgets to file the report – and can be fined up to EUR 4,000. In case of repeated violations, the regulator has the right to withdraw a license, but such a sanction has so far not been imposed. Any fines imposed by the regulator do not benefit its budget but go to the State budget, to avoid a conflict of interests.

The broadcasting regulator RTR has approximately one full time staff who focuses on the ownership structures, and also proactively contacts companies that are subject to oversight, inquiring about any ownership changes, if such changes have been reported by the media.

¹⁶ If a media only presents the personal lifestyle or only contains information to present the media owner but does not contain information suitable to influence public opinion, only the name or the company, if relevant the area of business activity of the company, as well as the residence or the registered office of the media owner have to be disclosed (Article 25(5)).

¹⁷ Audio-visual Media Services Act, Articles 4, 5,

https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2001_1_84/ERV_2001_1_84.html.

¹⁸ A media operator (or an owner with more than 25% of direct or indirect ownership) is not allowed to provide television channels or operate a terrestrial TV station if it also owns a terrestrial radio with more than 30% of national reach, a daily newspaper with more than 30% daily national reach, a weekly publication with more than 30% national reach or cable networks with more than 30% of the national population served.

¹⁹ Ibid, Article 10(5).

Case study: Georgia

Until 2011, several major Georgian TV stations – including the country’s most popular private national channels, Rustavi 2 and Imedi TV – which were widely perceived as linked with or de facto controlled by the government at the time – were owned by opaque off-shore companies, making it impossible to trace the actual owners of these broadcasters.²⁰

Following domestic and international calls to improve media ownership transparency, the Georgian Parliament amended the Law on Broadcasting in 2011 and introduced requirements for broadcasters to disclose their beneficial owners as well as requirements for financial transparency. In addition, the law also banned offshore entities from owning holders of a broadcasting license or authorization.

Eligibility for broadcasting license/authorization

A license holder or person authorized to carry out broadcasting activities has to be a citizen of Georgia or a resident physical or legal person of Georgia. The following actors are banned from holding a broadcasting license or authorization:²¹

- a) an administrative authority;
- b) officials or other employees of an administrative authority;²²
- c) a legal entity interdependent with an administrative authority;
- d) a political party or its officials;
- e) a legal entity registered offshore;²³
- f) a legal person with a share or stocks in it directly or indirectly owned by a legal entity registered offshore.

Ownership concentration

Georgia is a small market with 3.7 million people. Because of its geographical location, a limited number of frequencies are available for broadcasting until terrestrial broadcasting is switched to digital (DVB-T2 is currently being introduced).

Under the Georgian Law on Broadcasting, a person is not allowed to own or co-own not more than one terrestrial TV license holder and one radio license holder in any one service area.²⁴ It is likely that these stringent concentration requirements will be relaxed, after the digital switchover is finalized and sufficient frequency capacity for more channels has become available.

Ownership disclosure requirements for broadcasters

An applicant seeking a license or authorization has to provide the Georgian broadcasting regulator (GNCC) with a so-called declaration of compliance, containing the identity of the applicant, information on officials and bodies of the seeker of the license/authorization, a confirmation that the seeker of the license/authorization or its

²⁰ See: Transparency International Georgia, 2009: Television in Georgia – Ownership, Control and Regulation, <http://transparency.ge/en/node/213>.

²¹ Georgian Law on Broadcasting, Article 37, <http://gncc.ge/uploads/other/1/1252.pdf>.

²² Official is defined as a person permanently or temporarily elected or appointed, acting with or without salary, performing duties related to executive, organizational, managerial, administrative or other similar functions, including particular tasks and assignments in the Georgian National Communications Commission or in public broadcasting.

²³ Offshore is defined by the Law on Broadcasting as “a state or territory in a state where information on property, activity and partners/shareholders of a legal person is kept confidential”.

²⁴ Georgian Law on Broadcasting, Article 60.

beneficial owners are not banned from carrying out broadcasting activities (as outlined above), and the identities of the beneficial owners of the applicant, and information about the shares owned by them.²⁵

After awarding an authorization or license to a broadcaster, the regulator has to publish the broadcaster's compliance declaration on its website.²⁶ A broadcaster has to annually resubmit this compliance declaration to the regulator. In addition to publication of these declarations by the regulation, the broadcaster also has to publish the declaration on its website.²⁷

In case of a change in its ownership, shareholder structure or the membership of its governing bodies, a broadcaster has to submit an updated compliance declaration to the regulator within 10 days of the change, and also publish this declaration on its own website. The regulator may take measures to encourage pluralism of opinion in the mass media and to avoid concentration of prohibited broadcast ownership concentration.²⁸

In addition to the compliance declaration containing beneficial ownership²⁹ information, broadcasters also have to annually provide the regulator with the following information:

- any shares they own in other broadcasters or holders of broadcasting licenses or authorizations;
- any ownership of periodical printed publications;
- any ownership of news agencies;
- any holdings of at least 5% of shares in any other company.
- information on any shareholder, founder, board member, director, donor or their family members hold shares or stock in other holders of broadcasting licenses/authorizations, a periodical printed publication or a news agency.³⁰

Financial transparency requirements for broadcasters

- Large broadcasters (those with nationwide coverage) have to maintain their accounting in line with rules established by the International Accounting Standards Committee.
- By May 1 of each year, broadcasters also have to submit to the regulator and publish on their official website a report on the fulfillment of requirements of Georgian legislation, license conditions and Code of Conduct and sources of financing in the previous year. The report shall be enclosed with an auditor's opinion.
- By May 1, all broadcasters have to submit to the regulator information about their assets and liabilities as well implemented investments (indicating the amount of investments and the investors) in the previous year, using electronic forms that have been developed by the regulator.

²⁵ Ibid, Article 37¹.

²⁶ Ibid, Article 45¹.

²⁷ Ibid, Article 61.

²⁸ Ibid, Article 62.

²⁹ The Georgian Law on Broadcasting defines beneficial owner as „ a person who, on the basis of law or a contract, receives or may receive monetary or other benefit from a broadcaster's activity and has no obligation to transfer this benefit to another person, while if a beneficial owner is a legal entity created to further ideal goals, or if a legal entity owner does not have a person who owns a substantial share, beneficial owner is a member of its governing body“ (Article 2).

³⁰ Ibid, Article 61.

- Through electronic reporting forms, all broadcasters also have to file quarterly reports about their sources of financing, including a breakdown of revenues received from advertising, sponsorship, telemarketing and contributions from owners or any other person. Broadcasters also have to report about services they have received, either paid or as in-kind contribution from the owner or any other person. These reports have to be provided to the regulator within 15 days after the end of a quarter.
 - Within seven days of receiving this reporting form completed by broadcasters, the regulator has to publish the information on its website.
- The regulator publishes the identity of persons (companies and/or individuals) who, over the period of three months, provided advertising and teleshopping, sponsorship or service to a broadcaster or made contribution to it in the amount exceeding GEL 7,000 (UAH 60,000/EUR 2,600) to a broadcaster.
- The GNCC, as the broadcasting regulator, is authorized to request, and a broadcaster is obliged to deliver to GNCC, in full and within a required term any information about the fulfillment of assignments and functions defined in the Law on Broadcasting and legal acts of GNCC, including on the fulfillment of requirements of legislation of Georgia, license/authorization conditions and/or the broadcasters' Code of Conduct, as well as documentation on fulfillment of requirements of Georgian legislation on Copyright and Related Rights. Submission of incorrect or incomplete information by a broadcaster shall be considered as a non-submission of information. A broadcaster shall submit the requested information to GNCC within 15 days after the request is made, unless the GNCC defines other term. In case of nonfulfillment by a broadcaster of requirements of Georgian legislation and license/authorization conditions, the GNCC is authorized to apply sanctions as determined by legislation of Georgia.

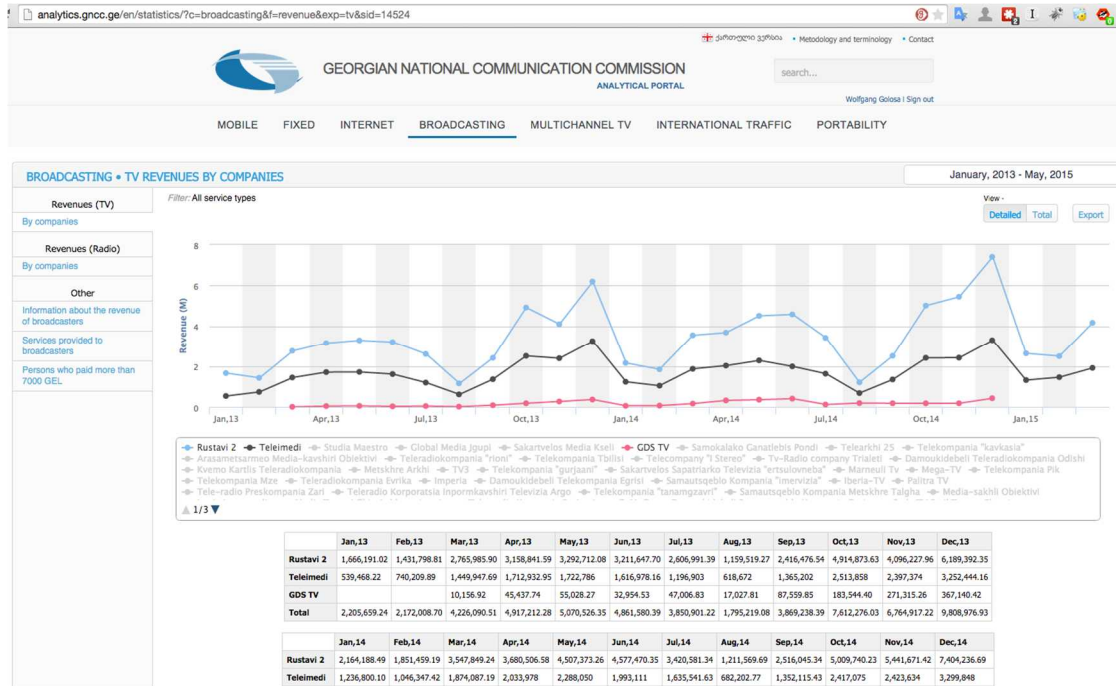
Sanctions

If a broadcaster violates Georgian legislation or fails to fulfill a decision of the regulator or a license condition, the GNCC shall issue a written warning and specify a reasonable term of correcting the problem or complying with a decision of the regulator. If the broadcaster fails to do so after the end of the warning period, and if the violation is repeated within one year after the warning was issued, the GNCC can impose a fine. The regulators decisions on fines, suspending or revoking a license can be challenged in Court.³¹

The regulator may impose a first fine on a broadcaster that does not exceed 0.5% of the broadcasters annual income but is no less than GEL 2,500 (UAH 22,000); in case of continuing violations or a new violation within one year after the initial fine, a second fine of 1% of the broadcasters annual income (at least GEL 5,000/UAH 44,000) or initiate administrative proceedings for a suspension of the license. In case of further violations, fines can increase to up to 3% of annual income (at least GEL 10,000/UAH 88,000), or the license can be suspended. Any fines are paid to the State budget, not to the regulator.³²

³¹ Ibid, Article 71.

³² Ibid, Article 72.



GNCC data portal, showing monthly reported revenues of major TV stations³³

BROADCASTING • REVENUES BY SOURCES (1Q, 2015 year)

Broadcaster	Source of revenue	Revenue (Gel)
7 arki	Other	0.00
TV ERA	Advertising	4,189.00
TV8	Advertising	4,727.34
Aleksandre Ghurtskaia Gimnazia - Jiji	Other	0.00
Asotsiatsia Atinati	Advertising	7,792.92
	Technical service	7,759.30
Basti-bubu	Advertising	4,500.00
Giorgi Koghuashvili	Other	6,185.60
Gorda	Announcements	1,467.00
Mega-TV	Announcements	2,187.27
	Advertising	5,356.11
	Other	16,040.00
Damoukidebeli Teleradiokompania Odishi	Announcements	12,110.67
	Advertising	25,709.12
Evropa Plus-tbilisi	Advertising	17,119.00
VI-ES	Other	0.00
Imperia	Announcements	130.00
	Content Realization	1,511.25
	Advertising	2,639.16
	Other	221.00

GNCC data portal, showing income of broadcasters by type of revenue³⁴

³³ <http://analytics.gncc.ge/en/statistics/?c=broadcasting&f=revenue&exp=tv>

³⁴

http://analytics.gncc.ge/en/statistics/?c=broadcasting&f=broadcasting&exp=broadcasting_revenue

analytics.gncc.ge/en/statistics/?c=broadcasting&f=broadcasting&exp=broadcasting_7000&sid=14581

GEORGIAN NATIONAL COMMUNICATION COMMISSION
ANALYTICAL PORTAL

Wolfgang Golosa | Sign out

MOBILE FIXED INTERNET **BROADCASTING** MULTICHANNEL TV INTERNATIONAL TRAFFIC PORTABILITY

BROADCASTING • ABOUT REVENUES MORE THAN 7000 GEL 4Q, 2013 year

Broadcaster	Source
TV3	სხიკ "სავაჭრო სამრეწველო პალატა"
	შპს "მაგთიკომი"
	შპს "მედია სახლი"
	შპს "საქეპერტიზა"
	შპს "ტელეკომპალა პიკ"
შპს ტელეკომპანია პიკ	
Arasametsarneo Media-kavshiri Obiektivi	ირაკლი ცილიკიშვილი
	მამუკა გობჯია
Beka-ji	მიხეილ გიორგობიანი
Giorgi Koghuashvili	შპს პაკერტინი
Global Media Jgupi	ჯეშალო საითაძე, სტანისლავ კერტელიძე
	1
	ს.ს. ელიტ ელექტრონიკები
	საქ. ენტრალური კავშირგაბმულობის კორპორაცია
	სს სადაზღვეო კომპ. აღდაგი ბი სი აი
	შ.პ.ს. მავი სტილი მედია
	შ.პ.ს. TV ERA
	შ.პ.ს. ბეთერ ფლაი
	შ.პ.ს. ზოუქ სი სატი
	შ.პ.ს. ბრენდაუსი
	შ.პ.ს. გლობალ კონტაქტ კონსალტინგი
	შ.პ.ს. თბ ტვ
	შ.პ.ს. თბ ტვ

GNCC data portal, showing a list of major sources of financing (latest data available from Q4 2013)³⁵

gncc.ge/uploads/other/0/803.pdf

შესამუშობის დეკლარაცია	შპს სასაწყობო კომპანია "რუსთავი 2"
ლიცენზიის მფლობელის/მამბელის	ლიცენზია N.B5; დოკუმენტი N.101; დოკუმენტი N.8103; დოკუმენტი N.1347
სამსაწყობო ლიცენზიების ნომერი (ციფრა მხოლოდ ლიცენზიის მფლობელის მიწაძევის და არაქონების შემთხვევაში)	დირექტორი ნიკა ვეჯარია, საქართველოს მოქალაქე, დაბადებული 1976 წლის 29 ივნისს, ა/მ 62001002103; ფინანსური დირექტორი ზურაბ იაშვილი, საქართველოს მოქალაქე, დაბადებული 1970 წლის 26 მაისს, ა/მ 01003006687
მონაცემები ლიცენზიის მფლობელის/ მამბელის ხელმძღვანელი თანამდებობის პირების და არაქონების შესახებ	დირექტორი ნიკა ვეჯარია, საქართველოს მოქალაქე, დაბადებული 1976 წლის 29 ივნისს, ა/მ 62001002103; ფინანსური დირექტორი ზურაბ იაშვილი, საქართველოს მოქალაქე, დაბადებული 1970 წლის 26 მაისს, ა/მ 01003006687
ლიცენზიის მფლობელის/მამბელის და ამ დეკლარაციის მე-5 პუნქტის მოთხოვნით, რომ ლიცენზიის მფლობელი ან მისი ბუნებრივი მემკვიდრე არ არიან:	
ა) აღმნიშვნული ორგანო:	
ბ) აღმნიშვნული ორგანოს თანამდებობის პირი, სხვა სახეობის მოხელე:	
გ) აღმნიშვნული ორგანოსთან ურთიერთდამოკიდებულების მქონე იურიდიული პირი:	
დ) პოლიტიკური პარტია, პოლიტიკური პარტიის თანამდებობის პირი:	
ე) იურიდიული ზომანი რეგისტრირებული თურქიდიული პირი:	
ვ) იურიდიული პირი, რომლის წილს ან აქციებს პირდაპირ ან ირიბად ფლობს იურიდიული ზომანი რეგისტრირებული პირი.	
ინფორმაცია ლიცენზიის მფლობელის/მამბელის ბუნებრივი მემკვიდრეების საიდენტიფიკაციო მონაცემებისა და მათი საკუთრებანი არსებული ქვეყნის თანახმად	ნიკა ვეჯარია ზურაბ იაშვილი 18.03.2013
	1. გიორგი გვეგუნიძე, საქართველოს მოქალაქე, დაბადებული 1963 წლის 10 იანვარს, ა/მ 01008015551 - 9%; 2. ლევან ყარაშანიშვილი, საქართველოს მოქალაქე, დაბადებული 1971 წლის 21 თებერვს, ა/მ 62001002710 - 22%; 3. გიორგი ყარაშანიშვილი, საქართველოს მოქალაქე, დაბადებული 1966 წლის 11 იანვარს, ა/მ 01025001809 - 18%; შპს ტელეკომპანია საქართველო-იური, მისი თბილისი, ვაჟა-ფშაველას გამზ.45; ა/მ: 206074291 - 51%

GNCC data portal, showing the ownership declaration of Rustavi 2, the most popular Georgian TV channel³⁶

Lessons learned from Georgia

- Through improved legal requirements, the owners of broadcasters can now be identified in Georgia based on information collected and proactively published by the broadcasting and telecommunication regulator GNCC.

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http://analytics.gncc.ge/en/statistics/?c=broadcasting&f=broadcasting&exp=broadcasting_7000

36 <http://gncc.ge/uploads/other/0/803.pdf>

- In the first year of stricter financial reporting being mechanisms in place, the impact of this data was undermined by the fact that reporting was inconsistent: some broadcasters did not disclose the companies that advertised, but the intermediaries (advertising agencies and media buyers) that had booked the ads. In most cases, broadcasters did not provide unique identifiers for major sources of their funding. Without company ID numbers and no information on the jurisdiction the company is registered in, the names of companies were of little use, as money flows could not be traced (in numerous cases, many companies with identical names are registered in Georgia).
- Broadcasters that operate appear to largely comply with financial reporting requirements (several broadcasters which are not reporting appear to be no longer operational, while the regulator has not cancelled their licenses/authorizations).
- While financial data is published through a database, in a data format that can be easily searched, exported and re-used, the forms containing information on the beneficial owners of broadcasters is only available as scanned PDF files, a format which does not allow users to easily find, analyze and re-use the information.
- The Georgian regulator in recent years has applied a measured and appropriate approach when applying sanctions, and has often used warnings to press for compliance. Large imposed fines and other sanctions for non-compliance could be perceived as a possible government attack against independent and critical media.
- The regulator requires sufficient resources, capacity and political independence, as well as strong provisions to prevent any conflicts of interest (for example because of revolving-door-problems, with individuals moving between regulator and private sector).
 - The GNCC has adopted a high level of transparency in recent years when taking action and, for example, publishes timely information when it launches procedures against license holders on its website.
- The ban of offshore ownership might be problematic when replicated in other contexts. The fact that a requirement was imposed on owners of valid broadcasting licenses to change their ownership structure could pose a problematic State interference in the media sector. The definition of “offshore” in the Georgian law leaves broad room for interpretation. However, the provision was not challenged in court and broadcasters complied with the new provision and re-arranged their corporate structures.
- Broadcasters may find loopholes to avoid disclosure: One Georgian TV channel operates under a license held by a non-profit association, and discloses the financial data of this station. However, it then allows a Georgian company to de facto operate the channel, whereby this company is partly owned by an offshore entity.
- All stakeholders, including broadcasters, need to have an opportunity to submit comments on a draft. In the case of Georgia, a number of broadcasters were not aware of the details of new reporting requirements until they came into force.
- It is key to ensure that the burden and costs for broadcasters of complying with transparency provisions is appropriate – especially for smaller, local and non-profit broadcasters – and not excessive. It is also important that the requirements do not undermine the broadcaster’s business conduct or result in market distortions.
- It should also be considered to apply ownership transparency requirements to other actors in the broadcasting sector which might act as possible gatekeepers and who play a key role in allowing the public to access broadcasters and other

content, such as cable service providers, operators of digital terrestrial TV platforms and internet service providers.

Recommendations to legislators and the regulatory authority

The following suggestions are partly based on a translated version of draft legal amendments. The author might have misinterpreted some draft provisions due to the translation and the partial availability of the relevant legal framework.

Disclosure requirements

The legislators should consider if the currently foreseen definition of “final beneficiary” would also provide adequate transparency in cases when the applicant is, or is owned by, a non-profit association, or by a trust or a similar legal entity. Associations should have to disclose its official representatives and its purpose, as well as its registration number and address. For trusts and foundations, it might be advisable to require the disclosure of the trustees and the beneficiaries of the trust.

The legislations may want to consider lowering the threshold of disclosure to 5% of direct or indirect shareholdings. It appears that this would create a rule that would be consistent with disclosure requirements applicable to joint stock companies. It might also help to further strengthen the transparency rules, and would be in line with best practices recommended by European civil society campaigners.³⁷

License award

It appears that the introduction of the proposed provisions might result in all current license holders losing their license, and would receive a new license with the disclosed ownership information. It should be considered if through a transitional provision, this withdrawal of licenses could be avoided, as stakeholders might see the re-issuing of licenses as excessive and might worry about the fairness and transparency of the licensing process. The issuing of a new license every time ownership information has to be updated might also dis-incentivize compliance, if media companies worry about delays or problems when applying for the new license.

Article 25(146) of the draft provisions appears to contain a reference to additional points being awarded to license applicants for being subject of an official monitoring by the National Commission. It was not clear what this monitoring process refers to. In any case, it should be ensured that this provision does not create undue barriers for new actors seeking to enter into the market.

Compliance

It appears that broadcasters will have to pay a **fee** when updating of their ownership information. It should be considered to allow license holders to update their information without having to pay a fee, as it might discourage especially smaller companies from reporting all changes in a timely manner.

The law should include **clear provisions for possible sanctions** that the National Council could apply in cases where, for example, it finds that a license holder has not reported an ownership change in time, or has incorrectly reported its ownership structure or other information. For these cases, the regulator should have limited and proportionate administrative sanctions at its disposal to ensure compliance.

³⁷ Access Info: Ten Recommendations on Transparency of Media Ownership, http://www.access-info.org/wp-content/uploads/TMO_Recommendations_05_November_2013.pdf.

Clear and precise legal framework

The National Council should have **clearly defined authority** and powers in regards to ensuring compliance with disclosure requirements. It should be considered if draft provisions (especially Article 13) provide sufficient legal ground for the National Council to request further supporting documentation, including contracts and extracts from corporate registries, when seeking to verify that beneficial owners were correctly disclosed.

In order to ensure transparent regulation, the framework has to be clear and precise, allowing all stakeholders – including the legislative, the regulator as well as the license holders – have a similar interpretation and understanding of what and how information needs to be reported and disclosed. It might be useful to provide an opportunity for all stakeholders to submit comments on draft provisions before they are adopted by Parliament. Such a public consultation could help fine-tuning the provisions.

Publication of ownership information

Strong consideration should be given to a model, like in Austria and Georgia, where not (only) the regulator but also the **media outlet is required to publish information** about contact details, official representatives and ownership information, in line with information it also submitted to the regulator. By requiring ownership information to be clearly signposted and easily accessible on the media outlet's website (and, if applicable, also indicated in the media organization's on-screen information system), more consumers will be able to find and benefit from the information. Media outlets could also be required to disclose also minor changes, such as changes in the managing or supervisory bodies, within 10 days of the change occurring. The impact of the regulation will thus be higher, whereby the additional compliance burden would be minimal.

Lawmakers should consider requiring that owners and final beneficiaries disclose other ownership in the media sector, including in sectors that are closely linked to the media sector (such as Internet Service Providers, DVB-T/T2 operators, cable networks etc.).

Furthermore, lawmakers should consider ownership transparency requirements that would apply to audio-visual service providers, such as cable network operators, DVB-T/T2-operators etc., as these companies may act as gatekeepers that can control who can access/receive what media outlet. In some scenarios, there might be a risk of them misusing their market power, if links between content providers and operators of delivery platforms and networks exist. More transparency might help to identify and mitigate such risks.

Publication of ownership information

Online-access to the **State Register of Subjects of Information Activity** should be and remain completely free for users. The Registry should contain scanned copies of documents submitted to the regulator as well as data in machine-readable and standardized file formats.³⁸ Data should be available for download in **open data** formats

³⁸ The EU Public Sector Information Directive (PSI Directive), which sets minimum standards for the publication and re-use of information released by public bodies defines "machine-readable format" as a file format that is structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure; "open format" means a file format that is platform-independent and made available to the public without any restriction that impedes the re-use of documents, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:175:0001:0008:EN:PDF>.

that allow users to easily find, access, analyze and reuse the information. If information were published *only* as scanned PDF documents or images, or in other formats that cannot be easily downloaded and reused, the impact and usefulness of the data would be severely limited, as journalists or activists could not easily analyze and use the information. Lawmakers could include a reference to machine-readable, open data formats in the bill.

After the amendments are adopted, the National Council could consult with potential user groups to ensure that the State Register of Subjects of Information Activity and the format it will seek to publish ownership information is as user friendly as possible.

The National Council should, in an effort to minimize the administrative burden to a minimum, work to develop user-friendly reporting mechanisms, including electronic ones, that will easily allow license holders to submit relevant information to the regulator.

The National Council should be prepared to allocate staff time to standardizing data that is submitted by license holders, in order to be able to publish it in consistent, user-friendly formats.

The information published in the State Register of Subjects of Information Activity should be sufficient to uniquely identify all entities and individuals. For this purpose, unique identifiers should be made available (for legal entities: ID numbers and the jurisdiction of registration, ideally also including the legal address; for individuals: the full name, date of birth and citizenship). Strong consideration should also be given to the proactive publication of all or most supporting documents submitted by license holders, in order to allow the public to trace the full picture of the ownership structure.

Financial transparency

In the annual report, license holders have to disclose information about persons that provided more than 10 per cent of capital in the reporting year. This provision might require some more detailed provisions, including preventing that this requirement be circumvented by financers providing free in-kind services (for example free or subsidized equipment, cars or office space) to the broadcaster. Consideration should be given to a requirement that broadcasters have to submit audited annual accounts to the regulator, which might help the National Council in establishing that the submitted financial information is correct.

From the translated draft, it was not immediately clear exactly what information has to be disclosed about larger financers of license holders. In this regard, some further clarifications might be needed.

In the future, lawmakers should also consider provisions that would require the active disclosure of payments that are made from state bodies to media outlets (subsidies, grants, paid advertising etc.) to ensure better transparency of financial relations between the public sector and the media.

National Council

The legal framework governing the composition and responsibilities of the National Television and Radio Broadcasting Council of Ukraine should be evaluated as to ensure that

- the National Council enjoys the high **level of political independence**³⁹
- that the National Council has **adequate conflict of interest provisions** in place for its leadership and staff (including provisions to prevent regulatory capture, addressing any potential conflicts caused by staff moving between the regulator and entities it oversees)
- that the National Council has **adequate capacity and resources** to administer the new transparency provisions and to ensure compliance.

The National Council should consider to further improve transparency requirements for its work, by **announcing** license competitions, relevant events and meetings, and the following award process through timely updates posted **on its official website**, ensuring that all interested stakeholders can stay updated on relevant developments.

The National Council should also ensure a **high level of openness** by holding relevant meetings in public session, allowing interested stakeholders to witness and observe processes. By adopting a high level of openness as standard procedure, the National Council would also be able to address any potential concerns over an unfair application of the rules.

Recommendations to civil society stakeholders

Watchdog organizations and reporters covering the media sector should closely follow and monitor the activities and decisions taken by the National Television and Radio Broadcasting Council, as well as media companies' compliance with the new transparency provisions.

It is likely that **civil society efforts are needed to aggregate, clean, analyse, visualize and contextualize the media ownership data**, in order to make the information more easily accessible and relevant for interested citizens, and to raise awareness of its availability.

Once data is available, NGOs could think **of innovative methods to apply the information**. For example, by researching other companies owned by shareholders of major media outlets, any ties the owners have to local and national political actors and the financing of political parties and electoral campaigns. Or they could consider developing new tools that would help users to become aware of any potential bias a media outlet might have in its reporting, based on business interests of its owners.

Civil society is needed to **monitor** if provisions, once they came into effect, contain any loopholes. After one or two years, it might be needed to revisit the provisions and further improve them, to ensure they are able to ensure the best possible transparency of the media sector. Civil society monitoring will help to document any shortcomings and inform further reform efforts.

The **donor community** should consider providing funding to civil society efforts focusing on media ownership transparency, and any administrative or other assistance to the National Council, including through experience-sharing efforts, to support the development of strong administrative capacity at the broadcasting regulator.

³⁹ Council of Europe: Recommendation of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector provides some useful guidance, Rec(2000)23, [https://wcd.coe.int/ViewDoc.jsp?Ref=Rec\(2000\)23&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=Rec(2000)23&Language=lanEnglish&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864).