



11th Global Symposium for Regulators (Armenia City, 2011)

Smart Regulation for a Broadband

Reference Document

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Questionnaire of the ITU Regulatory Self-Assessment Tool

The ITU Regulatory Self-Assessment Tool was developed to assist regulatory authorities in evaluating their structure and performance. The tool can be used as a starting point when planning for possible institutional reforms or changes in institutional structure. It provides a solid framework for analyzing the strengths and weaknesses of regulations and regulatory processes in place.

The Tool is composed by 55 questions. These questions build on the annual ITU World Telecommunications Regulatory Survey (TREG), and include additional issues associated with this project. The questions are designed to elicit information from the participants in order to help them understand how their regulatory structure and performance compares to international best practices. Where relevant, a subsection titled “definition” is included to clarify specific terms used in the questions and facilitate the participant’s response. At the end of each section, an analysis of the responses is provided featuring an overview of recent regulatory trends in the respective area as well as regulatory experiences from around the world. A complete report is available at the end of the questionnaire.

The methodology of this tool was developed by Telecommunications Management Group, Inc. (TMG) for the International Telecommunication Union (ITU). The web application was developed by ITU. The public beta version of the tool (available for the duration of the 10th Global Symposium for Regulators, from 10 through 12 November) can be accessed at: www.itu.int/ITU-D/icteye/tregbeta.aspx. Regulatory authorities will receive individual username and password in due course after the event.

Identification of participant

Country:

Organization:

Name of Person:

Position:

Office/Department:

I. Extent of Regulatory Mandates and Functions

The Regulatory Authority

1. Does a *separate** Regulatory Authority exist for Telecommunications or Information Communications Technologies in your country?

☐ Yes

☐ No

Definition

Separate means “independent” from the operator(s) and the sector Ministry in terms of its finance, structure, and decision-making capabilities and functions.

2. Are there specific plans to create a separate Regulatory Authority for Telecommunications or Information Communications Technologies?

☐ Yes

☐ No

Institutional Structure Migration

3. Are there specific plans to make institutional reforms that will affect or modify the mandate of the Regulatory Authority in your country?

☐ Yes

☐ No

II. Leadership**Governance Structure**

4. Is the Regulatory Authority headed by a collegial body (*i.e.*, are there Members /Commissioners)?
- ☐ Yes
- ☐ No
5. What is the total number of Members/Commissioners (including the Head/President/Chairman)?
- ☐ 3, 5 or 7
- ☐ 2, 4 or 6
- ☐ More than 7

Appointment of the Regulatory Authority

6. Does the law establish a clear appointment process and selection criteria for the Head/Chairperson and/or Members/Commissioners of the Regulatory Authority?
- ☐ Yes
- ☐ No
7. Is there a specific period of appointment (*i.e.*, term) for the Head/Chairperson and/or the Members/Commissioners of the Regulatory Authority established in the law?
- ☐ Yes
- ☐ No
8. Can the Head/Chairperson and/or the Members/Commissioners of the Regulatory Authority be reappointed?
- ☐ Yes, but only once
- ☐ Yes, more than once
- ☐ No

Removal of leaders of the Regulatory Authority

9. Are the grounds for removal of the Head/Chairman and Members/Commissioners of the Regulatory Authority set forth in the law?

☐ Yes

☐ No

III. Staffing**Staff Resources**

10. What is the total number of *staff** of the *regulator**?

[_____ (Participant will input a number)]

11. What is the number of professional *staff** of the *regulator**?

[_____ (Participant will input a number)]

Definition

Staff includes professional staff (e.g., engineers, economists, lawyers and other professionals), and non-professional staff (e.g., administrative assistants, support staff, etc.).

Regulator: for purposes of answering the remaining questions associated with this questionnaire (from Section III. Staffing onward), regulator means the entity(ies) or agency(ies) in charge of Telecommunications or Information and Communications Technology regulation, including a Ministry, a Department, a separate Regulatory Authority, etc.

Internal Organization

12. Can the regulator modify its internal organizational structure without seeking approval from a higher governmental authority/institution (*i.e.*, create, dismantle, merge or in any other manner modify its departments/bureaus/divisions)?

☐ Yes

☐ No

Personnel Policy and Compensation

13. Can the regulator establish its *personnel policy** without seeking approval from a higher governmental authority/institution?

- ☐ Yes
- ☐ No

Definition

Personnel policy is understood as the ability to set the selection, compensation and termination criterion for personnel.

Staff Ethics

14. Are there ethics rules in place that apply to the regulator's staff, including Head/Chairperson and Members/Commissioners (e.g., improper acceptance of gifts, personal and financial conflicts of interest, post employment-obligations, etc.)?

- ☐ Yes
- ☐ No

IV. Financing**Source of the Budget**

15. With regard to the last financial year, which of the following options best describes the sources of funding of the regulator?

- ☐ Diversified funding sources (e.g., revenues from auctions, licence fees, numbering fees, spectrum fees, regulatory fees and/or fines/penalties, government appropriation)
- ☐ Mainly government appropriation

Budget

16. Please indicate the annual budget for the regulator for the last fiscal year (in local currency).

[_____ (Participant will input a number)]

Definition of the Budget

NOTE: This question should not be presented to participants who answered NO to Question 1 above. These participants should be sent directly to Question 18.

17. Which authority is responsible for defining the budget of the Regulatory Authority?
(Please check all that apply)

- ☐ Legislative branch (e.g., Congress, Parliament)
- ☐ Executive branch (e.g., sector Ministry, Ministry of Finance, a combination of Ministries)
- ☐ Regulatory Authority
- ☐ Other

V. Oversight Functions**Monitoring Authority**

18. Does the regulator's *monitoring authority** include the ability to: (Please check all that apply)

- ☐ Monitor quality of service (QoS) standards
- ☐ Monitor compliance with licence conditions and regulatory obligations
- ☐ Conduct physical on-site inspections of networks and equipment
- ☐ Access records related to revenue and market statistics

Definition

Monitoring authority refers to the regulator's authority and ability to oversee operators' and service providers' compliance with laws, regulations, licence conditions and other legally binding obligations.

19. Are there rules or regulations in place to ensure that the regulator's information requests to service providers and operators and its physical inspections of their facilities/equipment are reasonable, proportional and not unduly burdensome?

- ☐ Yes
- ☐ No

Dispute Resolution

20. Does the law or regulation establish dispute resolution mechanisms (e.g., to resolve disputes between service providers, between service providers and consumers)?

- ☐ Yes
- ☐ No

21. Are there dispute resolution procedures specifically for the following? (Please check all that apply)

- ☐ Interconnection
- ☐ Infrastructure sharing
- ☐ Spectrum disputes
- ☐ Consumer complaints
- ☐ Other

Enforcement Measures

22. Does the regulator have sufficient *enforcement powers** to adequately discharge its duties under the law?

- ☐ Yes
- ☐ No

Definition

Enforcement powers refer to the regulator's authority and ability to ensure that operators and service providers comply with laws, regulations, licence conditions and other legally binding obligations, as well as the authority to apply sanctions if these obligations are not met.

23. When exercising its enforcement powers, do the laws or regulations require the regulator to comply with the following? (Please check all that apply)

- ☐ Enforcement is transparent (i.e., licensees/providers are aware of the relevant obligations, as well as consequences of violations)
- ☐ Enforcement is non-discriminatory and applied to all licensees equally and fairly
- ☐ Licensees are provided an opportunity to remedy minor violations of the law or licence before strict sanctions are applied

Sanctions

24. Does the regulator have the authority to impose penalties or sanctions for violation of laws, regulations and licence conditions?

- ☐ Yes
- ☐ No

25. Which of the following penalties or sanctions may the regulator impose? (Please check all that apply)

- ☐ Monetary fines
- ☐ Additional licence obligations
- ☐ Modification of licence
- ☐ Licence suspension
- ☐ Licence revocation

26. Are there procedures in place to ensure that sanctions are: (Please check all that apply)

- ☐ Proportional to the offense
- ☐ Reasonable
- ☐ Non-discriminatory
- ☐ Effective in remedying the violation

Appeals Process

27. Are there procedures in place that allow the regulator to reconsider its decisions?

- ☐ Yes
- ☐ No

28. Are interested parties permitted to appeal *major dispute** resolution or enforcement decisions?

- ☐ Yes
- ☐ No

Definition

Major disputes refer to disputes other than disputes relating to small claims. Major disputes would include, for example, interconnection disputes, interference disputes between radiocommunications providers, etc.

29. This question takes two forms depending on the response to Question 1 above:

- If the answer to Question 1 is YES (i.e., a separate Regulatory Authority exists), then the participant should be presented with Question 29.1 below.
- If the answer to Question 1 is NO (i.e., a separate Regulatory Authority does not exist), then the participant should be presented with Question 29.2 below.

29.1 Which body has the ultimate authority to overturn the Regulatory Authority's decisions? (Please select one)

- ☐ Judiciary
- ☐ Appeals tribunal/body within the Regulatory Authority
- ☐ Sector Ministry or other Ministry
- ☐ Other

29.2 Which body has the ultimate authority to overturn the regulators decisions? (Please select one)

- ☐ Judiciary
- ☐ Appeals tribunal/body within the regulator
- ☐ Other

VI. Responsiveness of the Regulator**Administrative procedures**

30. Are the regulator's decisions subject to a *general administrative procedures law**?

- ☐ Yes
- ☐ No

Definition

General administrative procedures law: refers to a law that governs the processes by which the regulator proposes, establishes and implements regulations, as well as provides for the review of the regulator's decisions. The administrative procedures law may apply to all or only to specific governmental bodies/agencies.

Responsiveness to licence/authorizations

31. Where a licence/authorization is required, is the regulator required to approve or deny applications for such licences/authorizations within a timeframe specified in a law, regulation or policy?

- ☐ Yes
- ☐ No

32. What is the regulator's success rate in issuing a decision on licence/authorization applications within the specified timeframe? (Please select only one)

- ☐ 85% or more of applications completed within the timeframe
- ☐ 70% to 84% of applications completed within the timeframe
- ☐ 50% to 69% of applications completed within the timeframe
- ☐ Fewer than 50% of the applications completed within the timeframe
- ☐ Do not know

Responsiveness to dispute resolutions

33. Is the regulator required to resolve disputes within a timeframe specified in a law, regulation or policy?

- ☐ Yes
- ☐ No

34. What is the regulator's success rate in complying with the specified timeframe in which to resolve *relevant disputes**?

- ☐ 85% or more of disputes resolved within the timeframe
- ☐ 70% to 84% of disputes resolved within the timeframe
- ☐ 50% to 69% of disputes resolved within the timeframe
- ☐ Fewer than 50% of the disputes resolved within the timeframe
- ☐ Do not know

Definition

Relevant disputes: means disputes that have not been withdrawn or declared non-admissible.

VII. Transparency

Annual Report

35. Is the regulator required to produce an annual report or set of annual reports that provides accountability and describes its objectives and performance?

- ☐ Yes
- ☐ No

36. What does the annual report or set of annual reports contain? (Please check all that apply)

- ☐ Comparison between stated goals for the year and goals actually met (i.e., an objective performance evaluation)
- ☐ Major regulatory decisions, regulations, reforms
- ☐ Review of decisions rendered for disputes, enforcement and rulemakings
- ☐ Financial and budgetary accounting detailing all expenditures, sources of revenue, assets and investments
- ☐ Industry statistics/metrics
- ☐ Identification of the next year's strategic goals
- ☐ Other

37. Is the annual report or set of annual reports made public?

- ☐ Yes
- ☐ No

Relevant Information on a Website

38. Does the regulator post the following legislative/regulatory documents on its website? (Please check all that apply)

- ☐ Laws
- ☐ Rules/Regulations/Decrees
- ☐ Dispute resolution decisions
- ☐ Policies
- ☐ Consultations
- ☐ Comments received in response to consultations
- ☐ Licences and authorizations
- ☐ Licence applications
- ☐ Petitions, requests or comments filed by stakeholders generally
- ☐ National Table of Frequency Allocations
- ☐ Spectrum assignments
- ☐ Tariffs
- ☐ Licence/authorization fees
- ☐ Filing and reporting requirements
- ☐ Interconnection agreements
- ☐ Reference service offers (RIOs, RUOs, etc.)
- ☐ Industry statistics/metrics
- ☐ Annual or other reports

Public Consultations

39. Is the regulator generally required to conduct public consultations before issuing *regulatory decisions**?

- ☐ Yes
- ☐ No

Definition

Regulatory decisions include decisions, acts, decrees, rules, regulations, orders, etc.

40. Are the procedures for public consultation publicly available?

- ☐ Yes
- ☐ No

41. Is the regulator required to consider all comments filed during a public consultation and provide a reasoned decision based on the commenter's responses?

- ☐ Yes
- ☐ No

VIII. Openness and Competitiveness of the Market**Definition of Competitiveness**

42. Are there any public services (e.g., telephony, Internet access) that are currently provided exclusively by one operator with no other operators permitted to enter that market (i.e., monopoly)?

- ☐ Yes
- ☐ No

43. Are there laws, regulations or rules in place that require the regulator to periodically assess the state of competition in the different telecommunications markets?

- ☐ Yes
- ☐ No

44. For public services not *fully open to competition**, which of the following options best describes the liberalization process in your country?

- ☐ All public services not fully open to competition are in the process of liberalization.
- ☐ Some, but not all, public services not fully open to competition are in the process of liberalization.
- ☐ There are currently no initiatives/plans to liberalize public services not fully open to competition.

Definition

Fully open to competition refers to markets for which there are no regulatory restrictions on entry, such as limits on the number of licences to be assigned, high fees that in practice restrict entry, among other. For purposes of this question, such restrictions do not include foreign ownership restrictions.

Licensing and Regulatory Policies to Encourage Competition

45. What type of licensing/authorization framework is currently in place? (Please select all that apply)

- ☐ Service specific (i.e., each type of network or service requires a separate licence)
- ☐ Multi-service (i.e., several types of services are authorized under an individual or class licence and there may be a distinction between facilities-based and non-facilities based services)
- ☐ Unified licence/general authorization (i.e., all electronic communications networks and services are permitted under a single authorization or licence, regardless of whether they are facilities-based or non-facilities based services)

46. If a service specific or multi-service framework is in place, is the regulator in the process of transitioning to a unified licensing/general authorization framework?

- ☐ Yes
- ☐ No

47. Are there simplified processes to obtain a licence/authorization? (e.g., through registrations and/or notifications):

- ☐ Yes
- ☐ No

48. Are all licences technology- and service-neutral?

- ☐ Yes
- ☐ No

IX. **Adaptability of Regulatory Framework to New Technologies**

49. When a new technology or service (e.g., VoIP) is introduced to the market, what approach does the regulator take to authorize it?

- ☐ The new technology/service is put into an existing regulatory classification.
- ☐ A consultation or other decision-making process is initiated to determine the appropriate regulatory treatment.
- ☐ The new technology/service is prohibited.

X. **Relationship/Collaboration with Other Government Authorities**

Media/Broadcasting Regulator

50. Are there laws, regulations, guidelines and/or other formal mechanisms that provide for coordination of functions between the regulator and the media/broadcasting authority?

- ☐ Yes
- ☐ No
- ☐ The scope of authority of the regulator includes media/broadcasting services

Competition Authority

51. Are there areas of concurrent or shared jurisdiction over competition issues in the ICT sector between the regulator and the *competition authority** (e.g., investigating/disciplining anti-competitive conduct, approving mergers, etc.)?

- ☐ Yes
- ☐ No

Definition

Competition authority is broadly defined to include one or more administrative agencies, courts or tribunals responsible for enforcing laws relating to competition/fair trading.

52. Are there laws, regulations, guidelines and/or other formal mechanisms that provide for coordination of functions between the regulator and the competition authority?

- ☐ Yes
- ☐ No

Environmental Authority

53. Does the regulator share responsibility for developing policy and ensuring compliance in *areas related to the environmental impact of ICTs** with another agency (e.g., environmental agency/ministry)?

- ☐ Yes
- ☐ No

Definition

Areas related to the environmental impact of ICTs include, but are not limited to, electromagnetic field (EMF) emissions for wireless facilities; radio frequency (RF) emissions for wireless devices; electronic waste (e-waste); and smart grids.

54. Are there laws, regulations, guidelines and/or other formal mechanisms that provide for coordination of functions between the regulator and the other agency (e.g., environmental agency/ministry)?

- ☐ Yes
- ☐ No

Data Protection Authority

55. Are there laws, regulations, guidelines and/or other mechanisms that provide for coordination of functions between the regulator and the authority in charge of *electronic data protection**?

- ☐ Yes
- ☐ No
- ☐ There is no authority in charge of electronic data protection

Definition

Data protection means measures adopted to safeguard individuals' privacy and their right to confidentiality with respect to the processing of personal data through public communications networks, including unsolicited communications. Powers relating to data protection as defined herein may be exercised by one or more administrative agencies/authorities, courts or tribunals.

ANNEX 1: Decision Tree of the ITU Regulatory Self-Assessment Tool

The following section presents the “questionnaire’s decision tree” which establishes the internal structure of the on-line tool. Specifically, the table below presents the possible answers for each of the questions and the action that are followed by the system.

QUESTION	ANSWER	ACTION
1	YES	Go to Question #3
	NO	Go to the next question
2	YES	Go to Question # 10
	NO	Go to Question # 10
3	YES	Go to the next question
	NO	Go to the next question
4	YES	Go to the next question
	NO	Go to the next question
5	3, 5 or 7	Go to the next question
	2, 4 or 6	Go to the next question
	More than 7	Go to the next question
6	YES	Go to the next question
	NO	Go to the next question
7	YES	Go to the next question
	NO	Go to Question # 9
8	Any answer	Go to the next question
9	YES	Go to the next question
	NO	Go to the next question

10	Answer will be a specific number. This number should be divided by the answer of Question 16 and converted to US\$ at annual average exchange rates and adjusted by PPP. Subsequently a No. staff/US\$1000 should be calculated.	Go to the next question
11	Answer will be a specific number. This number should be used to determine the percentage of professional staff based on the number of total staff given in Question 10.	Go to the next question
12	YES	Go to the next question
	NO	Go to the next question
13	YES	Go to the next question
	NO	Go to the next question
14	YES	Go to the next question
	NO	Go to the next question
15	Diversified funding sources	Go to the next question
	Mainly government appropriations	Go to the next question
16	Answer will be a specific number.	Go to the next question If the answer to <i>Question #1</i> is NO, then go to Question # 18
17	Any answer	Go to the next question
18	Any answer	Go to the next question
19	YES	Go to the next question
	NO	Go to the next question

20	YES	Go to the next question
	NO	Go to the next question
21	Any answer	Go to the next question
22	YES	Go to the next question
	NO	Go to the next question
23	Any answer	Go to the next question
24	YES	Go to the next question
	NO	<i>Go to Question # 27</i>
25	Any answer	Go to the next question
26	Any answer	Go to the next question
27	YES	Go to the next question
	NO	Go to the next question
28	YES	Go to the next question
	NO	<i>Go to Question # 30</i>
29	Any answer	Go to the next question NOTE: this question should take two forms, as explained on page 10 of this Report.
30	YES	Go to the next question
	NO	Go to the next question
31	YES	Go to the next question
	NO	<i>Go to Question # 33</i>
32	Any answer	Go to the next question
33	YES	Go to the next question

	NO	<i>Go to Question # 35</i>
34	Any answer	Go to the next question
35	YES	Go to the next question
	NO	<i>Go to Question # 38</i>
36	Any answer	Go to the next question
37	YES	Go to the next question
	NO	Go to the next question
38	Any answer	Go to the next question
39	YES	Go to the next question
	NO	<i>Go to Question # 42</i>
40	YES	Go to the next question
	NO	Go to the next question
41	YES	Go to the next question
	NO	Go to the next question
42	YES	Go to the next question
	NO	Go to the next question
43	YES	If answer to Question # 42 is NO, then go to Question # 44. If answer to Question # 42 is YES, the go to next question
	NO	If answer to Question # 42 was NO, then go to Question # 44. If answer to Question # 42 was YES, the go to next question
44	Any answer	Go to the next question

45	Includes SERVICE SPECIFIC	Go to the next question
	Includes MULTI-SERVICE	Go to the next question
	Includes UNIFIED LICENCE/GENERAL AUTHORIZATION	<i>Go to Question # 47</i>
46	YES	Go to the next question
	NO	Go to the next question
47	YES	Go to the next question
	NO	Go to the next question
48	YES	Go to the next question
	NO	Go to the next question
49	Any answer	Go to the next question
50	YES	Go to the next question
	NO	Go to the next question
51	YES	Go to the next question
	NO	<i>Go to Question # 53</i>
52	YES	Go to the next question
	NO	Go to the next question
53	YES	Go to the next question
	NO	<i>Go to Question # 55</i>
54	YES	Go to the next question
	NO	Go to the next question
55	YES	END OF QUESTIONNAIRE
	NO	END OF QUESTIONNAIRE