



EUROPEAN COMMISSION

Information Society and Media Directorate-General

Audiovisual, Media, Internet

Audiovisual and Media policies

Brussels, 22 June 2009

DG INFSO/A1/MFE/lc D(2009)126602

NOTE FOR THE FILE

ANALYSIS OF THE ALIGNMENT OF THE CROATIAN DRAFT PROPOSAL OF THE ELECTRONIC MEDIA ACT WITH THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE

I. INTRODUCTION

This document contains an analysis of the Croatian draft proposal of the Electronic Media Act (hereinafter 'the proposal') prepared by the Directorate General for Information Society and Media (Audiovisual and media policies unit) of the European Commission.

The analysis reviews the alignment of the proposal with the Audiovisual Media Services Directive¹ (hereinafter the AVMSD). It does not analyse the compliance of the proposal with other provisions.

It is important to underline that the comments do not represent an official view of the European Commission and do not prejudice the right of the European Commission to comment further once the act has been adopted. Moreover, the analysis will not refer to the alignment of the proposal with other elements of the EC *acquis* or other instruments containing European standards on media regulation.

In the context of the accession negotiations of Croatia to the European Union responsibility for the content of the new act and its compliance with the EC audiovisual *acquis* and European standards on media regulation rests entirely with the national authorities.

¹ DIRECTIVE 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 L 202 60 30.7.1997 and Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007

II. GENERAL COMMENTS AND ASSESSMENT

The present Proposal of the Electronic Media Act is a very good attempt to align Croatian legislation with the AVMSD. However, as explained below, the analysis of the compatibility of the proposal with the AVMSD has shown some discrepancies with some provisions of the directive. Several articles of the draft proposal should be reconsidered and revised to ensure the alignment with the directive. The Croatian authorities are invited to solve these discrepancies in order to ensure the full alignment of the proposal with the AVMD.

III. DETAILED COMMENTS

Article 2 paragraph 1

'Audiovisual media service: a service as defined by Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States, which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of the provisions of Electronic Communications Act. Such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service and/or audiovisual commercial communication as defined in this Act.'

Reference to Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States will have to be replaced by Articles 49 and 50 of the EC Treaty at the time of accession of Croatia to the European Union at the latest. A reference could be included in this regard to avoid the revision of the act. We recommend adding the following clarification: 'References to Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States are to be replaced by Articles 49 and 50 of the EC Treaty upon the accession of Croatia to the European Union.'

Article 2 (4)

'The European Convention on Transfrontier Television and the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply to the relations governed by this Act'

We recommend either:

- removing this paragraph or
- referring only to the European Convention of Human Rights or
- redrafting the paragraph as follows: 'The European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply to the relations governed by this Act. The European Convention on Transfrontier Television, and the Council of Europe Convention on Transfrontier Audiovisual Media Services, once it is ratified by Croatia, shall apply to the relations governed by this act in so far as there are no rules from the EC

acquis governing the particular subject concerned.’ This drafting will ensure consistency in the application of the act, the AVMS directive, the current Convention on Transfrontier Television (notably its Article 27) and the future Council of Europe Convention on Transfrontier Audiovisual Media Services).

Article 6 (8)

‘(8) If the question as to whether a media service provider falls under the jurisdiction of the Republic of Croatia or another Member State of the European Union cannot be determined in accordance with paragraphs 2 to 7 of this Article, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 48 to 50 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and its Member States.’

Reference to Articles 48 to 50 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States will have to be replaced by Articles 43 to 58 of the EC Treaty at the time of accession of Croatia to the European Union at the latest. A reference could be included in this regard to avoid the revision of the act. We recommend adding the following clarification: ‘References to Articles 48 and 50 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States are to be replaced by Articles 43 to 58 of the EC Treaty upon the accession of Croatia to the European Union.’

Article 8

‘The Republic of Croatia shall ensure freedom of reception and retransmission of audiovisual media services from other countries in its area and it may, in particular cases, restrict the freedom of broadcasting of those services only in compliance with international agreements and this act’

The term ‘from other countries in its area’ introduces a limitation to the principle of freedom of reception and retransmission that is not in line with the AVMSD. Moreover, it introduces an element of uncertainty. We recommend exchanging this term with the following expression ‘from the member states of the European Union and European third states party to the European Convention on Transfrontier Television of the Council of Europe and to the Council of Europe Convention on Transfrontier Audiovisual Media Services, once it is ratified by Croatia’.

Article 18 (3)

‘It is assumed that the product or services placement exists in the sense of paragraph 2 subparagraph 2 of this Article only if the goods or services involved in the audiovisual programme are of significant value. Alternative 1: It is assumed that the goods or services of significant value are those the respective value of which exceeds the average net monthly salary in the Republic of Croatia, based on the statistical data for the previous year.’ Alternative 2: The Electronic Media Council shall determine by an ordinance the manner of determining the significant value of the goods and services placed.

The definition of ‘significant value’ as exceeding the average net monthly salary in the Republic of Croatia is not in line with the AVMSD. Significant value has to be assessed

in relation to the budget of the production or the costs paid for the product placement of the product or service in this programme. The second alternative text is to be preferred provided that the 'significant value' is assessed in relation to the budget of the production or the costs paid for the product placement of the product or service in this programme.

Article 21

‘(1) The on-demand audiovisual media services providers shall use their best efforts in order that their on-demand audiovisual media services promote, where practicable and by appropriate means the production of and access to European works

(2) Promotion of the works referred to in paragraph 1 of this Article could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

(3) The Electronic Media Council is authorised to demand the data about the implementation of the paragraphs 1 and 2 of this Article from the on demand audiovisual media services provider.’

Article 21 aims to implement Article 3i of the AVMSD. However it fails to fulfill the obligation contained therein ‘shall ensure that on-demand audiovisual media services (...) promote where practicable and by appropriate means the production of access to European works’. We recommend introducing either more contingent obligations to on-demand audiovisual media services providers in this Article or a reference to specific criteria and methods to be introduced by the Electronic Media Council in an ordinance, similarly to Article 42 (1) with respect to the obligations of television broadcasters.

Article 23 (2) and (3)

(2) The television broadcaster shall determine, on the basis of programme basis set out in paragraph 1 of this Article, the proportion of European works referred to in Article 42 and 44 of this Act.

(3) The programme basis of the specialised television or radio programme channel shall contain a programme scheme determining:

- the type of audiovisual or radio programmes of which over 70% shall be of the same kind,*
- the foreseen quantitative ratio among individual content groups,*
- the foreseen maximum scope of advertising contents,*
- the proportion of European works referred to in Article 42 and 44 of this Act and other works for the broadcasters of specialised television programme,*
- time of broadcast.*

The promotion of independent works is one of the main objectives of the directive and the proposal. We recommend rephrasing the underlined sentences as follows: 'European works referred to in Articles 42 and 44 of this Act and independent works referred to in Articles 43 and 44'.

Article 45 (9)

‘The right to short news reports may be limited or excluded if its execution would severely hurt the feelings of participants in the event or jeopardize public order and security.’

This paragraph introduces an element of uncertainty in the regulation. Moreover the proposal already includes appropriate provisions concerning the protection of minors and public order and security. We recommend removing this paragraph.

Article 31 (2)

‘Advertising for medicines and medicinal products shall comply with the conditions stipulated in the Medicinal Products Act, and the subordinate legislation passed by virtue thereof.’

For the shake of clarity we recommend adding the following phrase ‘and the provisions of this act’ after ‘thereof’.

Article 31 (4)

‘Advertising and teleshopping for alcohol and alcoholic beverages shall be prohibited, unless the Food Act, and the subordinated legislation passed by virtue thereof, provide otherwise’

Paragraph 4 of Article 31 seems to prohibit advertising and teleshopping for alcoholic beverages but this is indeed regulated in paragraph 5, in line with the provisions of the directive. The phrase ‘unless the food act, and the subordinated legislation passed by virtue thereof provide otherwise’ seems to indicate that that act and the subordinated legislation may regulate advertising and teleshopping for alcoholic beverages in a different way from Article 31(5). In order to ensure compliance with Article 15 of the AVMSD we recommend either removing this reference or sending the Food Act and secondary legislation for analysis to make sure that it is in line with the AVMSD.

Article 31 (6)

‘Misleading advertising and teleshopping shall be prohibited. The ordering party and the television and/or radio broadcaster shall be held accountable for this type of advertising and teleshopping.’

Misleading practices, including misleading advertising in electronic media, are prohibited under the Croatian Consumer Protection Act (which transposes the Directive on Unfair Commercial Practices 2005/29/EC). This Act (and the Directive) provide for criteria when assessing whether an advertisement is misleading or not. These criteria shall also apply in the field covered by the Electronic Media Act. We recommend that this reference is:

- either to be deleted since misleading advertising and teleshopping is already prohibited under the Croatian Consumer Protection Act or,
- the provision is retained but a reference to the relevant articles in the Croatian Consumer Protection Act is added to the text.

Article 50

‘The provisions of Articles 23 to 46 of this Act shall mutatis mutandis apply to the media services providers referred in to Article 80 of this Act.’

The provisions of Articles 23 to 46 refer to programme principles and obligations as established in Articles 3j to Article 22 of the AVMSD. Article 80 refers to satellite, cable and internet audiovisual media services providers. This article introduces a restriction of the application of the rules of the AVMSD to those audiovisual media service providers which is not in line with the AVMSD. We recommend deleting this Article.

Correlation Table

DIRECTIVE 89/552/EEC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AUDIOVISUAL MEDIA SERVICES DIRECTIVE)²

NO	PROVISIONS OF THE DIRECTIVE	NEED FOR TRANSPOSITION	ACTIONS TAKEN BY THE COUNTRY DRAFT PROPOSAL OF THE ELECTRONIC MEDIA ACT
			OFFICIAL INDICATION OF DRAFT NATIONAL MEASURE(S) (NUMBER OF THE ARTICLE TRANSPOSING THE ARTICLE OF THE DIRECTIVE) WITH TEXT OF THE DRAFT ARTICLE
1.	<p>Article 1:</p> <p>(a) "audiovisual media service" means ...</p> <p>(a) 'audiovisual media service' means:</p> <p>— a service as defined by Articles 49 and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article, and/or</p> <p>— audiovisual commercial communication;</p>	Yes	<p>Article 2 paragraph 1</p> <p><i>Audiovisual media service:</i> a service as defined by Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States, which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of the provisions of Electronic Communications Act. Such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service and/or audiovisual commercial communication as defined in this Act</p>
2.	<p>Article 1:</p> <p>(b) "programme" means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the</p>	Yes	Article 2 paragraph 1

² DIRECTIVE 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 L 202 60 30.7.1997 and Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007

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	<p>form and content of television broadcasting.</p> <p>Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;</p>		<p><i>Audiovisual programme:</i> set of moving images with or without sound constituting an individual item within a schedule or a catalogue of programmes established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama.</p>
3.	<p>Article 1:</p> <p>(c) "editorial responsibility" means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;</p>	Yes	<p>Article 2 paragraph 1</p> <p><i>Editorial responsibility:</i> the exercise of effective control both over the selection of programmes and over their organisation either in a chronological programme schedule, in case of television or radio broadcasts, or in a catalogue of programmes, in case of on-demand audio and audiovisual media services. Editorial responsibility does not necessarily imply any legal liability for the content or the services provided, unless defined otherwise under this Act or a separate act.</p>
4.	<p>Article 1:</p> <p>(d) "media service provider" means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;</p>	Yes	<p>Article 2 paragraph 1</p> <p><i>Media service provider:</i> the natural or legal person who has editorial responsibility for the choice of the audio and audiovisual content of the audio and audiovisual media service and determines the manner in which they are organised.</p>

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5.	Article 1: (e) 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;	Yes	Article 2 paragraph 1 <i>Television media service or television broadcast (i.e. a linear audiovisual media service):</i> an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule
6.	Article 1: (f) 'broadcaster' means a media service provider of television broadcasts;	Yes	Article 2 paragraph 1 <i>Television broadcaster:</i> a media service provider of television broadcasts
7.	Article 1: (g) 'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;	Yes	Article 2 paragraph 1 <i>On-demand audiovisual media service (i.e. a non-linear audiovisual media service):</i> an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.
8.	Article 1: (h) 'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, <i>inter alia</i> , television advertising, sponsorship, teleshopping and product placement;	Yes	Article 2 paragraph 1 <i>Audiovisual commercial communication:</i> images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include,

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			inter alia, television advertising, sponsorship, teleshopping and product placement.
9.	<p>Article 1:</p> <p>(i) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;</p>	Yes	<p>Article 2 paragraph 1</p> <p><i>Advertising:</i> any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertakings or natural persons in connection with trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.</p>
10.	<p>Article 1:</p> <p>(j) 'surreptitious audiovisual commercial communication' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;</p>	Yes	<p>Article 2 paragraph 1</p> <p><i>Surreptitious audiovisual commercial communication:</i> the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a service provider in programmes, when such representation is intended by the media service provider to use such representation as advertising that might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.</p>
11.	<p>Article 1:</p> <p>(k) 'sponsorship' means any contribution made by a public or private undertaking or natural person not engaged in</p>	Yes	Article 2 paragraph 1

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	providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products;		<i>Sponsorship</i> : any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products.
12.	Article 1: (l) 'teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;	Yes	Article 2 paragraph 1 <i>Teleshopping</i> : direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment
13.	Article 1: (m) 'product placement' means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;	Yes	Article 2 paragraph 1 <i>Product placement</i> : any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration.
14.	Article 1: (n) (i) 'European works' means the following: — works originating in Member States, — works originating in European third States party to the European Convention on Transfrontier Television of the	Yes	Article 41 (1) Within the meaning of this Act, European works means the following: - works originating in Member States of the European

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	<p>Council of Europe and fulfilling the conditions of point (ii),</p> <p>— works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements,</p> <p>— application of the provisions of the second and third indents shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned;</p> <p>(ii) The works referred to in the first and second indents of point (i) are works mainly made with authors and workers residing in one or more of the States referred to in the first and second indents of point (i) provided that they comply with one of the following three conditions:</p> <p>— they are made by one or more producers established in one or more of those States, or</p> <p>— production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or</p> <p>— the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States;</p> <p>(iii) Works that are not European works within the meaning</p>		<p>Union,</p> <p>- works originating in European states party to the European Convention on Transfrontier Television and fulfilling the conditions of paragraph 3 of this Article,</p> <p>- works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.</p> <p>(2) Application of the provisions of paragraph 1, subparagraphs 2 and 3 of this Article shall be conditional only on works originating in Member States of the European Union not being the subject of discriminatory measures in the countries concerned.</p> <p>(3) The works referred to in paragraph 1, subparagraphs 1 and 2 of this Article are works mainly made with authors and workers residing in states referred to in paragraph 1, subparagraphs 1 and 2 of this Article, provided that they comply with one of the following conditions:</p> <p>- they are made by producers established in one or more of the mentioned states, or</p> <p>- production of an individual work is controlled by one or more producers established in one or more of the mentioned states, or</p> <p>- the contribution of co-producers of the mentioned states to the total co-production costs is preponderant and the coproduction is not controlled by one or more producers established outside the mentioned states.</p> <p>(4) Works that are not considered European works within the meaning of paragraph 1 of this Article, but that are produced within the framework of bilateral co-production treaties concluded between Member States of the European Union and third countries shall be deemed to be European works, provided that the co-producers from the European Union supply a majority share of the total cost of the production and that the</p>

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	of point (i) but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.		production is not controlled by one or more producers established outside the territory of the Member States of the European Union.
15.	Article 2: 1. Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State.	Yes	Article 1 The present Act regulates the rights, obligations and responsibilities of legal and natural persons that provide audio and audiovisual media services and services of electronic publications by electronic communication networks, and the interest of the Republic of Croatia in the field of electronic media.
16.	Article 2: 2. For the purposes of this Directive, the media service providers under the jurisdiction of a Member State are those: (a) established in that Member State in accordance with paragraph 3; or (b) to whom paragraph 4 applies.	Yes	Article 6 (1) Media service providers under the jurisdiction of the Republic of Croatia are those established in the Republic of Croatia or those deemed to be under the jurisdiction of the Republic of Croatia under paragraph 7 of this Article.
17.	Article 2: 3. For the purposes of this Directive, a media service provider shall be deemed to be established in a Member	Yes	Article 6 (2) Media service provider shall be deemed to be

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	<p>State in the following cases:</p> <p>(a) the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State;</p> <p>(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;</p> <p>(c) if a media service provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.</p>		<p>established in the Republic of Croatia when its head office is located in the Republic of Croatia and the editorial decisions about the audiovisual media services are taken in the Republic of Croatia.</p> <p>(3) Media service provider shall be deemed to be established in the Republic of Croatia when its head office is located in the Republic of Croatia, but editorial decisions on the audiovisual media services are taken in another Member State of the European Union, provided that a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in the Republic of Croatia.</p> <p>(4) Where a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in the Republic of Croatia and in another Member State of the European Union, the media service provider shall be deemed to be established in the Republic of Croatia if its head office is located there.</p> <p>(5) Where a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in neither of the Member States referred to in the previous paragraphs of this Article, the media service provider shall be deemed to be established in the Republic of Croatia if this is where it first began activity in accordance with the Croatian legislation, provided that it maintains a stable and effective link with the Croatian economy.</p> <p>(6) Where a media service provider has its head office in the Republic of Croatia, but decisions on audiovisual media services are taken in a third country, or vice-versa, it shall be deemed to be established in the Republic of Croatia, provided that a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in the Republic of Croatia.</p>

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18.	<p>Article 2:</p> <p>4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:</p> <p>(a) they use a satellite up-link situated in that Member State;</p> <p>(b) although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.</p>	Yes	<p>Article 6</p> <p>(7) Media service providers to whom the provisions of paragraphs 1 through 6 of this Article are not applicable shall be deemed to be under the jurisdiction of the Republic of Croatia in the following cases:</p> <ul style="list-style-type: none"> - they use a satellite up-link situated in the Republic of Croatia; - they do not use a satellite up-link situated in the Republic of Croatia but they use satellite capacity appertaining to the Republic of Croatia
19.	<p>Article 2:</p> <p>5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 43 to 48 of the Treaty.</p>	Yes	<p>Article 6</p> <p>(8) If the question as to whether a media service provider falls under the jurisdiction of the Republic of Croatia or another Member State of the European Union cannot be determined in accordance with paragraphs 2 to 7 of this Article, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 48 to 50 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and its Member States.</p>
20.	<p>Article 2:</p> <p>6. This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States.</p>	No.	

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21.	<p>Article 2a:</p> <p>1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.</p>	Yes	<p>Article 8</p> <p>The Republic of Croatia shall ensure the freedom of transmission and reception of audio and audiovisual media services from other countries in its area, and it may, in particular cases, restrict the freedom of broadcasting of those services only in compliance with international agreements and this Act.</p>
22.	<p>Article 2a:</p> <p>2. In respect of television broadcasting, Member States may provisionally derogate from paragraph 1 if the following conditions are fulfilled:</p> <p>(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22(1) or (2) and/or Article 3(b) (...)</p>	No	<p>Article 78</p> <p>(1) By way of derogation from the provisions of Article 8 of this Act, the Electronic Media Council may undertake appropriate measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states, in the case when the Republic of Croatia is authorised to temporarily deviate from the obligation of ensuring freedom of reception of audiovisual media services and retransmission in its territory, if the conditions prescribed by paragraph 2, 3 and 4 of this Article are met.</p> <p>(2) Measures referred to in paragraph 1 of this Article will be taken in relations to the audiovisual media services of television if:</p> <ul style="list-style-type: none"> - a television broadcast coming from another Member State of the European Union manifestly, seriously and gravely infringes the provisions of Article 26, paragraphs 2 or 3 of this Act and/or promotes hatred on grounds of race, sex, religion or nationality, - during the previous 12 months, the television broadcaster acted within the meaning of the previous sub-paragraph of this Article on at least two prior occasions, - the Republic of Croatia has notified the television broadcaster and the European Commission in writing

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			of the determined infringements referred to in this Article and of the measures it intends to take should any such infringement occur again, - consultations with the transmitting Member State of the European Union and the European Commission have not produced an amicable settlement within 15 days of the notification referred to in the previous paragraph, and the stated infringement persists.
23.	<p>Article 2a:</p> <p>4. In respect of on-demand audiovisual media services, Member States may take measures to derogate from paragraph 1 in respect of a given service if the following conditions are fulfilled:</p> <p>(a) the measures are:</p> <p>(i) necessary for one of the following reasons:</p> <ul style="list-style-type: none"> - public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, - the protection of public health, - public security, including the safeguarding of national security and defence, - the protection of consumers, including investors; <p>(ii) taken against an on-demand audiovisual media service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;</p> <p>(iii) proportionate to those objectives;</p> <p>(b) before taking the measures in question and without prejudice to court proceedings, including preliminary</p>	No	<p>Article 78</p> <p>(3) In respect of on-demand audiovisual media services, the measures referred to in paragraph 1 of this Article may be taken in respect of a given service if the following conditions are fulfilled:</p> <ul style="list-style-type: none"> - the measures are necessary for one of the following reasons: public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, the protection of public health, public security, including the safeguarding of national security and defence, the protection of consumers, including investors, - measures are taken against an on-demand audiovisual media service which prejudices the objectives referred to in the previous subparagraph or which present a serious and grave risk of prejudice to those objectives, - measures are proportionate to the objectives referred to in subparagraph 1, paragraph 3 of this Article, - before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a

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	<p>proceedings and acts carried out in the framework of a criminal investigation, the Member State has:</p> <ul style="list-style-type: none"> - asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate, - notified the Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures. 		<p>criminal investigation, the Republic of Croatia has asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate,</p> <ul style="list-style-type: none"> - the Republic of Croatia has notified the European Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures.
24.	<p>Article 2a:</p> <p>5. Member States may, in the case of urgency, derogate from the conditions stipulated in paragraph 4(b). Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency.</p>	No	<p>Article 78</p> <p>(4) The Republic of Croatia may, in the case of urgency, derogate from the conditions stipulated in paragraph 3, subparagraphs 4 and 5 of this Article, and where this is the case, it is obliged to notify in the shortest possible time the European Commission and the Member State under whose jurisdiction the media service provider falls about the measures taken, indicating the reasons for which the Member State considers that there is urgency.</p>
25.	<p>Article 2a:</p> <p>6. Without prejudice to the Member State's possibility of proceeding with the measures referred to in paragraphs 4 and 5, the Commission shall examine the compatibility of the notified measures with Community law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Community law, the Commission shall ask the Member State in question to refrain from taking any proposed measures or urgently</p>	No.	<p>Article 78</p> <p>(5) The Council shall immediately put an end to the measures referred to in paragraph 1 of this Article if the European Commission determines that the measures are not compatible with the regulations of the European Community.</p>

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	to put an end to the measures in question.		
26.	<p>Article 3:</p> <p>1. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Community law.</p>	No	
27.	<p>Article 3:</p> <p>2. In cases where a Member State:</p> <p>(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and</p> <p>(b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory;</p> <p>it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within two months. Either Member State may invite the contact committee established under Article 23a to examine the case.</p>	No.	
28.	<p>Article 3:</p> <p>3. Where the first Member State assesses:</p> <p>(a) that the results achieved through the application of paragraph 2 are not satisfactory; and</p> <p>(b) that the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established within the first Member State,</p> <p>it may adopt appropriate measures against the</p>	No	

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	<p>broadcaster concerned.</p> <p>Such measures shall be objectively necessary, applied in a non-discriminatory manner and be proportionate to the objectives which they pursue.</p>		
29.	<p>Article 3:</p> <p>4. A Member State may take measures pursuant to paragraph 3 only if the following conditions are met:</p> <p>(a) it has notified the Commission and the Member State in which the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment; and</p> <p>(b) the Commission has decided that the measures are compatible with Community law, and in particular that assessments made by the Member State taking these measures under paragraphs 2 and 3 are correctly founded.</p>	No.	
30.	<p>Article 3:</p> <p>5. The Commission shall decide within three months following the notification provided for in paragraph 4(a). If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.</p>	No	
31.	<p>Article 3:</p> <p>6. Member States shall, by appropriate means, ensure, within the framework of their legislation, that media service providers under their jurisdiction effectively comply with the provisions of this Directive.</p>	Yes. This includes all measures by which the country ascertain whether they have jurisdiction, e.g. transparency obligations of satellite	<p>Article 19</p> <p>(1) The activity of providing audio and/or audiovisual media services on demand can be carried out by legal or natural person which fulfils conditions set out in Articles 5 and 6 of this Act and has the Electronic Media Council's licence for providing these activities (hereinafter: on demand media service provider).</p> <p>(2) The Electronic Media Council issues the licence from paragraph 1 of this Article on the basis of the request of the on demand media service provider which has fulfilled the technical conditions for the transmission of audiovisual and/or radio programme and programme basis which contains the programme</p>

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		operators	<p>orientation of the on demand media service provider (general or specialised).</p> <p>(3) Before deciding on issuing the licence, the Council is authorised to exchange information on the on demand media service provider with regulatory bodies of other Member States of the European Union, if the activities from paragraph 1 of this Article refer to other Member States of the European Union as well.</p> <p>(4) The Electronic Media Council shall decide on issuing the licence from Article 1 as soon as possible, and at the latest within 30 days from receiving the correct request.</p> <p>(5) On the basis of issuing the licence from paragraph 1 of this Article, the on demand media service provider shall be registered into the Register administered by the Electronic Media Council.</p> <p>(6) The Council shall ex officio take a decision on termination of permit from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:</p> <ul style="list-style-type: none"> - if the media service provider notifies the Council in writing on the cessation of the activity providing, - if the media service provider ceases to provide the activities for a period longer than a year, - if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and/or radio programme, - if the media service provider was prohibited by an effective decision of the court to perform the registered activity, - after the cessation of the legal person of a media service provider or the cessation of craft. <p>(7) The licence for providing the activities of audio and/or audiovisual media services on demand can be transferred to another person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the licence, with the prior consent of the Council.</p>

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			<p>(8) The list of the media service providers from paragraph 1 of this Article is published on the website of the Council.</p> <p>(9) The content and manner of management of the Register from paragraph 5 of this Article is regulated by the Electronic Media Council's ordinance from Article 75 of this Act.</p> <p>Article 70</p> <p>(1) The Council shall:</p> <ul style="list-style-type: none"> - conduct the procedure of granting a concession in compliance with this Act, Concession Act and the ordinance referred to in Article 74 paragraph 3 of this Act; - enter into a concession contract with the most advantageous tenderer pursuant to this Act. - pass a decision on the cancellation of concession and granting in cases anticipated by this Act, - undertake appropriate measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states pursuant to Article 78 of this Act, - conduct the procedure of granting licences for providing the activities of providing of audio and/or audiovisual media services on demand and satellite, internet and cable transfer of audiovisual and/or radio programmes, - caution in cases of violation of provisions of this Act and executive regulations and/or charge pursuant to violation provisions of this Act and Misdemeanours Act, - pass the legislation for passing for which is

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			<p>authorised by this Act,</p> <ul style="list-style-type: none"> - pass its rules of conduct, - keep records of media services providers, - grant the approval referred to in Article 60, paragraph 2 of this Act, - implement the provisions of this Act relating to the protection of pluralism and diversity of electronic media, - ensure supervision over the implementation of provisions on the programme principles and obligations determined by this and a special act, save for electronic publications, and shall pass the annual monitoring plan, - ensure supervision over audiovisual and radio programmes broadcasted via satellite, internet or cable transmission, - conduct the procedure of determining whether the provisions of this Act are respected or violated, - consider the complaints of citizens on the media services providers' behaviour with regard to the implementation of acts, and shall undertake measures in compliance with this Act, - cooperate with regulatory bodies of other states and/or European Commission in the exchange of information for implementation of this Act, especially provisions of Article 6, Article 19 paragraph 3, Article 74 paragraph 6, Article 78 and Article 80 paragraph 3 of this Act, - submit reports to the Croatian Parliament and other competent bodies, in compliance with this Act and other acts, - submit reports to the European Commission, in compliance with this Act and other acts,

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			<p>- pass recommendations for implementation of this Act,</p> <p>- promote self-regulation and co-regulation for the implementation of this Act,</p> <p>- promote media literacy,</p> <p>- pass the annual work programme of the Agency, and</p> <p>- also perform other tasks stipulated by this Act and a special act.</p> <p>(2) Regulatory and other tasks referred to in paragraph 1 of this Article comprise tasks related to the public authorities of the Agency implemented by the Council.</p> <p>Article 75</p> <p>(1) The right to perform the activities of providing television and radio media service broadcasting shall be obtained on the basis of a decision on the selection of the most advantageous tenderer and the contracted concession contract.</p> <p>(2) The Council and the Croatian Post and Electronic Communications Agency shall, on the basis of a decision on the selection of the most advantageous tenderer, enter into a concession contract with the selected tenderer.</p> <p>(3) The concession contract shall, in addition to the conditions important for the exercise of the concession, contain the programme basis and other conditions from the tender for the award of concession.</p> <p>(4) The Council shall annul the decision on the selection of the most advantageous tenderer and the tenderer shall have no right to compensation of damages if the most advantageous tenderer fails to sign, within the time limit established in the decision referred to in paragraph 2 of this Article, the</p>

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			<p>concession contract which was drawn up in writing in accordance with the tender documents, the data contained in the public tender, the selected tender and the decision on the selection of the most advantageous tenderer.</p> <p>(5) It shall be possible, pursuant to the entered contract and upon acquiring the prior consent of the Council in compliance with this Act, to transfer the concession to another legal person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the concession. The request for the prior consent of the Council may be submitted only after 3 years counting from the entering into the concession contract. In such case an annex to the concession contract shall be made or a new concession contract shall be entered into.</p> <p>Article 80</p> <p>(1) The Electronic Media Council issues the licence for satellite, internet and cable transmission of the audiovisual and/or radio programme to the media service providers as referred to in the Article 5 or 6 of this Act, which do not use the concession as referred to in Article 75 of this Act and which are not on demand media service providers as referred to in the Article 19 of this Act.</p> <p>(2) The licence is issued on the basis of the request of the media service provider which has fulfilled the technical conditions for the transmission of programmes and the conditions set out in Article 23 of this Act.</p> <p>(3) Before deciding on issuing the licence, the Council is authorised to exchange information on the media service provider with regulatory bodies of other Member States of the European Union, if the transmission of programmes from paragraph 1 of this Article refers to other Member States of the European Union as well.</p> <p>(4) The Electronic Media Council shall decide on issuing the licence from Article 1 as soon as possible, and at the latest within 30 days from receiving the</p>

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			<p>correct request.</p> <p>(5) On the basis of issuing the licence from paragraph 1 of this Article, the media service provider shall be registered into the Register administered by the Electronic Media Council.</p> <p>(6) The Council shall <i>ex officio</i> take a decision on termination of licence from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:</p> <ul style="list-style-type: none"> - if the media service provider notifies the Council in writing on the cessation of the activity providing, - if the media service provider ceases to provide the activities for a period longer than a year, - if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and radio programmes, - if the media service provider was prohibited by an effective decision of the court to perform the registered activity, - after the cessation of the legal person of a media service provider or the cessation of trade. <p>(7) The list of the media service providers from paragraph 1 of this Article is published on the website of the Council.</p> <p>(8) The licence for satellite, internet and cable transmission of audiovisual and radio programmes can be transferred to another person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the licence, with the prior consent of the Council.</p> <p>(9) The content and manner of management of the Register from paragraph 5 of this Article is regulated by the Electronic Media Council's ordinance from Article 76 of this Act.</p>

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32.	<p>Article 3:</p> <p>7. Member States shall encourage co- and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement.</p>	Yes	<p>Article 10</p> <p>(1) Pursuant to this Act, particular issues may be regulated by self-regulatory and/or co-regulatory regimes for the purpose of standardizing their application in practice. These regimes shall be such that they are broadly accepted by the main stakeholders concerned in the Republic of Croatia, authorised by the Electronic Media Council, and they must provide for effective enforcement of the established provisions.</p> <p>(2) The Electronic Media Council shall publish on its website the acts which are accepted pursuant to paragraph 1 of this Article.</p> <p>Article 70</p> <p>(1) The Council shall</p> <p>- promote self-regulation and co-regulation for the implementation of this Act,</p>
33.	<p>Article 3:</p> <p>8. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive.</p>	No.	
34.	<p>Article 3a:</p> <p>Member States shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the</p>	Yes	<p>Article 11</p> <p>Audiovisual media service providers shall make easily,</p>

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	<p>recipients of a service at least the following information:</p> <p>(a) the name of the media service provider;</p> <p>(b) the geographical address at which the media service provider is established;</p> <p>(c) the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and effective manner;</p> <p>(d) where applicable, the competent regulatory or supervisory bodies.</p>		<p>directly and permanently accessible to the recipients of a service at least the following information:</p> <ul style="list-style-type: none"> - the name of the media service provider; - the geographical address at which the media service provider is established; - the details of the media service provider, including its electronic mail address or website, which allow rapid, direct and efficient contact with the provider, and - the competent regulatory and/or supervisory bodies.
35.	<p>Article 3b:</p> <p>Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.</p>	Yes	<p>Article 12</p> <p>(2) In audio and/or audiovisual services it shall be prohibited to promote, favour the promotion of and spreading of hatred or discrimination based on race, sex, religion or nationality, anti-Semitism and xenophobia, ideas of the fascist, nationalist, communist and other totalitarian regimes or other forms of hatred based on intolerance of individuals or groups, due to their origin, political beliefs, opinions, health condition or other preferences or characteristics.</p>
36.	<p>Article 3c:</p> <p>Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.</p>	No. Countries shall encourage media service providers	<p>Article 14</p> <p>The Electronic Media Council shall encourage audiovisual media service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability.</p>
37.	<p>Article 3d:</p> <p>Member States shall ensure that media service providers</p>	Yes	Article 13

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	under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.		Audiovisual media service providers shall not transmit cinematographic works outside periods agreed with the rights holders.
38.	<p>Article 3e:</p> <p>1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:</p> <p>(a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;</p>	Yes	<p>Article 16</p> <p>(1) Audiovisual commercial communications shall be readily recognisable as such.</p> <p>(2) Surreptitious audiovisual commercial communications shall be prohibited.</p>
39.	<p>Article 3e (1):</p> <p>(b) audiovisual commercial communications shall not use subliminal techniques;</p>	Yes	<p>Article 16</p> <p>(3) Audiovisual commercial communications shall not use subliminal techniques.</p>
40.	<p>Article 3e (1):</p> <p>(c) audiovisual commercial communications shall not:</p> <p>(i) prejudice respect for human dignity;</p> <p>(ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;</p> <p>(iii) encourage behaviour prejudicial to health or safety;</p> <p>(iv) encourage behaviour grossly prejudicial to the protection of the environment;</p>	Yes	<p>Article 16</p> <p>(4) Audiovisual commercial communications shall not:</p> <ul style="list-style-type: none"> - prejudice respect for human dignity, - include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation, - encourage behaviour prejudicial to health or safety, - encourage behaviour grossly prejudicial to the protection of the environment.
41.	<p>Article 3e (1):</p>	Yes	Article 16

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	(d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;		(5) All forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited
42.	Article 3e (1): (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;	Yes	Article 16 (6) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.
43.	Article 3e (1): (f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;	Yes	Article 16 (7) Audiovisual commercial communication for medicinal products and medical treatment available only on prescription shall be prohibited.
44.	Article 3e (1): (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.	Yes	Article 16 (8) Audiovisual commercial communications shall not: - cause physical or moral detriment to minors, - directly encourage minors to buy or hire a product or service by exploiting their inexperience or credulity, - directly encourage minors to persuade their parents or others to purchase the goods or services being advertised, - exploit the special trust minors place in parents, teachers or other persons, or - unreasonably show minors in dangerous situations.
45.	Article 3e: 2. Member States and the Commission shall encourage media service providers to develop codes of conduct	No Countries	Article 16 (9) Pursuant to Article 10 of this Act, media service

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	regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.	shall encourage media service providers	<p>providers may develop codes of conduct regarding inappropriate audiovisual commercial communication, included in or accompanying children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.</p> <p>(10) The Electronic Media Council shall publish on its website the codes of conduct which are accepted pursuant to paragraph 9 of this Article.</p> <p>Article 70</p> <p>(1) The Council shall</p> <ul style="list-style-type: none"> - promote self-regulation and co-regulation for the implementation of this Act
46.	<p>Article 3f:</p> <p>1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its</p>	Yes	<p>Article 17</p> <p>(1) Audiovisual media services and programmes that are sponsored shall meet the following requirements:</p> <ul style="list-style-type: none"> - their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider, - they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services, - viewers shall be clearly informed of the existence of a

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	<p>product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or the end of the programmes.</p> <p>2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.</p> <p>3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.</p> <p>4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.</p>		<p>sponsorship agreement,</p> <p>- sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as, for example, a reference to its product(s) or service(s) or a distinctive sign thereof in appropriate way for programmes at the beginning, during and/or the end of the programmes.</p> <p>(2) Audiovisual media services or programmes shall not be sponsored by legal or natural persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products.</p> <p>(3) The sponsorship of audiovisual media services or programmes by legal or natural persons whose activities include the manufacture or sale of medicinal products and medical treatments may promote the name or the image of the legal or natural persons, but shall not promote specific medicinal products or medical treatments available only on prescription.</p> <p>(4) News and current affairs programmes shall not be sponsored.</p> <p>(5) The showing of a sponsorship logo during children's programmes and religious programmes shall be prohibited.</p> <p>(6) The provisions of this Article shall also be mutatis mutandis applied on the radio media services.</p>
47.	<p>Article 3g:</p> <p>1. Product placement shall be prohibited.</p> <p>2. By way of derogation from paragraph 1, product placement shall be admissible unless a Member State decides otherwise:</p> <p>- in cinematographic works, films and series made for audiovisual media services, sports programmes and light</p>	Yes	<p>Article 18</p> <p>(1) Product placement shall be prohibited.</p> <p>(2) By way of derogation from paragraph 1 of this</p>

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	<p>entertainment programmes, or</p> <ul style="list-style-type: none"> - where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme. <p>The derogation provided for in the first indent shall not apply to children's programmes.</p> <p>Programmes that contain product placement shall meet at least all of the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>(c) they shall not give undue prominence to the product in question;</p> <p>(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.</p> <p>By way of exception, Member States may choose to waive the requirements set out in point (d) provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.</p> <p>3. In any event programmes shall not contain product placement of:</p> <ul style="list-style-type: none"> - tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or - specific medicinal products or medical treatments 		<p>Article, product placement shall be admissible:</p> <ul style="list-style-type: none"> - in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, with the exception of children's programmes, or - where there is no payment to the media services provider, but certain goods or services are provided free of charge, such as production props and prizes, with a view to their inclusion in an audiovisual programme. <p>(3) It is assumed that the product or services placement exists in the sense of paragraph 2 subparagraph 2 of this Article only if the goods or services involved in the audiovisual programme are of significant value. It is assumed that the goods or services of significant value are those the respective value of which exceeds the average net monthly salary in the Republic of Croatia, based on the statistical data for the previous year.</p> <p>(4) Audiovisual programmes that contain product placement shall meet all of the following requirements:</p> <ul style="list-style-type: none"> - their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider, - they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services, - they shall not give undue prominence to the product in question, - viewers shall be clearly informed of the existence of product placement, - they shall be appropriately identified at the start and the end of the audiovisual programme and when a

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	<p>available only on prescription in the Member State within whose jurisdiction the media service provider falls.</p> <p>4. The provisions of paragraphs 1, 2 and 3 shall apply only to programmes produced after 19 December 2009.</p>		<p>audiovisual programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.</p> <p>(5) By way of exception, the provisions of the paragraph 4 subparagraphs 4 and 5 of this Article are not applicable when the audiovisual programme containing product placement has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.</p> <p>(6) In any event audiovisual programmes shall not contain product placement of:</p> <ul style="list-style-type: none"> - tobacco products or cigarettes or product placement of natural and legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or - specific medicinal products or medical treatments available only on prescription. <p>(7) The provisions of this Article shall apply only to audiovisual programmes produced after 19 December 2009.</p> <p>Alternative for paragraph 3:</p> <p>“(3) It is assumed that the product and services placement exists in the sense of paragraph 2 subparagraph 2 of this Article if the goods or services involved in the audiovisual programme are of significant value. The Electronic Media Council shall determine by an ordinance the manner of determining the significant value of the goods and services placed.</p>
48.	Article 3h:	Yes	Article 20

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	Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.		<p>(1) The on-demand audiovisual media services which might seriously impair the physical, mental or moral development of minors are only available in such a way that ensures that minors will not in normal circumstances hear or see such on-demand audiovisual media services.</p> <p>(2) The Electronic Media Council shall prescribe by the ordinance referred to in Article 26 paragraph 4 of this Act the appropriate measures for the conduct of the media service providers in the event referred to in paragraph 1 of this Article.</p>
49.	<p>Article 3i:</p> <p>1. Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.</p>	Yes	<p>Article 21</p> <p>(1) The on-demand audiovisual media service providers shall use their best efforts in order that their on-demand audiovisual media services promote, where practicable and by appropriate means, the production of and access to European works.</p> <p>(2) Promotion of the works referred to in paragraph 1 of this Article could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.</p> <p>(3) The Electronic Media Council is authorised to demand the data about the implementation of the paragraphs 1 and 2 of this Article from the on demand audiovisual media services provider.</p>

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50.	<p>Article 3i:</p> <p>2. Member States shall report to the Commission no later than 19 December 2011 and every four years thereafter on the implementation of paragraph 1.</p>	No.	<p>Article 21</p> <p>(4) The Electronic Media Council shall report to the European Commission no later than 19 December 2011 and every four years thereafter on the implementation of the paragraphs 1 and 2 of this Article.</p>
51.	<p>Article 3i:</p> <p>3. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and the Council on the application of paragraph 1, taking into account the market and technological developments and the objective of cultural diversity.</p>	No	
52.	<p>Article 3j:</p> <p>1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.</p> <p>2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such</p>	yes	<p>Article 46</p> <p>(1) Television broadcaster shall not, on an exclusive basis, broadcast events which are regarded as being of major importance for society in such a way as to deprive a substantial proportion of the public in the Republic of Croatia of the possibility of following such events by live coverage or deferred coverage on free television.</p> <p>(2) The Electronic Media Council shall draw up a list of designated events referred to in paragraph 1 of this Article, national or non-national, which it considers to be of major importance for society and it shall also determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.</p> <p>(3) The Electronic Media Council shall immediately</p>

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	<p>measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the Official Journal of the European Union and at least once a year the consolidated list of the measures taken by Member States.</p> <p>3. Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.</p>		<p>notify the European Commission of the list referred to in paragraph 2 of this Article and other measures taken or to be taken, which conducts procedure to verify whether such measures are compatible with Community law and communicates them to the other Member States of the European Union. The Electronic Media Council shall also forward the notification of the list and measures to the states signatories of international treaties by which the Republic of Croatia is bound.</p> <p>(4) Television broadcasters under their jurisdiction of the Republic of Croatia shall not exercise the exclusive rights purchased following the date of entering into force of this Act in such a way that a substantial proportion of the public in another Member State of the European Union or signatory state of any international treaty that imposes obligations on the Republic of Croatia is deprived of the possibility of following events of major importance for society in accordance with its national legislation, and which events are determined by that state for whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television.</p> <p>(5) It is contrary to this Act if the event referred to in paragraph 1 of this Article is broadcast on the basis of received exclusive rights by a television broadcaster whose audiovisual programme can be viewed by less than 60% of the population of the Republic of Croatia or if to view that programme additional payments are required (pay TV), other than the fees laid down in the Croatian Radio Television Act.</p>
53.	<p>Article 3k:</p> <p>1. Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Community has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a</p>	Yes	<p>Article 45</p> <p>(1) For the purpose of short news reports, any television and/or radio broadcaster established in the European Union has access under the equal conditions</p>

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	broadcaster under their jurisdiction.		to events of high interest to the public which are transmitted on an exclusive basis by a television and/or radio broadcaster under the jurisdiction of the Republic of Croatia.
54.	<p>Article 3k:</p> <p>2. If another broadcaster established in the same Member State as the broadcaster seeking access has acquired exclusive rights to the event of high interest to the public, access shall be sought from that broadcaster.</p>	Yes	<p>Article 45</p> <p>(2) If a television and/or radio broadcaster established in the Republic of Croatia has acquired exclusive rights to the event of high interest to the public, another television and/or radio broadcaster established in the Republic of Croatia may seek access to the mentioned event from that television and/or radio broadcaster. All television and/or radio broadcasters have the right of access to events of high interest to the public under the equal conditions.</p>
55.	<p>Article 3k:</p> <p>3. Member States shall ensure that such access is guaranteed by allowing broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.</p>	Optional. Countries shall either transpose this provision or establish an alternative system according to Art. 3k (4)	<p>Article 45</p> <p>(3) The Electronic Media Council shall ensure that access to the events referred to in paragraph 1 and 2 of this Article is guaranteed by allowing television and/or radio broadcaster to freely choose short extracts from the transmitting television and/or radio broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.</p>
56.	<p>Article 3k:</p> <p>4. As an alternative to paragraph 3, Member States may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.</p>	Optional	<p>Article 45</p> <p>(4) Television and/or radio broadcaster may, before and instead of access to the signal within the meaning of paragraph 3 of this Article, accomplish access to the events referred to in paragraph 1 and 2 of this Article for purposes of shooting short extract or using the taped material of other television and/or radio broadcaster which has exclusive rights for the event of</p>

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			high interest to the public.
57.	<p>Article 3k:</p> <p>5. Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.</p>	Yes	<p>Article 45</p> <p>(5) Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.</p>
58.	<p>Article 3k:</p> <p>6. Without prejudice to paragraphs 1 to 5, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular, any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.</p>	Yes	<p>Article 45</p> <p>(6) Short information under this Article means announcement which lasts one minute and half at most, and which is presented as part of an informational programme</p> <p>(7) Television and/or radio broadcaster which broadcasts the event of high interest to the public shall have the right to ask from another television and/ radio broadcaster compensation of the actual costs incurred in fulfilment of its obligation. The foreseen compensation shall not exceed the additional costs directly incurred by allowing access.</p> <p>(8) The right to short news reports shall be executed in a manner which does not interrupt the course of events.</p> <p>(9) The right to short news reports may be limited or excluded if its execution would severely hurt the feelings of participants in the event or jeopardize public order and security.</p> <p>(10) Television and/or radio broadcaster, which used the right to short news reports shall enable the television and/or radio broadcaster which could not tape the event a single use of the tape and shall have the right to ask compensation for that, proportional to its share in the actual costs, as well as the mentioning of his name or the name of the company in the announcement.</p>

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			(11) The right to short news reports may be, in compliance with Article 10 of this Act, determined concerning the access to events of high interest to the public which are not broadcast on the basis of exclusive rights.
59.	<p>Article 4:</p> <p>1. Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.</p> <p>in Article 4(1), the phrase, "within the meaning of Article 6," shall be deleted;</p> <p>2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.</p> <p>However, in respect of the Hellenic Republic and the</p>	Yes	<p>Article 42</p> <p>(1) Television broadcaster shall use its best efforts to reserve for European works a majority proportion of their annual transmission time.</p> <p>(2) Television broadcaster who cannot attain the proportion of European works referred to in paragraph 1 of this Article shall progressively increase the proportion of such works every year in relation to the past year in accordance with the criteria and the method laid down in the ordinance which is adopted by the Electronic Media Council, taking into account the television broadcaster's informational, educational, cultural and entertainment responsibilities to its viewers, where the minimum initial proportion is 20%.</p> <p>(3) The annual transmission time referred to in this Article does not include the time earmarked for news, sports events, games, advertising, teletext services and teleshopping.</p> <p>(4) The proportion of European audiovisual works includes audiovisual works of private production and Croatian audiovisual works.</p>

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	Portuguese Republic, the year 1988 shall be replaced by the year 1990.		
60.	<p>Article 4:</p> <p>3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.</p> <p>That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.</p> <p>The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first</p>	<p>No. A reporting obligation can be included 'as from the date of accession to the European Union'.</p>	<p>Article 42</p> <p>(6) The Electronic Media Council shall report to the European Commission no later than 3 October December 2011 and every two years thereafter on the implementation of the paragraphs 1 and 2 of this Article.</p> <p>Article 44</p> <p>(6) The Electronic Media Council shall report to the European Commission no later than 3 October 2011 and every two years thereafter on the implementation of the paragraphs 1 to 4 of this Article</p>

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	<p>broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.</p> <p>4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive. To that end, the Commission report shall, on the basis of the information provided by Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.</p>		
61.	<p>Article 5 Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This</p>	yes	<p>Article 44</p> <p>(1) Television broadcaster shall use its best efforts to reserve for European works produced by independent producers at least 10% of the time in the annual audiovisual programme.</p> <p>(2) Television broadcaster which cannot attain the proportion of audiovisual works produced by independent producers referred to in paragraph 1 of this Article shall progressively increase the proportion of such works every year in relation to the past year in accordance with the criteria and the method laid down in the ordinance which is adopted by the Electronic Media Council, taking into account the media service broadcaster's informational, educational, cultural and</p>

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	<p>proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.</p>		<p>entertainment responsibilities to its viewers.</p> <p>(3) At least half of the works referred to in this Article shall be produced in the previous five years.</p> <p>(4) The annual transmission time referred to in this Article does not include the time earmarked for news, sports events, games, advertising, teletext services and teleshopping.</p>
62.	<p>Articles 6, 7 and 8 have been deleted</p> <p>Art. 6 moved to Art. 1 (n); Art. 7 moved to Art. 3d AVMSD</p>	No	
63.	<p>Article 9</p> <p>This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.</p>	yes	<p>Article 42</p> <p>(5) The provisions of the previous paragraphs shall not apply to television broadcaster who has a local concession and who is not affiliated with the national network.</p> <p>Article 44</p> <p>(5) The provisions of the previous paragraphs shall not apply to television broadcaster which has a local concession and which is not affiliated with the national network</p>
64.	<p>Article 10:</p> <p>1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.</p>	yes	<p>Article 29</p> <p>(1) Advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial</p>

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			means.
65.	<p>Article 10:</p> <p>2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.</p>	yes	<p>Article 29</p> <p>(2) Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.</p>
66.	<p>Article 11:</p> <p>1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme, and the rights of the right holders are not prejudiced.</p>	yes	<p>Article 32</p> <p>(3) Advertising and teleshopping in audiovisual programmes shall be inserted between programmes. Advertising spots and teleshopping may also be inserted during audiovisual programmes but only in such a way that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme and of the rights of the right holders are not prejudiced.</p>
67.	<p>Article 11:</p> <p>2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least thirty minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.</p>	yes	<p>Article 32</p> <p>(4) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least thirty minutes.</p> <p>(5) No advertising or teleshopping shall be inserted during the transmission of religious services.</p> <p>(6) Children's programmes, when their duration is less</p>

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			than 30 minutes, shall not be interrupted by advertising spots and/or by teleshopping spots. The children's programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.
68.	<p>Articles 12, 13, 14 (1) have been deleted.</p> <p>Art. 12 moved to Art. 3e (c); Art. 13 moved to Art. 3e (d)</p> <p>Art. 14 (1) moved to Art. 3e (f)</p> <p>Article 14 (2)</p> <p>2. Teleshopping for medicinal products which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (1), as well as teleshopping for medical treatment, shall be prohibited.</p>	Yes	<p>Article 31</p> <p>(2) Advertising for medicines and medicinal products shall comply with the conditions stipulated in the Medicinal Products Act, and the subordinate legislation passed by virtue thereof.</p> <p>(3) Teleshopping for medicines, medicinal products, and medical treatment shall be prohibited.</p>
69.	<p>Article 15:</p> <p>Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:</p> <p>(a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;(b) it shall not link the consumption of alcohol to enhanced physical performance or to</p>	Yes	<p>Article 31</p> <p>(4) Advertising and teleshopping for alcohol and alcoholic beverages shall be prohibited, unless the Food Act, and the subordinate legislation passed by virtue thereof, provide otherwise.</p> <p>(5) Advertising and teleshopping for alcohol and alcoholic beverages referred to in paragraph 4 of this Article shall comply with the following criteria:</p> <p>- it may not be aimed specifically at minors or, in</p>

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	<p>driving;</p> <p>(c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;</p> <p>(d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;</p> <p>(e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;</p> <p>(f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.</p>		<p>particular, depict minors consuming these beverages,</p> <ul style="list-style-type: none"> - it shall not link the consumption of alcohol to enhanced physical performance or to driving, - it shall not create the impression that the consumption of alcohol contributes towards social or sexual success, - it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts, - it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light, - it shall not place emphasis on high alcoholic content as being a positive quality of the beverages
70.	<p>Articles 16 and 17 have been deleted:</p> <p>Art. 16 moved to Art. 3e (g); Art 17 moved to Art. 3f</p>	No	
71.	<p>Article 18:</p> <p>1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.</p>	yes	<p>Article 32</p> <p>(1) The duration of advertising spots and teleshopping spots within a given clock hour, with the exception of television channels exclusively devoted to advertising and teleshopping as well as of television channels exclusively devoted to self-promotion referred to in Article 34 paragraph 2 of this Act, shall not exceed 12 minutes.</p>
72.	<p>Article 18:</p> <p>2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.</p>	yes	<p>Article 32</p> <p>(2) Provision of paragraph 1 of this Article shall not apply to announcements made by the television</p>

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			broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.
73.	<p>Article 18a:</p> <p>Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.</p>	yes	<p>Article 34</p> <p>(1) Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.</p>
74.	<p>Article 19:</p> <p>The provisions of this Directive shall apply mutatis mutandis to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion. Chapter III as well as Article 11 and Article 18 shall not apply to these channels.</p>	yes	<p>Article 34</p> <p>(2) The provisions of this Act shall apply mutatis mutandis to television programme channels exclusively devoted to advertising and teleshopping as well as to television programme channels exclusively devoted to self-promotion, with the exception of the provisions of Article 32 paragraphs 3, 4 and 6 and Articles 42 and 44 of this Act.</p>
75.	<p>Article 19a was deleted</p>	No	
76.	<p>Article 20:</p> <p>Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) and Article 18 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.</p>	Optional	
77.	<p>Article 21 has been deleted</p>	No	

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78.	<p>Article 22:</p> <p>1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.</p> <p>2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.</p> <p>3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.</p> <p>Articles 22a and 22b have been deleted</p>	Yes	<p>Article 26</p> <p>(2) Audiovisual or radio programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence shall be prohibited.</p> <p>(3) The broadcasting of audiovisual or radio programmes which are likely to impair the physical, mental or moral development of minors shall be prohibited, except where it is ensured by the television or radio broadcaster, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. When such programmes are broadcast in unencoded form, the broadcaster shall ensure that they are preceded by an acoustic warning or are identified by the presence of visual symbols throughout their duration.</p> <p>(4) The Electronic Media Council shall prescribe by ordinance the conduct of the broadcaster in the event referred to in paragraph 2 and 3 of this Article.</p>
79.	<p>Article 23</p> <p>1. Without prejudice to other provisions adopted by the</p>	Yes	<p>Article 2</p> <p>(3) The right of a correction of broadcast information or a reply to broadcast information shall be exercised in accordance with the Media Act.</p>

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	<p>Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies.</p> <p>Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.</p> <p>2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.</p> <p>3. Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure</p>		

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	<p>that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.</p> <p>4. An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency.</p> <p>5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.</p>		
80.	<p>Article 23a</p> <p>1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.</p> <p>2. The tasks of this committee shall be:</p> <p>(a) to facilitate effective implementation of this Directive through regular consultation on any practical</p>	No.	

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	<p>problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;</p> <p>(b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of the provisions of this Directive;</p> <p>(c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4 (3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;</p> <p>(d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions and the creative community;</p> <p>(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities</p>		

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	<p>regarding audiovisual media services, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;</p> <p>(f) to examine any development arising in the sector on which an exchange of views appears useful.</p>		
81.	<p>Article 23b:</p> <p>Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 hereof, notably through their competent independent regulatory bodies.</p>	Yes.	<p>Article 70</p> <p>(1) The Council shall:</p> <p>- cooperate with regulatory bodies of other states and/or European Commission in the exchange of information for implementation of this Act, especially provisions of Article 6, Article 19 paragraph 3, Article 74 paragraph 6, Article 78 and Article 80 paragraph 3 of this Act,</p>
82.	<p>Article 24</p> <p>In fields which this Directive does not coordinate, it shall not affect the rights and obligations of Member States resulting from existing conventions dealing with telecommunications or broadcasting.</p>		
83.	<p>Articles 25 and 25a have been deleted</p>	No.	
84.	<p>Article 26:</p> <p>Not later than 19 December 2011, and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this</p>	No	

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	<p>Directive and, if necessary, make further proposals to adapt it to developments in the field of audiovisual media services, in particular in the light of recent technological developments, the competitiveness of the sector and levels of media literacy in all Member States.</p> <p>This report shall also assess the issue of television advertising accompanying or included in children's programmes, and in particular whether the quantitative and qualitative rules contained in this Directive have afforded the level of protection required."</p>		

Recommendations in Recitals

85.	<p>RECITAL 50 :</p> <p>(50) WHEN IMPLEMENTING THE PROVISIONS OF ARTICLE 4 OF DIRECTIVE 89/552/EEC, MEMBER STATES SHOULD ENCOURAGE BROADCASTERS TO INCLUDE AN ADEQUATE SHARE OF CO-PRODUCED EUROPEAN WORKS OR OF EUROPEAN WORKS OF NON-DOMESTIC ORIGIN.</p>	<p><i>COUNTRIES MAY WANT TO FOLLOW THIS RECOMMENDION</i></p>
86.	<p>Recital 59 :</p> <p>(59) (...) The notion of a television advertising spot should be understood as television advertising in the sense of Article 1(i) of Directive 89/552/EEC as amended by this Directive having a duration of not more than 12 minutes.</p>	<p>Article 32</p> <p>(1) The duration of advertising spots and teleshopping spots within a given clock hour, with the exception of television channels exclusively devoted to advertising and teleshopping as well as of television channels exclusively devoted to self-promotion referred to in Article 34 paragraph 2 of this Act, shall not exceed 12 minutes.</p>
87.	<p>Recital 65 :</p> <p>(65) (...) More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.</p>	<p>Article 65</p> <p>(1) The Fund for Promotion of Pluralism and Diversity of Electronic Media (hereinafter: the Fund) shall be established and shall act within the scope of the Electronic Media Agency.</p> <p>(2) The sources of financial means for the Fund shall be funds secured by the provisions of this Act and the Croatian Radio Television Act.</p> <p>(3) The Electronic Media Council shall submit programmes and reports on the allocation of funds from the Fund to the Croatian Competition Agency.</p> <p>Article 66</p> <p>(1) The Fund's means shall stimulate the production and broadcasting of audiovisual and radio programmes of television and/or radio broadcaster at the local and regional levels which are of public interest and audiovisual and radio programmes of non-profit television and/or radio broadcaster, which are particularly important for:</p> <ul style="list-style-type: none"> - the exercise of citizens' right to public information, - promotion of cultural creativity and fostering of cultural heritage,

- development of upbringing, education, science and arts,
- promotion of works in dialects of the Croatian language,
- promotion of special programmes in areas of special state concern,
- national minorities in the Republic of Croatia,
- encouragement of the development of the awareness of gender equality.

(2) The Fund's means shall also stimulate the employment of highly qualified skilled employees in television and/or radio broadcasters at the local and regional levels and non-profit television and/or radio broadcasters.

(3) The Fund's means shall not stimulate the production of entertainment programmes and the programme referred to in Article 43 of this Act.

(4) The Fund's means shall be allocated in equal ratio for the stimulation of pluralism and diversity of audiovisual and radio programmes. The criteria for awarding the resources are:

- significance of the audiovisual and/or radio programme for the realisation of objectives referred to in paragraphs 1 and 2 of this Article,
- the quality and content-related innovation of the offered audiovisual and/or radio programme,
- interest for overall i.e. local and regional cultural development,
- other criteria determined by the Electronic Media Council by means of the ordinance referred to in paragraph 6 of this Article.

(5) Resources of the Fund may not be granted:

- for audiovisual and/or radio programmes which are already co-financed, regardless of the grounds, from the budgetary funds, with the exception of the programmes of the non-profit television and/or radio broadcaster,
- for the television and/or radio broadcasters to which the Electronic Media Council passed a warning in the previous twelve months and/or which were sentenced in the previous twelve months on the basis of court res judicata for violating provision of this Act.

(6) Based on the criteria referred to in paragraph 4 of this Article, the Electronic Media Council shall regulate the way and procedure for conducting a public tender for the co-financing of audiovisual and radio programmes from the Fund's means, monitoring of the spending of means and realisation of the programmes for which they were awarded. The list of beneficiaries of the Fund's means, programmes for which the means were awarded and reports on the execution thereof shall be published on the website of the Electronic Media Council.

		<p>(7) The decision on the allocation of the Fund's means shall be passed by the Electronic Media Council.</p>
<p>88.</p>	<p>Recital 66 :</p> <p>(66) (...) Where licensing procedures are provided for in national law and if more than one Member State is concerned, it is desirable that contacts between the respective bodies take place before such licences are granted.</p>	<p><i>Countries may want to set up such a procedure</i></p> <p><i>Article 19</i></p> <p>(3) Before deciding on issuing the licence, the Council is authorised to exchange information on the on demand media service provider with regulatory bodies of other Member States of the European Union, if the activities from paragraph 1 of this Article refer to other Member States of the European Union as well.</p> <p><i>Article 70</i></p> <p>(1) The Council shall:</p> <ul style="list-style-type: none"> - cooperate with regulatory bodies of other states and/or European Commission in the exchange of information for implementation of this Act, especially provisions of Article 6, Article 19 paragraph 3, Article 74 paragraph 6, Article 78 and Article 80 paragraph 3 of this Act, <p><i>Article 74</i></p> <p>(6) Before making a decision on the most advantageous tenderer, the Council is authorised to exchange information with the regulatory bodies of other Members States of the European Union on the most advantageous tenderer, if the activity of providing television and radio media service will apply to other Members States of the European Union.</p> <p><i>Article 80</i></p> <p>(3) Before deciding on issuing the licence, the Council is authorised to exchange information on the media service provider with regulatory bodies of other Member States of the European Union, if the transmission of programmes from paragraph 1 of this Article refers to other Member States of the European Union as well.</p>

REPUBLIC OF CROATIA
MINISTRY OF CULTURE

DRAFT

PROPOSAL OF THE ELECTRONIC MEDIA ACT

Zagreb, May 2009

DRAFT PROPOSAL OF THE ELECTRONIC MEDIA ACT

I CONSTITUTIONAL BASIS FOR PASSING THE ACT

The Constitutional basis for passing the Act is contained in the provisions of Article 2, paragraph 4 and Article 38 of the Constitution of the Republic of Croatia.

II STATUS EVALUATION, BASIC ISSUES TO BE REGULATED BY THE ACT AND CONSEQUENCES ENSUING FROM THE ADOPTION OF THE ACT

1 Status Evaluation

In addition to Croatian Radio Television, there are 24 television and 155 radio concessionaries that are active in the Republic of Croatia today, while the number of those publishing electronic publications has not been established. The operation of the mentioned electronic media is regulated by the provisions of the Electronic Media Act, the Media Act, Act on Confirming the European Convention on Trans-frontier Television while the operation of Croatian Radio Television is regulated by a special act.

The Electronic Media Act ("Official Gazette", nos. 122/03, 79/07 and 32/08) regulates the performance of radio and television activities, publication of electronic publications and particularly, the protection of pluralism and diversity of the media, composition and competence of the regulatory body, namely, the Electronic Media Council to which the Agency for Electronic Media has been added as an expert service.

The performance of television activities in the trans-frontier context is regulated by the Law on Confirming the European Convention on Trans-frontier

Television and Protocol Amending the European Convention on Trans-frontier Television (Official Gazette, International Agreements 11/01).

The adoption of the new Electronic Media Act is required given that the Audiovisual Media Services Directive accepted by the European Parliament and Council on 11 November 2007 (Directive 2007/65/EC amending Directive 89/552/EEC on Trans-frontier Television) regulates, in addition to audiovisual media services of television or television programmes as linear audiovisual media services, on-demand audiovisual services as non-linear audiovisual media services. Apart from that, the new Directive also regulates audiovisual commercial communications, product placement, audiovisual programmes, editorial responsibility, sponsorship, etc. Television broadcasting includes in particular analogous and digital television, direct transmission, transmission through the internet and near video on-demand, while for example, on-demand video represents an on-demand audiovisual media service.

The existing Electronic Media Act does not regulate a number of new audio and audiovisual media services that have resulted from the accelerated development of technology and digitalization in the audiovisual field requiring the regulation of these services by a new law that would be in compliance with the new Directive on Audiovisual Services.

It is also necessary to adopt through this new Act the provisions of Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access and partly the provisions of Directive 2006/114/EC on Misleading and Comparative Advertising.

2 Basic Issues to the Regulated by the Act

The Proposal of the Electronic Media Act implies the adoption of the provisions of the Audiovisual Media Services Directive, Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access and in part the provisions of Directive 206/114/EC on misleading and comparative advertising whereby each regulates from its own perspective the field of audiovisual media services.

Bearing in mind the need of adopting regulations that will be in line with the modern development of technology, the principle of media freedom and need of promoting public interests in the performance of the activity of providing audiovisual media services, the Draft Proposal of the Electronic Media Act regulates:

- specific terms used in the Act, particularly those taken from the Audiovisual Media Services Directive such as: audiovisual media services, audiovisual programme, editorial responsibility, media service provider, television broadcaster, television media service or television broadcast (namely, linear audiovisual media service), on-demand audiovisual media service (namely, non-linear audiovisual media service), audiovisual commercial communication, product placement and other terms;

- general principles linked to the performance of the activity of providing audio and audiovisual media services and manner of promoting and protecting the interests of the Republic of Croatia. In this way the Republic of Croatia encourages the media services providers to broadcast programmes geared at achieving the goals and values that are relevant to informing the public and citizens of the Republic of Croatia, protecting the Croatian language, preserving national and cultural identity, protecting children and youth, persons with special needs, promoting cultural creativity, the development of education, science, art and sports, protecting nature, the environment and human health as well as promoting media literacy;

- issues that relate to all audio and audiovisual media services, namely, the establishment of information that must be accessible to users regarding the providers of audiovisual media services, the prohibition of the use of hate speech, provision of conditions under which the necessary information must be broadcast as well as conditions for the broadcasting of audiovisual commercial communications, sponsored audiovisual media services and programmes, as well as product placement;

- conditions under which on-demand audio and audiovisual services can be performed. An on-demand audiovisual media service (namely, non-linear audiovisual media services) is an audiovisual media service supplied by the provider of the media service for watching the programme at a specific time chosen by the user at his discretion in accordance with the programme catalogue selected by the media service provider. An example of such a service is an on-demand video. These services may be performed in line with the provisions on the protection of minors and promotion of European works. An on-demand audio media services is an on-demand radio media service supplied by the media service provider for listening to a programme at a specific time chosen by the user at his discretion in accordance with the programme catalogue selected by the media service provider;

- conditions for performing the activity of providing television and radio media services, including: technical, spatial, financial and personnel and particularly, programme conditions, such as the programme basis of general and specialized television or radio programme channel as well as other programme principles and obligations. This ensures the existence of minimum working conditions and

standards the concessionaire has to provide if he wishes to retain the concession for performing the activity. In addition, if on the basis of the concession agreement, the concessionaire takes on greater obligations than those stipulated by law he has to comply with the taken obligations. Television broadcasting includes particularly analogous and digital television, live coverage, internet broadcasting and near video on-demand;

- programme conditions for performing the activity of providing television and radio media services which stipulate in detail programmes and programme services and their categorization into specific groups as well as quantitative proportions between specific contents, the maximum scope of advertising (promotional) content and minimum scope of one's own production and Croatian music as well as other programme principles and obligations. Apart from the general programme channel, a specialized programme channel is introduced which should contain the programme scheme that determines the type of programmes of which 70% have to be programmes of the same type. Special emphasis is placed on the obligation of producing one's programme as well as on the share of Croatian music works and European audiovisual works in the programme. In this way the development and expansion of the domestic production of audiovisual works is encouraged and the standards stipulated in the Audiovisual media services Directive met, in regard to the representation of European works in the programme,

- non-profit radio and television programmes on the basis of which non-profit television and/or radio are introduced as community television and/or radio that can be established by educational institutions, student associations, school associations, citizen associations and non-governmental associations with the status of legal persons as broadcaster. This type of electronic media is ever more broadly represented in the EU member states and is geared at meeting the information, educational, scientific, professional, artistic, cultural and other public needs;

- protected services that represent television and radio media services provided for a fee and on the basis of conditional access, or the provision of conditional access to the mentioned media services as such. These are coded services, pay TV, etc.

- conditions under which legal and natural persons may publish electronic publications, editorially formed internet sites and/or portals that contain electronic equivalents to printed press and/or information from the media in a manner that makes them accessible to the public regardless of their scope. These provisions of the Act are particularly intended to contribute to the greater responsibility for the published content in the sense of protecting children and youth from content that is inappropriate for them and from hate speech;

- the protection of pluralism and diversity of electronic media which includes issues of the public quality and transparency of ownership, limitation of ownership in order to prevent the creation of prohibited concentrations in the field of electronic media as well as the protection of concessionaire competitiveness. The Act regulates in detail the status of the Fund for promoting pluralism and diversity of electronic media whose main task is to promote production and broadcasting of programmes of television and/or radio broadcasters at the local and regional levels that are of public interest as well as to promote programmes of non-profit television and/or radio broadcasters;

- the status, composition, manner of selecting and competence of the regulatory body, the Electronic Media Council and the competence of the Electronic Media Agency as a professional service of the Council. The Electronic Media Council is competent for all the media service providers, it grants concessions to television and/or radio broadcasters, issues licences to audio and/or audiovisual on-demand media services and satellite, internet and cable transmissions of audiovisual and/or radio programmes. The Council has the special task of ensuring the implementation of programme principles and responsibilities stipulated in the Act. The Council is authorized to penalize every breach of the provisions of the Act, including the temporary or permanent suspension of the concession, suspension of the licence and prohibition of performing electronic publications. In cases of non-compliance with programme principles and responsibilities in performing the activity of providing television and/or radio services, the Council is authorized to limit the freedom of the transmission and broadcasting of programmes from other states in accordance with European regulations. This limitation of transmission is also envisaged for on-demand audiovisual media services in accordance with the audiovisual media services Directive.

In addition to the mentioned basic issues the Proposal of the Act also stipulates fines for violations in cases of non-compliance with the provisions of the act as well as transitional and final provisions which specifically stipulate a transitional period in which the concessionaires and other media service providers are obliged to coordinate the performance of their activity and publishing of electronic publications with the conditions and standards stipulated in the Act.

3 Consequences Ensuing from the Adoption of the Act

With the adoption of the Act the performance of the activity of providing audio and/or audiovisual media services will be brought into line with the Audiovisual Media Services Directive (Directive 2007/65/EC Amending the Directive 89/552/EEC on Trans-frontier Television, Directive 98/84/EC on the

Legal Protection of Services Based on, or consisting of, conditional access and partly the provisions and Directive 206/114/EC on misleading and comparative advertising which each from its perspective regulate the field of audiovisual media services. In addition it regulates, for media service providers, along with the existing television and radio media services the possibility of providing new services, such as on-demand audiovisual media services and the use of all available distributions platforms, (terrestrial, cable and internet) in accordance with the granted concession, namely, licence.

III EVALUATION OF THE REQUIRED RESOURCES FOR IMPLEMENTING THE ACT

The implementation of this Act does not require the provision of additional financial resources in the state budget of the Republic of Croatia

IV TEXT OF THE FINAL PROPOSAL OF THE ACT WITH EXPLANATIONS

1.1. ELECTRONIC MEDIA ACT

I GENERAL PROVISIONS

Article 1

The present Act regulates the rights, obligations and responsibilities of legal and natural persons that provide audio and audiovisual media services and services of electronic publications by electronic communication networks, and the interest of the Republic of Croatia in the field of electronic media.

Article 2

(1) For the purposes of this Act particular terms have the following meaning:

Electronic media: audiovisual programmes, radio programmes and electronic publications.

Electronic publications: edited websites and/or portals containing electronic versions of printed press and/or media information thus being available to general public regardless of their volume.

Audiovisual media service: a service as defined by Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States, which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of the provisions of Electronic Communications Act. Such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service and/or audiovisual commercial communication as defined in this Act.

Audiovisual programme: set of moving images with or without sound constituting an individual item within a schedule or a catalogue of programmes established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama.

General television or radio programme channel: channel of varied contents which has the programme basis containing mainly information, education, cultural and entertainment programmes pursuant to Article 23 paragraph 1 and 2 of this Act.

Specialised television or radio programme channel: channel which has the programme basis containing a programme scheme more than 70% of which are the programmes of the same kind pursuant to Article 23 paragraph 3 of this Act.

Editorial responsibility: the exercise of effective control both over the selection of programmes and over their organisation either in a chronological programme schedule, in case of television or radio broadcasts, or in a catalogue of programmes, in case of on-demand audio and audiovisual media services. Editorial responsibility does not necessarily imply any legal liability for the content or the services provided, unless defined otherwise under this Act or a separate act.

Media service provider: the natural or legal person who has editorial responsibility for the choice of the audio and audiovisual content of the audio and audiovisual media service and determines the manner in which they are organised.

Television broadcaster: a media service provider of television broadcasts.

Radio broadcaster: a media service provider of radio broadcasts.

Television media service or television broadcast (i.e. a linear audiovisual media service): an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

On-demand audiovisual media service (i.e. a non-linear audiovisual media service): an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

Near video on demand audiovisual media service: an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a programme schedule.

Audiovisual commercial communication: images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.

Advertising: any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertakings or natural persons in connection with craft, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

Surreptitious audiovisual commercial communication: the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a service provider in programmes, when such representation is intended by the media service provider to use such representation as advertising that might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

Misleading advertising: any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor.

Comparative advertising: any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

Sponsorship: any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

Teleshopping: direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.

Product placement: any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration.

Radio media service: the initial transmission and/or publication of the radio programmes intended for reception by the public, by wire or over the air, including that by satellite, in encoded or unencoded form. The term includes the forms of mutual mediation or exchange of radio programmes between radio media service providers with a view to their being relayed to the public.

Radio on demand media service: radio media service provided by a media service provider for the listening of programmes at the moment chosen by the

user at his individual request on the basis of a catalogue of programmes selected by the media service provider.

Radio programme: edited audio and voice information of all kinds (news, opinions, announcements, messages and other information) and authors' works which are broadcast through radio for the purpose of providing information and satisfying cultural, educational and other needs, and public communication.

Protected service: television media service and radio media service, where provided against remuneration and on the basis of conditional access, or the provision of conditional access to the mentioned services considered as a service in its own right.

Conditional access: any technical measure and/or arrangement whereby access to the protected services in an intelligible form is made conditional upon prior individual authorisation by service provider.

Conditional access device: any equipment, software and/or arrangement designed or adapted to give access to a protected service in an intelligible form.

Illicit device: any equipment, software and/or arrangement designed or adapted to give access to a protected service in an intelligible form without the previous authorisation by service provider.

The competent ministry: the ministry performing expert tasks in the area of electronic media.

Minister: the minister of the competent ministry.

(2) The terms: author, programme services, cable television, radio, digital radio, radio frequency, concessionaire, television, digital television, television transmission, multiplex, as well as other terms from the field of electronic communications, shall have the meaning stipulated by acts that regulate copyrights and related rights, concessions and electronic communications.

(3) The right of a correction of broadcast information or a reply to broadcast information shall be exercised in accordance with the Media Act.

(4) The European Convention on Transfrontier Television and the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply to the relations governed by this Act.

(5) The provisions of this Act shall apply to the Croatian Radio-Television as well, save if otherwise stipulated by a special act.

II GENERAL PRINCIPLES

Article 3

(1) Freedom of expression and full programme freedom of electronic media shall be guaranteed.

(2) No provision of this Act may be construed in such a manner that it provides the right to censorship or limitation of the freedom of speech and expression of thought.

Article 4

(1) Media service providers are obliged to broadcast programme in the Croatian language or with an adequate translation into the Croatian language, in accordance with the provisions of this Act.

(2) Media service providers may also promote works in the dialects of the Croatian language, which is considered as fulfilment of the obligations referred to in paragraph 1 of this Article.

(3) The use of the Croatian language is not obligatory:

- if films and other audio and audiovisual works are broadcast in the original;
- if music works with lyrics are broadcast which are either partially or fully in a foreign language,
- if broadcasts are either partially or fully intended for the learning of foreign language and script.

(4) The use of the Croatian language is not obligatory in the broadcasts intended for members of national minorities.

(5) By way of derogation from the provisions of paragraph 1 of this Article, media service providers may broadcast informative programme and service information for the needs of foreign guests in the languages according to the representation of foreign guests in the area of its concession.

Article 5

The activity of broadcasting audio and/or audiovisual media services as well as electronic publications under this Act and special acts shall be performed by media service providers registered in the court register or other register prescribed in the Republic of Croatia, and if, along with the general conditions, its

head office and editorial office are in the Republic of Croatia.

Article 6

(1) Media service providers under the jurisdiction of the Republic of Croatia are those established in the Republic of Croatia or those deemed to be under the jurisdiction of the Republic of Croatia under paragraph 7 of this Article.

(2) Media service provider shall be deemed to be established in the Republic of Croatia when its head office is located in the Republic of Croatia and the editorial decisions about the audiovisual media services are taken in the Republic of Croatia.

(3) Media service provider shall be deemed to be established in the Republic of Croatia when its head office is located in the Republic of Croatia, but editorial decisions on the audiovisual media services are taken in another Member State of the European Union, provided that a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in the Republic of Croatia.

(4) Where a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in the Republic of Croatia and in another Member State of the European Union, the media service provider shall be deemed to be established in the Republic of Croatia if its head office is located there.

(5) Where a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in neither of the Member States referred to in the previous paragraphs of this Article, the media service provider shall be deemed to be established in the Republic of Croatia if this is where it first began activity in accordance with the Croatian legislation, provided that it maintains a stable and effective link with the Croatian economy.

(6) Where a media service provider has its head office in the Republic of Croatia, but decisions on audiovisual media services are taken in a third country, or vice-versa, it shall be deemed to be established in the Republic of Croatia, provided that a significant part of the workforce involved in the pursuit of the activities concerning audiovisual media services operates in the Republic of Croatia.

(7) Media service providers to whom the provisions of paragraphs 1 through 6 of this Article are not applicable shall be deemed to be under the jurisdiction of the Republic of Croatia in the following cases:

- they use a satellite up-link situated in the Republic of Croatia;
- they do not use a satellite up-link situated in the Republic of Croatia but they use satellite capacity appertaining to the Republic of Croatia.

(8) If the question as to whether a media service provider falls under the jurisdiction of the Republic of Croatia or another Member State of the European Union cannot be determined in accordance with paragraphs 2 to 7 of this Article,

the competent Member State shall be that in which the media service provider is established within the meaning of Articles 48 to 50 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and its Member States.

Article 7

(1) Media service provider shall, in compliance with this Act, independently form the programme basis of the media and shall be liable for the programme providing.

(2) The activity of media service provider may include the production of programmes.

Article 8

The Republic of Croatia shall ensure the freedom of transmission and reception of audio and audiovisual media services from other countries in its area, and it may, in particular cases, restrict the freedom of broadcasting of those services only in compliance with international agreements and this Act.

Article 9

The activity of providing audiovisual and radio programmes shall be in the interest of the Republic of Croatia when programmes relate to:

- exercising the rights to public information and to keeping all citizens of the Republic of Croatia and members of Croatian national minorities and communities abroad informed and to exercising the rights of national minorities within the Republic of Croatia;
- exercising human rights and political rights of citizens and to the improvement of a law-based and social state and civil society;
- children and youth;
- persons with special needs;
- the preservation of the Croatian national and cultural identity;
- the promotion of cultural and artistic creativity;
- the culture of public dialogue;
- the development of education, science, art and sport;

- the protection of nature, environment and human health;
- promotion of media literacy.

Article 10

(1) Pursuant to this Act, particular issues may be regulated by self-regulatory and/or co-regulatory regimes for the purpose of standardizing their application in practice. These regimes shall be such that they are broadly accepted by the main stakeholders concerned in the Republic of Croatia, authorised by the Electronic Media Council, and they must provide for effective enforcement of the established provisions.

(2) The Electronic Media Council shall publish on its website the acts which are accepted pursuant to paragraph 1 of this Article.

III AUDIO AND AUDIOVISUAL MEDIA SERVICES

I General Provisions

Article 11

Audiovisual media service providers shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

- the name of the media service provider;
- the geographical address at which the media service provider is established;
- the details of the media service provider, including its electronic mail address or website, which allow rapid, direct and efficient contact with the provider, and
- the competent regulatory and/or supervisory bodies.

Article 12

(1) Audio and/or audiovisual services jeopardizing the constitutional order and national security shall not be allowed.

(2) In audio and/or audiovisual services it shall be prohibited to promote, favour the promotion of and spreading of hatred or discrimination based on race, sex, religion or nationality, anti-Semitism and xenophobia, ideas of the fascist, nationalist, communist and other totalitarian regimes or other forms of hatred based on intolerance of individuals or groups, due to their origin, political beliefs, opinions, health condition or other preferences or characteristics.

(3) It shall not be allowed to interview, record and photograph a child up to 14 years of age without the presence and consent of the parents or other adults responsible for the child, and in any case when the wellbeing of the child is endangered.

(4) It shall not be allowed to reimburse to children up to 18 years of age as well as to their parents or guardians, for the received information.

(5) It shall not be allowed to publish information revealing the identity of a child up to 18 years of age involved in cases of any type of violence, regardless of the child's status as witness, victim or perpetrator, as well as to introduce details of a child's family affairs and private life.

Article 13

Audiovisual media service providers shall not transmit cinematographic works outside periods agreed with the rights holders.

Article 14

The Electronic Media Council shall encourage audiovisual media service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability.

Article 15

(1) In case of war situations or immediate danger to the independence and integrity of the Republic of Croatia, as well as in case of large natural disasters, technical and technological and ecology disasters and outbreaks, the media service provider is obliged to, upon the request of the competent state body, broadcast the announcements free of charge, as well as the official statements by the competent state bodies when there is a danger to life and health of people, safety of the country and public order and peace.

(2) The request referred to in paragraph 1 of this Article is submitted in writing and needs to contain data which prove its authenticity and legal foundations.

Article 16

(1) Audiovisual commercial communications shall be readily recognisable as such.

(2) Surreptitious audiovisual commercial communications shall be prohibited.

(3) Audiovisual commercial communications shall not use subliminal techniques.

(4) Audiovisual commercial communications shall not:

- prejudice respect for human dignity,
- include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation,
- encourage behaviour prejudicial to health or safety,
- encourage behaviour grossly prejudicial to the protection of the environment.

(5) All forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited.

(6) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.

(7) Audiovisual commercial communication for medicinal products and medical treatment available only on prescription shall be prohibited.

(8) Audiovisual commercial communications shall not:

- cause physical or moral detriment to minors,
- directly encourage minors to buy or hire a product or service by exploiting their inexperience or credulity,
- directly encourage minors to persuade their parents or others to purchase the goods or services being advertised,
- exploit the special trust minors place in parents, teachers or other persons, or
- unreasonably show minors in dangerous situations.

(9) Pursuant to Article 10 of this Act, media service providers may develop codes of conduct regarding inappropriate audiovisual commercial communication, included in or accompanying children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in

particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

(10) The Electronic Media Council shall publish on its website the codes of conduct which are accepted pursuant to paragraph 9 of this Article.

Article 17

(1) Audiovisual media services and programmes that are sponsored shall meet the following requirements:

- their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider,
- they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services,
- viewers shall be clearly informed of the existence of a sponsorship agreement,
- sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as, for example, a reference to its product(s) or service(s) or a distinctive sign thereof in appropriate way for programmes at the beginning, during and/or the end of the programmes.

(2) Audiovisual media services or programmes shall not be sponsored by legal or natural persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

(3) The sponsorship of audiovisual media services or programmes by legal or natural persons whose activities include the manufacture or sale of medicinal products and medical treatments may promote the name or the image of the legal or natural persons, but shall not promote specific medicinal products or medical treatments available only on prescription.

(4) News and current affairs programmes shall not be sponsored.

(5) The showing of a sponsorship logo during children's programmes and religious programmes shall be prohibited.

(6) The provisions of this Article shall also be mutatis mutandis applied on the radio media services.

Article 18

(1) Product placement shall be prohibited.

(2) By way of derogation from paragraph 1 of this Article, product placement shall be admissible:

- in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, with the exception of children's programmes, or

- where there is no payment to the media services provider, but certain goods or services are provided free of charge, such as production props and prizes, with a view to their inclusion in an audiovisual programme.

(3) It is assumed that the product or services placement exists in the sense of paragraph 2 subparagraph 2 of this Article only if the goods or services involved in the audiovisual programme are of significant value. It is assumed that the goods or services of significant value are those the respective value of which exceeds the average net monthly salary in the Republic of Croatia, based on the statistical data for the previous year.

(4) Audiovisual programmes that contain product placement shall meet all of the following requirements:

- their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider,

- they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services,

- they shall not give undue prominence to the product in question,

- viewers shall be clearly informed of the existence of product placement,

- they shall be appropriately identified at the start and the end of the audiovisual programme and when a audiovisual programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

(5) By way of exception, the provisions of the paragraph 4 subparagraphs 4 and 5 of this Article are not applicable when the audiovisual programme containing product placement has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

(6) In any event audiovisual programmes shall not contain product placement of:

- tobacco products or cigarettes or product placement of natural and legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or

- specific medicinal products or medical treatments available only on prescription.

(7) The provisions of this Article shall apply only to audiovisual programmes produced after 19 December 2009.

Alternative for paragraph 3:

“(3) It is assumed that the product and services placement exists in the sense of paragraph 2 subparagraph 2 of this Article if the goods or services involved in the audiovisual programme are of significant value. The Electronic Media Council shall determine by an ordinance the manner of determining the significant value of the goods and services placed.

2 Audio and Audiovisual Media Services On Demand

Article 19

(1) The activity of providing audio and/or audiovisual media services on demand can be carried out by legal or natural person which fulfils conditions set out in Articles 5 and 6 of this Act and has the Electronic Media Council’s licence for providing these activities (hereinafter: on demand media service provider).

(2) The Electronic Media Council issues the licence from paragraph 1 of this Article on the basis of the request of the on demand media service provider which has fulfilled the technical conditions for the transmission of audiovisual and/or radio programme and programme basis which contains the programme orientation of the on demand media service provider (general or specialised).

(3) Before deciding on issuing the licence, the Council is authorised to exchange information on the on demand media service provider with regulatory bodies of other Member States of the European Union, if the activities from paragraph 1 of this Article refer to other Member States of the European Union as well.

(4) The Electronic Media Council shall decide on issuing the licence from Article 1 as soon as possible, and at the latest within 30 days from receiving the correct request.

(5) On the basis of issuing the licence from paragraph 1 of this Article, the on demand media service provider shall be registered into the Register administered by the Electronic Media Council.

(6) The Council shall ex officio take a decision on termination of permit from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:

- if the media service provider notifies the Council in writing on the cessation of the activity providing,

- if the media service provider ceases to provide the activities for a period longer than a year,
- if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and/or radio programme,
- if the media service provider was prohibited by an effective decision of the court to perform the registered activity,
- after the cessation of the legal person of a media service provider or the cessation of craft.

(7) The licence for providing the activities of audio and/or audiovisual media services on demand can be transferred to another person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the licence, with the prior consent of the Council.

(8) The list of the media service providers from paragraph 1 of this Article is published on the website of the Council.

(9) The content and manner of management of the Register from paragraph 5 of this Article is regulated by the Electronic Media Council's ordinance from Article 75 of this Act.

Article 20

(1) The on-demand audiovisual media services which might seriously impair the physical, mental or moral development of minors are only available in such a way that ensures that minors will not in normal circumstances hear or see such on-demand audiovisual media services.

(2) The Electronic Media Council shall prescribe by the ordinance referred to in Article 26 paragraph 4 of this Act the appropriate measures for the conduct of the media service providers in the event referred to in paragraph 1 of this Article.

Article 21

(1) The on-demand audiovisual media service providers shall use their best efforts in order that their on-demand audiovisual media services promote, where practicable and by appropriate means, the production of and access to European works.

(2) Promotion of the works referred to in paragraph 1 of this Article could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of

European works in the catalogue of programmes offered by the on-demand audiovisual media service.

(3) The Electronic Media Council is authorised to demand the data about the implementation of the paragraphs 1 and 2 of this Article from the on demand audiovisual media services provider.

(4) The Electronic Media Council shall report to the European Commission no later than 19 December 2011 and every four years thereafter on the implementation of the paragraphs 1 and 2 of this Article.

3 Television and Radio Media Services

Conditions for Providing the Television and Radio Media Service

Article 22

1) The activity of providing the television and/or radio media services may be performed by legal and natural person (hereinafter: television and/or radio broadcaster) entered in the appropriate register in the Republic of Croatia in accordance with this Act and separate regulation, and which has obtained a concession and concluded a concession contract in accordance with this Act and the Concessions Act.

(2) In order to perform the activities referred to in paragraph 1 of this Article, in addition to the general and programme conditions set out in this Act, a television and/or radio broadcaster shall meet special technical, spatial, financial and personnel conditions.

(3) Conditions from paragraph 2 of this Article and the procedure of establishing the conditions by an ordinance shall be stipulated by the Electronic Media Council, with the previous opinion of the Croatian Post and Electronic Communications Agency regarding technical and spatial conditions.

Article 23

(1) The programme basis of the general television or radio programme channel shall contain a programme scheme determining:

- the type of audiovisual or radio programmes or classification thereof into separate groups,
- the foreseen quantitative ratio among individual content groups,
- the foreseen maximum scope of advertising contents,
- the foreseen scope of its own audio and audiovisual works and the share of the Croatian audio and audiovisual works,
- time of broadcast.

(2) The television broadcaster shall determine, on the basis of programme basis set out in paragraph 1 of this Article, the proportion of European works referred to in Article 42 and 44 of this Act.

(3) The programme basis of the specialised television or radio programme channel shall contain a programme scheme determining:

- the type of audiovisual or radio programmes of which over 70% shall be of the same kind,
- the foreseen quantitative ratio among individual content groups,
- the foreseen maximum scope of advertising contents,
- the proportion of European works referred to in Article 42 and 44 of this Act and other works for the broadcasters of specialised television programme,
- time of broadcast.

(4) In order to change or make an addition to the programme basis referred to in paragraphs 1 and 3 of this Article, the television and/ or radio broadcaster is obliged to obtain the prior opinion of the editorial office comprising the editor-in-chief and editors of individual audiovisual or radio programmes. The opinion of the editorial office is established by a majority vote.

(5) In order to change or make an addition to the programme basis relating to more than 10% of its content from paragraphs 1 and 3 of this Article pursuant to which the concession was awarded, the television and/or radio broadcaster shall obtain the prior consent of the Electronic Media Council. Along with the request for the prior consent, the broadcaster shall enclose the opinion referred to in paragraph 4 of this Article.

(6) The programme basis forms part of the employment contract between the television and/ or radio broadcaster and its editor or journalist. Special rights of

editors and journalists resulting from changes or additions to the programme basis shall be regulated by a contract.

(7) The programme basis of the television and/ or radio broadcaster pursuant to which the concession was awarded and its modifications are public and are published on the website of the Electronic Media Council.

Article 24

The audiovisual or radio programmes shall in particular:

- broadcast truthful information, respect human dignity and human rights and fundamental freedoms and contribute to the respect of other people's opinions and beliefs,
- contribute to the free forming of opinions, versatile and objective informing of listeners and viewers, as well as to their education and entertainment,
- promote Croatian cultural heritage and encourage listeners and viewers to participate in the cultural life,
- promote international understanding and the public's sense of justice, defend democratic freedoms, serve to the environment protection, fight for the equality of women and men,
- promote understanding for members of national minorities.

Article 25

(1) The audiovisual or radio programmes shall meet the following conditions:

- events shall be presented realistically and different approaches and opinions shall be appropriately represented,
- news shall truthfully and correctly present facts and events, they shall be impartial and professionally correct and they shall encourage free forming of opinions,
- opinions and comments shall be easily recognisable as an opinion or a comment, and it shall be obvious whose opinion or comment is being published.

(2) In audiovisual or radio programme, the television and/or radio broadcasters shall be obliged to promote impartiality, respecting differences in opinions on political or economic issues or with regard to current public policies.

(3) In the production and broadcasting of audiovisual or radio programmes, the television and/or radio broadcaster shall respect copyrights and related rights, for which reason it shall be obliged to obtain the approval of the association authorised for the collective exercise of rights.

Article 26

(1) In audiovisual or radio programmes, it shall be prohibited:

- to publish footage which offends human dignity,
- to publish footage which especially contains immoral and pornographic content,
- in any manner to encourage, promote and glorify violence and crime and encourage citizens, especially children and youth, to use tobacco products, alcohol or drugs.

(2) Audiovisual or radio programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence shall be prohibited.

(3) The broadcasting of audiovisual or radio programmes which are likely to impair the physical, mental or moral development of minors shall be prohibited, except where it is ensured by the television or radio broadcaster, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. When such programmes are broadcast in unencoded form, the broadcaster shall ensure that they are preceded by an acoustic warning or are identified by the presence of visual symbols throughout their duration.

(4) The Electronic Media Council shall prescribe by ordinance the conduct of the broadcaster in the event referred to in paragraph 2 and 3 of this Article.

Article 27

(1) The television and/or radio broadcaster shall keep a record of the published audiovisual or radio programme and shall keep the taped material of the entire broadcast programme for at least 90 days from the day of broadcast, and in the event of complaint or dispute, it shall be obliged to keep the taped material of the disputable content until the dispute ends.

(2) The television and/or radio broadcaster referred to in paragraph 1 of this Article shall deliver without any delay, upon the request of the Electronic Media Council, the recording of the broadcast audiovisual or radio programme.

Article 28

State bodies and their representatives, as well as labour unions and various interest groups shall not exert influence over a television and/or radio broadcaster with regard to the creation of audiovisual or radio programme.

Advertising

Article 29

(1) Advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.

(2) Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

(3) Comparative advertising shall be permissible only under the conditions prescribed by the Impermissible Advertising Act.

Article 30

(1) In advertising and teleshopping aimed at minors or using minors, anything that could jeopardise their interests shall be avoided, their particular sensitivity and susceptibility shall be taken into consideration, and moral or physical detriment to minors shall not be caused.

(2) Advertising of political parties, coalitions and independent members of representative bodies shall be prohibited, save during the time of electoral promotion in accordance with a separate act.

Article 31

(1) Advertising and teleshopping for weapons and ammunition, pyrotechnical means and drugs, tobacco and tobacco products shall be prohibited.

(2) Advertising for medicines and medicinal products shall comply with the conditions stipulated in the Medicinal Products Act, and the subordinate legislation passed by virtue thereof.

(3) Teleshopping for medicines, medicinal products, and medical treatment shall be prohibited.

(4) Advertising and teleshopping for alcohol and alcoholic beverages shall be prohibited, unless the Food Act, and the subordinate legislation passed by virtue thereof, provide otherwise.

(5) Advertising and teleshopping for alcohol and alcoholic beverages referred to in paragraph 4 of this Article shall comply with the following criteria:

- it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages,
- it shall not link the consumption of alcohol to enhanced physical performance or to driving,
- it shall not create the impression that the consumption of alcohol contributes towards social or sexual success,
- it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts,
- it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light,
- it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

(6) Misleading advertising and teleshopping shall be prohibited. The ordering party and the television and/or radio broadcaster shall be held accountable for this type of advertising and teleshopping.

Article 32

(1) The duration of advertising spots and teleshopping spots within a given clock hour, with the exception of television channels exclusively devoted to advertising and teleshopping as well as of television channels exclusively devoted to self-promotion referred to in Article 34 paragraph 2 of this Act, shall not exceed 12 minutes.

(2) Provision of paragraph 1 of this Article shall not apply to announcements made by the television broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.

(3) Advertising and teleshopping in audiovisual programmes shall be inserted between programmes. Advertising spots and teleshopping may also be inserted during audiovisual programmes but only in such a way that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme and of the rights of the right holders are not prejudiced.

(4) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least thirty minutes.

(5) No advertising or teleshopping shall be inserted during the transmission of religious services.

(6) Children's programmes, when their duration is less than 30 minutes, shall not be interrupted by advertising spots and/or by teleshopping spots. The children's programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.

(8) The provisions of this Article shall not apply to advertising in radio programmes.

Article 33

(1) The bodies of state administration as well as the legal persons predominantly owned by the Republic of Croatia shall reserve 15% of their annual funds, which are earmarked for the promotion of their services or activities, for advertising in the audiovisual or radio programmes of regional and/or local television or radio broadcasters.

(2) By 31 March of every calendar year, the bodies of state administration and the legal persons predominantly owned by the Republic of Croatia shall notify the Electronic Media Council of advertising performed in accordance with paragraph 1 of this Article.

Article 34

(1) Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.

(2) The provisions of this Act shall apply mutatis mutandis to television programme channels exclusively devoted to advertising and teleshopping as well as to television programme channels exclusively devoted to self-promotion, with the exception of the provisions of Article 32 paragraphs 3, 4 and 6 and Articles 42 and 44 of this Act.

Sponsorship

Article 35

Political parties and coalitions shall not be sponsors of the audiovisual or radio programme except during the time of electoral promotion in compliance with a special act.

Time of Broadcast

Article 36

(1) All audiovisual or radio programmes broadcast in radio or television broadcasts on daily basis from 00:00 to 24:00 hours shall enter the daily time of broadcast, unless provided otherwise in this Act.

(2) The annual time of broadcast under this Act shall include all audiovisual or radio programme broadcast from 1 January to 31 December of a particular year, other than programme contents exempt under this Act.

(3) Radio broadcaster at the national and regional level and the level of counties and the City of Zagreb shall broadcast at least 12 hours of radio programme per day, and radio broadcasters at a level lower than the county level shall broadcast at least 6 hours of radio programme per day, unless the concession contract provides for the longer time of broadcast of the programmes.

(4) Television broadcasters at the national and regional level and the level of counties and the City of Zagreb shall broadcast at least 6 hours of audiovisual programme per day, and television broadcasters at a level lower than the county level shall broadcast at least 3 hours of audiovisual programme per day, unless the concession contract provides for the longer time of broadcast of the programmes.

(5) Television and/or radio broadcaster on regional level shall reserve at least 10% of their total weekly audiovisual and/or radio programme for broadcasting news and announcements in the concession area, unless the concession contract provides for the longer time of broadcast of the news and announcements.

(6) Television and/or radio broadcaster on local level shall reserve at least 10% of their total weekly audiovisual and/or radio programme for broadcasting local news and announcements in the concession area, unless the concession contract provides for the longer time of broadcast of the local news and announcements.

(7) Television and/or broadcaster on state and regional level shall broadcast current affairs programme in the duration of at least 30 minutes per day, where at least one current affairs show must last at least 20 minutes, unless the concession contract provides for the longer time of broadcast of the programmes or current affairs show.

(8) At the time of pre-electoral campaigns, the television and/or radio broadcaster shall ensure that all political parties have an opportunity to promote themselves under equal conditions, in accordance with electoral regulations and instructions provided by the competent body in charge of supervising or holding the elections.

(9) The provisions of paragraphs 5, 6 and 7 of this Article shall not apply to the broadcaster of the specialised television and/or radio programme channel.

Private Production

Article 37

(1) News and current affairs, cultural and artistic, music, sport and other shows and other originally produced audiovisual and/or radio programmes the producer of which is the television and/or radio broadcaster or which were produced upon its order and for its account, shall be considered a private production.

(2) If several television and/or radio broadcasters had an input in the production of a audiovisual and/or radio programme, a private production for each of them shall be considered a part proportional to the input.

(3) Opening night and first re-runs of Croatian audiovisual works shall be considered a private production.

(4) The broadcast of Croatian music shall also be considered private production of a radio programme, in compliance with provisions of Article 38 of this Act.

(5) Advertisements, including radio and television sale and paid information, shall not be considered audiovisual and/or radio programme made in a private production.

(6) The Electronic Media Council may, by an ordinance, stipulate more detailed measures for determining audiovisual and/or radio programmes considered to be a private production.

Article 38

(1) The portion of private production shall amount to at least 20% of the daily time for broadcast of each audiovisual programme of a television broadcaster, out of which at least 50% shall be between 16 and 22 hours, save if otherwise stipulated under this Act .

(2) The portion of private production shall amount to at least 30% of the daily time for broadcast of each radio programme of a radio broadcaster, save if stipulated otherwise under this Act

(3) The re-run of a radio or television show shall be clearly marked during the entire duration of the show. Only the first re-run of a show may be calculated into the portion referred to in paragraphs 1 and 2 of this Article

(4) The Electronic Media Council shall stipulate in the ordinance referred to in Article 26 paragraph 4 of this Act the form of identification of the re-run shows referred to in paragraph 3 of this Article.

(5) The provisions of this Article shall not apply to the broadcaster of the specialised television and/or radio programme channel.

Article 39

(1) Croatian music shall comprise at least 20% of the daily broadcast of music programme anticipated by the programme scheme of the radio programme.

(2) Not more than 20% of the daily broadcast in which Croatian music is performed may be calculated into the portion referred to in Article 38, paragraph 2 of this Act.

(3) The provisions of this Article shall not apply to the broadcaster of the

specialised television and/or radio programme channel.

Croatian Audiovisual Works

Article 40

(1) Croatian audiovisual works according to this Act shall be the works originally produced in the Croatian language or works intended for national minorities in their languages as well as works of Croatian cultural heritage.

(2) Audiovisual works referred to in paragraph 1 of this Article shall be only the works which are expressed with pictures which in consecutive order create an impression of motion expressed as individual intellectual creation, such as films and dramas, cultural and artistic and entertaining series, documentary, educational and other audiovisual works.

(3) The Electronic Media Council shall, by an ordinance, stipulate more detailed measures for determining programmes which are considered to be Croatian audiovisual works.

European Works

Article 41

(1) Within the meaning of this Act, European works means the following:

- works originating in Member States of the European Union,
- works originating in European states party to the European Convention on Transfrontier Television and fulfilling the conditions of paragraph 3 of this Article,
- works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.

(2) Application of the provisions of paragraph 1, subparagraphs 2 and 3 of this Article shall be conditional only on works originating in Member States of the European Union not being the subject of discriminatory measures in the countries concerned.

(3) The works referred to in paragraph 1, subparagraphs 1 and 2 of this Article are works mainly made with authors and workers residing in states referred to in paragraph 1, subparagraphs 1 and 2 of this Article, provided that they comply with one of the following conditions:

- they are made by producers established in one or more of the mentioned states, or
- production of an individual work is controlled by one or more producers established in one or more of the mentioned states, or
- the contribution of co-producers of the mentioned states to the total co-production costs is preponderant and the coproduction is not controlled by one or more producers established outside the mentioned states.

(4) Works that are not considered European works within the meaning of paragraph 1 of this Article, but that are produced within the framework of bilateral co-production treaties concluded between Member States of the European Union and third countries shall be deemed to be European works, provided that the co-producers from the European Union supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States of the European Union.

Article 42

(1) Television broadcaster shall use its best efforts to reserve for European works a majority proportion of their annual transmission time.

(2) Television broadcaster who cannot attain the proportion of European works referred to in paragraph 1 of this Article shall progressively increase the proportion of such works every year in relation to the past year in accordance with the criteria and the method laid down in the ordinance which is adopted by the Electronic Media Council, taking into account the television broadcaster's informational, educational, cultural and entertainment responsibilities to its viewers, where the minimum initial proportion is 20%.

(3) The annual transmission time referred to in this Article does not include the time earmarked for news, sports events, games, advertising, teletext services and teleshopping.

(4) The proportion of European audiovisual works includes audiovisual works of private production and Croatian audiovisual works.

(5) The provisions of the previous paragraphs shall not apply to television broadcaster who has a local concession and who is not affiliated with the national network.

(6) The Electronic Media Council shall report to the European Commission no later than 3 October December 2011 and every two years thereafter on the implementation of the paragraphs 1 and 2 of this Article.

Audiovisual Works of Independent Producers

Article 43

(1) An independent producer of audiovisual works (hereinafter: the independent producer) shall be a legal or natural person who meets the following conditions:

- that he/she is registered for performing the activity of production of audiovisual works and has the seat in the Republic of Croatia or in one of the European Union Member States;
- that he/she is not included into the organizational structure of the broadcaster;
- that the television broadcaster may have at the most up to 25% of the producer's share capital or managerial or voter's rights;
- that he/she does not realize more than one half of his annual production upon the order of one single television broadcaster.

(2) An independent producer shall also be a legal or natural person who is registered for performing the activity of producing audiovisual works and has his/her seat in one of the third countries, if European works comprise the major part of his/her audiovisual production in the last three years and if he/she, in addition to that, fulfils the conditions set out in paragraph 1, sub-paragraphs 2 and 3 of this Article.

(3) The independent producer may not be a legal or natural person whose average share of financial means for covering total expenses of production or co-production, in which he/she participated in the last three years, does not exceed 10%.

Article 44

(1) Television broadcaster shall use its best efforts to reserve for European works produced by independent producers at least 10% of the time in the annual audiovisual programme.

(2) Television broadcaster which cannot attain the proportion of audiovisual works produced by independent producers referred to in paragraph 1 of this Article shall progressively increase the proportion of such works every year in relation to the past year in accordance with the criteria and the method laid down in the ordinance which is adopted by the Electronic Media Council, taking into account the media service broadcaster's informational, educational, cultural and entertainment responsibilities to its viewers.

- (3) At least half of the works referred to in this Article shall be produced in the previous five years.
- (4) The annual transmission time referred to in this Article does not include the time earmarked for news, sports events, games, advertising, teletext services and teleshopping.
- (5) The provisions of the previous paragraphs shall not apply to television broadcaster which has a local concession and which is not affiliated with the national network.
- (6) The Electronic Media Council shall report to the European Commission no later than 3 October 2011 and every two years thereafter on the implementation of the paragraphs 1 to 4 of this Article.

Right to Short News Reports

Article 45

- (1) For the purpose of short news reports, any television and/or radio broadcaster established in the European Union has access under the equal conditions to events of high interest to the public which are transmitted on an exclusive basis by a television and/or radio broadcaster under the jurisdiction of the Republic of Croatia.
- (2) If a television and/or radio broadcaster established in the Republic of Croatia has acquired exclusive rights to the event of high interest to the public, another television and/or radio broadcaster established in the Republic of Croatia may seek access to the mentioned event from that television and/or radio broadcaster. All television and/or radio broadcasters have the right of access to events of high interest to the public under the equal conditions.
- (3) The Electronic Media Council shall ensure that access to the events referred to in paragraph 1 and 2 of this Article is guaranteed by allowing television and/or radio broadcaster to freely choose short extracts from the transmitting television and/or radio broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.
- (4) Television and/or radio broadcaster may, before and instead of access to the signal within the meaning of paragraph 3 of this Article, accomplish access to the events referred to in paragraph 1 and 2 of this Article for purposes of shooting short extract or using the taped material of other television and/or radio broadcaster which has exclusive rights for the event of high interest to the public.
- (5) Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.

(6) Short information under this Article means announcement which lasts one minute and half at most, and which is presented as part of an informational programme.

(7) Television and/or radio broadcaster which broadcasts the event of high interest to the public shall have the right to ask from another television and/ radio broadcaster compensation of the actual costs incurred in fulfilment of its obligation. The foreseen compensation shall not exceed the additional costs directly incurred by allowing access.

(8) The right to short news reports shall be executed in a manner which does not interrupt the course of events.

(9) The right to short news reports may be limited or excluded if its execution would severely hurt the feelings of participants in the event or jeopardize public order and security.

(10) Television and/or radio broadcaster, which used the right to short news reports shall enable the television and/or radio broadcaster which could not tape the event a single use of the tape and shall have the right to ask compensation for that, proportional to its share in the actual costs, as well as the mentioning of his name or the name of the company in the announcement.

(11) The right to short news reports may be, in compliance with Article 10 of this Act, determined concerning the access to events of high interest to the public which are not broadcast on the basis of exclusive rights.

Right of the Public to Follow Events of Major Importance for Society

Article 46

(1) Television broadcaster shall not, on an exclusive basis, broadcast events which are regarded as being of major importance for society in such a way as to deprive a substantial proportion of the public in the Republic of Croatia of the possibility of following such events by live coverage or deferred coverage on free television.

(2) The Electronic Media Council shall draw up a list of designated events referred to in paragraph 1 of this Article, national or non-national, which it considers to be of major importance for society and it shall also determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

(3) The Electronic Media Council shall immediately notify the European Commission of the list referred to in paragraph 2 of this Article and other measures taken or to be taken, which conducts procedure to verify whether such

measures are compatible with Community law and communicates them to the other Member States of the European Union. The Electronic Media Council shall also forward the notification of the list and measures to the states signatories of international treaties by which the Republic of Croatia is bound.

(4) Television broadcasters under their jurisdiction of the Republic of Croatia shall not exercise the exclusive rights purchased following the date of entering into force of this Act in such a way that a substantial proportion of the public in another Member State of the European Union or signatory state of any international treaty that imposes obligations on the Republic of Croatia is deprived of the possibility of following events of major importance for society in accordance with its national legislation, and which events are determined by that state for whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television.

(5) It is contrary to this Act if the event referred to in paragraph 1 of this Article is broadcast on the basis of received exclusive rights by a television broadcaster whose audiovisual programme can be viewed by less than 60% of the population of the Republic of Croatia or if to view that programme additional payments are required (pay TV), other than the fees laid down in the Croatian Radio Television Act.

Networking of Television and Radio Programmes

Article 47

(1) Television and/or radio broadcasters may, upon the prior consent of the Electronic Media Council, integrate into regional or national networks covering regional or wider areas, under the following conditions:

- that networked television and/or radio broadcasters, by a special legal act, appoint a responsible editor of the joint programme who will be responsible for the broadcast of audiovisual and/or radio programme in compliance with this Act, and forward the legal act on the appointment to the Electronic Media Council within 15 days prior to the beginning of broadcasting of the joint audiovisual and/or radio programme,
- that each of the networked broadcasters broadcast in the area for which they were awarded the radio concession at least two hours of private production daily in the period from 7 to 22 hours,
- that the joint private production of networked television and/or radio broadcasters is produced in the Croatian language, excluding the programme from the previous subparagraph, and that it amounts daily to at least 25% of the audiovisual and/or radio programmes broadcast via the network,

- that the networked television and/or radio broadcasters create a joint programme basis and written act on the manner of performing the programme basis, and forward both documents to the Electronic Media Council, for the acquisition of prior consent.

(2) A national network of programmes is an audiovisual or radio programme referred to in this Article which is accessible to more than 60% of the population of the Republic of Croatia. A regional network of programmes is an audiovisual or radio programme from this Article which is accessible to more than 70% of the population in the region.

(3) A regional or national network referred to in this Article, shall, in the sense of programme requirements and limitations set out in this Act, be considered a unique audiovisual or radio programme.

Non-profit Audiovisual and Radio Programmes

Article 48

(1) An audiovisual or radio programme which daily broadcasts at least 50% of its own production of news and current affairs, cultural, educational and entertaining contents, shall be considered as a non-profit radio or television programme, where at least 25% of the daily production serves for satisfying informative, educational, scientific, expert, artistic, cultural and other needs of the public.

(2) Only educational institutions, student and school associations and citizens' associations as well as other non-government organisations with legal personality, with at least three years of uninterrupted and publicly acknowledged work in the field of satisfying informative, educational, scientific, expert, artistic, cultural and other needs of the public can be non-profit television and/or radio broadcaster.

(3) The television and/ or radio broadcaster shall use the profit from activities referred to in paragraph 1 of this Article only for the improvement and development of its own activities.

(4) The salaries of employees and compensations to members of managerial and supervisory bodies of the non-profit television and/or radio broadcaster, and other compensations (travel expenses, per diem allowance, etc), may not exceed the amount stipulated or common for public institutions financed from the State Budget.

(5) The Electronic Media Council shall, in compliance with this Act, determine the status of a non-profit radio or television broadcaster when awarding or terminating concession.

(6) The non-profit television and/or radio broadcaster may broadcast promotional messages up to 3 minutes per hour.

(7)The status of a non-profit television and/or radio broadcaster referred to in paragraph 5 of this Article can't be altered within the duration of concession contract.

Article 49

(1) Educational institutions or student associations with legal personality may be a non-profit television and/or radio broadcaster, if the programmes are produced and broadcast by students and pupils primarily, and they are intended for the school and student population, and if the activity is performed as a non-profit radio or television programme.

(2) Programmes of the broadcasters referred to in paragraph 1 of this Article shall be information of all kinds and author's works whose purpose is to inform and satisfy educational, scientific, professional, artistic, cultural and other needs of students and the wider public.

(3) The status of the broadcasters referred to in paragraph 1 of this Article shall be determined by the Electronic Media Council in compliance with this Act when awarding or terminating the concession.

Article 50

The provisions of Articles 23 to 46 of this Act shall mutatis mutandis apply to the media services providers referred in to Article 80 of this Act.

IV PROTECTED SERVICES

Article 51

(1)The manufacture, production, import, distribution, sale, rent or possession for commercial purposes of illicit devices which enable free access to protected services, shall be prohibited.

(2)The installation, maintenance or replacement for commercial purposes of devices referred to in paragraph 1 of this Article, shall be prohibited.

(3) The use of commercial communications which promote illicit devices, product placement or advertising of such devices, shall be prohibited.

(4) The private possession of illicit devices which enable free access to protected services shall be prohibited.

Article 52

(1) The service provider of protected services shall be provided with court protection.

(2) The service provider may exercise legal protection and receive damage compensation from the person who violated his rights according to the regulations on damage compensation.

V PROTECTION OF PLURALISM AND DIVERSITY OF ELECTRONIC MEDIA

Publicity of Ownership

Article 53

(1) By January 31 of each calendar year, media service providers shall be obliged to forward to the Electronic Media Council the data on a legal person and its seat, i.e. name, surname and permanent residence of all legal and natural persons who have directly or indirectly become holders of stocks or a share in that legal person, along with the data on the percentage of stocks or the share they possess.

(2) The Electronic Media Council shall forward a written warning to a media service provider which fails to perform the obligation referred to in paragraph 1 of this Article with the explanation of possible sanctions for the non-fulfilment of the obligation.

(3) A media service provider shall be obliged to publish the data referred to in paragraph 1 of this Article in the Official Gazette. Data on holders of stocks or share up to 1% of the capital value are published collectively.

Linked Persons

Article 54

(1) Linked persons, pursuant to this Act, shall be the persons who are mutually linked by way of management, capital or in another manner which enables them to jointly shape the business policy, conduct business in a coordinated manner with the intention of achieving mutual objectives, or in such a manner that one person has the possibility to direct another person or influence him/her in a significant manner while deciding about the financing and business management, i.e. deciding about the programme basis of the media.

(2) Persons linked in the following manner shall be considered linked persons:

- blood relatives, such as members of the immediate family (parents, children, brothers and sisters, adopters and adoptees),
- by marriage or extramarital community,
- in-laws, as members of the immediate family of a spouse,
- when a person, or persons, holds a total business share, stocks or other rights on the basis of which they participate in the management of another person with at least 25% of the voter's rights,
- when the same person has a total business share, stocks or other rights in both persons, on the basis of which they participate in the management of each of them with at least 25% of voter's rights,
- when they earn more than 30% of income from advertising by way of marketing contracts or other contracts, through a period of three months or a longer period within a year,
- when they form linked companies pursuant to the Act on Trading Companies,
- when they are members of the management or supervisory board in a company in which they perform this duty, as well as persons who are considered to be linked with the heads of management or supervisory board of that company, in the manner determined in this paragraph.

Restriction of Concentration

Article 55

The following shall be considered as an impermissible concentration in the area of media:

- the television and/or radio broadcaster who has concession at the state level and a share exceeding 25% of the capital of another broadcaster who has the same kind of concession or a concession on the regional, county, city or municipality level, and vice versa,

- the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of another broadcaster who publishes daily newspapers printed in more than 3,000 copies, and vice versa,
- the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of a legal person who performs the activity of a newspaper agency, and vice versa,
- the television and/or radio broadcaster who has concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies,
- the television and/or radio broadcaster with a concession at the local or regional level of coverage and shares exceeding 30% of the capital of another such broadcaster with the concession at the local or regional level of coverage in the same area,
- the television and/or radio broadcaster who has a concession at the regional or local level of coverage and simultaneously publishes daily newspapers of local importance in the same or in the neighbouring area.

Article 56

It shall also be considered that impermissible concentration exists in the area of media also when, in cases referred to in Article 55 of this Act, a natural or legal person, who is the founder of the television and/or radio broadcaster, or a founder, or persons related to him/her in the sense of Article 54 of this Act, has a share in the capital of another television and/or radio broadcaster, newspapers publisher of a daily newspaper or news agency, above the determined amount of capital.

Article 57

(1) The Electronic Media Council shall not award a concession to the most advantageous tenderer who applies to a public tender for the award of concession, if it has been determined that the award of a concession would create an impermissible concentration in the sense of this Act.

(2) Each tenderer who applies to a public tender for the award of a concession shall be obliged to enclose a verified statement along with the tender indicating that impermissible concentration in the sense of this Act shall not be created by a possible award of concession.

Article 58

(1) The television and/or radio broadcaster shall report in writing on any change in the ownership structure to the Electronic Media Council.

(2) Should the Electronic Media Council determine that the occurred changes in the ownership structure resulted in an impermissible concentration in the area of media, it shall give an order to the television and/or radio broadcaster to conform its ownership structure, within a certain deadline, in a manner which is not contrary to the provisions of this Act.

(3) Should the television and/or radio broadcaster fail to comply with the order of the Electronic Media Council, the provisions of this Act stipulating the termination of validity of the concession prior to the expiration of the deadline for which it was awarded shall be applied, and the decision on the cancellation of the concession shall be passed by the Electronic Media Council.

Article 59

(1) A domestic legal person, whose founders include also foreign legal persons registered in countries in which, according to those countries' regulations, it is not permissible or it is not possible to determine the origin of the founding capital, may not participate in a public tender for a concession grant in compliance with this Act.

(2) Should it be subsequently determined that one of the founders of the television and/or radio broadcaster to whom a concession was awarded is a foreign legal person referred to in paragraph 1 of this Article, the provision of Article 58 of this Act shall apply.

Article 60

(1) A particular broadcaster may perform either television media service or radio media service.

(2) The provision of the previous paragraph shall not apply if the broadcaster obtains, pursuant to this Act, the approval of the Electronic Media Council, in the case when the broadcaster does not provide television and radio media services in the same area.

Article 61

(1) A legal person whose activity is collection, shaping and mediation in advertising, as well as a natural or legal person, or a group of connected persons, which has more than 10% of the ownership share in the capital, i.e. property of that sort, or which has more than 10% of management or voter's rights, may not be a television and/or radio broadcaster and/or founder of radio

and/or television broadcaster, nor can it have ownership of stocks or shares in the capital of the television and/or radio broadcaster.

(2) Should the Electronic Media Council determine that the impermissible changes in the ownership structure referred to in paragraph 1 of this Article have occurred, it shall give an order to the television and/or radio broadcaster to conform its ownership structure within a certain deadline in a manner which is not contrary to the provisions of this Act.

(3) Should the television and/or radio broadcaster fail to comply with the order of the Electronic Media Council, the provisions of this Act stipulating the termination of validity of the concession prior to the expiration of the deadline for which it was awarded shall be applied, and the decision on the cancellation of the concession shall be passed by the Electronic Media Council.

Article 62

An operator who performs the activity of audiovisual and/or radio programme transmission may not be the television and/or radio broadcaster as well as the media service providers referred to in Articles 19 and 80 of this Act.

Article 63

Regulations on the protection of market competition shall apply to television and/or radio broadcasters.

Article 64

The provisions on ownership and concentration shall also apply to foreign legal and natural persons, regardless of the state in which they have their seats, i.e. permanent residence, save if otherwise stipulated by this Act.

Fund for Promotion of Pluralism and Diversity of Electronic Media

Article 65

(1) The Fund for Promotion of Pluralism and Diversity of Electronic Media (hereinafter: the Fund) shall be established and shall act within the scope of the Electronic Media Agency.

(2) The sources of financial means for the Fund shall be funds secured by the provisions of this Act and the Croatian Radio Television Act.

(3) The Electronic Media Council shall submit programmes and reports on the allocation of funds from the Fund to the Croatian Competition Agency.

Article 66

(1) The Fund's means shall stimulate the production and broadcasting of audiovisual and radio programmes of television and/or radio broadcaster at the local and regional levels which are of public interest and audiovisual and radio programmes of non-profit television and/or radio broadcaster, which are particularly important for:

- the exercise of citizens' right to public information,
- promotion of cultural creativity and fostering of cultural heritage,
- development of upbringing, education, science and arts,
- promotion of works in dialects of the Croatian language,
- promotion of special programmes in areas of special state concern,
- national minorities in the Republic of Croatia,
- encouragement of the development of the awareness of gender equality.

(2) The Fund's means shall also stimulate the employment of highly qualified skilled employees in television and/or radio broadcasters at the local and regional levels and non-profit television and/or radio broadcasters.

(3) The Fund's means shall not stimulate the production of entertainment programmes and the programme referred to in Article 43 of this Act.

(4) The Fund's means shall be allocated in equal ratio for the stimulation of pluralism and diversity of audiovisual and radio programmes. The criteria for awarding the resources are:

- significance of the audiovisual and/or radio programme for the realisation of objectives referred to in paragraphs 1 and 2 of this Article,
- the quality and content-related innovation of the offered audiovisual and/or radio programme,
- interest for overall i.e. local and regional cultural development,
- other criteria determined by the Electronic Media Council by means of the ordinance referred to in paragraph 6 of this Article.

(5) Resources of the Fund may not be granted:

- for audiovisual and/or radio programmes which are already co-financed, regardless of the grounds, from the budgetary funds, with the exception of the programmes of the non-profit television and/or radio broadcaster,
- for the television and/or radio broadcasters to which the Electronic Media Council passed a warning in the previous twelve months and/or which were sentenced in the previous twelve months on the basis of court res judicata for violating provision of this Act.

(6) Based on the criteria referred to in paragraph 4 of this Article, the Electronic Media Council shall regulate the way and procedure for conducting a public tender for the co-financing of audiovisual and radio programmes from the Fund's means, monitoring of the spending of means and realisation of the programmes for which they were awarded. The list of beneficiaries of the Fund's means, programmes for which the means were awarded and reports on the execution thereof shall be published on the website of the Electronic Media Council.

(7) The decision on the allocation of the Fund's means shall be passed by the Electronic Media Council.

VI ELECTRONIC MEDIA AGENCY AND ELECTRONIC MEDIA COUNCIL

Electronic Media Agency

Article 67

(1) The Electronic Media Agency (hereinafter: the Agency) shall be an autonomous and independent legal person with public authority, it shall be listed in the court register. The seat of the Council shall be in Zagreb.

(2) The Agency shall pass a Statute confirmed by the Croatian Parliament.

(3) The bodies of the Agency are the Director of the Agency and the Electronic Media Council (hereinafter: the Council).

(4) The Director of the Agency acts on behalf of, represents and manages the Agency, and is responsible for the work of the expert services of the Agency. The president of the Council is the Director of the Agency.

(5) In managing the Agency, the Director of the Agency organises and heads the work and operations of the Agency.

(6) General employment regulations shall apply to the realisation of the Agency's employees' rights and obligations from the employment relationship. The salaries of the director of the Agency and Council members shall be determined by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia.

(7) The means for the functioning of the Agency, including the means for the director of the Agency and Council members' salaries, shall be ensured, in compliance with the Agency's annual financial plan, in the amount of 0.5 % of the total annual gross income made in the previous year by media service providers by performing the activities of on-demand audio and/or audiovisual media services referred to in Article 19 of this Act and activities of providing television and/or radio media services referred to in Articles 22 and 80 of this Act.

(8) Unused funds referred to in Paragraph 7 of this Article can be used for the long-term projects of the Agency after balance sheet.

(9) The Agency director shall submit an annual report on the work of the Agency to the Croatian Parliament, which is the constituent part of the report on the work of the Electronic Media Council.

Electronic Media Council

Article 68

(1) The Council manages the Agency and carries out the duties of a regulatory body in the area of electronic media. In its work the Council has the authority of an administrative council in the sense of the Institutions Act. The president of the Council signs the Council decisions.

(2) The president and members of the Council shall perform their duties professionally as employees of the Agency.

(3) The Council shall publish an annual report on its work and submit it to the Croatian Parliament.

Article 69

(1) The Council shall have seven members one of which is the president of the Council.

(2) The president and other members of the Council shall be appointed by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia. In the procedure of nomination of the Council members, the Government of the Republic of Croatia shall announce public invitation for nominating candidates for Council members.

(3) The president and members of the Council shall be appointed for a five-year term, whereby they can be re-appointed.

(4) Deputy President of the Council, upon the proposal of the president of the Council, is chosen by the Council by majority vote.

(5) Only citizens of the Republic of Croatia who have professional knowledge, abilities and experience in radio or television activities, or in publishing, cultural or similar activity, may be members of the Council.

(6) Members of the Council shall be public persons who have distinguished themselves in public life by advocating the respect for democratic principles and the rule of law, building and promotion of the highest values of the constitutional

system of the Republic of Croatia, development of civil society, defence of human rights and freedoms, as well as protection of the freedom of expression.

(7) A member of the Council shall not be a state official, an official in the executive or judicial authority, or an official of a political party.

(8) Members of the Council shall not be owners, stock holders or holders of a share, members of management or supervisory boards or members of boards of directors or other appropriate management bodies, managers or directors general or other heads of business management of legal persons subject to provisions of this Act, pertaining to audio and audiovisual media services and network operators.

(9) Members of the Council shall not be persons who are employed, or have a contractual or some other relation in any legal person or another service which is linked to audio and audiovisual media services and network operators, or persons performing tasks which could lead to a conflict of interests.

(10) Members of the Council may not receive gifts, accept services or enter into relations with the broadcaster which lead to a conflict of interest in terms of the duties stipulated in this Act.

(11) The Croatian Parliament can, upon the proposal of the Government of the Republic of Croatia, relieve of duty the president or a member of the Council before the expiry of his/her term of office if:

- he or she submits a request for the relief of duty,
- it is established that upon the proposal for a Council member he or she submitted untruthful information or failed to submit information on the circumstances important for establishing proposal,
- he or she seriously violates duties set out in the Agency's Statute,
- he or she does not fulfil his/her duties for a period longer than 6 months in continuity,
- the conditions set out in Paragraphs 7, 8, 9 and 10 of this Article have been fulfilled,
- he or she has been convicted for a committed criminal act by a legally effective judgement,
- he or she does not fulfil the goals and duties set out in the annual work programme of the Agency.

(12) The Council is obliged to inform the Government of the Republic of Croatia upon the existence of reasons for relieving of duty the president or member of the Council before the expiry of term of office. Before reaching the decision on relieving, the president or member of the Council has to be allowed to reply on the reasons of relieve.

(13) The president, deputy president and member of the Council can not within a year from relieving of duty be appointed as members of board of directors,

supervisory boards or administrative boards of legal persons subject to provisions of this Act.

(14) The president, deputy president and members of the Council, after relieving of duty in case referred to in paragraph 11, subparagraphs 4, 5 and 7 of this Article and until the beginning of receiving the salary on other basis or the right for receiving pension in compliance with general provisions, and at the longest for a year after relieving of duty, shall be entitled to a remuneration in the amount of the last salary paid in the last month before relieving of duty.

Article 70

(1) The Council shall:

- conduct the procedure of granting a concession in compliance with this Act, Concession Act and the ordinance referred to in Article 74 paragraph 3 of this Act;
- enter into a concession contract with the most advantageous tenderer pursuant to this Act.
- pass a decision on the cancellation of concession and granting in cases anticipated by this Act,
- undertake appropriate measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states pursuant to Article 78 of this Act,
- conduct the procedure of granting licences for providing the activities of providing of audio and/or audiovisual media services on demand and satellite, internet and cable transfer of audiovisual and/or radio programmes,
- caution in cases of violation of provisions of this Act and executive regulations and/or charge pursuant to violation provisions of this Act and Misdemeanours Act,
- pass the legislation for passing for which is authorised by this Act,
- pass its rules of conduct,
- keep records of media services providers,
- grant the approval referred to in Article 60, paragraph 2 of this Act,
- implement the provisions of this Act relating to the protection of pluralism and diversity of electronic media,
- ensure supervision over the implementation of provisions on the programme principles and obligations determined by this and a special act, save for electronic publications, and shall pass the annual monitoring plan,

- ensure supervision over audiovisual and radio programmes broadcasted via satellite, internet or cable transmission,
- conduct the procedure of determining whether the provisions of this Act are respected or violated,
- consider the complaints of citizens on the media services providers' behaviour with regard to the implementation of acts, and shall undertake measures in compliance with this Act,
- cooperate with regulatory bodies of other states and/or European Commission in the exchange of information for implementation of this Act, especially provisions of Article 6, Article 19 paragraph 3, Article 74 paragraph 6, Article 78 and Article 80 paragraph 3 of this Act,
- submit reports to the Croatian Parliament and other competent bodies, in compliance with this Act and other acts,
- submit reports to the European Commission, in compliance with this Act and other acts,
- pass recommendations for implementation of this Act,
- promote self-regulation and co-regulation for the implementation of this Act,
- promote media literacy,
- pass the annual work programme of the Agency, and
- also perform other tasks stipulated by this Act and a special act.

(2) Regulatory and other tasks referred to in paragraph 1 of this Article comprise tasks related to the public authorities of the Agency implemented by the Council.

Article 71

(1) The Council shall pass decisions by the majority of votes of all members of the Council. The manner and procedure of passing decisions on the selection of the most advantageous tenderer and on terminating the concession shall be determined by the Council in its rules of conduct. The decision of the Council on the selection of the most advantageous tenderer and on terminating the concession shall be published in the Official Gazette.

(2) The Agency conducts administrative, expert and technical activities for the Council, while technical and expert activities in the area of electronic communications for the Council are conducted by the Croatian Post and Electronic Communications Agency.

(3) The Agency must have an expert service for monitoring and regular supervision of adherence to the provisions of the Act.

Article 72

An appeal against a decision of the Council is not permissible, but an administrative procedure may be initiated before the Administrative Court of the Republic of Croatia.

Article 73

The Council carries out preparatory actions for the award of concessions in line with the Concessions Act.

The Procedure for Awarding of Concessions for Providing Television and Radio Media Services

Article 74

(1) The Council invites public tenders for the awarding of concessions to carry out the activities of television and radio media service providing on a technical basis which is determined by the Croatian Post and Electronic Communications Agency in accordance with the legislation on electronic communications.

(2) The public tender referred to in paragraph 1 of this Article is invited for each available radio frequency or more radio frequencies which comprise a single concession, i.e. in the case of digital radio and television for the free transmission capacity of an individual radio or television programme within the multiplex.

(3) The contents and procedure of public tenders referred to in paragraph 1 of this Article shall be stipulated by the Council ordinance.

(4) The criteria for awarding concessions for providing radio and television media services are:

- the programme conditions in accordance with this Act, and especially the quantity of own production, European audiovisual works and works of independent producers,
- the time of service providing,
- the quality and diversity of audiovisual and/or radio programmes,
- special technical, financial (amount of resources and financial guarantees) and personnel conditions, and economic justifiability (cost effectiveness) of concession awarding,
- abiding the provisions of this Act and legislation regulating tax and other obligations of legal entities towards the state budget and budget of the units of local and regional self-government, and legal persons in their ownership.

(5) An offer for the public tender referred to in paragraph 1 of this Article shall contain evidence on the fulfilment of conditions stipulated by the tender, a

programme basis in compliance with this Act, data on the ownership structure of a legal person submitting the tender, personal data on the company and its head office, i.e. name and family name and permanent residence of persons who directly or indirectly, through other legal persons, have stocks or shares in that legal person, as well as data on the percentage of those stocks or shares. A tender must contain data on the tenderer's financial capability for the performance of the activities of television and radio broadcaster.

(6) Before making a decision on the most advantageous tenderer, the Council is authorised to exchange information with the regulatory bodies of other Members States of the European Union on the most advantageous tenderer, if the activity of providing television and radio media service will apply to other Members States of the European Union.

(7) The Council shall pass a decision on the most advantageous tenderer after the conducted procedure of public tender referred to in paragraph 1 of this Article, as well as the procedure of establishing the conditions for granting a concession.

(8) The decision from paragraph 7 of this Article shall contain the following:

- name of the concession grantor with the number and date of the decision,
- name of the tenderer,
- object of the concession,
- the description of activities which will be performed,
- the level and area of concession,
- the period of concession,
- the amount of the concession fee,
- the time limit within which the most advantageous tenderer must sign the concession contract with the concession grantor,
- consequences of non-compliance with the deadline for signing the concession contract,
- explanation of the reasons for selecting the tenderer,
- instruction on legal remedy,
- the authorized person's signature and the seal of the concession grantor.

(9) The decision on the most advantageous tenderer may also contain other appropriate data in line with the public tender documentation submitted with the tender and provision of this Act, Concessions Act and the ordinance from paragraph 3 of this Article.

Article 75

- (1) The right to perform the activities of providing television and radio media service broadcasting shall be obtained on the basis of a decision on the selection of the most advantageous tenderer and the contracted concession contract.
- (2) The Council and the Croatian Post and Electronic Communications Agency shall, on the basis of a decision on the selection of the most advantageous tenderer, enter into a concession contract with the selected tenderer.
- (3) The concession contract shall, in addition to the conditions important for the exercise of the concession, contain the programme basis and other conditions from the tender for the award of concession.
- (4) The Council shall annul the decision on the selection of the most advantageous tenderer and the tenderer shall have no right to compensation of damages if the most advantageous tenderer fails to sign, within the time limit established in the decision referred to in paragraph 2 of this Article, the concession contract which was drawn up in writing in accordance with the tender documents, the data contained in the public tender, the selected tender and the decision on the selection of the most advantageous tenderer.
- (5) It shall be possible, pursuant to the entered contract and upon acquiring the prior consent of the Council in compliance with this Act, to transfer the concession to another legal person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the concession. The request for the prior consent of the Council may be submitted only after 3 years counting from the entering into the concession contract. In such case an annex to the concession contract shall be made or a new concession contract shall be entered into.

Article 76

- (1) The area of a concession may be at the national, regional, county, city, municipality or other level determined on the basis of a special regulation.
- (2) The area of a concession at the national level shall comprise at least 60% of the population of the Republic of Croatia, while at the regional level it shall comprise at least 70% of the population of the region.
- (3) A concession shall be granted for a period of time which may not exceed fifteen years or be shorter than eight years. The criteria for the determination of the duration of the concession shall be prescribed by the Council's ordinance referred to in Article 74 paragraph 3 of this Act.
- (4) A fee shall be paid for the concession. The concession fee shall be paid in the account of the State Budget.

(5) The manner of payment and the amount of fee for the concession shall be stipulated by the Council, as well as the manner of payment and the amount of fee for the tender documentation and offer for public tender.

(6) Concessions for the performance of television and/or radio media services shall be registered in the Register administered by the Council and Concession Register administered by the Ministry of Finance. The Council regulates the Register's content and manner of management by an ordinance.

Article 77

(1) The Council shall pass a decision on temporary or permanent termination of a concession or permit for a media service provider, if it has determined:

1. that the concession was awarded on the basis of incorrectly presented data important for passing the decision on the selection of the most advantageous tenderer,

2. that the television and/or radio broadcaster has not started to exercise the concession within the deadline determined by the concession contract or it does not respect the technical conditions from the concession contract for a period longer than one month since the beginning of the exercise of the concession, or if it stops exercising the concession for a period longer than 48 hours,

3. that the media service provider performs an activity even after the third warning by the Council which they issued in the previous 12 months, contrary to the provisions of this Act and the regulations adopted on the basis of this Act or to the concession contract,

4. that the television and/or radio broadcaster no longer fulfils the conditions for the performance of activities referred to in Article 22 of this Act,

5. that the broadcaster publishes audiovisual or radio programmes contrary to the Article 12 and/or 20 and/or 26 of this Act,

6. that the media service provider, even after receiving a warning by the Council, fails to adhere to a minimum of 90% of the programme basis,

7. that the media service provider, even after receiving a warning by the Council, doesn't comply to the established time of broadcasting set out in Article 36 paragraph 3 and/or 4 and/or 5 and/or 6 and/or 7 of this Act,

8. that the media service provider failed to pay the concession fee more than twice consecutively or is generally disorderly in paying the concession fee,

9. that the media service provider failed to forward information on the change of data referred to in Article 53 paragraph 1 of this Act within a determined deadline, even after receiving a warning by the Council,

10. the existence of an impermissible concentration as determined by this Act,

11. that the media service provider failed to obtain the approval of the competent association for collective exercise of copyrights and related rights within a determined deadline, even after receiving a warning by the Council,

12. that the media service provider transferred the concession to another person contrary to the Article 75 paragraph 5 of this Act,

13. that the media service provider transfers the licence to another person contrary to the Article 19 paragraph 7 and Article 80 paragraph 7 of this Act,

14. that the media service provider, regardless of the Council decision on measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states, publishes audiovisual programmes referred to in Article 78 of this Act.

(2) A concession shall terminate in the following cases:

1 upon expiration of the period for which it was granted,

2. if the media service provider renounces the concession,

3. by the cessation of the legal person of a media service provider or the cessation of craft,

4. if the media service provider was prohibited by an effective decision of the court to perform activity for which the concession was awarded,

5. by mutual termination of the concession contract.

(3) The concession contract shall cease to be valid on the day the decision on cancellation of the concession becoming final and on the day of cessation of the concession.

Article 78

(1) By way of derogation from the provisions of Article 8 of this Act, the Electronic Media Council may undertake appropriate measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states, in the case when the Republic of Croatia is authorised to temporarily deviate from the obligation of ensuring freedom of reception of audiovisual media services and retransmission in its territory, if the conditions prescribed by paragraph 2, 3 and 4 of this Article are met.

(2) Measures referred to in paragraph 1 of this Article will be taken in relations to the audiovisual media services of television if:

- a television broadcast coming from another Member State of the European Union manifestly, seriously and gravely infringes the provisions of Article 26, paragraphs 2 or 3 of this Act and/or promotes hatred on grounds of race, sex, religion or nationality,

- during the previous 12 months, the television broadcaster acted within the meaning of the previous sub-paragraph of this Article on at least two prior occasions,

- the Republic of Croatia has notified the television broadcaster and the European Commission in writing of the determined infringements referred to in this Article and of the measures it intends to take should any such infringement occur again,

- consultations with the transmitting Member State of the European Union and the European Commission have not produced an amicable settlement within 15 days of the notification referred to in the previous paragraph, and the stated infringement persists.

(3) In respect of on-demand audiovisual media services, the measures referred to in paragraph 1 of this Article may be taken in respect of a given service if the following conditions are fulfilled:

- the measures are necessary for one of the following reasons: public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, the protection of public health, public security, including the safeguarding of national security and defence, the protection of consumers, including investors,

- measures are taken against an on-demand audiovisual media service which prejudices the objectives referred to in the previous subparagraph or which present a serious and grave risk of prejudice to those objectives,

- measures are proportionate to the objectives referred to in subparagraph 1, paragraph 3 of this Article,

- before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Republic of Croatia has asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate,

- the Republic of Croatia has notified the European Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures.

(4) The Republic of Croatia may, in the case of urgency, derogate from the conditions stipulated in paragraph 3, subparagraphs 4 and 5 of this Article, and where this is the case, it is obliged to notify in the shortest possible time the European Commission and the Member State under whose jurisdiction the media service provider falls about the measures taken, indicating the reasons for which the Member State considers that there is urgency.

(5) The Council shall immediately put an end to the measures referred to in paragraph 1 of this Article if the European Commission determines that the measures are not compatible with the regulations of the European Community.

Article 79

(1) The Council may, at the request of the television and/or radio broadcaster, pass a decision on the renewal of the concession for the following period with inviting a public tender, if the television and/or radio broadcaster performs an activity in compliance with the regulations and the concession contract.

(2) The television and/or radio broadcaster must submit a request for the renewal of the concession to the Council at least 6 months prior to the expiration of duration of the concession.

(3) A concession contract shall be entered into on the basis of a decision of the Council referred to in paragraph 1 of this Article.

The Procedure of Issuing Licence for Satellite, Internet and Cable Transmission of the Audiovisual and/or Radio Programme

Article 80

(1) The Electronic Media Council issues the licence for satellite, internet and cable transmission of the audiovisual and/or radio programme to the media service providers as referred to in the Article 5 or 6 of this Act, which do not use the concession as referred to in Article 75 of this Act and which are not on demand media service providers as referred to in the Article 19 of this Act.

(2) The licence is issued on the basis of the request of the media service provider which has fulfilled the technical conditions for the transmission of programmes and the conditions set out in Article 23 of this Act.

(3) Before deciding on issuing the licence, the Council is authorised to exchange information on the media service provider with regulatory bodies of other Member States of the European Union, if the transmission of programmes from paragraph 1 of this Article refers to other Member States of the European Union as well.

(4) The Electronic Media Council shall decide on issuing the licence from Article 1 as soon as possible, and at the latest within 30 days from receiving the correct request.

(5) On the basis of issuing the licence from paragraph 1 of this Article, the media service provider shall be registered into the Register administered by the Electronic Media Council.

(6) The Council shall *ex officio* take a decision on termination of licence from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:

- if the media service provider notifies the Council in writing on the cessation of the activity providing,
- if the media service provider ceases to provide the activities for a period longer than a year,
- if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and radio programmes,
- if the media service provider was prohibited by an effective decision of the court to perform the registered activity,
- after the cessation of the legal person of a media service provider or the cessation of craft.

(7) The list of the media service providers from paragraph 1 of this Article is published on the website of the Council.

(8) The licence for satellite, internet and cable transmission of audiovisual and radio programmes can be transferred to another person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the licence, with the prior consent of the Council.

(9) The content and manner of management of the Register from paragraph 5 of this Article is regulated by the Electronic Media Council's ordinance from Article 76 of this Act.

VII ELECTRONIC PUBLICATIONS

Article 81

(1) The provisions of Articles 12, 15, and 26 of this Act shall be adequately applied to the electronic publications.

(2) A natural or legal person shall be obliged to submit a request for entry into the Register of electronic publications providers, which is kept with the Electronic Media Council, prior to the first broadcast of the electronic publication.

(3) The contents of the request, the contents and the manner of keeping the Register referred to in paragraph 2 of this Article shall be prescribed by the Electronic Media Council by the ordinance referred to in Article 76 of this Article.

VIII PROHIBITION AND CESSATION OF PERFORMANCE OF ACTIVITIES

Article 82

(1) A natural or legal person may not publish audiovisual and/or radio programmes if it does not fulfil the conditions set out in this Act.

(2) The Council may prohibit the performance of activities of audio and/or media service providing to the person referred to in paragraph 1 of this Article and institute proceedings for the temporary seizure of its operation equipment, products and the material which was used for the performance of activities.

IX PENAL PROVISIONS

Article 83

(1) A fine from HRK 100,000.00 up to HRK 1,000,000.00 shall be imposed for an offence on a legal person who:

1. performs the activity of broadcasting audio or audiovisual media services and has not, as a media service provider, been listed in the court register or another register, and if it does not meet other conditions set out in this Act,

2. broadcasts a audio and/or audiovisual media services contrary to the prohibition in Article 12, paragraph 1 and/or 2 of this Act,

3. does not broadcasts without fee the necessary information set out in Article 15 paragraph 1 of this Act upon the request of the competent body,

4. broadcasts audiovisual commercial communication contrary to the provisions of Article 16 of this Act,

5. broadcasts sponsored audiovisual media services and programmes contrary to the prohibition in Article 17, paragraph 2 or 3 or 4 or 5 of this Act,

6. broadcasts product placement contrary to the provisions of Article 18, paragraph 2 or 4 or 6 of this Act,

7. conducts the activity of providing audio and/or audiovisual media services on demand without the licence from Article 19 of this Act or contrary to the issued permit,

8. conducts the activity of providing audiovisual media services on demand which could seriously damage physical, mental or moral development of minors contrary to the provisions of Article 20 paragraph 1 of this Act,

9. changes, that is updates the programme basis for more than 10% of its contents contrary to the provision of Article 23 paragraph 5 of this Act,

10. broadcasts audiovisual or radio programmes that do not fulfil the obligations set out in Article 25 paragraph 1 of this Act, or in broadcasting audiovisual and radio programme contents does not act according to the provisions of Article 25 paragraph 2 of this Act,

11. broadcasts audiovisual or radio programme contrary to the prohibition referred to in Article 26, paragraph 1 subparagraph 1 or 2 or paragraph 2 or 3 of this Act,
12. broadcasts comparative advertising contrary to the Article 29 paragraph 3 of this Act,
13. broadcasts advertising and teleshopping without complying with the provision of Article 29, paragraph 1 and 2 of this Act, or acts contrary to the provision of Article 30 paragraph 1 of this Act,
14. broadcasts advertising and teleshopping contrary to the provisions of Article 31, paragraph 1 and/or 2 and/or 3 and/or 4 and/or 5 of this Act,
15. broadcasts advertising and teleshopping for a duration exceeding that stipulated in Article 32, paragraph 1 of this Act,
16. broadcasts advertising and teleshopping contrary to the provisions of Article 32, paragraph 3 and/or 4 and/or 5 and/or 6 of this Act,
17. broadcasts windows intended for teleshopping for a duration shorter than that stipulated in Article 34, paragraph 1 of this Act or conducts advertising or teleshopping on channels that are exclusively devoted to teleshopping or self-promotion contrary to Article 34, paragraph 2 of this Act,
18. broadcasts sponsored programme contrary to the provisions of Article 35 of this Act,
19. does not fulfil the obligations of broadcasting audiovisual and radio programmes in the prescribed time referred to in Article 36, paragraphs 3 and/or 4 and/or 5 and/or 6 and/or 7 and/or 8 of this Act
20. does not fulfil the obligations on the prescribed portion of private production referred to in Article 38, paragraphs 1 or 2 of this Act,
21. does not achieve the proportion of European audiovisual works referred to in Article 42 of this Act,
22. does not achieve the proportion of audiovisual works of independent producers referred to in Article 44 of this Act,
23. does not fulfil the right of short information in accordance with Article 45, paragraph 1 or 2 of this Act,
24. fulfils the right of short information contrary to the provisions of Article 45, paragraph 7 or 9 of this Act,
25. uses the right of short information contrary to the provision of Article 45, paragraph 5 or 8 or 10 of this Act,
26. broadcasts an event significant for the public of the Republic of Croatia or other Member States of the European Union or state which is a party to any international treaty that imposes obligations on the Republic of Croatia, contrary to the provisions of Article 46, paragraph 1 or 4 of this Act;

27. performs connection of audiovisual and radio programmes into networks contrary to the provisions of Article 47, paragraph 1, sub-paragraphs 1, 2 or 3 of this Act,

28. does not broadcast the proportion of its own production prescribed for the media service provider of non-profit television and/or radio in compliance with Article 48, paragraph 1 of this Act, or broadcasts promotional messages of longer duration than prescribed in Article 48, paragraph 5 of this Act,

29. does not fulfil his obligation of submitting information on stockholders and holders of shares referred to in Article 53, paragraph 1 of this Act after receiving a warning by the Electronic Media Council,

30. establishes an impermissible concentration contrary to the provisions of Articles 55 and/or 56 of this Act,

31. does not report the change in the ownership structure in compliance with the provisions of Article 58, paragraph 1 of this Act,

32. undertakes the transfer of concession onto another person contrary to the provisions of Article 75, paragraph 5 of this Act,

33. performs satellite, internet or cable transfer of audiovisual and/or radio programme without licence from Article 80 of this Act or contrary to the issued licence.

(2) A responsible person in the legal person shall also be fined for an offence referred to in paragraph 1 of this Article with a fine from HRK 10,000.00 up to HRK 50,000.00.

(3) A natural person shall be fined for an offence referred to in paragraph 1 of this Article with a fine from HRK 20,000.00 up to HRK 100,000.00.

(4) Assets gained from an offence shall be impounded.

Article 84

(1) A fine from HRK 10,000.00 up to HRK 100,000.00 shall be imposed for an offence on a legal person who:

1. broadcasts sponsored audiovisual media services and programmes which do not fulfil the conditions set out in Article 17 of this Act,

2. does not mark the re-run of a radio or television show in accordance with Article 38 paragraph 3 of this Act and/or does not mark the re-run of a radio or television show as stipulated in the ordinance from Article 38, paragraph 4 of this Act,

3. acts with regard to devices or means which enable free access to protected services contrary to the Article 51 of this Act,

4. participates in the procedure of public collection of offers or in a public tender contrary to the provision of Article 59 of this Act,

5. becomes a broadcaster of a radio or television and/or founder of the broadcaster of a radio or television, or acquires more than 10 % of ownership in stocks or shares in the capital or management of voting rights of the broadcaster of the radio or television contrary to the provisions of Article 61, paragraph 1 of this Act,

6. does not fulfil the obligation to submit a request for entry into the Register of electronic publications providers from Article 81, paragraph 2 of this Act.

(2) A responsible person in the legal person shall also be fined for an offence referred to in paragraph 1 of this Article with a fine from HRK 5,000.00 up to HRK 20,000.00.

(3) A natural person shall be fined for an offence referred to in paragraph 1 of this Article with a fine from HRK 10,000.00 up to HRK 50,000.00.

(4) Objects gained from the offence from paragraph 1 subparagraph 3 of this Article shall be impounded and destroyed, and objects intended or used for the offence from paragraph 1 subparagraph 3 shall be impounded.

(5) A protective measure of prohibition for performing the activities or parts of activities in the duration of up to a year can be pronounced to a legal person, physical person including individual craftsman and tradesman who commit offences set out in paragraph 1 subparagraph 3 of this Article in performing their activities, if the committed offence is especially serious, owing to the manner of commitment, the consequences of the offence, repeated commitment or other circumstances of the committed offence which make it especially serious.

(6) Assets gained from an offence shall be impounded.

X TRANSITIONAL AND FINAL PROVISIONS

Article 85

(1) Media service providers are obliged to align their work, business activities and general acts with the provisions of this Act within 6 months of the date of entry into force of this Act.

(2) It is considered that the media service providers as referred to in Articles 19 and 80 of this Act which have begun their activities before the entry into force of this Act have the licence for their activities providing as stipulated in this Act, if

within 60 days of the date of entry into force of this Act they submit to the Electronic Media Council a correct request for issuing the licence from Articles 19 and 80 of this Act.

Article 86

The procedures which have begun pursuant to the provisions of the Electronic Media Act (Official Gazette, no. 122/03, 79/07 and 32/08) until the date of entry into force of this Act shall be completed under the provisions of that Act and rules passed on the basis of that Act.

Article 87

Members of the Electronic Media Council, the President of the Council and the Director of the Agency shall continue with work even after the entry into force of this Act, until the expiry of the time period for which they were appointed, that is, until the appointment of new Council members.

Article 88

The Electronic Media Agency undertakes to align the Agency Statute with the provisions of the Electronic Media Act within 90 days of the date of entry into force of the Electronic Media Act, and to forward it to the Croatian Parliament for confirmation.

Article 89

(1) Within 90 days from entry into force of this Act, the Electronic Media Council shall pass regulations on the basis of authorisation established by this Act.

(2) Until entry into force of the regulations set out in paragraph 1 of this Article, in part in which they are not contrary to the provisions of this Act, the following shall be applied:

- Rules for the Amount and Manner of Payment of the Fee for a Concession for the Performance of Radio and/or Television Activities, as well as the Amount and Manner of Payment of Fees for the Tender Documentation and for a Bid to a Public Tender (OG 28/06)
- Rules for the Content and Procedure for the Public Tender for Granting a Concession for the Performance of Radio and/or Television Activities (OG 98/07 and 105/07)
- Rules for the Special Technical, Spatial, Financial and Personnel Conditions for the Performance of Radio and Television Activities (OG 111/07)

- Rules for the Content and Procedure for the Public Tender for Co-financing Programme Contents from the Resources of the Fund for the Promotion of Pluralism and Diversity of Electronic Media, as well as for the Criteria for the Allocation of the Resources and the Manner of Monitoring Their Usage and the Production of Relevant Programme Contents (OG 07/08 and 11/08)
- Rules for the Criteria and Manner of Increasing the Share of European Audiovisual Works (OG 47/08)
- Rules for the Criteria and Manner of Increasing the Share of European Audiovisual Works by Independent Producers (OG 47/08)
- Rules for Exercising the Right to Reply in the Television and Radio Programmes (OG 139/05)
- List of Major Events (OG 47/08)
- Rules of Conduct for Television Broadcasters in Order to Protect Minors (OG 130/08)

Article 90

On the day this Act enters into force, the Electronic Media Act (OG 122/03, 79/07, 32/08) shall cease to be valid.

Article 91

This Act shall enter into force on the eighth day from its publication in the Official Gazette.

E X P L A N A T I O N

Chapter I General Provisions (Articles 1 and 2)

The General provisions establish the field regulated by the Electronic Media Act, the performance of the activity of providing audio and audiovisual media services and electronic publication services through electronic communication networks, define the public interest of the Republic of Croatia in the field of electronic media and stipulate the basic terms used in the text of the Act. The meaning of the terms in the field of electronic media is in line with Directive 2007/65/EC of the European Parliament and the Council of Europe on audiovisual media services, Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access and in part the provisions of Directive 2006/114/EC on misleading and comparative advertising, whereby each regulates the field of audiovisual media services from its own perspective.

Chapter II General Principles (Article 3 to 10)

The general principles contained in these articles promote and protect basic constitutional values, particularly the freedom of expression and apply to the performance of this activity as well as the activity of broadcasting programmes that are of interest to the Republic of Croatia in the achievement of the goals and values that are important to the state: such as the implementation of the right to public information and of all the citizens of the Republic of Croatia to be informed, the protection of the Croatian language, preservation of national and cultural identity, protection of children and youth, persons with special needs, promotion of cultural creativity, development of education, science, art and sports, the protection of nature, the environment and human health as well as the promotion of media literacy.

For the purpose of protecting the Croatian language, the media services providers established, namely, registered in the Republic of Croatia, shall broadcast the programme content in the Croatian language or with an adequate translation into the Croatian language. Exception to this rule are envisaged, particularly when dealing with programmes intended for informing the members of national minorities and in the case of news and service information broadcasts for the needs of foreign guests.

The activity of broadcasting audio and/or audiovisual media services as well as electronic broadcasts in the Republic of Croatia shall be performed by a media service provider registered in the court register or other register and who a head office and editorial office in the Republic of Croatia. Also stipulated are cases when it is deemed that audiovisual media service providers operating in members states of the European Union or in third countries fall under the jurisdiction of the Republic of Croatia, the competence of its bodies and in respect to which its regulations apply. This provision is in accordance with Article 2 of the Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

The Act provides for freedom of transmitting and receiving audio and audiovisual media services from other states, which the Republic of Croatia is obliged to ensure in accordance with Article 2a. of Directive 2007/65/EC with the possibility of limitation in cases prescribed in this Act that have been taken over from Article 2a., paragraphs 2 and 4 of Directive 2007/65/EC.

Article 10 establishes that specific issues may, in accordance with the provisions of this Act, be regulated the basis of co-regulatory or self-regulatory regimes for the purpose of standardizing their application in practice. The mentioned regimes have to be generally accepted by the main interest groups in the Republic of Croatia and approved by the Electronic Media Council as well as provide for the effective implementation of their provisions. This provision is in

line with the introductory explanation contained in Recital 36 and Article 3, paragraph 7 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Chapter III Audio and Audiovisual Media Services (Article 11 to 50)

Article 11 stipulates that the audiovisual media service providers shall make easily, directly and permanently accessible to the service recipients at least the following information: the name of the media service provider; address at which the media service provider is established; detailed facts on the media service provider, including the electronic mail address or website which enables speedier, direct and effective contact with the provider; the competent regulatory and/or supervisory bodies in accordance with Article 3a of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 12 stipulates that audio and/or audiovisual media services which jeopardize the constitutional order and national security shall be prohibited. In the audio and/or audiovisual media services it is prohibited to spread hatred or discrimination based on race, sex, religion or nationality, anti-Semitism and xenophobia or other forms of hatred based on intolerance towards individuals or groups due to their origin, political beliefs, opinions, health conditions or other preferences or characteristics in accordance with Article 3b of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services. Likewise stipulated are measures for the protection of children whereby it is prohibited to interview, film or photograph children under the age of 14 without the presence and consent of parents or other adult person responsible for the child, and in all other cases that jeopardizes the wellbeing of the child. It shall also be prohibited to pay children under 18 for information, including their parents or guardians. Likewise it shall be prohibited to publish information that discloses the identity of children under the age of 18 involved in cases of any form of violence, regardless whether the child is a witness, victim or perpetrator or disclose details from the child's family and private life.

Article 13 stipulates that audiovisual media service providers shall not transmit cinematographic works outside the periods agree with the rights holders in line with Article 3d. of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 14 stipulates that the Electronic Media Council shall encourage the providers of audiovisual media services to ensure that their services are gradually made accessible to persons with visual or hearing impairments, in line with Article 3c of Directive 2007/65/EC of the European Parliament and EC Council on audiovisual media services.

Article 15 stipulates that in case of war situations or immediate danger to the independence and integrity of the Republic of Croatia as well as in case of large natural disasters and epidemics, the media service provider shall at the request of the competent state body broadcast necessary announcements, namely, broadcast free of charge the proclamation of a state emergency as well as official statements when there is a danger to life and health of people, safety of the country and public order and peace. The obligation of the broadcaster to broadcast the required information is in the public interest in the implementation of the protection of previously mentioned values and is regularly established in other legislations too.

Article 16 regulates audiovisual commercial communications in accordance with Article 3e, paragraph 1 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services. It particularly establishes what audiovisual commercial communications should not be, for example, prejudice respect for human dignity, include or promote any discrimination, cause physical or moral detriment to minors, unreasonably show minors in dangerous situations, etc. It also establishes that providers of audiovisual services may develop codes of behaviour in regard to children's programmes that contain or are accompanied by inappropriate audiovisual commercial communications linked to food or beverages containing nutrients and substances with a nutritional or physiological effects in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended, in line with Article 3e, paragraph 2 of the mentioned Directive.

Article 17 stipulates the conditions that sponsored audiovisual media services and programmes shall meet, in line with Article 3f of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services. It particularly stipulates that audiovisual media services or programmes shall not be sponsored by legal or physical persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products. When audiovisual media services or programmes are sponsored by legal or physical persons whose activity includes the manufacture or sale of medicinal products and provision of health services they may promote the name or the image of the legal or physical person who are the sponsors. In the case of specific medicinal products or medical treatments available only on prescription the name or image of the legal or physical person may not be promoted. The showing of a sponsorship logo during children's programmes and religious programmes shall be prohibited.

Article 18 prohibits the placement of products. It particularly states that product placement is exceptionally admissible in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes with the exception of children's programmes in line with Article 3g of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services. Where there is no payment to the media service provider, but only the provision of certain goods or services to him free of charge, such as production props and prizes with a view to their inclusion in the audiovisual programme, only the inclusion of goods or services with a considerable value shall be deemed as product placement in the programme. It shall be assumed that a good or service has significant value only if its respective value exceeds the average net monthly salary in the Republic of Croatia based on the statistical data for the previous year. Likewise stipulated are conditions which must be fulfilled by audiovisual programmes containing product placement, as are conditions for the placement of products in audiovisual programmes.

An alternative solution is also envisaged according to which the Electronic Media Council may regulate by an ordinance the manner of determining the considerable value of goods or services that are being placed.

Article 19 establishes who can perform the activity of broadcasting on-demand audio and/or audiovisual media services, stating that they can be performed by legal or physical persons who fulfil the conditions from Articles 5 and 6 of this Act and who have the licence of the Electronic Media Council to perform that activity. The licence is issued on the basis of the request of the provider of on-demand media services who has complied with the conditions for transmitting audiovisual and/or radio programmes and programme basis which contains the programme orientation of the on-demand media service provider (general or specialized). Based on the decision on awarding the licence, the on-demand media service provider is inscribed in the Register which is administered by the Electronic Media Council. Also stipulated are the conditions under which the licence is suspended as well as the possibility of transferring the licence to another person with the previous approval of the Electronic Media Council.

Article 20 stipulates that on-demand audiovisual media services which may seriously impair the physical, mental or moral development of minors are available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services. The Electronic Media Council shall prescribe appropriate measures for the conduct of the on-demand media services providers in accordance with Article 3h of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 21 stipulates that the on-demand audiovisual media service providers shall use their best efforts in order for their on-demand audiovisual media services to promote, where practicable and by appropriate means, the production of and access to European works. The promotion of works could

relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media services, in line with Article 3i. of Directive 2007/65EC of the European Parliament and Council on audiovisual media services.

Article 22 stipulates the conditions for performing the activity of providing television and/or radio media services which include, in addition to general and programme conditions, special technical, spatial, financial and personnel conditions for performing this activity. It is stipulated that these conditions shall be regulated in detail in a special ordinance of the Electronic Media Council with the previous opinion of the Croatia Post and Electronic Communications Agency regarding technical and spatial conditions.

Article 23 regulates the programme basis of the general television or radio programme channel, that shall contain a programme scheme which determines the type of programme, quantitative proportion between individual content groups, scope of advertising content and share of private and share of Croatian audio and audiovisual works and time of broadcast. It also regulates the programme basis of specialized television or radio programme channels that shall contain a programme scheme which determines the type of programme, of which over 70% shall be of the same kind, quantitative proportion between individual content groups, maximum scope of advertising content, proportion of works of European audiovisual production and other works for specialized television programme broadcasters, and time of broadcast. The programme basis of a television and/or radio broadcaster on the basis of which a concession was awarded and its amendments are public and shall be posted on the website of the Electronic Media Council.

Articles 24 to 28 regulate the basic programme principles and obligations of television and/or radio broadcasters. The programmes of television and/or radio broadcaster shall respect fundamental social values, such as human dignity and human rights, contribute to the comprehensive and objective informing of listeners and viewers, etc. In that respect programmes of television and/or radio broadcasters shall truthfully and correctly present facts and events and promote impartiality while respecting differences in opinion on various topics and wherein none of the interest groups may influence the broadcaster regarding the broadcast of radio and television programmes. Likewise, in the production and broadcasting of the programme the television and/or radio broadcaster shall observe copy rights and related rights for which reason it shall be obliged to obtain the approval of the association authorized for the collective exercise of rights. In programmes it shall be prohibited to publish footage which offends human dignity and which contains immoral and pornographic content, which in any manner encourages, promotes and glorifies violence and crime and encourages citizens, and especially children and youth to use tobacco products, alcohol or drugs. Programmes which may seriously impair the physical, mental or

moral development of minors, in particular programmes that involve pornography or gratuitous violence shall also be prohibited. The broadcasting of programmes which are likely to impair the physical, mental or moral development of minors shall be prohibited, except where it is ensured by the broadcaster, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not in normal circumstances hear or see such programmes, which is in line with Article 22 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services. The television and/or radio broadcaster shall keep a record of the broadcast programmes and preserve the taped material of the entire broadcast programmes for at least 90 days from the day of broadcast.

Articles 29 to 32 regulate conditions under which television and/or radio broadcasters shall perform advertising and teleshopping. Advertising and teleshopping shall be easily recognizable and distinguishable from editorial content which is in line with Article 10 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services. Comparative advertising shall be permissible only under conditions prescribed by the Inadmissible Advertising Act. In advertising and teleshopping aimed at minors or using minors, anything that could jeopardize their interests shall be avoided. Advertising of political parties, coalitions and independent members of representative bodies, except during political campaigns, shall be prohibited. Advertising and teleshopping of weapons and ammunition, pyrotechnical devices, and drugs shall be prohibited. The advertising of medicines and medicinal products shall comply with the conditions stipulated in the Medicines Act and Medical Products Act as well as by-laws passed on the basis of these Acts. It is also established that the advertising and teleshopping of alcohol and alcoholic drinks shall be prohibited and conditions stipulated under which it is permitted. In addition, misleading advertising and teleshopping shall be prohibited and the ordering party and the broadcaster shall be held accountable for this type of advertising and teleshopping. Also stipulated is the duration of promotional spots for television advertising and spots for teleshopping as well as the conditions under which advertisements and teleshopping sports may be inserted in between and during the programme and the prohibition of inserting advertising and teleshopping during the transmission of religious services.

Article 33 stipulates that state administration bodies and physical persons in the majority ownership of the Republic of Croatia shall allocate 15% of their annual funds earmarked for the promotion of their services or activities in advertising in the programmes of regional and local television and/or radio broadcasters. This provision ensures that citizens at the regional (county) namely, local (city/municipal) levels are informed on the services and activities of state administrative bodies and legal persons in the majority ownership of the Republic of Croatia wherein the obligation is established of notifying the Electronic Media Council by 31 March of each calendar year on the performed advertising.

Article 34 stipulates that the windows intended for teleshopping shall be clearly identified as such by optical and acoustic means and shall last a minimum of 15 minutes without interruption. The same Article establishes that the provisions of this Act apply mutatis mutandis to television channels exclusively devoted to advertising and channels exclusively devoted to advertising and self-promotion, with the exception of the provisions of Article 32, paragraphs 3,4 and 6 and Article 42 and 44 of this Act which do not apply to the mentioned specialized television channels which is in line with Article 18.a of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 35 specifically stipulates that political parties and coalitions shall not be sponsors of audiovisual or radio programmes except during election campaigns in accordance with a special law,

Article 36 establishes that all audiovisual or radio programmes broadcast through radio or television broadcasts from 0:00 to 24:00 hours shall enter the daily time of broadcast, unless provided otherwise in this Act and that the annual time of broadcast shall include all audiovisual or radio programmes broadcast from 1 January to 31 December of a particular year, other than programmes exempt under this Act. In addition, it establishes the duration of the daily programme of a radio broadcaster at the state and regional levels and at the levels of the counties and the City of Zagreb and that the broadcaster shall broadcast at least 12 hours of programme daily while a radio broadcaster on a level lower than the county level at least 6 hours of audiovisual programme a day unless otherwise determined in the concession contract. A television broadcaster at the state and regional levels, and the levels of the counties and the City of Zagreb shall broadcast at least 6 hours of audiovisual and/or radio programme on a daily basis, while a television broadcaster at the level lower than the county level at least 3 hours of audiovisual programme daily, whereby the television and/or radio broadcaster at the regional level shall devote at least 10% of the overall weekly audiovisual and/or radio programme to news and information in the concession area. The television and/or radio broadcaster at the local level shall devote at least 10% of the overall weekly audiovisual and/or radio programme to local news and information in the concession area and the television and/or radio broadcaster at the state and regional levels shall broadcast news in the duration of at least 30 minutes on a daily basis and broadcast at least one news programme in the duration of at least 20 minutes. During an electoral campaign all television and/or radio broadcasters shall enable the promotion of all political parties under the same conditions, in accordance with the regulations pertaining to elections and instruction of the competent body for implementing the elections. The possibility exists for radio and television broadcasters to establish in the concession contract the duration of broadcasting programmes that are longer than the time stipulated by law.

Article 37 defines what is considered private production and establishes that audiovisual and/or radio programmes originally produced by the television

and/or radio broadcaster or produced on its order and for its account and which include news and current affairs, cultural and art, music, sports and other shows as well as other originally produced audiovisual and/or radio programme shall be considered as private productions. Private productions also include premiers and first reruns of Croatian audiovisual works, the broadcasts of Croatian music in radio programmes, whereby advertisements, radio and television sale and paid information shall not be considered as private production. The Electronic Media Council stipulates in an ordinance more detailed measures for determining programmes considered to be private productions.

Article 38 establishes the share of private production which shall amount to at least 20% of the daily audiovisual programme out of which at least 50% shall be between 16:00 and 22:00 hours, while for radio broadcasters it establishes the share of private production in the amount of at least 30% of the daily programme if not otherwise stipulated in this Act. It also establishes that the re-run of a radio or television show shall be clearly marked during the entire duration of the show and that only the first re-run of a show may be included in the share of private production. The Electronic Media Council shall stipulate in more detail the form of identification of the re-run shows in an ordinance. Also envisaged in this Article is the exemption of the implementation of Article 38 in relation to broadcasters of specialized television and/or radio programme channels.

Article 39 establishes that Croatian music shall comprise at least 20% of the daily broadcast of music programmes, wherein not more than 20% of the daily broadcast in which Croatian music is performed can be calculated in the share of the privately produced programme. The provisions of this Article do not apply to broadcasters of specialized radio programme channels.

Article 40 defines Croatian audiovisual works as works originally produced in the Croatian language or works intended for national minorities in their languages as well as works of Croatian cultural heritage and establishes that audiovisual works shall be only those works which are expressed in images which in a consecutive order create an impression of motion expressed as individual intellectual creations, such as films and dramas, cultural and artistic and entertainment series, documentary, educational and other audiovisual works. The Electronic Media Council shall stipulate in more detail by an ordinance measures for determining programme contents which are considered as Croatian audiovisual works.

Article 41 defines what are considered European works and establishes that they are works originating from the European Union Member States, works originating from other European states members of the European Convention on

Transfrontier Television as well as works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and which fulfil the conditions defined in each of those agreements and on condition that discriminatory measures have not been applied in states non-members of the European Union to audiovisual works from states members of the European Union. In addition the Article stipulates other characteristics of these works in accordance with Article 1 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 42 stipulates that a television broadcaster shall use its best efforts to have European works make up the majority share of its annually broadcast programme. The television broadcaster who does not attain the stipulated proportion of European works in the overall broadcasted programme shall progressively increase the share of such works every year as compared to the previous year in accordance with the criteria laid down in the ordinance of the Electronic Media Council. The annual broadcasting time does not include the time earmarked for news, sport events, games, advertising, teletext services and teleshopping. It is explicitly established that private productions and Croatian audiovisual works are included in the share of European works and that this Article does not apply to television broadcasters at the local level. The Electronic Media Council shall inform the European Commission on the implementation of this Article, in accordance with Article 4 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 43 establishes the criteria which determine what is considered an independent producer of audiovisual works. Accordingly, an independent producer of audiovisual works is a legal or physical person registered for performing such activities and with a head office in the Republic of Croatia or in any European Union Member State, which is not included in the organizational structure of the television broadcaster; that the television broadcaster may have a maximum of 25% share of the producer or management or voting rights and that the independent producer generates a maximum of one half of its annual production based on the order of a television producer. In addition, an independent producer is a legal or physical person who is registered for the performance of the mentioned activities and has a head office in one of the third countries, on condition that European works make up the majority share of its audiovisual production in the last three years and meets other previously mentioned conditions; it is explicitly established that an independent producer may not be a legal or physical person whose average financial share for covering the total cost of production or co-production in the three previous years does not exceed 10%. Given that the Audiovisual Media Services Directive does not contain a definition of the independent producer of audiovisual works, the definition from the previous Directive on television without frontiers has been taken over.

Article 44 stipulates that a television broadcaster shall use its best efforts to ensure that the share of European works by independent producers in the annual audiovisual programme amounts to at least 10% of the time. If the broadcaster does not attain this share, he shall progressively increase the proportion of such works every year in accordance with the ordinance of the Electronic Media Council, wherein at least half of the works shall be produced in the last five years. The annual transmission time referred to in this Article does not include the time earmarked for news, sport events, games, advertising, teletext services and teleshopping and the provisions of this Article shall not apply to television broadcasters with a local level concession who are not affiliated with the national network. The Electronic Media Council shall inform the European Commission on the implementation of the provisions of this Article not later than 3 October 2011 and every two years after that. This provision complies with Article 5 of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 45 provides for the right of every television and/or radio broadcaster established in the European Union and the Republic of Croatia to access important events covered on the basis of exclusive rights by domestic broadcasters. The access to important events is provided by the free choice of short extracts from the transmitting television and/or radio broadcaster's signals. However, prior to and in place of this possibility, the access to important events may be achieved by accessing the events for the purpose of filming or recording a short extract or by using the footage of another broadcaster. Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service producer. Short news reports imply an announcement lasting not more than one and a half minute. The broadcaster broadcasting an event important to the public shall have the right to ask from another television and/or radio broadcaster only for compensation for actual costs incurred. If so determined in the co-regulation procedure there is a possibility that the right to short news report is exercised in relation to events of great significance to the public that are not transmitted on the basis of exclusive rights. These provisions are in line with Article 3 k of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 46 establishes that a television broadcaster shall not, on the basis of obtained exclusive rights, broadcast events considered important for society in a way to deprive a large part of the public the possibility of following those events. The Electronic Media Council shall determine in an ordinance what are significant events, and the need for their full, partial or delayed broadcast. Likewise, domestic broadcasters shall not deprive a substantial part of the public in another EU Member State or state signatory of an international agreement that is binding for Croatia, of the possibility of following events that are of major importance for society. It is established that the television programme from this Article shall be accessible to at least 60% of the population of the Republic of Croatia without additional compensation. This provision is in line with Article 3 j of the Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 47 establishes the presumptions for integrating broadcasters into regional or national networks, such as the appointment of editors-in-chiefs, specific duration of private production day programmes, joint programme basis, programme production in Croatian, etc. The national programme network shall be accessible to more than 70% of the population in a given region.

Article 48 establishes that non-profit radio and television programmes are those which broadcast daily more than 50% of their own production whereby at least 25% of the daily production serves to meet information, educational and other public needs. In addition, it establishes conditions under which non-profit television or radio may operate and which relate to salaries, the broadcasting of promotional messages up to 3 minutes per hour, etc.

The regulation of non-profit radio and television programmes introduces for the first time in the Republic of Croatia non-profit television as community television/radio that can be established by educational institutions, students' associations, school associations, civic and non-governmental associations with legal status as broadcasters. This type of electronic media is growing in number in EU Member States and is geared at meeting the information, educational, scientific, professional, artistic, cultural and other needs of the public.

Article 49 stipulates that educational institutions, student and school associations may be broadcasters if the programmes are primarily produced by students and pupils and the programmes are intended for that population.

Article 50 stipulates that the provisions of Article 26 to 46 of this Act shall *mutatis mutandis* apply to the media service providers from Article 80 of this Act which do not have a concession and are not on-demand audiovisual media service providers but rather operate on the basis of licences for satellite, internet and cable programme transmissions.

Article 51 prohibits all actions and possession of illicit devices which enable free access to protected services. This article protects the providers of those media services that can be accessed only on the basis of special legal conditions which include the payment of special compensations for accessing the programmes and the possession of adequate technical means (coded programme, pay TV). This provision is in line with Article 4 of Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access.

Article 52 guarantees to providers of protected services adequate court protection and the right to damage compensation for the illicit access to

protected services. This provision is in line with Article 5 of Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access.

Article 53 establishes the obligation of media service providers to submit by 31 January of each calendar year to the Electronic Media Council the prescribed data related to the ownership structure and operation of the media service provider. Data on stockholders and holders of shares up to 1% of the capital value are published jointly. In case this obligation is not fulfilled, the media services provider shall be forwarded a written notification with an explanation of the possible sanctions for not complying with the obligation.

Article 54 establishes, with a view to protecting the independence of television and/or radio broadcasters, cases in which it is considered that connected persons exist, namely, persons who are mutually connected by way of management, capital or in some other way which enables them to considerably influence the financing and business operations of the broadcaster, namely, decisions on its programme basis. The intention is to protect the independence of television and/or radio broadcasters, particularly in respect to the creation of the content of their programmes.

Article 55 to 59 regulate the restriction of concentration in the field of the media and defines cases in which, according to this Act, it is considered that impermissible concentration exists. In cases of impermissible concentration the Electronic Media Council will not award the concerned legal person a concession for performing the activity of providing television and/or radio media services. Also established is the obligation of each applicant to a public tender for gaining a concession to submit a certified statement indicating that impermissible concentration in the field of the media shall not be created by the possible award of a concession. In addition, the Electronic Media Council may order the broadcaster, if it establishes that upon awarding a concession for the activity of performing television and/or radio media services an impermissible concentration has been created, to bring its activities in line in a specific period of time with the provisions of this Act, given that otherwise the concession can be revoked. **Article 58** and **59** stipulate in particular that the television and/or radio broadcaster shall report in writing any changes in the ownership structure to the Electronic Media Council which can determine that the broadcaster shall coordinate its ownership structure with the provisions of this Act. Domestic legal persons whose founders or co-founders are foreign legal persons and registered in countries in which, according to those countries' regulations, it is not permissible or it is not possible to determine the origin of the founding capital, may not participate in the procedure of awarding concessions for performing the activity of television and radio media services. Should these legal persons be awarded a concession it will be revoked upon the establishment of these facts.

Article 60 stipulates that a particular broadcaster may perform only the activity of television broadcasting or the activity of radio broadcasting. The Electronic Media Council may permit the broadcaster to perform the media service of television and radio if television and radio media services are not provided in the same area.

Article 61 stipulates that a legal person whose activity is the collection, shaping and mediation in advertising, as well as a physical or legal person or a group of connected persons, which have more than 10% of the ownership share in the capital, i.e., property of that sort or which have more than 10% of management or voting rights may not be a television and/or radio broadcaster and/or founder of the television and radio broadcaster. Measures are envisaged which the Electronic Media Council may take if changes contrary to this provision appear in the ownership structure of the television and/or radio broadcaster.

Article 62 stipulates that an operator who performs the activity of audiovisual and/or radio programme transmission may not be a television and/or radio broadcaster nor a media service provider from Articles 19 and 80 of this Act.

Articles 63 and 64 stipulate that regulations on the protection of market competition shall apply to television and/or radio broadcasters, namely, the Market Competition Protection Act ("Official Gazette", no. 122/03) and that the provisions of the Electronic Media Act pertaining to ownership limitation and prohibition of concentration shall also apply to foreign legal and physical persons.

Articles 65 and 66 stipulate the establishment and operation of the Fund for the Promotion of Media Pluralism and Diversity within the Electronic Media Agency while paragraph 2 of Article 65 establishes the regulations which provide for the financial means for the operation of the Fund. The Electronic Media Council forwards the programmes and report on the allocation of the financial resources of the Fund to the Croatian Competition Agency. **Article 66** particularly stipulates that financial resources of the Fund for the Promotion of Media Pluralism and Diversity shall be used for encouraging the production and broadcasting at the regional and local levels of programmes of audiovisual and/or radio broadcasters that are of public interest, and audiovisual and radio programmes of non-profit television and/or radio broadcasters as well as the employment of university level personnel in television and/or radio broadcasters at the local and regional levels as well as non-profit television and/or radio broadcasters. The financial resources of the Fund shall be allocated in equal proportions for promoting pluralism and diversity of audiovisual and radio programmes. The articles also stipulate criteria for the allocation of funds and cases when the Fund's resources cannot be allocate.

Chapter VI Electronic Media Agency and Electronic Media Council

(Article 67 to 73)

Article 67 regulates the establishment of the Electronic Media Agency as an autonomous and independent legal person with public authority that has two bodies: the Agency director and Electronic Media Council. The Agency Director acts on behalf, represents and manages the Agency and is responsible for the work of the expert services of the Agency. In managing the Agency, the director of the Agency organizes and heads the activities and operations of the Agency.

Article 68 establishes that the Council manages the Agency and carries out the duties of a regulatory body in the area of electronic media. In its work the Council has the authority of an administrative council in the sense of the Institutions Act. The members of the Council perform their duties professionally as employees of the Agency.

Article 69 establishes that the Council shall have seven members of which one is the president of the Council. The president and the other members of the Council are appointed and relieved of duty by the Croatian Parliament at the proposal of the Government of the Republic of Croatia on the basis of a public invitation announced by the Government of the Republic of Croatia. The president and members of the Council are appointed for a five-year term with the possibility of re-appointment. The deputy-president of the Council is elected by a majority vote of the Council at the proposal of the president. The Article also stipulates criteria for the election of the Council members, namely, only those persons who have professional knowledge, abilities and experience in radio or television activities or in publishing, cultural or similar activities and have distinguished themselves in public life by advocating the respect for democratic principles and the rule of the law, the development and promotion of the highest values of the constitutional order of the Republic of Croatia, development of civic society, protection of human rights and freedoms as well as the protection of the freedom of expression, can be elected to the Council. It is also stipulated in this Article that a Council member cannot be a state official, an official in the executive or judicial authority or an official of a political party. In addition, a member cannot be the owner, shareholder or holder of stocks, member of management of supervisory boards and other corresponding managing bodies, director, chairman or member of executive boards of legal persons subject to the provisions of the Act and pertain to audio and audiovisual media services and network operators. Council members cannot receive gifts from media service providers, accept services or enter into relations that would lead to a conflict of interest in terms of the duties stipulated in this Act. Council members cannot be persons who are employed, or have a contractual or some other relation with any legal person or service that is connected with audio and audiovisual media services and network operators as well as persons performing tasks which could lead to a conflict of interest. The Article also indicates instances when the Croatian Parliament can relieve the president, namely, member of the Council of

duty before the expiry of his/her term of office, at the proposal of the Government of the Republic of Croatia. The president, deputy-president and members of the Council cannot, for a period of one year from the date of their relief of duty, be appointed as members of the management or supervisory or managing boards in legal persons to which the provisions of this Act apply while upon being relieved of duty in the case from paragraph 11, items 4,5 and 7 of this Article until the receipt of a salary from some other sources and until fulfilling the conditions for retirement in accordance with general acts and not longer than one year from the date of their relief of duty, they shall the right to compensation in amount of their last salary for the month preceding their relief of duty.

Article 70 defines the competence of the Electronic Media Council. The Council conducts the procedure for awarding a concession for providing television and/or radio media services, and licence for performing the activity of providing on-demand audio and/or audiovisual media services and licence for satellite, internet and cable programme transmission. The Council concludes a contract on the concession with the most advantageous tenderer in accordance with this Act, decides on the cancellation of concessions and licences in cases stipulated by this Act, undertakes appropriate measures for the temporary limitation of the freedom of transmitting audiovisual services from other states in accordance with Article 78 of this Act, issues warnings in cases of non-compliance with the provisions of this Act and proposals for bringing charges in accordance with the offence provisions, brings regulations which it is authorized to bring according to this Act, brings rules of procedure on its work, administers a register of media service providers, brings decisions on licences which permit the broadcaster to perform both radio and television activities, implements the provisions of this Act which relate to the protection of pluralism and diversity of electronic media, ensures the supervision of the implementation of provisions on programme principles and obligations, carries out the procedure of establishing non-compliance with or violation of the provisions of this Act, submits report to the Croatian Parliament and competent bodies, and to the European Commission and carries out other tasks stipulated in this Act and in special acts. The Article also establishes that regulatory and other tasks from paragraph 1 of this Article are tasks from the field of the public authorities of the Agency which are carried out by the Council.

Article 71 stipulates the manner in which the Electronic Media Council takes decisions. The Council takes decision by majority vote of all the Council members. The manner and procedure of taking decisions on the selection of the most advantageous tenderer and on terminating the concession shall be determined by the Council in its rules of procedure. The Article also stipulates that the Electronic Media Agency carries out administrative, expert and technical tasks for the Council, while the Croatian Post and Electronic Communications Agency carries out technical and expert tasks from the field of electronic communications. The Agency has an expert service for the supervision and regular monitoring of compliance with the provisions of this Act.

Article 72 establishes that an appeal against a decision of the Council is not permissible but an administrative procedure may be initiated before the Administrative Court of the Republic of Croatia.

Article 73 establishes that the Council carries out preparatory actions for the awarding of concessions in line with the Concessions Act. Preparatory actions for awarding concessions according to the Concessions Act imply the assessment of the value of the concession, preparation of a feasibility study for awarding the concession and drawing up of the competition documentation.

Article 74 stipulates the procedure for awarding a concession for providing television and radio media services. The Electronic Media Council announces a public competition for awarding concessions for the performance of television and radio media services in line with the technical basis set by the Croatian Post and Electronic Communications Agency in accordance with the electronic media regulations. The public competition is announced for an available radio frequency or more radio frequencies which comprise a single concession, i.e., in the case of digital radio and television for the available transmission capacity of an individual radio or television programme within the multiplex. The content and procedure of the public competition is stipulated by the Council in a special ordinance. The Article also contains criteria for awarding concessions for the performance of the activity of providing television and radio media services. The bid to a public competition must contain evidence on the fulfilment of conditions stipulated in the competition, the programme basis in accordance with this Act, data on the ownership structure of the legal person that is bidding, personal data on the company and its seat, namely, name, surname and address of the persons who own, directly or indirectly through other legal persons, stock or shares in that legal person, as well as data on the percentage of those stocks or shares. The bid must contain data on the tenderer's financial capability for performing the activity of a television and/or radio broadcaster. The decision on the selection of the most advantageous tenderer is brought by the Council upon the completion of the public competition procedure and implementation of the procedure for establishing the conditions for awarding a concession. Due to the importance and relevance of the content of the decision on the selection of the most advantageous tenderer the obligatory content of the text of the decision shall be specified.

Article 75 establishes that the right to perform the activity of providing television and/or radio broadcasting media services is acquired on the basis of a decision on the selection of the most advantageous tenderer and concluded concession contract. On the basis of the decision on the selection of the most advantageous tenderer, the Council and the Croatian Agency for Post and Electronic Communications conclude with the most advantageous tenderer a concession contract. In addition to the conditions essential for the exercise of the concession, the concession contract shall contain the programme basis and other conditions from the concession award competition. Likewise, if in the time frame established in the decision on the selection of the most advantageous

tenderer, the tenderer does not sign a concession contract drawn up in writing in line with the public competition documentation, and containing all the data stipulated in the public competition, the Council shall annul the decision on the selection of the most advantageous tenderer, and the tenderer shall not have the right to damage compensation. The concession may be transferred to another legal person together with the property, rights and obligations essential for the uninterrupted continuance of exercising the concession with the prior approval of the Council in accordance with this Act. The request for the prior approval of the Council may be submitted only after the expiry of three years from the date of concluding the concession contract. In such a case an annex to the concession contract shall be made or a corresponding new concession contract concluded.

Article 76 stipulates the area and duration of the concession for providing television and/or radio media services. The area of the concession may be the national, regional, county, city, municipality or some other level determined on the basis of a special regulation. The area of the concession at the national level shall comprise at least 60% of the population of the Republic of Croatia, while at the regional level it shall comprise at least 70% of the population of the region. The concession is awarded for a period of time which may not be longer than fifteen years or shorter than eight years. A fee is paid for the concession, and the manner of payment and the amount of the fee for the concession is stipulated by the Electronic Media Council. The concession for providing radio and/or television media services is registered in the Register administered by the Council and Register of Concessions administered by the Ministry of Finance. The content and manner of administering the Register shall be stipulated by the Council in an ordinance.

Article 77 stipulates cases in which the Electronic Media Council is authorized to temporarily or permanently terminate a concession for providing television and/or radio media services or the licence for performing the activity of providing on-demand audio and/or audiovisual media services including licences for satellite, internet and cable programme transmission as well as other cases of the termination of concessions.

Article 78 stipulates that the Council may temporarily limit the freedom of transmitting audiovisual media services from other states, if the programme from another member country encourages racial, sexual, religious, national and other forms of hatred, broadcasts pornographic content, insults human dignity, incites violence and crime, etc., in which cases the Council shall inform the television broadcaster and the European Commission in written form on the established violations and carry out consultations with the member state if the violations continue. Measures are necessary if they are carried out in order to protect minors, fight hatred, reasons of national security, protection of public health, assuming that the Republic of Croatia has previously asked the member state to undertake corresponding measures from which it may withdraw only in urgent cases. Conditions are determined under which the freedom of on-demand transmissions and audiovisual media services may be limited. These provisions

are in line with Article 2.a of Directive 2007/65/EC of the European Parliament and Council on audiovisual media services.

Article 79 stipulates cases in which the Electronic Media Council may, at the request of the broadcaster, take a decision on the renewal of the concession for performing the activity of providing television and/or radio media services.

Article 80 stipulates that the Council may issue, to the provider of media services from Article 5 or 6 of this Act, who does not use a concession and is not a provider of on-demand media services, a licence for satellite, internet or cable transmission of audiovisual and/or radio programmes if the applicant fulfils the technical conditions for programme transmission. The decision is brought not later than 30 days from the receipt of a correct request and the media services provider is inscribed in the Register administered by the Electronic Media Council and posted on the Council's website. In addition, this Article stipulates conditions under which the licence is terminated and that the transfer of the licence to another person is possible with the prior consent of the Electronic Media Council.

Chapter VII Electronic Publications

Article 81 stipulates that mutatis mutandis the provisions of Article 12,15 and 26 of this Act shall apply to electronic publications and that physical and legal persons shall submit, prior to the first publication of the publication, an application for inscription in the Register of electronic publication providers with the Electronic Media Council.

Chapter VIII Prohibition and Termination of Activity Performance

Article 82 stipulates that physical or legal persons shall not broadcast audiovisual and/or radio programmes if they do not fulfil the conditions contained in this Act, and that the Council may prohibit such persons the performance of the activity of providing services and initiate adequate proceedings for the temporary seizure of the working devices, products and materials used for performing the activity.

Chapter IX Penal Provisions (Articles 83 and 84)

Article 83 and 84 stipulate penal provisions which determine the amount a legal person shall be fined for acts or omissions established as violations and listed as such in the provisions of this Act. In accordance with the provisions of the Misdemeanours Act ("Official Gazette", no. 107/07) the Act also stipulates the protective measures of seizing the item and prohibiting the performance of the activity, as well as seizing the material gains acquired on the basis of the violation. The provisions also determine the amount in which the responsible individual in the legal person and physical person shall be fined for the mentioned violations.

Chapter X Transitional and Final Provisions (Articles 85 to 91)

Article 85 places the providers of media services under obligation to coordinate in a period of six months their work, business operations and general acts with the provisions of this Act which is sufficient time for undertaking all the actions required for coordinating the work and general acts of all the protagonists the Act applies to. Likewise, it leaves the possibility to the existing media service providers from Articles 19 and 80 of this Act to submit to the Electronic Media Council within 60 days from the coming into force of the Act an adequate request for the awarding of licences prescribed by the Act whereby it shall be deemed that they have licences for performing the activities in the sense of this Act.

Article 86 establishes that the procedures initiated according to the provisions of the Electronic Media Act shall be completed according to the provisions of that Act and other implementing regulations until the day of the coming into force of this Act.

Article 87 establishes that the members of the Council, the president of the Council and the director of the Agency shall continue with their work until the expiration of the term they were appointed for, namely, until the appointment of new Council members.

Article 88 establishes that the Electronic Media Agency shall coordinate within a period of 90 days from the coming of this Act into force the Agency Statute with the provisions of the Act and forward it to the Croatian Parliament for confirmation.

Article 89 establishes that the Electronic Media Council shall within a period of 90 days from the coming of this Act into force pass regulations on the basis of the authority stipulated in this Act. Until the adoption of the above

regulations, the regulations brought on the basis of the Electronic Media Act ("Official Gazette" no, 122/03, 79/07 and 32/08) shall apply.

Article 90 establishes that on the day of the entering into force of this Act the Electronic Media Act ("Official Gazette", no. 122/03,79/07 and 32/08), shall cease to be valid.

Article 91 stipulates that this Law shall enter into force on the eighth day of its publication in the "Official Gazette".