

Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content*

Having realised that new regulations need to be formulated to promote community and individual interests and social integrity, to ensure proper operation of the democratic order and to strengthen national and cultural identity, in line with the norms of international law and the European Union and developments in technology, the Parliament, giving due heed to ensuring the freedom of expression, speech and the press, and considering the key importance of media services in cultural, social and economic terms and to ensuring competition on the media market, hereby adopts the Act on the Freedom of the Press and the Fundamental Rules of Media Content as well as the Fundamental Rights and Obligations of Media Content Providers and the General Public, as follows:

TITLE I ***DEFINITION OF TERMS***

Article 1 1. *Media service* shall mean any independent service of a commercial nature, as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, provided on a regular basis, for profit, by taking economic risks, for which the media service provider bears editorial responsibility, the primary aim of which is the delivery of programmes to the general public for informational, entertainment or educational purposes through an electronic communications network.

2. *Media service provider* shall mean the natural or legal person, or a business association without legal personality who or which has editorial responsibility over the composition of the media services and determines their contents. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the media service.

3. *Programme* shall mean the series of sounds or moving images with or without sound, which form a separate unit in the programme schedule or the catalogue of programmes selected by the media service provider and the form and content of which is similar to that of radio or television media services.

4. *On-demand media service* shall mean the media services where, on the basis of a catalogue of programmes compiled by the media service provider, the user may, at his/her own request, watch or listen to the programmes at any time of his/her own choice.

5. *Linear media services* shall mean the media services provided by a media service provider that allow for the simultaneous watching or listening to programmes on the basis of a programme schedule.

6. *Press products* shall mean individual issues of daily newspapers or other periodical papers, online newspapers or news portals, which are offered as a business service, for the content of which a natural or legal person, or a business association without legal personality has editorial responsibility, and the primary purpose of which is to deliver textual or image content to the general public for information, entertainment or educational purposes, in a printed format or through any electronic communications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the

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media content and shall not necessarily result in legal responsibility in connection with the press product. Business service shall mean any independent service of a commercial nature provided on a regular basis, for profit, by taking economic risks.

7. *Media content* shall mean any content offered in the course of media services and in press products.

8. *Media content provider* shall mean the media service provider or the provider of any media content.

9. *Commercial communication* shall mean the media content aimed to promote, directly or indirectly, the goods, services or image of a natural or legal person, or a business association without legal personality carrying out business activities. Such contents accompany or appear in media contents against payment or similar consideration or for the purpose of self-promotion. Forms of commercial communication shall include amongst others advertisements, the display of the name, the trademark, the image or the product of the sponsor, or teleshopping or product placement.

10. *Surreptitious commercial communication* shall mean any commercial communication, the publication of which deceives the audience about its nature. Communications serving the purposes of commercial communications may qualify as surreptitious commercial communications, even if no consideration is paid for their publication.

11. *Advertisement* shall mean communications, information or form of representation intended to promote the sale or other use of marketable tangible assets – including money, securities and financial instruments and natural resources that can be utilized as tangible assets – services, real estates, pecuniary rights or to increase, in connection with the above purposes, the public awareness of the name, designation or activities of an undertaking, or any merchandise or brand name.

12. *Sponsorship* shall mean any contribution provided by an undertaking to finance media content service providers or media contents with the purpose of promoting its own name, trade mark, image, activities or products, or those of others.

TITLE II ***SCOPE OF THE ACT***

Article 2 (1) This Act shall apply to media services provided by media content providers established in Hungary.

(1a) The scope of this Act – with the exception of Article 13, Paragraph (1) of Article 14, Paragraphs (1), (2) and (4) of Article 19, the second sentence of Paragraph (8) of Article 20, and Paragraph (9) of Article 20 – shall also apply to the press products published by media content providers established in the territory of Hungary.

(2) For the purposes of this Act, a media content provider shall be deemed as established in Hungary if it meets the following criteria:

a) the analogue distribution of the media service provided by it is performed through the use of a frequency owned by Hungary, or the press product is primarily accessible through the electronic communications identifier designated for the users of Hungary;

b) the seat of its central administration is located on the territory of Hungary and the editorial decisions related to the media service or the press product are made on the territory of Hungary;

c) if either the seat of its central administration or the place where editorial decisions are made is located on the territory of Hungary, however the significant part of the media content provider's staff being employed on the territory of Hungary;

d) if a significant part of the media content provider's staff is employed both in and outside

the territory of Hungary but the seat of its central administration is located on the territory of Hungary; or

e) if either the seat of its central administration or the place where editorial decisions are made is located on the territory of Hungary, however its activity was commenced on the territory of Hungary and it maintains actual and continuous contact with the players of the Hungarian economy.

(3) This Act shall also apply to media services provided by media content providers not meeting the criteria set forth in Paragraphs (1)-(2) above, provided that such media content providers use a satellite uplink station located on the territory of Hungary or use such transmission capacity of the satellite that is owned by Hungary.

(4) If, on the basis of Paragraphs (1)-(3), it cannot be determined whether a particular media content provider falls under the jurisdiction of Hungary or some other Member State, the media content provider shall fall under the jurisdiction of the state where it is established, according to the provisions of Articles 49-55 of the Treaty on the Functioning of the European Union.

Article 3 (1) This Act shall apply to media services and press products which, although outside the scope of Article 2 (1)-(4), are targeted at or distributed or published on the territory of Hungary, subject to the conditions set forth in Articles 176-180 of Act CLXXXV of 2010 on Media Services and Mass Media (hereinafter: the Media Act).

(2) This Act shall also apply to the media services and press products targeted at or distributed or published on the territory of Hungary by such media content providers that are not deemed as established in any Member State of the European Economic Area, provided that their media services or press products are not subject to the jurisdiction of any one of the Member States either.

(3) This Act shall apply to media content providers rendering media services or publishing press products that fall under the scope of the Act pursuant to Article 2 and Paragraphs (1)-(2).

(4) In case this Act is violated, the Media Council of the National Media and Info-communications Authority may proceed and apply sanctions in accordance with the provisions of the Media Act on regulatory procedures.

TITLE III FREEDOM OF THE PRESS

Article 4 (1) Hungary recognises and protects the freedom and diversity of the press.

(2) The freedom of the press also includes independence from the State and from any organisation or interest group.

(3) The exercise of the freedom of the press may not constitute or encourage any acts of crime, violate public morals or the moral rights of others.

Article 5 (1) Legislation may set official registration as a precondition for the commencement or pursuit of media services and the publication of press products. The conditions set for registration may not restrict the freedom of the press.

(2) When limited state-owned resources are used by the media service provider, successful participation in a tender procedure announced and conducted by the Media Authority may also be set as a condition for the commencement of the media service.

Article 6 (1) A media content provider or a person in an employment relationship or in other work-related legal relationship with a media content provider shall be entitled, as stipulated by the respective Act, to keep the identity of a person delivering information to him/her in connection with the media content provider's activities (hereinafter as: journalists'

source) in the course of court or regulatory procedures, as well as to refuse to hand over any documents, objects or data carriers that could potentially reveal the identity of the journalists' source.

(2) In order to investigate a crime, the court has the right – in exceptionally justified cases as defined by law – to oblige the media content provider or a person in an employment relationship or in other work-related legal relationship with a media content provider to reveal the identity of the journalists' source or to hand over any document, object, or data carrier that could potentially identify the journalists' source.

Article 7 (1) Persons employed by or engaged in any other work-related legal relationship by the media content provider shall be entitled to professional independence from the owner of the media content provider or from natural or legal persons or business associations without legal personality sponsoring the media content provider or placing commercial communications in the media content, as well as to protection against any pressure from the owner or the sponsor aimed to influence the media content (editorial independence and journalistic freedom of expression).

(2) No sanctions set forth in the labour laws or originating from any other work-related legal relationship may be applied against any person employed by or engaged in any other work-related legal relationship by the media content provider for their rejection to comply with any instruction that would have violated editorial freedom or the journalistic freedom of expression.

Article 8 (1) The media content provider and the persons employed by or engaged in any other work-related legal relationship by the media content provider may not be held liable for any breach of law committed by it in connection with obtaining information of public interest provided that the particular piece of information could not have been obtained by it in any other manner or the difficulties endured while obtaining such information would be out of proportion, unless such breach of law constitutes a dis-proportionate or serious violation and unless such information was obtained in breach of the Act on the protection of qualified data.

(2) The entitlement laid down in Paragraph (1) does not constitute an exemption from the enforceability of claims under civil law for compensation of damages caused to property by such unlawful conduct.

Article 9 State and local government bodies, institutions, officers, public officers, persons entrusted with public functions and directors/managers of business associations in the majority ownership of the State or local governments shall be obliged to assist the media content providers in performing their obligation of information supply by providing the necessary information and data to the media content providers in a timely manner and in accordance with the legislation on the disclosure of data of public interest and the freedom of information.

TITLE IV

THE RIGHTS OF THE GENERAL PUBLIC

Article 10 All persons shall have the right to receive proper information on public affairs at local, national and European level, as well as on any event bearing relevance to the citizens of Hungary and the members of the Hungarian nation. The media system as a whole shall have the task to provide authentic, rapid and accurate information on these affairs and events.

Article 11 Public media service is operated in Hungary in order to preserve and strengthen national and European identity, foster and preserve national, family, ethnic and religious communities, and promote and enrich Hungarian language and culture and the languages and culture of other nationalities and meet the needs of citizens for information and culture.

TITLE V
THE RIGHT TO REQUEST CORRECTIONS IN THE PRESS

Article 12 (1) If false facts are stated or disseminated about a person or if true facts related to a person are represented as false in any media content, such person may demand the publication of a corrective statement suitable to identify the part of the statement that was false or unfounded, or the facts that the statement has distorted, while also presenting the true facts.

(2) For newspapers, online press products and news agencies, the corrective statement shall be published within five days from receipt of the respective request, in a manner and to an extent similar to the contested part of the statement. In case of on-demand media services, the corrective statement shall be made within eight days from receipt of the respective request, in a manner and to an extent similar to the contested part of the statement, in case of other periodicals the corrective statement shall be published eight days after receipt of the request, in the next issue/edition, in a manner and to an extent similar to the contested part of the statement, and in case of linear media services within eight days in a manner similar to contested part of the statement and during the same time of the day in which the contested part was published.

TITLE VI
OBLIGATIONS OF THE PRESS

Article 13 Linear media services engaged in the provision of information shall provide balanced coverage on local, national and European issues that may be of interest for the general public and on any events and debated issues bearing relevance to the citizens of Hungary and the members of the Hungarian nation, in the general news and information programmes broadcasted by them. The detailed rules of this obligation shall be set forth by the Act with a view to ensure proportionality and democratic public opinion.

Article 14 (1) The media service provider shall respect human dignity in the media content that it publishes.

(2) No wanton, gratuitous and offensive presentation of persons in humiliating, exposed or defenceless situations shall be allowed in the media content.

Article 15 (1) It is prohibited to abuse the consent granted to the media content provider regarding the publication of statements intended for public disclosure or regarding the appearance in the media content.

(2) The media content provider shall present the statement intended for public disclosure to the person who made the statement or appears in the media content before publication, upon his or her request, and may not publish it if the person concerned refuses to consent to publication because the media content provider has materially modified or distorted the statement and if it is detrimental to the person who made the statement or appears in the media content. The relevant rules of civil and criminal law shall apply to cases where publication was made despite of such consent having been withdrawn, or where the publication was detrimental to the reputation or honour of the person concerned.

(3) Without prejudice to the case specified in Paragraph (2), the statement or appearance may not be withdrawn, if

a) it was made by the person concerned in relation to an event of local, national, or European public life,

b) it is related to an event which is important to Hungarian citizens or members of the Hungarian nation, or

c) it was made by a person entrusted with a public function or by a politically exposed person in relation to the performance of his or her public function.

(4) Media content providers shall not enter into such agreements with persons appearing in media content which, within the scope of the agreement, limit the enforceability of the right of the person appearing in media content to his or her reputation, honour or privacy, or the right to withdraw the statement or appearance pursuant to Paragraphs (1) and (2). Such contractual provisions shall be null and void.

Article 16 Media contents shall not violate the constitutional order.

Article 17 (1) The media content may not incite hatred against any nation, community, national, ethnic, linguistic or other minority or any majority as well as any church or religious group.

(2) The media content may not exclude any nation, community, national, ethnic, linguistic and other minority or any majority as well as any church or religious group.

Article 18 [not in effect]

Article 19 (1) Linear media services may not include media content that could materially damage the intellectual, psychological, moral or physical development of minors especially by broadcasting pornography or extreme or unreasonable violence.

(2) Access to media content in on-demand media services that could materially damage the intellectual, psychological, moral or physical development of minors especially by displaying pornography or extreme or unreasonable violence may only be granted to the general public in a manner that prevents minors from accessing such content in ordinary circumstances.

(3) Access to media content in the press products that could materially damage the intellectual, psychological, moral or physical development of minors especially by displaying pornography or extreme or unreasonable violence may only be granted to the general public in a manner that prevents minors, by the application of an appropriate technical or other solution, from accessing such content. In case the application of such solution is not possible, the given content may only be published with a warning label informing about its possible harm to minors.

(4) Media content in linear media services that could damage the intellectual, psychological, moral or physical development of minors may only be published in a manner that ensures, either by selecting the time of broadcasting or by means of a technical solution, that minors do not have the opportunity to listen to or watch such content under ordinary circumstances.

(4a) Minors may not be presented in media content in a manner that may substantially jeopardise their psychological or physical development corresponding to their respective ages.

(5) The detailed rules on the protection of minors against media content are laid down in separate legislation.

Article 20 (1) Commercial communications in the media content must be easily recognisable.

(2) Advertisements in the media content must be distinguishable from other media content.

(3) No surreptitious commercial communication may be published in the media content.

(4) Commercial communications in the media content may not use techniques that cannot be perceived by the conscious mind.

(5) No such commercial communication can be presented in media content that offends religious or ideological convictions.

(6) Commercial communications presented in media content may not encourage a conduct that could be harmful to health, safety or the environment.

(7) The media content may not contain commercial communications aimed to promote or

present tobacco products, weapons, ammunition, explosives, gambling games organised without the permission of the state tax authority, prescription medication and therapeutic procedures. This restriction shall not apply to the exemptions set forth in the Act on commercial advertising and other relevant legislation.

(8) The party sponsoring the media content shall be named concurrently with or immediately before or after the publication of such content. Audiovisual media services and the programmes thereof may not be sponsored by other undertakings providing audiovisual media services or producing audiovisual programmes or cinematographic works.

(9) The media content published and sponsored in the media service may not encourage, call for or discourage the purchase or use of products or services of the sponsor or a third party defined by the sponsor.

(10) The sponsor may not influence the media content or the publication thereof in a manner that could affect the liability or editorial freedom of the media content provider.

TITLE VII RESPONSIBILITY

Article 21 (1) The media content provider, subject to the provisions of applicable legislation, shall make its decision on publication of the media content in its sole discretion and shall be responsible for compliance with the provisions of this Act.

(2) The provisions of Paragraph (1) shall not affect the responsibility, as defined in other legislation, of persons providing information to the media content provider or those persons employed by or engaged in any other work-related legal relationship by the media content provider who participate in production of the media content.

TITLE VIII AMENDED LEGISLATION

Article 22 *[not in effect]*

TITLE IX ENTRY INTO FORCE

Article 23 (1) This Act shall enter into force on 1 January 2011.

(2) Article 22 of this Act shall be repealed on the day following the entry into force of this Act.

Article 23/A Articles 1-9 and 12-21 of this Act shall qualify as organic law provisions pursuant to Paragraph (6) of Article IX of the Fundamental Law of Hungary.

TITLE X SHORT TITLE OF THE ACT

Article 24 This Act shall be referred to in other legislation as “Smtv.” <Press Freedom Act>.

TITLE XI

COMPLIANCE WITH EUROPEAN UNION LAW

Article 25 This Act serves the purposes of compliance with the following legislative acts of the European Union:

a) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (codified version) (Audiovisual Media Services Directive);

b) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic Commerce);

c) Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version);

d) Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products;

e) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive');

f) Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the community code relating to medicinal products for human use.