

# HUNGARY'S NEW MEDIA REGULATION



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2. Criticism: "the fact itself that the printed and internet press is subject to statutory regulation system is harmful to the freedom of the press" .....

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3. Criticism: "in the Media Council there are only members who are close to the biggest party in the government" .....

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4. Criticism: "the mandatory registration required from the press is seriously harmful to the freedom of the press" .....

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## Preface

The new media regulation has settled a debt long overdue by repealing the previous, for the most part, outdated regulations enacted in 1986 and 1996. Surprisingly for many, however, the new media regulation provoked unexpected and intense emotions. Despite this, the new laws entered into force in early 2011, and the media “market” in Hungary has been still operating ever since, but now under a new oversight authority and judicial practice based on a new regulatory foundation.

The volume the Reader is holding contains the currently effective texts of the two media laws, as well as a comprehensive study analyzing whether the new regulation is in compliance with the norms of Hungarian constitutionality that took shape since 1989. At the end of the book, the Reader will find a collection of the most serious criticisms of the Hungarian media laws and examples from Member States of the European Union that are in many respect similar to the solutions opted for by the architects of the Hungarian regulation. We hope our book will arouse the Readers’ interest and that we were successful in painting an impartial and accurate picture of the new Hungarian media regulation.

*The editors*

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, having regard to Article 61 of the Constitution of the Republic of Hungary, 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** *Media service* shall mean any independent business service as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union – provided on a professional and regular basis, for profit, by taking economic risk – 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 media content and shall not necessarily result in legal responsibility in connection with the press product. Business service shall mean any independent service provided on a professional and regular basis, for profit, by taking economic risk.

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 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 and press products provided and published by media content providers established in the Republic of Hungary.

(2) For the purposes of this Act, a media content provider shall be deemed as established in the Republic of 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 the Republic of Hungary, or the press product is primarily accessible through the electronic communications identifier designated for the users of the Republic of Hungary;
- b) the seat of its central administration is located on the territory of the Republic of Hungary and the editorial decisions related to the media service or the press product are made on the territory of the Republic of Hungary;
- c) either the seat of its central administration or the place where editorial decisions are made is located on the territory of the Republic of Hungary, with the significant part of the media content provider's staff being employed on the territory of the Republic of Hungary;
- d) if a significant part of the media content provider's staff is employed both in and outside the territory of the Republic of Hungary but the seat of its central administration is located on the territory of the Republic 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 the Republic of Hungary, however its activity was commenced on the territory of the Republic 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 the Republic of Hungary or use such transmission capacity of the satellite that is owned by the Republic of 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 the Republic 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 the Republic 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 the Republic 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 (1)-(2).

(4) In case this Act is violated, the Media Council of the National Media and Infocommunications 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) The laws of the Republic of Hungary recognise and protect the freedom of the press and ensure 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) The Act 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) The media content provider and any person employed by or engaged in any other work-related legal relationship by the media content provider shall have the right to keep secret the identity of its informant (hereinafter referred to as: journalists' source). The right to keep such data confidential shall not include the protection of journalists' sources disclosing qualified data unlawfully.

(2) The media content provider and any person employed by or engaged in any other work-related legal relationship by the media content provider shall have the right to keep the identity of their journalists' sources confidential even during court or other regulatory procedures, provided that the information thereby supplied to them were disclosed in the interest of the public.

(3) In exceptionally justified cases, courts or investigating authorities may, in order to protect national security and public order or to uncover or prevent criminal acts, oblige the media service provider and any person employed by or engaged in any other work-related legal relationship by the media content provider to reveal the identity of the journalists' sources.

**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 disproportionate 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 a 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 the Republic 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 the Republic of 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 minority languages and culture 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 and accurate 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 diverse, comprehensive, factual, up-to-date, objective and 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 the Republic 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 content provider shall, in the media content published by it and while preparing such media content, respect human dignity.

(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 misuse the approval granted to the media content provider for the publication of statements intended for public disclosure.

(2) The media content provider shall present the statement intended for public disclosure to the person having made the statement at such person's request, and may not publish the statement if the person having made the statement refuses to grant approval for publication because the media content provider has modified such statement materially and such modification is detrimental to the person having made the statement.

(3) The approval for the publication of the statement may be withheld without any legal consequences in the event of misuse by the media content provider as defined in Paragraph (1) provided that:

- a) the statement was not made in connection with a public event at a local, national or European level;
- b) the statement does not concern an event that bears relevance to the citizens of the Republic of Hungary and the members of the Hungarian nation, or
- c) the withdrawal statement was not made by a public officer or a person entrusted with a public function or a politically exposed person in relation to such person's public duties

provided that such withdrawal is made within reasonable time before the publication and, therefore does not cause disproportionate damage to the media content provider. Restrictions on this right under any contract shall be null and void.

**Article 16** The media content provider shall respect the constitutional order of the Republic of Hungary and shall not violate human rights in the course of its operations.

**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** The media content may not be suitable for the invasion of privacy.

**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.

(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, 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**

## **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.

## **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.

# Act CLXXXV of 2010

## on Media Services and Mass Media

The Parliament, with a view to promote community and individual interests and social integrity, to ensure proper operation of the democratic order and to strengthen national and cultural identity, with due respect to the Constitution, the constitutional principles, and the norms of international law and of the European Union, by taking into consideration the circumstances created by the developments in technology, by preserving the freedom of expression, speech and the press, and considering the key importance of media services in cultural, social and economic terms, and the importance of ensuring competition on the media market, hereby adopts this Act on Media Services and Mass Media, as follows:

### PART ONE

#### GENERAL PROVISIONS

#### CHAPTER I

##### SCOPE OF THE ACT

**Article 1** (1) The Act shall apply to media services and press products provided and published by media content providers established in the Republic of Hungary.

(2) For the purposes of the Act, a media content provider shall be deemed as established in the Republic of 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 the Republic of Hungary, or the press product is primarily accessible through the electronic communications identifier designated for the users of the Republic of Hungary;
- b) the seat of its central administration is located on the territory of the Republic of Hungary and the editorial decisions related to the media service or the press product are made on the territory of the Republic of Hungary;
- c) either the seat of its central administration or the place where editorial decisions are made is located on the territory of the Republic of Hungary, with the significant part of the media content provider's staff being employed on the territory of the Republic of Hungary;
- d) if a significant part of the media content provider's staff is employed both in and outside the territory of the Republic of Hungary but the seat of its central administration is located on the territory of the Republic 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 the Republic of Hungary, however its activity was commenced on the territory of the Republic of Hungary and it maintains actual and continuous contact with the players of the Hungarian economy.

(3) The scope of the Act shall also cover media services provided by media content providers which do not qualify as a media content provider established on the territory of the Republic of Hungary based on Paragraphs (1)-(2) and which do not qualify as a media content provider established in another Member State either, provided that such media content providers use a satellite uplink station located on the territory of the Republic of Hungary or use such transmission capacity of the satellite that is owned by the Republic of 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 the Republic 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.

(5) This Act shall also apply to media services and press products which, although outside the scope of Paragraphs (1)-(4), are targeted at or distributed or published on the territory of the Republic of Hungary, subject to the conditions set forth in Articles 176–180.

(6) The Act shall also apply to the media services and press products targeted at or distributed or published on the territory of the Republic of Hungary by such media content providers that are not deemed as established in any Member State,

provided that their media services or press products are not subject to the jurisdiction of any one of the Member States either.

(7) The Act shall apply to media content providers rendering media services or publishing press products that fall under the scope of the Act pursuant to Paragraphs (1)-(6).

**Article 2** (1) In certain instances stipulated herein, the scope of the Act shall also cover ancillary media services, and their providers, that are provided within the territory of the Republic of Hungary or that are related to media service distribution provided within the territory of the Republic of Hungary.

(2) In certain instances stipulated herein, the scope of the Act shall cover

- a) media service distribution, carried out wholly or partially with electronic communications equipment installed within the territory of the Republic of Hungary or transmitting to the territory of the Republic of Hungary;
- b) the technical activities of the media service provider in connection with the media service distribution stipulated in Point (a);
- c) the activity of the ancillary media service provider in connection with the media service distribution stipulated in Point (a);
- d) the publications.

(3) In certain instances stipulated herein, the scope of the Act shall cover natural or legal persons or other organizations without legal personality and the executive officers of such persons or entities carrying out the activities or providing the services stipulated under Paragraph (2) or carrying out any activity or providing any service related thereto.

(4) In certain instances stipulated herein, the scope of the Act shall also cover the intermediary service provider transmitting the media service or the press product and the services of such provider.

(5) In certain instances stipulated herein, the scope of this Act shall also cover the viewers, the listeners or the readers of the media services, ancillary media services and press products and the user, consumer and subscriber of the media service distribution falling within the scope of the Act.

## CHAPTER II

### FUNDAMENTAL PRINCIPLES

**Article 3** Media services may be provided and press products may be published freely, information and opinions may be transmitted freely through the mass media, and Hungarian and foreign media services intended for public reception may be accessed freely in the Republic of Hungary. The content of the media service and the press product may be determined freely, nevertheless the media service provider and the publisher of press product shall be liable for compliance with the provisions of this Act.

**Article 4** The diversity of media services is a particularly important value. The protection of diversity shall also include the avoidance of the formation of ownership monopolies and any unjustified restriction of competition on the market. The provisions of this Act shall be interpreted in consideration of the protection of diversity.

**Article 5** The right to information and the right to be informed of those living within the territory of the Republic of Hungary and of the members of the Hungarian nation and, in connection with this, the development and strengthening of publicity in the democratic society are fundamental constitutional interests. The provisions of this Act shall be interpreted with a view to the interests of democratic public opinion.

**Article 6** Existence of public media services represents an essential condition of the appropriate functioning of a democratic social order. The interests of public media service shall be considered with particular emphasis in the course of the application of this Act.

**Article 7** (1) In the course of carrying out the tasks falling within the scope of this Act, the media service providers, publishers of press products, ancillary media service providers and media service distributors shall act as required by good faith and fairness, in accordance with the provisions of this Act and shall be obliged to mutually cooperate with one another and the viewers, the listeners, the readers, the users and the subscribers.

(2) The media service distributors, media service providers, and ancillary media service providers shall be obliged to operate and provide the electronic communications networks, electronic communications services, digital programme

flows and ancillary media services between each other in accordance with a set of coordinated technical criteria, so that these form a unified system required to establish the necessary connection and to provide the service either directly or with the incorporation of proper interfaces, network parts, elements, devices or services.

**Article 8** The professional self-regulatory bodies comprising the media service providers, publishers of press products, intermediary service providers and media service distributors, as well as the various self- and co-regulatory procedures applied play an important role in the field of media regulation and in the application of and compliance with the provisions of this Act. Such bodies and procedures shall be respected in the application of this Act.

## **PART TWO**

### **GENERAL RULES OF MEDIA SERVICES AND PRESS PRODUCTS**

#### **CHAPTER I**

#### **REQUIREMENTS REGARDING THE CONTENT OF MEDIA SERVICES**

##### **Protection of Children and Minors**

**Article 9** (1) A media service provider providing linear media services shall assign a rating to each and every programme it intends to broadcast in accordance with the categories under Paragraphs (2)-(7) prior to broadcasting, with the exception of news programmes, political programmes, sports programmes, previews and advertisements, political advertisements, teleshopping, public service advertisements and public service announcements.

(2) Category I shall include programmes which may be viewed or listened to by persons of any age.

(3) Category II shall include programmes which may trigger fear in persons under the age of six or may not be comprehended or may be misunderstood by such viewer or listener owing to his/her age. These programs shall be classified as "Not recommended for audiences under the age of six".

(4) Category III shall include programmes which may trigger fear in persons under the age of twelve or may not be comprehended or may be misunderstood by such viewer or listener owing to his/her age. These programmes shall be classified as "Not recommended for audiences under the age of twelve".

(5) Category IV shall include programmes which may impair the physical, mental or moral development of persons under the age of sixteen, particularly because they refer to violence or sexuality, or are dominated by conflicts resolved by violence. These programmes shall be classified as "Not recommended for audiences under the age of sixteen".

(6) Category V shall include programmes which may impair the physical, mental or moral development of minors, particularly because they are dominated by graphic scenes of violence or sexual content. These programmes shall be classified as "Not recommended for audiences under the age of eighteen".

(7) Category VI shall include programmes which may seriously impair the physical, mental or moral development of minors, particularly because they involve pornography or scenes of extreme and/or unjustified violence.

(8) The Media Council of the National Media and Infocommunications Authority (hereinafter as: the Media Council) shall issue recommendations on the most important conceptual aspects of the enforcement practice applied by it concerning the detailed criteria governing the ratings as per Paragraphs (2)-(7), the signs to be used prior to and in the course of broadcasting the various programmes and the method of communicating the rating, if justified by public interest related to the protection of minors or by the uniform approach to the protection of minors.

(9) Upon request of the media service provider the Media Council shall adopt a regulatory decision on the rating of the programme within fifteen days from having received the programme in question, for an administrative service fee.

(10) It shall not qualify as the violation of Paragraphs (1)-(7) if the media service provider rates a programme into a higher category than it would be required pursuant to Paragraphs (2)-(6).

**Article 10** (1) In linear media services

(a) programmes classified into Category II cannot be aired between programmes intended for persons under the age of six, but may, at any time, be aired using the proper rating;

(b) programmes classified into Category III cannot be aired between programmes intended for persons under the age of twelve, but may, at any time, be aired using the proper rating;

- (c) programmes classified into Category IV may be aired between 9.00 p.m. and 5.00 a.m. using the proper rating;
- (d) programmes classified into Category V may be aired between 10.00 p.m. and 5.00 a.m. using the proper rating;
- (e) programmes classified into Category VI may not be aired;
- (f) a preview may not be aired at a time when the programme it introduces or presents is not allowed to be aired or at a time when upon the proper rating of such preview it is not allowed to be aired;
- (g) the preview of a programme classified into Category III may not be aired during the interval of or immediately prior or subsequent to a programme intended for persons under the age of twelve;
- (h) sports programmes, commercial communications and public service advertisements may not be aired at such times when it is foreseeable that these would not be allowed to be aired, if they were provided with a proper rating based on their content.

(2) In linear media services

- (a) a programme may only be aired in compliance with its rating, subject to the exceptions provided by this Act;
- (b) the rating of the programme shall be communicated at the time the airing of the programme begins.
- (3) In the case of linear radio media services, the rating does not have to be communicated if
  - (a) the programme falling within Categories II and III is aired between 9.00 p.m. and 5.00 a.m.;
  - (b) the programme falling within Categories IV and V is aired between 11.00 p.m. and 5.00 a.m.
- (4) In linear audiovisual media services, at the time the specific programme is aired, a sign corresponding to the rating of the programme shall also be displayed in the form of a pictogram in one of the corners of the screen so that it is clearly visible throughout the entire course of the programme. The pictogram shall indicate with numbers the age group affected by the given category. In case of programmes falling into Category I it is not necessary to display the sign. In case of a linear radio media service it is not necessary to use permanent signs.
- (5) In case of linear audiovisual media services the continuous display in accordance with Paragraph (4) of the sign corresponding to the rating of the programme may be disregarded, provided that
  - a) the programme classified into Categories II and III is aired between 9.00 p.m. and 5.00 a.m.;
  - b) the programme classified into Category IV is aired between 10.00 p.m. and 5.00 a.m.; or
  - c) the programme classified into Category V is aired between 11.00 p.m. and 5.00 a.m.

In this case the sign corresponding to the rating of the programme shall be displayed when the programme begins, and at the time the programme is continued following the commercial break.

- (6) The stipulations in Points (c)-(f) and (h) of Paragraph (1) and under Paragraphs (2) and (4) shall not be applied if the media service contains the programme in an encrypted form and decryption may only be executed by using a code, which the media service provider or the media service distributor only made accessible to subscribers over the age of eighteen, or which uses another effective technical solution to prevent viewers or listeners under the age of eighteen from accessing the programme. The Media Council shall issue recommendations in respect of effective technical solutions subsequent to holding a public hearing, if necessary.
- (7) The rating of each and every programme in accordance with Article 9 shall be displayed in a conspicuous manner in the press product specifying the programme flow of the media service provider, on the website, noninteractive teletext and teletext of the media service provider, provided it has any of these.

**Article 11** (1) The provisions under Article 9 (6)-(7) shall be applied to on-demand media services.

- (2) Pursuant to Article 19 (2) of Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content (hereinafter referred to as: Press Freedom Act), the media service provider or the media service distributor (distributing the given service) of an on-demand media service shall use an effective technical solution to prevent minors from accessing its programmes falling within categories V and VI.
- (3) The Media Council shall issue recommendations in respect of effective technical solutions mentioned in Paragraph (2) subsequent to holding a public hearing, if necessary.

## Information Activities

**Article 12** (1) The information activities of media services shall comply with the obligation set forth under Article 13 of the Press Freedom Act.

- (2) Subject to the nature of the programmes, the balanced nature of the information provision shall be ensured either within the given programme or within the series of programmes appearing regularly.
- (3) Save for the explanation of the news, employees of the media service provider appearing regularly in the programmes providing news service and political information as presenters, newsreaders or correspondents may not add any opinion or evaluative explanation to the political news appearing in the programme aired by any media service provider.
- (4) Any opinion or evaluative explanation added to the news provided in a programme shall be made in a form distinguishing it from the news themselves, indicating its nature as such and identifying its author.

## **Parliamentary Broadcasting**

**Article 13** (1) A closed circuit audiovisual system operates for the purpose of broadcasting the entire sessions of the Parliament, the public hearings of parliamentary committees concerning appointments and nominations and the sessions of parliamentary committees, if necessary.

(2) The output signal of the closed circuit system shall be made accessible to each and every media service provider. The media service provider shall bear the costs of connecting to the system.

(3) The provisions under Paragraphs (1)-(2) are without prejudice to the right of any media service provider to broadcast or record programme flow from the designated area of the Parliament building.

(4) A copy of the recorded output signal accessible by any person shall be deposited with the Library of Parliament and the National Széchényi Library (Országos Széchényi Könyvtár). The Library of Parliament shall ensure that the recorded material may be viewed and that any person may make a freely usable copy for a fee. A copy shall be deposited at archives of the Media Service Support and Asset Management Fund (hereinafter as: Fund).

(5) The broadcasting order guaranteeing the impartiality of broadcasting of the parliamentary activity shall be determined as an annex to the Parliament's Rules of Procedure.

## **Warning about Offensive Content**

**Article 14** The viewers or listeners shall be given a forewarning prior to the broadcasting of any image or sound effects in media services that may hurt a person's religious, faith-related or other ideological convictions or which are violent or otherwise disturbing.

## **Managing Crisis Situations through the Media Services**

**Article 15** During a state of distress, state of emergency or state of extreme danger, or in the event of the unforeseen invasion of the territory of Hungary by foreign armed groups, or in connection with operations for the protection of the state's territory by air defence and air forces of the Hungarian Army, the Parliament, the Defence Council, the President of the Republic of Hungary and the Government, as well as the persons and organizations defined by law may order the media service provider, to the extent necessitated by the existing state of affairs or situation, to publish, free of charge, any public service announcements in connection with the existing state of affairs or situation, in the prescribed form and time, or may prohibit the publication of certain announcements or programmes. The Fund shall be responsible for providing the conditions necessary for publishing. At the time of publication, the person or institution ordering the publication must be clearly identified.

## **Exclusive Broadcasting Rights**

**Article 16** (1) The audiovisual media service provider may not exercise the exclusive broadcasting right so as to deprive a substantial part – more than twenty percent – of the Hungarian audience having access to the audiovisual media services of the possibility to follow the events, live or in a subsequent broadcast, regarded to be events of major importance to society, through an audiovisual media service accessible without the payment of a subscription fee.

(2) In connection with the audiovisual media service providers determined under Paragraph (1), the events of major importance to society shall be defined by the Media Council in its regulatory decision, subsequent to a public hearing. In this decision the Media Council shall also establish whether the events of major importance to society should be broadcasted live or subsequently. When adopting the decision, it should also be given consideration that a wide

range of viewers should show interest in the event classified as one of major importance, and that the event should be a world- or Europe-wide event, or one with Hungarian significance, which, save for events exclusively of Hungarian significance, is aired in a significant number of European countries.

(3) The Media Council shall, in the form of an order, inform the audiovisual media service providers on the commencement of the regulatory procedure referred to under Paragraph (2). Such notification shall only contain the subject matter of the case and a brief description thereof. The Media Council shall publish such notifications through public notices. In the course of such a regulatory procedure only clients participating in the procedure shall be entitled to exercise the respective client rights.

(4) The Media Council shall communicate its regulatory decision defined under Paragraph (2) through a public notice.

(5) The Media Council may amend its regulatory decision as per Paragraph (2) in accordance with the discretionary criteria defined under Paragraph (2). The provisions of Paragraph (4) shall be applied regarding the notification of the amended decision.

(6) In the course of the judicial review of the decisions defined under Paragraphs (2) and (5), the filing of the statement of claim shall not have a suspensive effect on the enforcement of the decision and the court cannot suspend the enforcement of the decision challenged by the statement of claim. The decision shall be enforceable immediately, irrespective of the filing of the statement of claim.

(7) Paragraph (1) and Article 18 (1) shall not be applied regarding the exclusive rights lawfully acquired prior to the notification of the first decision adopted according to Paragraph (2) and the notification of its subsequent amendment.

**Article 17** (1) The exclusive broadcasting right shall not be exercised so as to deprive a substantial part of the audience in a Member State from following those events of major importance for them via an audiovisual media service, which are indicated on the list compiled and published in advance by the Member State concerned.

(2) Exclusive audiovisual broadcasting rights obtained subsequent to the effective date of the Act promulgating the Protocol on the amendment of the European Convention on Transfrontier Television signed in Strasbourg on 5 May 1989, promulgated by Act XLIX of 1998, shall be exercised in conformity with the provisions on the broadcasting of events of major importance for society in the States which are party to the Protocol.

**Article 18** (1) If exercising of the exclusive broadcasting right would deprive at least twenty percent of the Hungarian audience from following the events as per Article 16 (2) via an audiovisual media service, the audiovisual media service provider shall be obliged to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to the linear audiovisual media service provider (hereinafter as: contracting authority), who provides services accessible for at least eighty percent of the citizens of the Republic of Hungary without the payment of a subscription fee, when approached by such service provider, for the broadcasting of the said event live or subsequently. Under such circumstances, the media service provider having obtained exclusive rights may not refer to not being entitled to transfer the exclusive right.

(2) Any media service provider, that acquired exclusive rights for the broadcasting of an event through audiovisual media service which has been designated by any State being a party to the Protocol as being of major importance to society, shall be required to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to the foreign linear audiovisual media service provider – who falls within the jurisdiction of that State, complies with the requirements defined by that State, and is accessible without a subscription fee by at least eighty percent of the citizens of that State by taking any and all media service distribution techniques into consideration – when approached by such a service provider concerning the broadcast of the said event.

(3) Any media service provider, that acquired exclusive rights for the broadcasting of an event that has been designated by a Member State as being of major importance to society, shall be required to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to the foreign audiovisual media service provider – who falls within the jurisdiction of that Member State and complies with the requirements defined by that Member State – when approached by such a service provider concerning the broadcast of the said event.

(4) The parties concerned shall agree on the detailed terms and conditions of the contracts defined under Paragraphs

(1)-(3).

(5) In the cases specified under Paragraphs (1)-(3) the parties shall be subject to an obligation to contract. In the event the parties fail to conclude an agreement or fail to agree on the fees within fifteen days subsequent to the offer having been made, the contracting authority or the media service provider with exclusive broadcasting rights may initiate the legal dispute procedure stipulated in Articles 172-174. Within the framework of such legal dispute procedure, the Media Council shall adopt its decision within fifteen days. The administrative deadline may be extended by fifteen days, if justified.

(6) For the purposes of Articles 16 and 18, the records of the Media Council shall prevail as far as the accessibility of the media services are concerned.

## **Short News Reports**

**Article 19** (1) Any linear audiovisual media service provider established within the territory of the European Union may have, for the purpose of a short news report, access in a fair, reasonable and non-discriminatory manner to the broadcast on the event of major importance, which appears on the list defined under Article 16 (2) published by the Media Council or designated as such in any Member State and broadcasted under an exclusive broadcasting right by the audiovisual media service provider established in Hungary. The access may take place by obtaining the signal of the media service, by making a record at the location of the event or by receiving the footage recorded on the event.

(2) If an audiovisual media service provider, who is established in the same Member State where the audiovisual media service provider requesting the access is established, obtained exclusive rights in connection with the event of major importance, access may only be requested from this audiovisual media service provider.

(3) In the case specified under Paragraph (1) the parties concerned shall be subject to an obligation to contract. The contract shall be entered into upon reasonable terms and conditions; the consideration for the right of access may not exceed the costs arising directly as a result of providing access. In the event the parties fail to conclude an agreement within fifteen days subsequent to the offer having been made, any of the parties may initiate the legal dispute procedure stipulated in Articles 172 -174. Within the framework of such legal dispute procedure, the Media Council shall adopt its decision within fifteen days. The administrative deadline may be extended by fifteen days, if justified.

(4) The audiovisual media service provider, which obtained a right of access, may freely select the parts of the programme it intends to broadcast in the short news report.

(5) The total length of the parts to be broadcasted may not exceed ten percent of the total length of the programme concerned, but fifty seconds at most. The contract may permit the broadcasting of parts with a longer total length.

(6) The audiovisual media service provider having obtained a right of access shall identify the holder of the exclusive broadcasting right with which it entered into an agreement on broadcasting.

(7) The parts of the programme, which may be used on the basis of the agreement, cannot be broadcasted individually but only as part of general news and information programmes. If the linear audiovisual media service provider intends to broadcast the short news report in an on-demand audiovisual media service as well, it may only do so if the programmes containing the short news report are identical in both the linear and in the on-demand audiovisual media services.

## **Programme Quotas**

**Article 20** (1) The media service provider

a) shall allocate over half of its annual total transmission time of linear audiovisual media services to broadcasting European works and over one-third of its transmission time to broadcasting Hungarian works;

b) shall allocate at least ten percent of its annual total transmission time of linear audiovisual media services to broadcasting such European works, and at least eight percent of its transmission time to broadcasting such Hungarian works which were ordered by it from an independent production company, or were purchased from an independent production company within five years of production;

(2) Over one-quarter of the total sum of the length of the programmes made available in a given calendar year in the on-demand audiovisual media service shall be composed of Hungarian works.

(3) The public media service provider shall be obliged to allocate its total annual transmission time of linear audiovisual media services in the following way:

- (a) over sixty percent of its annual transmission time to broadcasting European works;
- (b) over half of its annual transmission time to broadcasting Hungarian works;
- (c) over one-third of its annual transmission time to works which were ordered by it from an independent production company or which were purchased from an independent production company within five years of production;
- (d) over one-quarter of its annual transmission time to works which were ordered by it from an independent Hungarian production company or which were purchased from an independent Hungarian production company within five years of production.

**Article 21** (1) In linear radio media services at least thirty-five percent of the total annual transmission time dedicated to broadcasting musical works shall be allocated to broadcasting Hungarian musical works.

(2) In average, annually at least twenty-five percent of the Hungarian musical works to be broadcasted in linear radio media services shall consist of musical works released within five years or from recordings produced within five years.

**Article 22** (1) The provisions laid down in Articles 20-21 shall not apply to

- (a) media services dedicated exclusively for advertising purposes and the broadcasting of teleshopping;
- (b) media services advertising exclusively the media service provider or another media service of the media service provider;
- (c) the media service which broadcasts its service exclusively in a language other than the languages of the Member States of the European Union; where programmes are broadcasted in this language or languages in the significant part of the transmission time, the provisions shall not apply to the respective part of transmission time;
- (d) the local media service with the exception of community media service;
- (e) the media service which is exclusively broadcasted in countries outside of the European Union.

(2) The media service provider may, upon its request addressed to the Media Council, also attain the proportions defined in Articles 20-21 gradually, in a manner stipulated in a public contract concluded with the Media Council. Such an exemption in a public contract may only be granted for a maximum period of three calendar years upon the condition that the media service provider – until it reaches the prescribed proportions – shall gradually increase the proportion of broadcasted Hungarian and European works and works produced by an independent producer in its media service.

(3) The public contract entered into with a media service provider offering radio media services and on-demand media services may, in justified cases, permit a long-term or permanent deviation from the proportions defined in Articles 20-21. The public contract entered into with the media service provider offering linear audiovisual thematic media services may, in justified cases, permit the media service provider to fulfil its obligation under Article 20 (1) (b) and Article 20 (3) (c)-(d) by broadcasting works produced over five years earlier.

(4) Save for the case stipulated under Paragraph (3), no general exemption may be granted from compliance with the provisions concerning programme quotas.

(5) The proportion of European works set forth in Article 20 (1) (a) and the proportions set forth in Article 20 (3) (a) and 21 (1), as well as the proportions specified in the public contract concluded according to Paragraphs (2)-(3) of this Article – in relation to Point a) of Article 20 (1), Point a) of Article 20 (3), and Article 21 (1) – must also be ensured during the transmission time of the different media services between 5.00 a.m. and 12.00 p.m.

(6) Media service providers providing more than one media service shall attain the proportions defined in public contracts entered into on the basis of Articles 20-21 and Paragraphs (2)-(3) on average of the total transmission time of all of their media services, with the provision that the proportion of Hungarian musical works shall be at least twenty percent of the transmission time for each media service in relation to the performance of the obligation set forth in Article 21 (1).

(7) For the purposes of Articles 20-21, transmission time devoted to news programmes, sports programmes, games, advertisements, teleshopping, political advertisements, public service announcements, sponsorship announcements, public service advertisements and the noninteractive teletext shall not be considered in the course of determining the total transmission time.

(8) The media service provider shall provide data monthly to the Media Council for the verification of compliance with the provisions concerning programme quotas. The application for exemption, with justifications attached, regarding

the forthcoming calendar year in accordance with Paragraphs (2)-(3) shall be filed to the Media Council by 30 September each year at the latest. In the case of a new media service, the application may be lodged at the same time when the registration procedure is initiated.

### **Commercial Communications**

**Article 23** The provisions laid down in Article 20 (1)-(7) of the Press Freedom Act shall also be applied to commercial communications broadcasted in media services.

**Article 24** (1) The commercial communication broadcasted in the media service

- (a) may not violate human dignity;
- (b) may not contain and may not support discrimination on grounds of gender, racial or ethnic origin, nationality, religion or ideological conviction, physical or mental disability, age or sexual orientation;
- (c) may not directly call upon minors to purchase or rent products or to use services;
- (d) may not directly call upon minors to persuade their parents or others to purchase the advertised products or to use the advertised services;
- (e) may not exploit the special trust of minors placed in their parents, teachers or other persons or the inexperience and credulity of minors;
- (f) may not show minors in dangerous situations, if this is not justified;
- (g) may not express religious, conscientious or ideological convictions except for commercial communications broadcasted in thematic media services with religious topics;
- (h) may not violate the dignity of a national symbol or a religious conviction.

(2) Commercial communications broadcasted in media services pertaining to alcoholic beverages

- (a) may not be aimed specifically at minors;
- (b) may not show minors consuming alcohol;
- (c) may not encourage immoderate consumption of such beverages;
- (d) may not depict immoderate alcohol consumption in a positive light and refraining from alcohol consumption in a negative light;
- (e) may not show exceptional physical performance or the driving of vehicles as a result of the consumption of alcoholic beverages;
- (f) may not create the impression that the consumption of alcoholic beverages contributes to social or sexual success;
- (g) may not claim that the consumption of alcoholic beverages has stimulating, sedative or any other positive health effects or that alcoholic beverages are a means of resolving personal problems;
- (h) may not create the impression that immoderate alcohol consumption may be avoided by consuming beverages with low alcohol content or that high alcohol content is a positive attribute of the beverage.

**Article 25** The person who orders the publication of the commercial communication and the person who has an interest in such publication may not exert editorial influence over the media service, except for the time of publication.

### **Sponsoring Media Services and Programmes**

**Article 26** (1) Provisions of Article 20 (8)-(10) of the Press Freedom Act shall be applicable to the sponsorship of media services and programmes.

- (2) In the case of a sponsored media service or programme the identification of the sponsor – pursuant to Article 20 (8) of the Press Freedom Act – may take place by reference to the name or the trademark of the sponsor or another undertaking designated by it, or by the publication or use of a symbol of the sponsor or another undertaking designated by it, or by reference to its product, activity or service or the publication or use of the distinguishing sign or logo of the aforesaid.
- (3) The publication under Paragraph (2) may take place simultaneously with the programme, prior to the programme or subsequent to the end of the programme in a manner not damaging the nature and content of the sponsored programme.

**Article 27** (1) The following entities may not sponsor media services or programmes:

- a) political parties, political movements;

b) undertakings manufacturing tobacco products.

(2) In addition to the provisions of Point (b) of Paragraph (1), undertakings, which – as their core business – manufacture products that may not be advertised pursuant to the provisions of this Act or under any other piece of legislation or which provide services related to such products, may not sponsor media services or programmes by the display or promotion of such products or services.

(3) The prohibition laid down in Article 20 (7) of the Press Freedom Act shall not apply to the sponsorship tied to the publication of the name and trademark of an undertaking in connection with a medicine or a therapeutic procedure, or sponsorship tied to the promotion of medicines, medicinal products or therapeutic procedures, which may be used without a medical prescription. Programmes sponsored by an undertaking engaged in the manufacture or distribution of medicines, medicinal products or the supply of therapeutic procedures may not promote medicines, medicinal products or therapeutic procedures accessible only upon medical prescriptions.

(4) The name, slogan or emblem of a political party or a political movement may not appear in the name or the displayed name of the sponsor.

(5) It shall not qualify as the sponsorship of an audiovisual media service or programme or as a surreptitious commercial communication, if a public event, or the name or logo of the sponsor of the participants of the event, or the name of the product or the service of the sponsor is displayed on the screen in the course of the broadcast from the event – including the interviews made in connection with the event before or after the event or during the interval of the event –, provided that the media service provider has no material interest in such appearance and the manner of appearance does not provide the sponsor with an unjustified emphasis.

(6) If a person or an undertaking sponsoring another person or undertaking, which appears in a programme of the audiovisual media service provider or the name, the symbol or the logo of such sponsoring person or undertaking appears in the programme – with the exception of the case referred to under Paragraph (5) –, the rules concerning the sponsorship of media services and programmes shall be applicable, not including the obligation to identify the sponsor.

**Article 28** (1) The followings may not be sponsored in audiovisual media services:

(a) news programmes and political programmes;

(b) programmes reporting about the official events of national holidays.

(2) Programmes reporting about the official events of national holidays may not be sponsored in a radio media service.

(3) The restriction defined in Point (a) of Paragraph (1) does not affect the sponsorship of thematic media services broadcasting news and political programmes.

**Article 29** Article 20 (8)-(10) of the Press Freedom Act shall not apply to thematic media services exclusively specialising in the ordering of goods or services.

## **Product Placement in Programmes**

**Article 30** (1) With the exceptions provided under Paragraph (2), product placement in media services shall be prohibited.

(2) Product placement in programmes shall be permitted

(a) in cinematographic works intended for showing in cinemas; cinematographic works or film series intended for showing in media services; sports programmes and entertainment programmes;

(b) in programmes other than those stipulated in Point (a), provided that the manufacturer or distributor of the product concerned, or the provider or intermediary of the service concerned does not provide the media service provider or the producer of the given programme with any financial reward, neither directly nor indirectly, beyond making available the product or service free of charge for product placement purposes.

(3) No product placement may be used

(a) in news programmes and political programmes;

(b) in programmes intended specifically for minors under the age of fourteen, with the exception of the case specified in Point (b) of Paragraph (2);

(c) in programmes reporting about the official events of national holidays;

(d) in programmes with religious or ecclesiastic content.

(4) Programmes shall not contain product placements of the following products:

- (a) tobacco products, cigarettes or other products originating from undertakings, the primary activity of which is the manufacture or sale of cigarettes or other tobacco products;
- (b) products that may not be advertised pursuant to this Act or other pieces of legislation;
- (c) medicines, medicinal products, or therapeutic procedures, which may only be used upon medical prescription.

**Article 31** (1) Programmes containing product placements shall comply with the following requirements:

- (a) their content – and in the case of linear media services, the programme schedule – may not be influenced so as to affect the responsibility and editorial independence of the media service provider;
- (b) they shall not call upon the purchase or rent of a product or the use of a service in a direct manner;
- (c) they shall not give unjustified emphasis to the product so displayed, which does not otherwise stem from the content of the programme flow.

(2) Viewers and listeners shall be clearly informed about the fact of product placement. At the beginning and at the end of the programme containing the product placement, and when the programme resumes after advertisements, attention shall be drawn to the fact of product placement in an optical or acoustic form.

(3) The obligation stipulated under Paragraph (2) shall not apply to programmes which were not produced or ordered by the media service provider or another media service provider or production company operating under the qualifying holding of its owner.

(4) The Media Council – subsequent to holding a public hearing, if necessary – may publish recommendations concerning the compliance of the product placement and the related warning with the provisions stipulated in this Act.

Political Advertisements, Public Service Announcements, Public Service Advertisements

**Article 32** (1) The person or entity ordering the publication of political advertisements, public service announcements, public service advertisements, and the person or entity with an interest in the publication thereof shall not exert editorial influence over the media service, except for the time of publication.

(2) The political advertisement, public service announcement and public service advertisement shall be immediately recognizable in nature and distinguishable from other media contents. The method of distinguishing from other media contents in linear media services

(a) shall take place in the form of optical and acoustic notice in the case of audiovisual media services;

(b) shall take place in the form of acoustic notice in the case of radio media service.

(3) During election campaign periods, political advertisements may only be published in accordance with the provisions of the acts on the election of members of Parliament, members of the European Parliament, representatives of local and county governments, mayors and the election of minority self-governments. Outside of election campaign periods, political advertisements may only be published in connection with referendums already ordered. The media service provider shall not be responsible for the content of the political advertisement, if the request for the publication of the political advertisement is in compliance with the provisions of the Act on election procedures, and in such case the media service provider shall be obliged to publish the advertisement without further consideration.

(4) Upon the publication of political advertisements, public service announcements and public service advertisements, the person or entity ordering the publication shall be identified unequivocally.

(5) The media service provider may not request any remuneration for the publication of public service announcements.

(6) The public or community media service provider or the media service provider with significant market power shall be obliged to publish the public service announcements of the professional disaster management agency if it provides information on the potential occurrence of danger to safety of life or property, on the mitigation of the consequences of an event that has already occurred or on the tasks to be carried out. Such publication shall take place in the media service of the media service provider which has the highest audience share per year on average and in the manner defined by the media service provider, with the exception of the instance stipulated under Article 36 (6). The obligation of publishing shall also apply to the media service provider of the local media service operating in the reception area where the given events take place.

(7) The duration of the public service announcement may not exceed one minute. This restriction shall not apply to public service announcements specified in Article 15 and in Paragraph (6).

(8) Upon request of the media service provider, the Media Council shall decide – within fifteen days of receipt of the request and against an administrative service fee – by a regulatory decision whether the announcement in respect of which the request is lodged qualifies as a public service announcement, a public service advertisement or a political advertisement.

(9) Information concerning the corporate social responsibility of an undertaking shall not qualify as a surreptitious commercial communication, but such reports may only contain the name, logo and trademark of the undertaking and its product or service, if it is closely connected to its social responsibility. The slogan of the undertaking or any parts of its commercial communication may not appear in the report and the information may not expressly encourage the purchase of the product or the use of the service offered by the undertaking.

## **Advertisements and Teleshopping in Linear Media Services**

**Article 33** (1) The method of distinguishing advertisements and teleshopping from other media content in linear media services

(a) shall take place in the form of an optical or acoustic notice in case of advertisements and teleshopping broadcasted in an audiovisual media service;

(b) shall take place in the form of an optical and an acoustic notice in the case of teleshopping windows broadcasted in an audiovisual media service;

(c) shall take place in the form of an acoustic notice in the case of a radio media service.

(2) In linear media service the advertisement or teleshopping broadcasted by interrupting the programme – taking natural breaks, the duration and nature of the programme into consideration – may not interfere with the coherence of the programme to an unjustified extent or violate the rights or legitimate interests of the holder of the copyrights or the related rights to the programme.

(3) The programme broadcasted in a linear media service, which

(a) broadcasts political news or contains political information and its duration does not exceed thirty minutes;

(b) is intended for minors under the age of fourteen and its duration does not exceed thirty minutes;

(c) reports about the official events of national holidays;

(d) has religious or ecclesiastic content, save for cinematographic works, may not be interrupted with advertisements or teleshopping.

(4) The average volume, or the volume perceived by the viewer or the listener, of advertisements, teleshopping and previews broadcasted in a linear media service, and that of the acoustic notice indicating the broadcasting of advertisements or teleshopping or previews may not be higher than the volume of adjacent programmes.

(5) Virtual advertisements may only be broadcasted in a linear audiovisual media service if the media service provider draws attention to such broadcasting by an optical or acoustic notice immediately prior to the given programme and also immediately after the given programme. This obligation shall not apply to programmes which were not produced or ordered by the media service provider or another media service provider or production company under the qualifying holding of its owner.

(6) Virtual or split screen advertisements may not be published in a programme broadcasted in a linear audiovisual media service, which programme

(a) contains political news or political information and its duration does not exceed thirty minutes;

(b) is intended for minors under the age of fourteen and its duration does not exceed thirty minutes;

(c) reports about the official events of national holidays;

(d) has religious or ecclesiastic content; or

(e) is a documentary and its duration does not exceed thirty minutes.

(7) Split screen advertisements may only be broadcasted in a linear audiovisual media service if these are separated from the programme in terms of visual appearance in a clearly recognizable manner, on half of the screen at most, indicating the nature of the advertisement on the screen in a clearly visible manner.

**Article 34** (1) In sports programmes and other programmes featuring natural breaks, broadcasted in linear media services, advertisements may only be broadcasted between the parts and during such breaks, with the exception of split screen advertisements and virtual advertisements.

(2) A cinematographic work, news or political programmes, the duration of which exceeds thirty minutes – with the exception of television series or documentaries – broadcasted in a linear audiovisual media service may only be interrupted with advertisements or teleshopping once every thirty minutes, including the duration of advertisements and previews as well.

**Article 35** (1) The duration of advertisements broadcasted in linear media services may not exceed twelve minutes within any 60-minute period, i.e. hour to hour (from the top of the hour), including split screen advertisements, virtual advertisements and the promotion of the programmes of other media services, with the exception provided for in Point (e) of Paragraph (2).

(2) The time restriction defined under Paragraph (1) shall not apply to

- (a) teleshopping windows;
  - (b) political advertisements;
  - (c) public service announcements;
  - (d) public service advertisements;
  - (e) previews on the own programmes of the media service or the programmes of another media service operating under the qualifying holding of the given media service provider or its owner;
  - (f) sponsorship announcements as defined under Article 26 (2);
  - (g) product placements;
  - (h) noninteractive teletext, if it is broadcasted in a local media service;
  - (i) virtual advertisements appearing in programmes which were not produced or ordered by the media service provider or another media service provider or production company operating under the qualifying holding of the given media service provider or its owner;
  - (j) media service providers solely broadcasting advertisements and teleshopping;
  - (k) linear audiovisual media services advertising exclusively the media service provider or its other media services;
  - (l) announcements intended solely for the purpose of advertising the media service itself or the products complementing the programmes broadcasted in the media service.
- (3) The transmission time used for broadcasting teleshopping windows may not exceed three hours per calendar day, not including the transmission time of the thematic media service broadcasting primarily teleshopping or teleshopping windows.

### **Advertisements and Public Service Announcements in Public and Community Media Services**

**Article 36** (1) The duration of the advertisements and teleshopping broadcasted in the linear media service of the public media service provider may not exceed eight minutes within any 60-minute period, i.e. hour to hour (from the top of the hour). The duration of the advertisements and teleshopping broadcasted in the community media service may not exceed six minutes within any 60-minute period, i.e. hour to hour (from the top of the hour).

(2) The broadcasting of noninteractive teletext containing advertisements shall also be counted into the duration of advertisements defined under Paragraph (1) in the case of public media service.

(3) Advertisements in public and community media services may only be broadcasted in between the individual programmes – in the case of complex programmes composed of several parts, between the individual parts of the programme –, or before or after the programmes. In sports and other broadcasts with natural breaks, advertisements may also be broadcasted in between the parts and during the breaks.

(4) Presenters, reporters or newsreaders appearing regularly in the news and political programmes broadcasted in public and community media services cannot appear or play a role in advertisements or political advertisements broadcasted in any media service, except for the self promotion of public media services.

(5) In public and community media services, split screen advertisements and virtual advertisements may only be broadcasted in conjunction with the broadcast of sports programmes.

(6) The public media service provider shall be obliged to reserve two minutes of transmission time for the broadcasting of public service announcements in each two hour periods – i.e. from the top of the hour – in respect of the entire annual transmission time of its media service which has the highest audience share per year on average. This provision shall

not apply to the periods from hour to hour (from the top of the hour), when such a programme is broadcasted which is longer than two hours and may not be interrupted due to its nature. In absence of a request for the broadcast of a public service announcement, this period may also be used for other programmes. The public media service provider shall be obliged to broadcast the public service announcement as per Article 32 (6) by interrupting its programme flow, if justified on the basis of the decision of the disaster management agency and if such decision was communicated to the media service provider in due time. The obligation stipulated in this Paragraph shall also apply to the media provider of the community media service.

### **Disclosure Obligation**

**Article 37** (1) The media service provider shall make continuously available to the public

- (a) its name or company name;
- (b) its address or registered office or mailing address;
- (c) its electronic mailing address;
- (d) its telephone number;
- (e) the name and contact details of the regulatory or supervisory authorities that are competent to proceed against it upon violation of rules concerning media administration;
- (f) the name and contact details of the professional self-regulatory bodies authorised by them to proceed against the media service provider.

(2) The media service provider shall publish the data specified under Paragraph (1) on all of its websites and teletext pages connected to its media services, provided that it has any such websites or teletext pages. In the case of on-demand media services, such data shall also be published at the access point of the media service. Moreover, the media service provider shall also ensure that the interested parties may also receive information about the data defined in Points (a)-(c) and (e)-(f) on the telephone.

### **Public Service Obligations of Media Service Providers with Significant Market Power**

**Article 38** (1) Linear audiovisual media service providers with significant market power shall be obliged to broadcast a news programme or general information programme of at least fifteen minutes in duration on each working day between 7:00 a.m. and 8:30 a.m., and a separate news programme of at least twenty minutes in duration on each working day between 6:00 p.m. and 9:00 p.m. without interruption. Linear radio media service providers with significant market power shall broadcast a separate news programme of at least fifteen minutes in duration on each working day between 6:30 a.m. and 8:30 a.m. without interruption. News content or reports of a criminal nature taken over from other media service providers, or the news content or reports of a criminal nature which do not qualify as information serving the democratic public opinion, shall not be longer in duration on an annual average than twenty percent of the duration of the news programme.

(2) The linear media service provider with significant market power shall meet its obligation stipulated under Paragraph (1) above and in Article 32 (6) in its media service which has the highest annual average audience share.

(3) Linear media service providers with significant market power shall ensure in the course of all of their media services transmitted by digital media service distribution, that at least one quarter of the cinematographic works and film series originally produced in a language other than Hungarian, broadcasted between 7:00 p.m. and 11:00 p.m., shall be available in their original language, with Hungarian subtitles, including programmes starting before 11:00 p.m. but ending later.

### **Programmes Accessible to People with Impaired Hearing**

**Article 39** (1) The media service provider of audiovisual media services shall make efforts to gradually make its programmes accessible to persons with impaired hearing as well.

(2) The public and – in respect of its programme with the highest annual average audience share – the linear media service provider with significant market power shall be obliged to ensure that all

- (a) public service announcements, news programmes and political programmes;
- (b) cinematographic works and programmes produced for persons with impaired hearing

are also accessible with Hungarian subtitles – for example through teletext – or with sign language

(ba) for at least four hours in each calendar day in 2011;

(bb) for at least six hours in each calendar day in 2012;

(bc) for at least eight hours in each calendar day in 2013;

(bd) for at least ten hours in each calendar day in 2014.;

(be) fully from 2015 on.

(c) Without interfering with the coherence of the programme, the media service provider shall provide subtitles or sign language throughout the entire duration of a programme that started with subtitles or with sign language.

(d) It shall be indicated in media services prior to subtitled programmes that the respective programme is also available in that form through the teletext service connected to the media service. The subtitled version of the text of each programme shall be accurate and synchronized to the events displayed on the screen.

Rules Concerning Ancillary Media Services

**Article 40** Articles 14-18, Article 19 (2) and Article 20 of the Press Freedom Act shall apply to ancillary media services *mutatis mutandis*.

## CHAPTER II

### THE RIGHT TO PROVIDE MEDIA SERVICES AND TO PUBLISH PRESS PRODUCTS

#### General Provisions

**Article 41** (1) The provision of linear media services subject to this Act provided by media service providers established in the Republic of Hungary may commence subsequent to the notification of and registration by the Office of the National Media and Infocommunications Authority (hereinafter as: the Office), with the exception of analogue linear media services using state-owned limited resources, which may be provided subject to winning a tender announced and completed by the Media Council and entering into an agreement thereto.

(2) On-demand media services and ancillary media services provided by media service providers established in the Republic of Hungary, as well as press products published by a publisher established in the Republic of Hungary, falling under the scope of this Act, shall be notified to the Office for registration, within sixty days from commencement of the service or activity. The registration shall not be a precondition for starting such a service or activity.

(3) Under the framework of this Act, the notifier initiating such registration may be any natural person, legal entity or organization without legal personality.

(4) The Office shall keep a register of

- a) linear audiovisual media services;
- b) linear radio media services;
- c) audiovisual media services, the providers of which obtained the media service provision rights via tendering;
- d) radio media services, the providers of which obtained the media service provision rights via tendering;
- e) on-demand audiovisual media services;
- f) on-demand radio media services;
- g) ancillary media services;
- h) printed press products;
- i) online press products and news portals;
- j) linear and on-demand media services and ancillary media services provided by public media service providers.

(5) In the event a media service provider provides both linear and on-demand services, or if a press product publisher publishes both printed and online press products, it shall notify each of its media services or press products separately.

(6) The data recorded in the registers mentioned in Paragraph (4) concerning the names, contact information of media service providers, press product founders and publishers, as well as the names and titles of the media services and press products shall be publicly available and accessible on the website of the National Media and Infocommunications Authority (hereinafter as: the Authority). For the purposes of monitoring media services and press product publishing, the Authority shall handle the identification data of natural person media service providers and of natural persons

founding and publishing press products until such data are deleted from the register.

(7) Linear media service provision rights shall not be transferable.

### **Linear Media Service Provision Rights Based on Notification**

**Article 42** (1) The registration of linear media services may be initiated by the future media service provider thereof. Notifiers intending to provide linear media services without using state-owned limited analogue resources shall notify the Office of the followings at least forty-five days prior to taking up the media service provision activity:

a) particulars of the notifier:

aa) name,

ab) address (registered office), designation of place(s) of business directly affected by the media service provision,

ac) contact information (telephone number and electronic mailing address),

ad) name and contact information (telephone number, postal and electronic mailing address) of its executive officer, representative, and of the person appointed to liaise with the Authority,

ae) company registration number, or registration number,

b) the notifier's effective Deed of Foundation and specimen of signature authenticated by a notary public, or a specimen of signature countersigned by an attorney-at-law, if the notifier is not a natural person;

c) basic particulars of the planned media service:

ca) kind (radio or audiovisual),

cb) type (general or thematic),

cc) character (commercial, community),

cd) permanent name,

ce) name, address (registered office), contact information (telephone number and electronic mailing address) of the electronic communications service provider likely to perform broadcasting,

cf) planned number of subscribers,

cg) type of the electronic communications network planned for broadcasting,

ch) name of the settlements affected by broadcasting,

ci) media service transmission time, transmission time schedule and planned programme flow structure,

cj) daily, weekly, monthly minimum transmission time intended for broadcasting public service programmes, programmes dealing with local public affairs, or programmes supporting local everyday life,

ck) minimum transmission time intended for daily regular news programmes,

cl) planned daily minimum transmission time serving national, ethnic and other minorities,

cm) planned ancillary media services,

cn) the media service signal, and – in case of audiovisual media services – the emblem of the media service,

co) the fact of expansion of the reception area, or connecting to the network, if applicable.

d) in case of satellite media services, a statement of intent from the provider of the satellite capacity the notifier plans to use, with respect to the lease of the channel, also indicating its frequency, technical specifications and fee,

e) data on the size of direct or indirect ownership stake held by the notifier or by any other person with a qualifying holding in the notifier undertaking, in any undertaking providing media services, or applying for media service provision rights, within the territory of the Republic of Hungary,

f) planned date of launching the media service.

(2) The notifier shall make a statement that no grounds for exclusion under the Act would arise against it in case of its registration.

(3) Linear media service provision may only be commenced after the completion of registration. The Office shall adopt a regulatory decision on the registration of the linear media service within forty-five days, wherein it shall set forth the media service provision fee payable after each linear media service by the media service provider.

(4) In the event that the Office fails to adopt the decision on the registration within forty-five days after the notification, the notification shall be deemed as registered, with the provision that the rights holder shall be informed about the fact of registration and the amount of the media service provision fee by virtue of a decision within fifteen days.

- (5) In the course of the registration procedure, the Office shall examine whether the jurisdiction of the Republic of Hungary can be established in relation to the notified media service pursuant to this Act.
- (6) The Office shall refuse the registration of the linear media service, if
- a) a conflict of interests set forth in Article 43 exists *vis-à-vis* the notifier,
  - b) the notifier, or any of its owners, has overdue fees from earlier media service activities,
  - c) it would be in violation of the provisions set forth in Article 68 on the prevention of media market concentration,
  - d) the notification does not contain the data provision required under Paragraph (1), even after notice to remedy the deficiencies,
  - e) the name of the notified media service is identical with – or is confusingly similar to – the name of a linear media service already registered, having valid records at the time of notification, or
  - f) the notifier failed to pay the administrative service fee.
- (7) The Office shall delete the linear media service from the register, if
- a) refusal of registration would be applicable,
  - b) the media service provider requested its deletion from the register,
  - c) the media service provider failed to pay its overdue fees within thirty days from the Office's written notice thereto,
  - d) the rights holder fails to commence the media service within six months from the date of registration, or interrupts the ongoing service for more than six months, except if the media service provider provides adequate justification thereto,
  - e) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the media service's name and barred the infringer from further violation of the law, or
  - f) based on repeated and serious violation of the media service provider, the Media Council ordered the application of this legal sanction with regard to the provisions of Articles 185-187.
- (8) The provisions of Paragraphs (1)-(7) shall also apply to linear media service provision via satellite involving the use of satellites not subject to Government control.
- (9) The media service provider of a linear media service shall notify the Office about any changes concerning its registered data within fifteen days after the change.
- (10) The Office may impose a fine according to Article 187 (3) (ba) or (bb) on the media service provider in case of late performance or non-performance of the notification on such data changes.
- (11) The permission of the Media Council granted in the form of a regulatory decision in line with the provisions set forth in Article 64 of this Act shall be required for every media service provider to connect to the network.

### **Conflict of Interest Rules of Linear Media Service Providers**

**Article 43** (1) For persons authorized to provide linear media services, the provisions set forth in Article 118 (1) (a)-(c) concerning the Authority's President, Vice-President, Director General and Deputy Director General shall be applicable.

(2) Furthermore, the following persons shall not be entitled to provide linear media services:

- a) judges and public prosecutors;
- b) executive officers of public administration bodies, the National Bank of Hungary, the Hungarian Competition Authority, and the Hungarian State Holding Company (*in Hungarian: Magyar Nemzeti Vagyonkezelő Zrt.*), the President, Vice-President, secretary general, executive officer, or auditor of the State Audit Office of Hungary, and Members of the Hungarian Competition Council;
- c) the Authority's President, Vice-President, Director General, Deputy Director General, and any person in work-related legal relationship with the Authority;
- d) a close relative of persons falling within the scope of Article 118 (1) (a)-(b) and of those specified under Points (b)-(c) above.

(3) The following organisations shall not be entitled to provide linear media services:

- a) political parties or undertakings established by political parties;
- b) state and public administration bodies, unless provided otherwise by legislation applicable in the event of an extraordinary situation or state of emergency;
- c) undertakings in which the Hungarian state has a qualifying holding;
- d) undertakings in which any of those listed under Paragraphs (1)-(2) hold a direct or indirect ownership stake, or

have acquired the right to influence its decisions pursuant to a separate agreement or by other means; or a person or organisation otherwise subject to acquisition restrictions.

(4) An undertaking shall not be entitled to provide local linear media service in a reception area of which at least twenty percent falls within the limits of local government jurisdiction, if any local government representative or employee, the Mayor, Deputy Mayor, the Mayor of Budapest, the Deputy Mayor of Budapest, or any of their close relatives hold an office in the Board of Directors, management or the Supervisory Board of such an entity, or in the Board of Trustees of a Foundation or a Public Foundation.

(5) For the purposes of Paragraph (3) (d), the undertaking, in which the Mayor of Budapest, the Deputy Mayor of Budapest, the Mayor, or Deputy Mayor, the chairperson or deputy chairperson of the county-level general assembly, or any of their close relatives hold a direct or indirect qualifying holding or is entitled to influence the decisions thereof under a separate agreement or otherwise, may not be entitled to provide linear media services, if the reception area of the respective media service covers at least twenty percent of the territory of the affected local government.

### **Media Service Provision Fee**

**Article 44** (1) Persons or entities entitled to provide linear media services by virtue of registration shall pay a media service provision fee specified by the Office.

(2) The media service provider shall pay a quarterly media service provision fee in advance, as a consideration. In the event of connecting to a network, the networked media service provider shall pay the media service provision fee payable by the media service provider joining the network in proportion to its networked transmission time.

(3) In the event of late payment of the fee, the Media Council may terminate the agreement with a thirty day notice period.

(4) Default in fee payment shall be deemed a serious breach of law.

(5) With respect to media services subject to public contract or broadcasting agreement, the media service provision fee shall be the sum total of the media service provision basic fee applicable to the given media service provision rights and the fee instalment undertaken by the tenderer winning the tender procedure. The Media Council shall determine the media service provision basic fee in the invitation to tender.

(6) The media service provision basic fee shall be proportionate to the area of the given media service's reception area. At the same time, it shall give due consideration to the purchasing power indicator of the given area's population, as well as to the market share attained by media service provider groups grouped according to their reception area, media service type, mode of distribution, or other significant criteria.

(7) The media service provision fee payable on linear media services subject to registration shall be proportionate to the reception area of the given media service. At the same time, it shall give due consideration to the purchasing power indicator of the given area's population, as well as to the market share attained by media service provider groups grouped according to their reception area, media service type, mode of distribution, or other significant criteria.

(8) When setting the media service provision fee payable with respect to linear media services provided via terrestrial digital broadcasting systems or satellite systems accessible without payment of a subscription fee, due consideration shall be given to data about the reception area of the given media service, as well as to the availability (prevalence) of equipment suitable for reception of such media service.

(9) No media service provision fee shall be payable for community media services.

(10) In the event of expansion of the reception area, the media service provision fees established for each individual reception area shall be added up.

### **Notification of On-Demand Media Services**

**Article 45** (1) The registration of on-demand media services may be initiated by the media service provider thereof. The notification to the Office of the on-demand media service shall include:

a) particulars of the notifier:

aa) name,

ab) address (registered office or place of business), designation of place(s) of business that are directly affected by the media service provision,

- ac) contact information (telephone number and electronic mailing address),
  - ad) name and contact information (telephone number, postal and electronic mailing address) of the executive officer, representative of the media service provider, and of the person appointed to liaise with the Authority,
  - ae) company registration number, or registration number,
  - b) basic particulars of the planned media service:
    - ba) kind (radio or audiovisual)
    - bb) name
    - bc) type (general or thematic)
  - c) the planned date of launching the media service.
- (2) The following shall not be entitled to provide on-demand media services: the National Media and Infocommunications Authority's President, Vice-President, Director General, Deputy Director General, or the Chairperson or member of the Board of Trustees of the Public Service Foundation or the Chairperson or member of the Board of Public Services, the CEO of the Fund, the President, Deputy President or member of the National Council for Communications and Information Technology, the CEO of the public media service provider, the Chairperson or member of the Supervisory Board thereof, members of the Media Council, and persons in work-related legal relationship with any of the aforesaid organizations. The notifier shall make a statement that no conflict of interest under the Act exists or would arise *vis-à-vis* him/her/it as a result of registration of the media service.
- (3) The Office shall register the on-demand media service within thirty days.
- (4) The Office shall withdraw the registration if
- a) a conflict of interests exists *vis-à-vis* the notifier, or
  - b) the name of the notified media service is identical with – or is confusingly similar to – the name of an on-demand media service already registered, having valid records at the time of notification.
- (5) The on-demand media service shall be deleted from the register, if
- a) the registration is to be withdrawn pursuant to Paragraph (4),
  - b) the media service provider requested its deletion from the register,
  - c) the media service is not commenced for more than a year, or the ongoing media service is interrupted for more than a year, or
  - d) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the media service's name and barred the infringer from further violation of the law.
- (6) The media service provider of an on-demand media service shall notify the Office about any changes concerning its registered data within fifteen days.
- (7) In the event of a change in the media service provider's person or the data of the media service as per Paragraph (1) (d), the media service provider making the original notification shall initiate modification of the data on record. Paragraphs (1)-(5) shall be applied *mutatis mutandis* to such procedure.
- (8) In the event the media service provider fails to comply with its obligations related to registration, the Office may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185 (2).

## Notification of Press Products

**Article 46** (1) Registration of a press product may be initiated by its publisher. In the event that the founder and publisher of a press product are different persons or undertakings, they shall enter into an agreement wherein they shall define their relationship, and their responsibilities and rights regarding the press product.

(2) Notifications for the registration of press products shall contain the following information:

- a) particulars of the notifier:
  - aa) name,
  - ab) address (registered office or place of business),
  - ac) contact information (telephone number and electronic mailing address),
  - ad) name and contact information (telephone number, postal and electronic mailing address) of its representative, and of the person appointed to liaise with the Authority,

- ae) company registration number, or registration number,
  - b) the title of the notified press product
  - c) in the event the founder and the publisher are different persons or undertakings, the particulars of both of them, as defined in Point a).
- (3) The following persons may not be founders or publishers of press products: the National Media and Infocommunications Authority's President, Vice-President, Director General, Deputy Director General, or the Chairperson or member of the Board of Trustees of the Public Service Foundation or the Chairperson or member of the Board of Public Services, the CEO of the Fund, the President, Deputy President or member of the National Council for Communications and Information Technology, members of the Media Council, not including the founding or publishing of press products aimed to publish scientific results or to disseminate popular science. The notifier shall make a statement that no conflict of interest under the Act exists or would arise *vis-à-vis* him/her/it as a result of registration.
- (4) The Office shall register the press product within fifteen days.
- (5) The Office shall withdraw the registration if
- a) a conflict of interests exists *vis-à-vis* the notifier, or
  - b) the title of the notified press product is identical with – or is confusingly similar to – the title of a press product already registered, having valid records at the time of notification.
- (6) The press product shall be deleted from the register, if
- a) the registration is to be withdrawn pursuant to Paragraph (5),
  - b) the founder or – if the founder and the publisher are different undertakings, with the approval of the founder – the publisher requested deletion from the register,
  - c) publication of the press product is not commenced within two years from the date of registration, or ongoing publication is interrupted for over five years, or
  - d) a final decision by a court has ordered the cessation of trade mark infringement perpetrated through the use of the title of the press product and barred the infringer from further violation of the law.
- (7) The publisher and founder of the press product shall notify the Office about any changes concerning the registered data within fifteen days.
- (8) In the event of a change in the publisher's person, the publisher on record shall initiate modification of the data on record. In case of failure of this, the founder may also initiate the modification. Paragraphs (1)-(5) shall be applied *mutatis mutandis* to such procedure.
- (8a) In the event the publisher or the founder fail to comply with their obligations related to registration, the Office may impose a fine up to one million forints, taking into consideration the principles set forth in Article 185 (2).
- (9) Press products and – unless legislation provides otherwise – other publications must display the key editorial and publication data (imprint). The imprint shall display the following information:
- a) publisher's name, registered office, and the name of the person responsible for publishing,
  - b)–c)
  - d) the name of the person responsible for editing.
- (10) An international identifier of printed press products (ISSN), other international markings, and the price of the publication shall be determined and displayed pursuant to separate legislation.
- (11) Legislation may also prescribe the use of a short imprint, the obligation of displaying special data, or other specific rules.
- (12) For academic and administrative purposes, a free legal deposit copy of printed press products and other publications shall be provided to the bodies designated by separate legislation. The legal deposit copy shall remain in the ownership of the body entitled thereto. Detailed rules for making available legal deposit copies shall be regulated by a government decree.
- (13) Free legal deposit copies of printed press products and other publications shall be delivered to the bodies designated by separate legislation in order to preserve cultural assets, to ensure national bibliographical accounting and public library services. The legal deposit copy shall remain in the ownership of the body entitled thereto.
- (14) A legal deposit copy for preservation purposes may only be removed from the public collection records, if it was destroyed or has become irreparably damaged.

## **Notification of Ancillary Media Services**

**Article 47** The registration of ancillary media services shall be subject to the regulations applicable to the registration of on-demand media services.

## **CHAPTER III**

### **OBTAINING THE RIGHT TO PROVIDE LINEAR MEDIA SERVICES VIA TENDER**

#### **General Rules**

**Article 48** (1) Analogue linear media services using state-owned limited resources may be provided – unless provided otherwise by this Act – subject to winning a tender announced and conducted by the Media Council and entering into an agreement thereto.

(2) The procedures applied for tenders announced concerning the rights to provide linear media services using state-owned limited resources (hereinafter as: tender procedure) shall be governed by the provisions of the Act on the General Rules of Administrative Proceedings and Services (hereinafter as: the Act on Administrative Proceedings), subject to the deviations set forth in this Act.

(3) The Media Council shall - subject to the deviations set forth in this Act – be in charge of managing the tasks related to the tender procedure.

(4) For a specific time period, but for a maximum of three years, the Media Council shall be entitled to authorise, without a tender procedure, an undertaking to provide media services for the sake of carrying out public duties. This media service provision right shall be granted by the Media Council, in its regulatory decision, to the first applicant submitting a request for such right, provided that such media service provider meets the conditions required to perform the public duties. For the purposes of this Paragraph, the following shall be deemed as public duties:

- a) media service provision in the event of and in relation to a state of emergency promulgated according to the Constitution, a natural disaster affecting a significant territory of the country, or an industrial disaster, or
- b) duties serving a community's special educational, cultural, information needs, or needs associated with a specific event affecting the given community.

(5) The right to provide analogue linear media services using state-owned limited resources shall, in the case of radio, be valid for a maximum period of seven years or, in the case of audiovisual media service provision, for a maximum period of ten years, and it may be – upon expiry – renewed one time for a maximum of five years without a tender procedure upon the media service provider's request, with the provision that the audiovisual media service provision agreements shall expire on the date set forth under Article 38 (1) of Act LXXIV of 2007 on the Rules of Broadcasting and Digital Switchover. The request for renewal must be notified to the Media Council fourteen months prior to the expiry. Renewal shall be refused in case of failure to meet this deadline.

(6)

(7) The right may not be renewed, if the rights holder

- a) repeatedly or seriously violated the provisions set forth in the agreement or in this Act,
- b) had been subject previously to the sanction specified in Article 112 (1) (b) of Act I of 1996 on Radio and Television Broadcasting due to breach of the agreement, or
- c) is in arrears with the media service provision fee at the time of submitting the request.

(8) The Media Council, with due regard to the appropriate application of the provisions of Chapter III and the unique characteristics deriving from the nature of these media service facilities, shall determine and publish on its website the principles of the tender procedure regarding the small community media service facilities. Small community media service facilities may not be subject to tendering and may not be operated commercially.

(9) Upon the Media Council's request, the Office shall compile the register of media service facilities.

## **Preparation of Tender Procedures for Media Service Provision**

**Article 49** (1) The Media Council shall, for purpose of preparing tender procedures regarding media services, request the Office to draw up frequency plans.

(2) In the request as per Paragraph (1), the Media Council shall establish the conceptual criteria required for drawing up a broadcast frequency plan, in particular:

- a) the objective of frequency use,
- b) the preferences to be applied in frequency planning,
- c) the frequency planning schedule.

(3) The frequency plan prepared shall contain:

- a) the broadcasting stations' nominal places of business, and other technical requirements of installation,
- b) the expected reception area of the stations,
- c) the frequency band according to the International Radio Regulation markings.

(4) The Media Council may return the frequency plan for modification.

(5) The Office shall publish the frequency plan for at least fifteen days, prior to approval by the Media Council. The Office shall issue a public notice on the website of the Media Council concerning the publication of the plan and its location, at least one week prior to the starting date of publication of the plan. During the period when the frequency plans are published and for five days after closing the frequency plans, any person may submit written comments – addressed to the Media Council – with respect to the frequency plans.

(6) The Media Council shall make a decision with respect to the approval of the frequency plan and the preparations for a draft invitation to tender within forty-five days from the last day of publication.

(7) The frequency plans and the conceptual criteria of planning shall be public and available for inspection at the Office.

(8) For the purpose of planning the media service facility, the Authority may, in exchange for a fee and upon the request of clients, provide data, provided that the Media Council approved the planning of media service facility in advance with respect to the reception area specified in the request and with due consideration of media market and media policy considerations. Media service facilities thus planned shall henceforth be subject to the provisions of this Act applicable to tender procedures.

## **Draft Invitation to Tender**

**Article 50** (1) The Media Council shall, with a view to preparing the invitation to tender, compile a draft invitation to tender about the tender conditions. The Media Council shall publish the draft invitation to tender, with justification, via public notice and on its website.

(2) Between the twentieth – the earliest – and the thirtieth – the latest – day from publishing the draft invitation to tender, the Office shall hold a public hearing (hereinafter as: hearing).

(3) The Office shall publish, via public notice and on the Media Council's website, an announcement about the time and venue of the hearing, at least ten days prior to the hearing.

(4) Anyone may comment on the draft invitation to tender verbally or in writing, at the hearing and anyone may lodge a question or submit a comment to the Office in writing within five days from the hearing.

(5) Minutes of the hearing shall be prepared within eight days and shall be available for inspection at the Office.

(6) The Media Council shall decide about the finalisation of the draft invitation to tender within forty-five days from the hearing, and, as far as possible, it shall take into account the comments received and the recommendations made at the public hearing.

## **The Tender Procedure**

**Article 51** (1) The tender procedure shall – with the exceptions specified in this Act – commence *ex officio* with the publication of the invitation to tender.

(2) The administrative deadline for the tender procedure shall be eighty-five days. This deadline shall not include – beyond those set forth in the Act on Administrative Proceedings – the time period from the day the invitation to tender is published to the submission of the tender. In justified cases, the deadline may be extended on one occasion, with the maximum of twenty days.

### **The Invitation to Tender**

**Article 52** (1) The Media Council shall publish invitations to tender for the utilisation of media service facilities.

(2) The invitation to tender shall include:

- a) the data of the media service facility as per Article 49 (3),
- b) the objective of the invitation to tender,
- c) the fundamental rules governing the rules of procedure,
- d) the tender fee and the payment method thereof,
- e) the minimum amount of the media service provision fee (media service provision basic fee), below which media service provision rights cannot be awarded, with the exception of the provision of community media services,
- f) the form of and deadline for the submission of tenders,
- g) the required contents of tenders,
- h) the principles of evaluation and the criteria to be taken into consideration during evaluation, the categories for evaluating tenders, the quantified evaluation framework allocated to specific evaluation categories, as well as the rules of evaluation based on which the Media Council adopts its decision about the winning tenderer,
- i) the starting date of the provision of the media service,
- j) the term of the media service provision right,
- k) the formal requirements of tenders,
- l) the validity criteria of tenders concerning their form and contents,
- m) other criteria according to the Media Council's decision.

(3) In addition to the criteria defined under Paragraph (2), the invitation to tender may also include the following criteria, in particular:

- a) commitment concerning the offer validity of the submitted tenders, the term thereof,
- b) the specific proportion of programmes serving public service objectives set forth in Article 83,
- c) the ratio of programmes on subjects related to local public affairs or facilitating local everyday life,
- d) predefined extent of service to national and ethnic minorities and other minority needs,
- e) the obligation to provide news services,
- f) tender criteria for connecting to a network and expanding the reception area,
- g) criteria for the provision of ancillary and value-added media services.

(4) The Media Council shall publish the invitation to tender through a public notice and on its website.

(5) The invitation to tender shall be announced so that, from the day of its publication

- a) at least sixty days are available for the submission of tenders for the provision of national media services,
- b) at least forty days are available for the submission of tenders for the provision of regional media services,
- c) at least thirty days are available for the submission of tenders for the provision of local media services.

### **Amending and Withdrawing the Invitation to Tender**

**Article 53** (1) The Media Council shall be entitled to amend the invitation to tender along the principles of an objective, transparent and non-discriminative procedure.

(2) The invitation to tender may be amended until no later than the fifteenth day prior to the submission of the tenders.

(3) Any amendment to the invitation to tender shall be published in accordance with the rules governing the publication of the invitation to tender.

(4) In the event the invitation to tender is amended, the Media Council shall be obliged to extend the deadline for the submission of tenders, ensuring that the period available for the submission of tenders as defined under Article 52 (5) remain available from the date of the publication of the invitation to tender.

(5) The Media Council may withdraw the invitation to tender until no later than fifteen days prior to the deadline for submission of the tenders, by taking into consideration media market and media policy aspects. The Media Council shall publish this decision in the same manner as the invitation to tender, and give reasons for its decision.

### **The Tender Fee**

**Article 54** Tenderers submitting a tender shall pay a tender fee. The tender fee shall be five percent of the published media service provision basic fee. Eighty percent of the tender fee shall be offset against (deducted from) the media service provision fee.

### **The Tenderer**

**Article 55** (1) Only those undertakings may participate in the tender procedure that

- a) have no customs or social security contributions overdue for longer than sixty days or overdue taxes registered by the central tax authority, or any overdue payment obligations to separate state funds, except if the creditor has agreed to the payment of the debt at a subsequent date in writing,
- b) are not under bankruptcy, liquidation, members' voluntary liquidation, or other winding up proceedings, and
- c) in regard to which no final public administration ruling has established a serious breach of obligations stemming from a broadcasting agreement or a public contract undertaken on the basis of a previous tender procedure – closed not more than five years ago – and the broadcasting agreement or public contract of which has not been terminated,
- d) does not have overdue debts to the Media Council.

(2) Any undertaking with a qualifying holding in the tenderer or in which the tenderer has qualifying holding must also meet the criteria laid down under Paragraph (1) (a)-(d).

(3) Only those entities shall be eligible to participate in the tender procedure that comply with the provisions on conflict of interests defined under the Act.

(4) If the tenderer holds a media service provision right falling under the scope of this Act which excludes acquisition of the right announced in the invitation to tender, it may only submit a tender if it declares in a legally binding declaration, forming part of its tender, that in case it is declared as the winner of the tender, it shall either relinquish its existing media service provision right or any claim to such right as from the date of the conclusion of the agreement, or undertake to terminate the situation violating the restrictive provisions in another manner, as of this same date.

(5) Undertakings holding a qualifying holding in one another, or an undertaking in which the other undertaking holds a qualifying holding, or in which the same third party holds a qualifying holding shall not be permitted to participate in the tender procedure simultaneously.

### **The Tender**

**Article 56** The tender shall contain:

- a) the particulars of the tenderer:
  - aa) name,
  - ab) address or registered office,
  - ac) company registration number or registration number,
  - ad) contact details (telephone number and electronic mailing address),
  - ae) name and contact information (telephone number, postal and electronic mailing address) of its executive officer, representative as well as the specimen of signature certified by a notary public or countersigned by an attorney-at-law,
- b) the tenderer's effective Deed of Foundation,
- c) the tenderer's declaration on the ownership share, either direct or indirect, held by the tenderer or by another undertaking holding an ownership share in the tenderer, in the undertaking providing media services in the territory of the Republic of Hungary or applying for media service provision rights in Hungary,
- d) basic particulars of the planned media service:
  - da) type (general or thematic),
  - db) reception area,

- dc) the broadcasting transmission possibility wished to be used,
- de) kind (commercial, community),
- df) the transmission time and transmission time schedule of the service,
- dg) the planned ancillary and value-added services,
- dh) permanent name and signal of the media service,
- di) the fact of expansion of the reception area, or connecting to the network, if applicable,
- dj) the planned programme flow structure,
- dk) daily, weekly, monthly minimum transmission time intended for broadcasting programmes serving the public service objectives set forth in Article 83, programmes dealing with local public affairs, or programmes supporting local everyday life,
- dl) minimum transmission time intended for daily regular news programmes,
- dm) planned daily minimum transmission time serving national, ethnic and other minorities,
- e) with the exception of community media service, the offer for the media service provision fee,
- f) the media service provider's business and financial plan,
- g) a bank certificate confirming the availability of the amount required to cover the media service provider's operation for at least the first three months, excluding advertising revenue, on a separate current account held by the media service provider,
- h) the tenderer's declaration stating that no grounds for exclusion, as defined in this Act, exist *vis-à-vis* it, and that the possible acceptance of another pending tender of the tenderer will not create such grounds for exclusion either,
- i) any other data, documents and declarations defined in the invitation to tender.

### **Evaluation and Formal Validity of Tenders**

**Article 57** (1) The Media Council shall examine whether the tenderer complies with the applicable formal and content requirements.

(2) Tenders shall be deemed formally invalid if

- a) the tenderer does not meet the personal or participation criteria set forth in Article 55, or the conflict of interest requirements under this Act,
- b) the tender was not submitted by the deadline, at the place, in the number of copies or in the form or manner defined in the invitation to tender,
- c) the tender fee was not paid on time,
- d) the tender does not comply with the formal requirements defined in the invitation to tender,
- e) the data and information listed in Article 56 are not included in the tender or are included inadequately.

(3) Only those deficiencies revealed in terms of the requirements of form specified in Article 57 (2) shall be allowed to be remedied which relate to the information and data as per Article 56 (b), (c), (dc), (df)-(dm), and (f)-(i).

(4) Deficiencies may be remedied by the tenderer within fifteen days of delivery. If the tenderer duly remedies the deficiencies within the deadline set forth in the invitation to tender, the tender shall be deemed as if it was correct and complete right from the start. The deadline defined for remedying deficiencies represents the expiry of the limitation period; no petition for excuse may be submitted after its expiry. No remedy of deficiencies is permitted with regard to those elements of the tender that are subject to evaluation pursuant to the invitation to tender.

(5) Fifty percent of the tender fee shall be reimbursed in the case of formally invalid tenders.

### **Tender Registration and Formally Invalid Tenders**

**Article 58** (1) The Media Council shall record the tenderers having submitted a formally valid tender in an administrative register (hereinafter referred to as: tender register) within forty-five days of expiry of the submission deadline. The Office shall notify the tenderers - i.e. participants from then on - of their entry into the tender register, and publish the list of tenderers recorded in the tender register on the Media Council's website.

(2) In the case of tenders that are formally invalid pursuant to Article 57 (2), the Media Council shall reject the registration

of the tenderer in the tender register by way of an order. The order rejecting the registration shall terminate the tenderer's client status under the procedure. The tenderer may request the Budapest Court of Appeal to review the order rejecting the registration in the tender register on grounds of a breach of law, within eight days of the communication of the order. The court will pass its decision, based on a hearing held for the parties, if required, in an out-of-court proceeding, within fifteen days. No appeal can be lodged against the decision of the Budapest Court of Appeal. If a request is submitted for an out-of-court proceeding, the Media Council shall suspend the tender procedure until the final decision of the court is made. No independent legal remedy against the Media Council's order to suspend the tender procedure can be obtained.

(3) If the Media Council discovers causes of formal invalidity only after registration in the tender register, in the course of the tender's evaluation on the merits, it shall not establish the formal invalidity of the tender in a separate order; rather, it shall stipulate such invalidity in the decision closing the tender procedure.

### **Substantive Validity of Tenders**

**Article 59** (1) When examining the substantive validity of the tenders, the Media Council shall evaluate and check the tender submitted by the tenderer entered into the tender register both as a whole and also in respect of each tender component separately.

(2) If the tender is deficient in terms of content, the Media Council shall call on the tenderer to remedy the deficiencies. Article 57 (4) shall apply to the remedy of deficiencies. If the tender is not adequately clear, the Media Council may, without prejudice to the principle of equal opportunities, request clarification from the tenderer. The tenderer shall have fifteen days for clarification from the date of delivery of the respective request. Clarification may not result in modification of any financial or other commitments pertaining to value or other material statements; it may only serve the interpretation thereof.

(3) A tender shall be deemed substantively invalid if

- a) it contains – among the commitments forming part of the evaluation criteria of the invitation to tender – incomprehensible, contradicting or clearly unfeasible commitments or conditions that impede the evaluation of the tender on the merits,
- b) in the opinion of the Media Council, the tender contains commitments that are unfeasible, excessive or insufficient or highly disproportionate, or contains such clearly irrational or unfounded commitments or conditions that contradict the facts and data available to the Media Council, and thus render evaluation in accordance with the set of criteria defined in the invitation to tender impossible,
- c) the tender is unsuitable for achieving or implementing the objectives defined in this Act and in the invitation to tender since the tender itself is unfounded, or
- d) it does not comply with the substantive requirements defined in the invitation to tender.

(4) The Media Council shall not establish the substantive invalidity of the tender in a separate order; rather, it shall stipulate such invalidity in the decision closing the tender procedure.

(5) Fifty percent of the tender fee shall be reimbursed in the case of substantive invalidity.

### **Evaluation of Tenders**

**Article 60** (1) Tenders shall be evaluated on the basis of the principles and criteria defined in the invitation to tender. Evaluation criteria shall be based on quantitative or other assessable factors, and be in line with the subject of the tender or the material conditions of the public contract. The different criteria may not result that the same content element of the tender is evaluated several times.

(2) The Media Council may, in connection with a tender component related to the evaluation criteria, determine, in the invitation to tender, a requirement compared to which no less favourable offer can be made.

(3) The evaluation principles shall be transparent, free from discrimination and proportionate.

(4) Tenders must be evaluated in the way defined in the invitation to tender: no deviation shall be allowed in this respect.

## **Termination of the Tender Procedure**

**Article 61** (1) The Media Council may terminate the tender procedure through an order if

- a) no tenders are submitted for the invitation to tender,
- b) the tender procedure loses its original purpose due to circumstances or conditions arising in the course of the tender procedure, thus in particular if the national or international economic environment changes substantially following the invitation to tender, or if the economic, legal, spectrum management or media service market circumstances or conditions prevailing at the time of the publication of the invitation to tender change materially,
- c) in the opinion of the Media Council, the media policy aspects or the fundamental principles or objectives defined under this Act or in the invitation to tender cannot be guaranteed by executing the tender procedure, or
- d) based on the tenders submitted or the information available, the Media Council establishes that none of the tenders submitted by the tenderers satisfy the objectives or basic principles laid down in this Act, or that declaring any one of the tenderers as the winner would jeopardise the responsible, proper and effective management of frequencies constituting state property.

(2) The Media Council shall publish its decision as per Paragraph (1) in the same place and in the same manner as the invitation to tender.

## **Result of the Tender Procedure, Announcement of the Result and Public Availability of Tenders**

**Article 62** (1) The Media Council shall establish through a regulatory decision

- a) the success or the failure of the tender procedure,
- b) the winner of the tender procedure in the case of a successful procedure.

(2) The tender procedure shall be unsuccessful if all submitted tenders are invalid in terms of form or content.

(3) Only such a tenderer may be declared winner that have consistently complied with the participation requirements laid down in this Act and in the invitation to tender from the date of the submission of the tender. In case of tenders on local media services, if only one tenderer meets the statutory requirements or the requirements of the tender, the Media Council determines the winner of the tender in line with Point b) of Paragraph (1).

(4) The Media Council shall publish its decision as per Paragraph (1) in the same place and in the same manner as the invitation to tender.

(5) A judicial review of the Media Council's decision as per Paragraph (1) may be requested from the Budapest Court of Appeal within fifteen days of the decision's announcement on grounds of breach of law, with the provision that following the expiry of the limitation period of thirty days from the date of the decision, the decision may not be contested even if such decision was not communicated, in addition to the known clients, to other third parties entitled to legal remedy, or even if such parties did not gain knowledge thereof prior to the expiry of the deadline.

(6) The Budapest Court of Appeal shall assess the statement of claim for a judicial review in a board comprised of three members, within thirty days from the expiry of the deadline set for the submission of the statement of claim. Against the decision of the Budapest Court of Appeal no appeal may be lodged, and no retrial or review can be requested.

(7) The Media Council may not disclose any information concerning the data contained in the tenders to third parties until the contract is concluded.

(8) Eighty percent of the tender fee shall be reimbursed in the case of tenders which are valid in terms of form and content, but which have not been declared winner.

## **Public Contract**

**Article 63** (1) Simultaneously with notifying the winning tenderer about the decision as per Article 62 (1) (b), the Media Council shall, *ex officio*, launch a regulatory procedure for the purpose of concluding a public contract with the winner of the tender procedure. The administrative deadline of such regulatory procedure shall be forty-five days.

(2) If the winning tenderer does not participate in the regulatory procedure specified under Paragraph (1), or if the winning tenderer hinders the conclusion of the public contract, the public contract may not be concluded beyond the administrative deadline defined under Paragraph (1). In such cases, the Media Council shall terminate the procedure on the forty-fifth day from the starting date of the procedure. No petition for excuse may be lodged in the procedure.

(3)

(4) If the procedure of the Budapest Court of Appeal has been requested according to Article 62 (5), the public contract may not be concluded until the final and binding decision of the Budapest Court of Appeal. The duration of the review procedure of the Budapest Court of Appeal shall not be included in the administrative deadline of the regulatory procedure.

(5) The Media Council may, pursuant to Article 187, impose fines if the winning tenderer withdraws its tender or does not conclude the public contract.

(6) The Media Council may, in addition to imposing a fine, also oblige the winning tenderer to bear and pay all the costs arising from the withdrawal of the tender or from hindering the conclusion of the public contract.

(7) The conditions pertaining to the production, safekeeping, availability and disclosure of the information required for verifying the fulfilment of the media service provider's obligations must be determined in the public contract.

(8) If the media service is not provided by the deadline specified in the public contract – due to reasons within the tenderer's reasonable control – the Media Council may, in addition to enforcing the legal sanctions determined in the public contract, terminate the public contract with immediate effect.

(9) The media service provider shall pay the media service provision fee defined in the public contract in advance on a quarterly basis. Upon obtaining the media service provision right, the media service provision fee shall be paid in advance for the following half year.

(10) If the media service provider is in default with the payment of or fails to pay any portion of the media service provision fee, the Media Council may, in addition to enforcing the legal sanctions determined in the public contract, terminate the public contract with a fifteen-day notice period.

(11) The consequences of breach of contract must be defined in the public contract.

(12) The media service provider shall be entitled and obliged to broadcast the programme flow for the duration, with the transmission time and according to the transmission time schedule undertaken in its tender, using its own unique identifying signal, in line with the programme flow structure undertaken, via its own network maintained by it, using its own equipment and instruments or using a communications service provider (broadcasting service). No telecommunications license is required for the media service provider's broadcasting or distribution activity using own equipment. This, however, does not affect the obligations of the media service provider to acquire other permits and licenses required by legislation.

(13) The original applicant as per Article 49 (8) may claim from the winner of the tender the reimbursement of the justified expenses incurred in relation to data disclosure and planning.

(14) The media service provider shall report to the Media Council within five days any changes taking place to its ownership structure or its data indicated in the public contract.

### **Connecting to Network, Expansion of the Reception Area, Amendment of the Agreement**

**Article 64** (1) The Media Council shall decide on connecting to a network based on the joint request of those connecting to the network, within the framework of a regulatory procedure. If the permission is granted, the Media Council shall amend the public contract of the media service providers.

(2) Community media service providers may only connect to network with other community media service providers. National media service providers shall not be allowed to network.

(3) Connecting to a network shall not be allowed if

a) the length of the regional or local media service provider's own media service does not reach the daily threshold of four hours,

b) any of the media service providers owe overdue media service provision fees to the Media Council,

c) as a result of connecting to the network, any of the media service providers would not meet the conditions laid down in Article 71,

d) the reception area of the networked media service provider and the media service provider connecting to the network overlaps in excess of twenty percent,

e) as a result of connecting to the network, the media service provider would depart from its original commitments made in its tender.

(4) The Media Council shall adopt its decision about expansion of the reception area, within the framework of a regulatory procedure, initiated at request. If the permission is granted, the Media Council shall amend the public contract of the media service provider.

(5) The condition for permitting the expansion of the reception area shall be that the reception areas of the media service provider's rights of similar nature are situated at a distance of at most forty kilometres from each other.

(6) Expansion of the reception area shall not be permitted

a) if the media service provider owes overdue media service provision fees to the Media Council,

b) if, as a result of expansion of the reception area, the media service provider would not meet the conditions laid down in Article 71.

(7) No new rights shall be created through the expansion of the reception area. The validity period of the expanded reception area right shall remain unchanged, with the full right remaining in force until the expiry of the extended basic right. The media service provider shall broadcast the same programme flow over the entire reception area throughout the entire transmission time.

(8) If the media service provider's reception area increases from local to regional or from regional to national as a result of an increase in the population reached with the media service distribution system, or as a result of connecting to a network, or as a result of the reception area expansion, the Media Council shall amend the public contract on condition that the media service provider satisfies the requirements applicable to the media service with the increased reception area, as defined under this Act.

(9) At the media service provider's request, the Media Council may – based on media market and media policy considerations, and with due regard to essential public interests – offer, in place of the existing media service provision right, another media service provision right registered in the register of media service facilities under similar terms and conditions, with regard to the frequency band and the frequency, without inviting tenders. Such amendment shall not affect the term of the media service provision right.

## **Temporary Media Services**

**Article 65** (1) Upon request, the Media Council may – taking into consideration media market and media policy considerations – conclude provisional public contracts for a period of at most thirty days for the utilization of such local media service facilities

a) the frequency plan of which has been published by the Media Council as per Article 49 (5), but for which no public contract has been concluded yet,

b) for which another party has already acquired a media service provision right, but the media service provision by the rights holder has not commenced within sixty days from the completion of the temporary media service, or

c) regarding which the Authority certifies that the media service may be pursued without disturbing others and without violating international requirements.

(2) The applications shall include:

a) the name, address, registered office, telephone number of the applicant,

b) the effective Deed of Foundation of the applicant undertaking,

c) the purpose of the proposed temporary media service,

d) the planned transmission time broken down by day, week or month,

e) the programme flow plan,

f) the starting and ending date of the proposed temporary media service,

g) the media service provider's declaration on the starting date of the media service in the case of applications as per Paragraph (1) (b),

h) the description of the media service facility or in case of Paragraph (1) (c) the place of business of the proposed temporary media service.

(3) Applications shall be evaluated within twenty days of their submission. If the application does not meet the conditions set forth under Paragraph (2), the Media Council shall call on the applicant to remedy the deficiencies. Applicants shall have five days from the date of delivery to remedy the deficiencies. The deadline set for remedying deficiencies

represents a limitation period; if it is not met, the Media Council shall reject the application. The Media Council shall reject the application without examining it on the merits if at least thirty days have not passed between the date of submission of the application and the start date of the proposed temporary media service.

(4) If several applications are submitted regarding a media service facility, the Media Council shall evaluate the applications in the order they were received. If the Media Council concludes a public contract based on an application received earlier, the provisions of Paragraph (5) shall be applied regarding the evaluation of applications received later, and applicants shall be called upon to amend the dates under Paragraph (2) (e), if necessary.

(5) A provisional public contract may be concluded

- a) once a year with the same undertaking,
- b) three times a year in the same public administration area. A period of at least fifteen days shall elapse between the terms of two provisional public contracts.

(6) The media service provider authorised to provide temporary media services may not initiate connection to a network with another media service provider, nor the expansion of its reception area.

(7) The community media service provider shall not be required to pay a media service provision fee based on the provisional public contract.

(8) The requirements defined under Article 71 shall not be taken into account when applying Paragraphs (1)-(7).

(9) The temporary media service provision period specified under Paragraph (1) may not be extended.

(10) If the audiovisual media service provision right expires between 1 January 2010 and the target date set in Article 38 (1) of the Act on the Rules of Broadcasting and Digital Switchover in a way that it cannot be renewed pursuant to Article 48 (5), the Media Council may conclude a provisional public contract at the media service provider's request concerning the media service provision right, until the deadline defined in legislation as the target date of digital switchover of broadcasting provided by audiovisual media service providers.

(11) If the radio media service provision right expires so that it is not renewable pursuant to Article 48 (5), and no decision has yet been made in the course of the tender procedure, the Media Council may conclude a provisional public contract with the media service provider formerly holding the right, at the request of such media service provider, until the date the public contract is concluded with the winning tenderer, but for a term of sixty days at most.

(12) When applying Paragraphs (10)-(11), Paragraphs (1)-(5) and Paragraph (9) shall not be applied.

(13) For the purposes of Paragraphs (10)-(11), the Media Council may conclude a provisional public contract, if the media service provider has no overdue debts toward the Media Council and certifies, on the day of conclusion of the contract at the latest, the payment of the media service provision fee payable for the entire period – in case of audiovisual media services, for six months – of the provisional right.

## **CHAPTER IV**

### **COMMUNITY MEDIA SERVICES**

**Article 66** (1) Linear community media services

- a) are intended to serve or satisfy the special needs for information of and to provide access to cultural programmes for a certain social, national, or ethnic minority, cultural or religious community or group, or
- b) are intended to serve or satisfy the special needs for information of and to provide access to cultural programmes for residents of a given settlement, region or reception area, or
- c) in the majority of their transmission time such programmes are broadcasted which are aimed at achieving the objectives of public media services as defined in Article 83.

(2) The media service provider providing linear community media services shall define in its media service policy

- a) the objective of its activity,
- b) the cultural areas and topics which it has undertaken to present,
- c) the objectives of public media services which it has undertaken to serve,
- d) the community or communities (social groups or residents of a specific geographic area) that it intends to serve,
- e) if it serves the needs of a specific community as per Paragraph (1) (a)-(b), then such community and the minimum

percentage ratio of the programmes targeted at such community as compared to the total transmission time shall be defined.

(3) The media service provider shall report annually to the Media Council on compliance with the applicable legislative provisions governing community media services and with the media service policy.

(4) Linear community media service shall

- a) provide information about social or local community news regularly, and perform other news services,
- b) broadcast cultural programmes,
- c) strive to take into consideration the needs of persons with impaired hearing, in the case of audiovisual media services,
- d) in the case of audiovisual media services, operate in line with the requirements of Article 20 pertaining to Hungarian and European programme quotas, excluding the programme quotas applicable to independent production companies,
- e) have at least four hours of daily transmission time allocated to it,
- f) broadcast weekly at least four hours of programmes aired for the first time (not reruns) prepared and edited by it during the given calendar year,
- g) broadcast programmes serving public service objectives set forth in Article 83 in over two-thirds of its weekly transmission time, including the news programme, political programme and cultural programme aimed at the community served by it, as well as other similar programmes not primarily aimed at the community in question,
- h) allocate, in the case of radio media services, at least fifty percent of its weekly transmission time committed to programmes presenting musical works to the presentation of Hungarian musical works.

(5) The recognition of local or regional media services as community media services shall be established through the Media Council's decision on the winner of the media service tender or under the Media Council's procedure initiated specifically for this purpose, based on the Media Council's decision. This procedure may be initiated by the media service provider following the registration of the media service in the register as per Article 42. In the course of its procedure, the Media Council shall examine whether the existing or proposed media service and the provisions of its respective media service policy satisfy the criteria laid down under Paragraphs (1)-(4), and issue a regulatory decision within sixty days. National media services may not be recognised as community media services.

(6) Following recognition as per Paragraph (5), the Media Council shall, *ex officio*, examine the operation of the media service provider in depth, over a period of at least seven days of service, at least every two years – and also following the first year in the case of new services –, and for that purpose the media service provider shall disclose detailed data regarding the programmes broadcasted by it and the contents of the media service. If, in the opinion of the Media Council, the media service examined does not meet the criteria of linear community media services, the Media Council shall, through a decision passed by it, withdraw recognition as community media service.

(7) In case a decision on the refusal or withdrawal of the recognition as a community media service is adopted, the media service provider may not initiate the proceeding under Paragraph (5) within six months of communication of the decision on the refusal or withdrawal.

## **CHAPTER V**

### **PREVENTING MARKET CONCENTRATION AND MEDIA SERVICE PROVIDERS WITH SIGNIFICANT MARKET POWER**

#### **General Rules on the Prevention of Media Market Concentration**

**Article 67** The market concentration of media service providers providing linear media services may be limited within the framework of this Act in order to maintain the diversity of the media market and to prevent the formation of information monopolies.

**Article 68** (1) Linear audiovisual media service providers with an average annual audience share of at least thirty-five percent, linear radio media service providers, and media service providers having a joint average annual audience share of at least forty percent on the linear audiovisual and linear radio markets, any owners of the media service provider and any person or undertaking having a qualifying holding in the media service provider's owner

- a) may not launch new media services, may not acquire shares in undertakings providing media services, and
- b) shall take measures in order to increase the diversity of the media market by modifying the programme flow structure of its media services, by increasing the proportion of Hungarian works and programmes prepared by independent production companies, or in any other way.
- (2) In the case presented under Paragraph (1) (a) is concerned, if the media service provider affected by the rule restricting media market concentration wishes to acquire a share in a company providing media services, the Media Council shall be obliged to reject the approval of the special authority under the procedure as per Article 171.
- (3) In the case presented under Paragraph (1) (b), in order to determine the measures aimed at increasing diversity, the Media Council may conclude a public contract – for a term of at least one year – with the media service provider, at the media service provider's request, and under such procedure the Media Council shall be entitled to assess whether it accepts the obligations the media service provider wishes to undertake or not. Such applications may be submitted within thirty days from the communication of the Media Council's regulatory decision as per Article 70 (7). If the public contract – due to failure to reach an understanding – is not concluded within three months from the communication of the regulatory decision specified in Article 70 (7), the Media Council shall terminate the procedure by a decision.
- (4) In the absence of the conclusion of a public contract specified under Paragraph (3), the media service provider shall submit its application for the approval of its measures aimed at increasing media market diversity, within six months of the communication of the Media Council's regulatory decision specified in Article 70 (7). In its procedure conducted regarding the approval of the application, the Media Council shall assess whether the proposed measures are suitable for decreasing the former information monopoly and for increasing media market diversity and information pluralism. In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine.
- (5) If the application complies with the conditions specified under Paragraph (4), the Media Council shall approve it by its decision.
- (6) In case of any doubt, it is the media service provider's responsibility to prove that the proposed measures comply with the conditions specified under Paragraph (4).
- (7) If the Media Council does not approve the proposed measures, it shall adopt a decision wherein it shall identify the causes of non-compliance, as far as the principles specified under Paragraph (4) are concerned.
- (8) In the case presented under Paragraph (7), the media service provider shall submit a new plan for proposed measures by the deadline set by the Media Council, however, within thirty days at most, taking into account the considerations specified in the Media Council's decision as per Paragraph (7). In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine. If the measures specified in the new application also fail to satisfy the criteria defined under Paragraph (4), the Media Council may enforce the respective legal sanctions in accordance with Articles 185–187.
- (9) The Media Council shall supervise the implementation of the measures approved through its decision within the framework of general authority supervision.
- (10) The average annual audience share jointly reached on the linear audiovisual and linear radio market shall, for the purposes of Paragraph (1), be determined by adding the individual average annual audience shares, expressed as a percentage, attained separately on the linear audiovisual and linear radio markets.

### **Identifying Media Service Providers with Significant Market Power**

- Article 69** (1) Linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least fifteen percent shall qualify as media service providers with significant market power, provided that the average annual audience share of at least one their media service reaches three percent.
- (2) The Media Council shall regularly monitor the fulfilment of the obligations prescribed in Article 32 and Articles 38-39 for media service providers with significant market power.
- (3) The Authority may conclude an agreement with an external contractor for measuring the average annual audience share defined in Article 68 and Paragraph (1). The contracting party shall be selected in an open tender procedure. When preparing the agreement and determining the tender result, the Authority shall cooperate with the media service

providers. The agreement shall define the method for measuring audience share, the professional criteria thereof, and the procedure for auditing the results.

(4) The Authority shall publish on its website the methodology used for measuring audience share and the average annual audience share of media services for the previous calendar year.

Rules of Procedures Aimed at Preventing Media Market Concentration and Identifying Media Service Providers with Significant Market Power

**Article 70** (1) For the purposes of the procedures aimed at the prevention of media market concentration and at identifying media service providers with significant market power, the Media Council shall examine market facts and circumstances important (hereinafter as: relevant) for the assessment of the level of concentration, in particular the media service provider's average annual audience share for the previous calendar year, under the regulatory inspection as per the Act on the General Rules of Administrative Proceedings and Services, with the deviations defined under Paragraphs (2)-(6).

(2) In order to clarify the relevant facts and circumstances, the Media Council may require the media service providers to provide data in the course of its regulatory inspection, by way of an order. No independent legal remedy shall be available against the order; the order may be challenged in a legal remedy procedure brought against the decision on the merits made in a procedure that may follow the regulatory inspection and is aimed at the prevention of media market concentration and at identifying media service providers with significant market power.

(3) In the event of failure to provide data or upon inadequate provision of data, the Media Council may, pursuant to Article 175 (8), impose a procedural fine. Over and above the fine, if the data are not provided or if data are provided inadequately, the Media Council shall be entitled to, and in case of a repeated breach of law, shall be obliged to impose a fine ranging from fifty thousand forints to three million forints on the officer or registered representative, as per Article 45 (1) (ad), of the media service provider found in breach of the law.

(4) The following shall be taken into account when determining audience share, or added to the audience share

a) the audience share of all linear media services distributed by the media service provider on the territory of the Republic of Hungary,

b) the audience share of the linear media services distributed on the territory of the Republic of Hungary by media service providers in whom the affected media service provider has a qualifying holding, and

c) the audience share of linear media services distributed on the territory of the Republic of Hungary by a media service provider in whom any owner of the affected media service provider, or the owner of the owner thereof has a qualifying holding.

(5) If, based on the regulatory inspection, the Media Council established that there is a circumstance providing grounds for conducting a procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, then, notwithstanding the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services, it shall only decide to launch the procedure in an order.

(6) No procedure shall be launched by the Media Council if it establishes on the basis of the regulatory inspection that neither the media service provider affected by the rules restricting media market concentration identified in the decision made earlier as per Paragraph (7), nor the group of media service providers with significant market power identified in the decision as per Paragraph (7) or in the public contract as per Paragraph (10) have changed.

(7) In the procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, the Media Council shall identify the media service provider affected by the rules restricting media market concentration as per Article 68 or the media service provider with significant market power as per Article 69 in a regulatory decision, and shall decide on the termination of such status determined in its earlier decision.

(8) In its decision made within the framework of a procedure aimed at identifying media service providers with significant market power, the Media Council shall also define the exact contents of the obligations imposed on the media service provider with significant market power pursuant to Article 32 and Articles 38–39, taking into account the assessment criteria defined therein.

(9) The provisions of Article 163 shall apply, as appropriate, to the review of the decision made within the framework of the procedure aimed at the prevention of media market concentration and at identifying media service providers with

significant market power, with the provision that the client or some other participant of the procedure may request the Budapest Court of Appeal to review the Media Council's final decision on grounds of violation of the law, by bringing an action against the Media Council's decision. The Budapest Court of Appeal shall adjudge the statement of claim in court proceedings, within thirty days.

(10) In the procedure aimed at identifying media service providers with significant market power, the Media Council, rather than issuing a decision, may also conclude a public contract with the media service provider in order to identify whether the media service provider has significant market power and to define the exact contents of the obligations imposed on the media service provider with significant market power pursuant to Article 32 and Articles 38–39. In such case, the parties may depart from the assessment criteria for determining the obligations specified in Article 32 and Articles 38–39 with the provision that the media service provider with significant market power may not be exempted, not even in the public contract, from its obligations defined therein.

(11) The Media Council shall conduct its procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power, with the deviations determined under Paragraph (6), by 30 September each year. When identifying media service providers with significant market power, their average audience share during the previous calendar year shall be taken into account. Media service providers with significant market power shall fulfil their obligations from 1 January of the year following the Media Council's decision. The Media Council's decision made within the framework of the procedure aimed at the prevention of media market concentration and at identifying media service providers with significant market power and also the public contract concluded shall remain in force until the entry into force of the subsequent decision made, or public contract concluded on the same subject as a result of a procedure conducted in the following year.

(12) For the purposes of Paragraphs (1)–(11), sales revenue shall mean the net sales revenue achieved by the participant of the procedure through sales relating to media service activities in the course of the previous business year.

Rules Governing Media Service Providers of Analogue Linear Radio Media Services Acquiring Media Service Provision Rights by Virtue of a Public Contract or Broadcasting Agreement

**Article 71** (1) Those authorised to provide analogue linear radio media services based on a public contract or broadcasting agreement shall have the right to simultaneously provide

- a) maximum one national analogue linear radio media service,
- b) maximum two regional and four local analogue linear radio media services, or
- c) maximum twelve local analogue linear radio media services.

(2) With the exception of thematic analogue linear radio media services, providers authorised to provide national analogue linear radio media services and those having a qualifying holding therein may not acquire a qualifying holding in undertakings providing or distributing other media services.

(3) The same undertaking may only acquire a qualifying holding in organisations authorised to provide analogue linear radio media services within the limits defined under Paragraph (1).

(4) The media service provider's own rights and the rights of the undertakings in which it has a qualifying holding shall be taken into account jointly for the purposes of Paragraphs (1) and (3).

(5) A regional or local linear radio media service provider or its owner may not, with the exceptions defined under Paragraph (5), acquire a qualifying holding in other undertakings providing regional or local linear radio media services falling within the reception area of their media services.

(6) The restriction defined under Paragraph (5) shall not be applied if

- a) the reception areas of the two media service providers overlap up to twenty percent at most, or
- b) unused transmission time remains following the evaluation of the tender and, parallel to an invitation being issued to a new tender, an agreement is concluded with the media service provider defined under Paragraph (5) in respect of the unused transmission time, provided that the transmission time thereby acquired by it differs from its existing transmission time by eighty percent, and neither transmission time exceeds four hours.

(7) Concentration of companies as per the Act on the Prohibition of Unfair and Restrictive Market Practices shall not be permitted if such were prejudicial to this Act.

## **CHAPTER VI**

### **PROTECTION OF DIVERSITY IN MEDIA SERVICE DISTRIBUTION**

#### **Diversity in Media Service Distribution**

**Article 72** (1) The number of media services in the providers of which the same undertaking has a qualifying holding shall not exceed one quarter of the audiovisual media services or half the radio media services distributed on the given transmission system.

(2) The number of media services the providers of which also perform media service distribution activities or in the providers of which the same media service distributor undertaking has an ownership stake shall not exceed one quarter of the audiovisual media services or half the radio media services broadcasted on the given transmission system.

(3) The ratios defined under Paragraphs (1)-(2) shall also apply to the programme package, offered by the media service distributor undertaking to viewers or listeners, which had the highest number of subscribers at the end of the previous calendar year in the given transmission system.

(4) The obligations defined under Paragraphs (1)-(3) shall not apply to media service distribution activities carried out by public media service providers.

#### **“Must carry” Obligation regarding Media Services**

**Article 73** (1) In order to preserve, protect and further develop Hungarian and European culture and the culture of national or ethnic minorities, support and sustain national or ethnic minority languages, satisfy the information needs of citizens and facilitate their participation in democratic public affairs and preserve diversity of opinions, the media service distributor defined under Paragraphs (2)-(3) shall be subject to the obligations defined in Articles 74–75 (hereinafter as: “must carry” obligation).

(2) Media service distributors distributing media services on a transmission system or network used for broadcasting radio and audiovisual media services to the public shall be subject to a “must carry” obligation.

(3) Transmission systems or networks used for broadcasting radio and audiovisual media services to the public include, in particular, cable television networks, satellite and terrestrial media service distribution networks (with the exception of analogue audiovisual broadcasting networks), as well as transmission systems allowing for transmission of media services by use of Internet Protocol, if the nature and conditions of the service are identical to those of media service distribution, or if this substitutes the media service distribution carried out by any other means.

(4) The “must carry” obligation shall also extend to service providers and operators distributing media services on other transmission systems or networks, if this transmission system or network is the one which is widely used by subscribers and users as the main instrument for receiving radio and audiovisual media services. The Media Council shall monitor such transmission systems or networks regularly, but at least every three years, as far as compliance with the “must carry” obligation is concerned, and shall perform their analysis within the framework of such monitoring. If, in the course of the regulatory procedure launched, if necessary, as a result of such monitoring, the Media Council establishes that it is reasonable to impose a “must carry” obligation in respect of the given transmission system or network, then it shall, in its decision, establish such “must carry” obligation in respect of all service providers and operators distributing media services on the given transmission system or network.

(5) The “must carry” obligation shall not apply to radio media services in a media service distribution network or transmission system used primarily for broadcasting audiovisual media services to the public.

(6) If the media service distributor simultaneously provides media service distribution on several transmission systems and media service distribution networks, the “must carry” obligation as per Paragraphs (1)-(4) shall apply to the media service distributor for each transmission system, media service distribution network separately.

(7) A media service distributor shall qualify as influential from a media market perspective (hereinafter as: influential media service distributor) if

a) the number of subscribers to its media service distribution, irrespective of the media service distribution platform or network used, exceeds one hundred thousand, or

b) in case of publicly accessible media service distribution available without payment of a subscription fee, the reception area of the media service distributor covers more than one-third of the population of the Republic of Hungary, and the sales revenue of the media service distributor or any undertaking having a qualifying holding in it or in its owner, or of any other undertaking operating under the qualifying holding of the media service distributor or its owner, arising from media service distribution or related services, with the exception of analogue broadcasting transmission, performed in the territory of the Republic of Hungary, exceeds one billion forints annually.

(8) In case of any doubt, the influential media service distributor shall be obliged to prove that the conditions defined under Paragraph (7) do not prevail.

**Article 74** (1) The media service distributor shall be obliged to transmit a total of four linear audiovisual media services and three linear radio media services of the public media service providers free of charge, with the exception of media service distribution performed by means of broadcasting transmission. The media service distributor may not claim an additional fee from subscribers in excess of the costs of access related to ensuring access to such media services. The public media service provider shall not claim consideration from the media service distributor for the distribution of its media services.

(2) The media service distributor shall transmit the public media services defined in Paragraph (1) and falling under the scope of the "must carry" obligation as a basic service in such a manner that these services, with the exception of analogue media service distribution networks, may also be available to subscribers as a separated subscription service. The media service distributor may not claim an additional fee for the use of such subscription service packages from subscribers in excess of the costs of access related to ensuring access to such media services. In case of analogue media service distribution networks, all public media services falling under the scope of the "must carry" obligation shall be made available to subscribers in all programme packages.

(3) The public media service provider shall make its media services as per Paragraph (1), distributed using broadcasting transmission, available to subscribers free of charge.

(4) The Office shall monitor due performance of the provisions defined under Paragraphs (1)-(3) *ex officio* or upon request.

(5) The Office shall monitor due performance of the provisions defined under Paragraphs (3)-(4) *ex officio* or upon request.

**Article 75** (1) The media service distributor shall, up to ten percent of its total capacity but in respect of three media services at most, be subject to an obligation to contract regarding the technically and economically founded contract offers made by the media service providers regarding the provision of their regional or local audiovisual community media services.

(2) The media service distributor shall – in respect of no more than two further media services – be subject to an obligation to contract regarding the technically and economically founded contract offers made by the media service provider with a local reception area regarding the provision of its audiovisual media service, with the provision that based on the data in the register of the Media Council the reception area of the given media service provider falls within the given media service distributor's reception area or within the separate service area as per Paragraph (4), and that it provides its media service specifically for the given area's population. Pursuant to Paragraphs (1)-(2), the media service distributors performing their services via satellite shall not be subject to the "must carry" obligation in respect of the local media services subject to the "must carry" obligation.

(3) Over and above the media services falling under the "must carry" obligation defined under Article 74 (1) and Paragraphs (1)-(2), the Media Council may, *ex officio* or upon the media service provider's request, define in a regulatory decision no more than two additional linear public media services or one linear community media service, serving the media policy objectives of public interest laid down in this Act, in respect of which the media service distributor has an obligation to contract according to a technically and economically founded contract offer. When passing its decision, the Media Council shall assess the extent by which the decision contributes to the diversity of the media market and information, to the achievement of the public service objectives defined in this Act and to the preservation and improvement of culture. Media service distributors shall not have the legal status of a client in such regulatory procedures.

(4) If the transmission system of the media service distributor as per Paragraphs (1)-(3) comprises of parts serving several areas that can be technically distinguished from each other, the media service distributor shall be subject to

the obligations as per Paragraphs (1)-(3) *mutatis mutandis* in respect of each technically distinguishable area separately.

(5) For the purposes of Paragraphs (1)-(2), the media service provider shall be considered as being entitled to benefit the "must carry" obligation in respect of that media service provided by it

a) in respect of which it requests the media service distributor to distribute the media service, and

b) which, pursuant to the Media Council's decision, qualifies as a community media service as per the criteria defined in Article 66.

For the purposes of Paragraph (3), the Media Council may appoint only linear community media services provided by media service providers other than those providing linear community media services under Paragraphs (1)-(2).

(6) For the purposes of Paragraphs (1)-(4), neither the media service distributor's information channel nor such media service shall be taken into account in the provider of which, or in the owner of the provider of which the media service distributor undertaking or its owner has a qualifying holding.

(7) The influential media service distributor shall have an obligation to contract in respect of three further linear community audiovisual media services at most in addition to those defined under Paragraphs (1)-(3), according to the technically and economically founded contract offers made by the media service providers for distributing their audiovisual community media services.

(8) If, in the course of fulfilling its "must carry" obligation, the media service distributor is only obliged to transmit one authorised media service provider, however, several authorised media service providers simultaneously also require transmission, the media service distributor shall be obliged to assess the authorised media service providers' contract offers, impartially and based on objective criteria, under a public and transparent procedure.

(9) Offers may be rejected on objective technical grounds if the service requirement indicated in the offer jeopardises the safety of operation or the unity of the network.

(10) Offers may be rejected on objective economic grounds if the fees indicated in the offer are different from the costs (including the usual profit) to an extent that any agreement is rendered impossible.

(11) In case of any doubt, the media service distributor shall be responsible to prove that transmission of the programme flow is either economically or technically unfounded.

(12) The Media Council shall notify the affected media service providers about the launch of the regulatory procedure as per Paragraph (3) in an order. Such notification shall only contain the subject matter of the case and a brief description thereof. The Media Council shall publish such notifications through public notices. In the course of such a regulatory procedure only clients participating in the procedure shall be entitled to exercise the respective client rights. The Media Council shall announce its regulatory decision issued in the course of this procedure through public notices.

(13) Taking into account the assessment criteria defined under Paragraph (3), the Media Council may amend its regulatory decision as per Paragraph (3) if this is justified by a substantial change in circumstances. The provisions of Paragraph (12) shall apply to the communication of the amended decision.

(14) The submission of a statement of claim within the framework of the judicial review of the regulatory decision specified under Paragraphs (3) and (13) shall not have a suspensive effect on the enforcement of the decision, and the court shall not suspend the enforcement of the regulatory decision challenged by the statement of claim. The decision shall be enforceable immediately, irrespective of the filing of the statement of claim.

(15) The Media Council may, *ex officio* or on basis of a complaint specified in Article 145, may monitor the due application and performance by the media service distributor of the provisions laid down in Paragraphs (1)-(11) within the framework of general regulatory supervision.

(16) If the Media Council concludes, as the result of the authority supervision, that the media service distributor had violated the provisions laid down in Paragraphs (1)-(11) and the violation may be rectified by termination of the violating behaviour or by restoring the lawful situation – without completing another regulatory procedure, the Media Council shall notify the media service distributor about the violation of law and shall, in the form of an order, oblige the media service distributor to terminate such violation by setting a deadline of at least twenty days for compliance and including a warning on the consequences of failure to comply.

(17) If the deadline set in the notification mentioned in Paragraph (16) expires without result or if the provisions contained in Paragraph (16) cannot be applied, the Media Council shall *ex officio* launch the proceeding falling within its own competence.

(18) The contents and framework of the “must carry” obligation of the public media service designated according to Paragraph (3) by the regulatory decision of Media Council, as well as the respective rights and obligations shall remain unaffected even if the number of “must carry” public media services specified in Article 74 (1) are reduced subsequent to the decision on the designation as per Paragraph (3) became final.

**Article 76** The media service provider shall be entitled to initiate the legal dispute procedure as per Articles 172–174 if

- a) an agreement as per Article 75 (1)-(3) and (7) is not concluded within thirty days of the offer being made, or
- b) the media service distributor violates the authorised media service provider’s media service distribution right or legitimate interest set forth by law or an agreement.

**Article 77** (1) The media service distributor shall send to the Office all agreements concluded with media service providers within the framework of its “must carry” obligation defined in this Chapter, as well as the amendments thereto, within thirty days from their conclusion or amendment, and shall notify the Office of the termination of such agreements within thirty days following the date of termination.

(2) The media service distributors and media service providers shall provide data upon the Authority’s request in connection with the “must carry” obligation regulated in this Chapter.

### **Obligation to Offer Media Services**

**Article 78** (1) Media service providers with significant market power and media service providers in which or in the owner of which an influential media service distributor or the owner thereof has a qualifying holding (for the purposes of Articles 78–81 hereinafter jointly referred to as obliged media service provider) shall be subject to the obligations defined under Paragraph (2) in respect of all their linear media services.

(2) The obliged media service provider shall have an obligation to contract in respect of all its linear media services according to the fair and reasonable contract offers of the media service distributor. The obliged media service provider shall be subject to an obligation to contract in respect of each linear media service separately.

(3) The conclusion of an agreement subjecting any of the other media services of the obliged media service provider, which are not essential for the distribution of the given media service, or the purchase or use of other services or products may not be set by the obliged media service provider as a precondition of the conclusion of an agreement pertaining to any of its media services or of the determination of the material contents of such agreement (prohibition on tying).

(4) The obliged media service provider and media service distributor shall determine the agreement and the contractual terms and conditions thereof – in particular, but not exclusively, the fee – in line with the principle of equal treatment, by setting an affordable price level and by taking into account the principles of technological neutrality and economies of scale. In the course of this, the obliged media service provider shall not differentiate between the contract offers of the media service distributors, unless it is justified. Parties shall be entitled to amend the agreement in terms of the fee once a year, reckoned from the date the agreement was concluded.

(5) For the purposes of this Act it shall be regarded as a behaviour violating the principle of equal treatment, in particular, if the obliged media service provider

- a) unreasonably subjects distribution of the programme flow to technical conditions which a decisive proportion of media service distributors are unable to meet, or
- b) determines such pricing terms and tariffs – including volume discount – in the course of determining the fee payable by the media service distributors, so that upon application of these terms and tariffs, the most advantageous terms would become available only to a few media service distributors.

(6) The offer may be rejected if performance of the commitments contained in the offer is impossible due to objective technical or economic reasons, and the parties cannot come to an agreement regarding these terms within the framework of the procedure aimed at conclusion of the agreement.

(7) In case of any doubt, the obliged media service provider shall be responsible to prove that refusal of the offer was well-founded.

**Article 79** (1) In order to ensure the proper and transparent satisfaction of the obligation to contract defined in Article 78 (2), the obliged media service provider shall determine the general contractual framework conditions related to the distribution of its media service, and shall publish such conditions on its website.

(2) The obliged media service provider shall determine its general contractual framework conditions as per Paragraph (1) in line with the requirements of rationality in such a way as to ensure that they are justified, transparent and verifiable. Conditions contrary to these shall not be applied.

(3) The provisions of Paragraphs (1)-(2) shall apply to the following contractual terms and conditions:

- a) the contractual framework conditions regarding the programme fee payable to the obliged media service provider, in particular the principles, method, period of application of the pricing policy of the obliged media service provider and the method and date of payment,
- b) the procedure applicable for the conclusion of the agreement, the method and terms for using the service and its technical, economic or other restrictions, if any,
- c) cases and conditions of amendment or termination of the agreement,
- d) cases of interruption of the service,
- e) breach of the agreement and the legal sanctions thereof.

(4) In the event of modification of the contractual terms and conditions, the obliged media service provider shall make the new contractual terms and conditions available at least thirty days prior to the entry into force of the new contractual terms and conditions.

(5) The Office shall monitor the fulfilment of the obligations set forth under Paragraphs (1)-(4).

**Article 80** (1) The media service distributor shall be entitled to initiate the legal dispute procedure as per Articles 172–174 if

- a) the agreement as per Article 78 (2) is not concluded within thirty days of making the offer, or
- b) the obliged media service provider has violated the authorised media service distributor's right or legitimate interest laid down by law or in an agreement, affecting distribution of the media services.

(2) If the amount of the fee payable by the media service distributor is contested, the obliged media service provider shall be responsible to prove the legitimacy of the pricing and that the proceedings have been conducted in line with the requirement of equal treatment.

**Article 81** (1) The obliged media service provider shall send to the Office all agreements, and the amendments thereof, concluded with media service distributors within the framework of the obligation defined in Article 78 within thirty days of their conclusion or amendment, and shall notify the Office of the termination of such agreements within thirty days of termination.

(2) The obliged media service providers and the media service distributors shall provide data upon the Authority's request in connection with the obligation defined in Articles 78–79.

## **PART THREE**

### **PUBLIC MEDIA SERVICES**

#### **CHAPTER I**

#### **BASIC PRINCIPLES AND OBJECTIVES OF PUBLIC MEDIA SERVICES**

##### **Basic Principles of Public Media Services**

**Article 82** Public media service is characterised by the following:

- a) it operates independently from both the State and from economic operators, furthermore the managers of the public media service providers and those involved in its activities have professional autonomy within the applicable legislative framework,
- b) its system ensures accountability and the existence of social control,
- c) its operations are financed primarily from the joint voluntary contributions of those living in the Republic of Hungary, from public funding,
- d) its activities cannot be primarily focused on profit-making.

The Objectives of Public Media Services

**Article 83** (1) The objectives of public media service are as follows:

- a) to provide media services which are comprehensive in both the social and the cultural sense, aiming to address as

many social classes and culturally distinct groups and individuals as possible,

- b) to support, sustain and enrich national, community and European identity, culture and the Hungarian language,
- c) to promote and strengthen national cohesion and social integration, and to respect the institution of marriage and the value of family,
- d) to provide information about and support constitutional rights, the fundamental values of the constitutional order and the rules of democratic social order,
- e) to satisfy the media related needs of national and ethnic minorities, religious communities and other communities, present their culture, support and sustain the mother tongues of national and ethnic minorities,
- f) to satisfy the media service related special needs of underprivileged groups who are at a great disadvantage due to their age, physical, mental or psychological state or social circumstances, as well as of people with disabilities,
- g) to serve the cultural needs of Hungarians living abroad, promote preservation of their national identity and mother tongue and enable them to have spiritual relations with their mother country,
- h) to broadcast programmes serving the physical, mental and moral development and interest of minors and widening their knowledge, as well as educational and information programmes serving child protection purposes,
- i) to accomplish educational and information tasks and present the latest scientific findings,
- j) to disseminate information promoting healthy lifestyles, protection of the environment, nature and landscape conservation, public security and transport safety,
- k) to present programmes about the social, economic and cultural life in Hungary and of various areas within the Carpathian Basin,
- l) to present Hungary and Hungarian culture, as well as the culture of the national and ethnic minorities living in Hungary to Europe and to the world,
- m) to provide a balanced, accurate, thorough, objective and responsible news service and information,
- n) to confront dissenting opinions with one another, conduct debates about community affairs, contribute to the freedom of opinion based on the provision of reliable information,
- o) to broadcast a rich palette of diverse programme flows representing different values, present high quality entertainment, as well as programmes generating widespread interest,
- p) to implement high quality programme-making across every segment of the programme flow, reasonable and justified involvement in media market competition.

(2) Public media service strives to:

- a) ensure innovation in the media profession, the continuous improvement of professional standards and the use of high ethical standards in the media service,
- b) boldly use new technologies and methods serving media service distribution, play a pivotal role in discovering new digital and Internet media services and exploit these in the public's interest,
- c) promote acquisition and development of knowledge and skills needed for media literacy through its programmes and through other activities outside the scope of media services,
- d) support Hungarian cinematographic art and present new Hungarian cinematographic works,
- e) serve public interest through activities outside the scope of media services, such as book publishing or active involvement in theatre events.

(3) The public media service provider shall contribute to the long-term preservation, archiving and professional collection and care of cultural values and documents of historical significance that come into its possession in the course of performing its activities.

## **CHAPTER II**

### **THE PUBLIC SERVICE FOUNDATION**

#### **General Rules**

**Article 84** (1) The Parliament establishes the Public Service Foundation (hereinafter as: Public Foundation) to ensure the provision of public media service and public news service and to protect their independence. The Public Foundation is the owner of the Hungarian Television Non-Profit Private Limited Company, Duna Television Non-Profit Private Limited Company, Hungarian Radio Non-Profit Private Limited Company and the National News Agency Non-Profit Private Limited Company (hereinafter collectively as: public media service providers).

(2) The initial assets of the Public Foundation shall be determined by the Parliament in a parliamentary decision.

(3) The Parliament shall adopt and may amend the Public Foundation's Statutes by a two-thirds majority of the Members of Parliament present. Issues relating to the operation and organisational structure of the Public Foundation not regulated in this Act or the Statutes shall be specified in the Public Foundation's By-laws.

(4) Unless otherwise specified by this Act, the general rules governing foundations shall apply to the Public Foundation.

#### **Board of Trustees of the Public Service Foundation**

**Article 85** (1) The managing body of the Public Foundation is the Board of Trustees.

(2) The responsibilities and the framework of the activities of the Board of Trustees shall be determined in the Public Foundation's Statutes, in line with this Act.

(3) The Board of Trustees shall, within the framework of this Act and the Public Foundation's Statutes, define and adopt its own procedural rules, as well as the Public Foundation's By-laws. These procedural rules shall include the rules governing the substitution of the Chairperson of the Board of Trustees.

(4) The activities of the Board of Trustees shall be supported by the Board of Trustees' Office (hereinafter as: Board of Trustees' Office). The administrative, management and procedural duties of the Board of Trustees shall be fulfilled by the Board of Trustees' Office. The Board of Trustees and the members of the Board of Trustees shall be entitled to avail themselves of expert assistance via the Board of Trustees' Office. The terms and conditions of employing experts as well as the operating conditions of the Board of Trustees' Office shall be set out in the Public Foundation's By-laws.

#### **Composition of the Board of Trustees**

**Article 86** (1) The Parliament shall elect six members to the Board of Trustees by voting for each member individually, by a two-thirds majority vote of the Members of Parliament present.

(2) Half of the members who may be elected by the Parliament to the Board of Trustees shall be nominated by the governing factions, while the other half shall be nominated by the opposition factions. Both the governing factions and the opposition factions shall agree among themselves upon the candidates who may be nominated by the respective side.

(3) Nominations for candidates shall be made within eight days following the commencement of the election procedure. The election shall be held within eight days of the nomination of candidates.

(4) Should any faction fail to participate in the nomination, the other factions of the given side may exercise the given side's right to nominate.

(5) A new candidate shall be nominated in place of a non-elected candidate within eight days, and the new election shall be held within the subsequent eight days. A person who did not receive at least one-third of the votes of all the Members of Parliament in the course of the previous election may not be renominated.

(6) The Chairperson of the Board of Trustees and one other member shall be delegated by the Media Council for a term of nine years.

(7) The Board of Trustees shall be deemed to have come to existence when its members have been elected, and its Chairperson, and one other member, have been delegated by the Media Council. Each member of the Board of Trustees shall make an oath laid down in Annex 2 before the President of the Parliament upon taking up of his/her office.

(8) The formation of the Board of Trustees shall not be prevented by failure of either the governing or the opposition side

to make a nomination, or by not all nominees obtaining the necessary majority or, upon the application of Paragraph (5), by the new nominee not obtaining the necessary majority. In this case the Board of Trustees shall come into existence with the election of at least three members.

(9) When formed with less than the full headcount, the Board of Trustees may be completed up to the full headcount in accordance with the provisions of Article 87.

(10) Members of the Board of Trustees shall be elected by the Parliament for a term of nine years. The mandate of the elected and delegated members shall expire at the same time, i.e. after nine years from the date of election of the elected members by the Parliament.

**Article 87** (1) If the mandate of an elected member terminates before the expiry of the period defined in Article 86 (10), the nomination and election of the new member shall take place in accordance with Paragraphs (2)-(7).

(2) If the nomination of a new member takes place within the same Parliamentary cycle as the one in which other members of the Board of Trustees are elected, or if no change has occurred in respect of the factions of the governing side and the opposition side following Parliamentary elections held after this Parliamentary cycle, then the provisions of Article 86 (2)-(4) shall apply to the nomination, with the provision that the right of nomination shall be vested in that (governing or opposition) side that originally nominated the member (who was elected) and who is to be replaced through the new nomination process, after his/her mandate expired.

(3) If the nomination of a new member takes place after the Parliamentary cycle during which the members of the Board of Trustees were elected, then, provided that there is a change regarding the factions of the governing and the opposition side following the Parliamentary elections held after the Parliamentary cycle during which the Board of Trustees was elected, a nomination committee consisting of one member of each Parliamentary faction shall propose a candidate by unanimous vote within fifteen days following the establishment of the nomination committee.

(4) Should the nomination committee fail to nominate a member within the deadline defined under Paragraph (3), the nomination committee may then propose a candidate within another period of eight days with at least two-thirds of the votes. In the course of this, the number of votes held by the individual members of the nomination committee shall be proportionate to the size, at the time of voting, of the Parliamentary faction nominating the given member.

(5) In the course of candidate nomination under Paragraphs (3)-(4), the nomination committee shall take into consideration any changes taking place regarding the governing and the opposition side, such as when a Parliamentary faction changes the side to which it belongs, or in case of establishment of a new faction or the termination of an existing faction.

(6) Should the nomination committee fail to nominate a sufficient number of candidates even under the scenario defined in Paragraph (4), a new nomination committee shall be established.

(7) After a successful nomination, the Parliament shall elect the new member by a two-thirds majority of the Members of Parliament present for the remaining term of the mandate of the members of the already operational, elected Board of Trustees. Every new member of the Board of Trustees shall make an oath, upon taking up his/her office, as defined in Annex 2, before the President of the Parliament.

(8) In case of early termination of the mandate of the Chairperson of the Board of Trustees or a Board of Trustees member delegated by the Media Council, the Media Council shall, within fifteen days, delegate a new Chairperson/member for the period lasting until the mandate of the members of the Board of Trustees expires.

**Article 88** (1) Conflict of interest rules stated in Article 118 (1)-(2) pertaining to the Chairperson and members of the Board of Trustees, the President, Vice President, Director General and Deputy Director General of the Authority, as well as the rules stated in Article 118 (3) shall apply as appropriate.

(2) Neither the Chairperson of the Board of Trustees nor its members may be engaged in an employment relationship with the Public Foundation, and may not accept remuneration under any legal title from any public media service provider under their supervision.

(3) The Chairperson and members of the Board of Trustees may not establish any work-related legal relationship with any public media service provider within one year following the termination of their mandate.

(4) If the Chairperson of the Board of Trustees or any of its members fail to meet their verification obligation despite being asked to do so as defined in Article 89 (4) due to their own fault, or if any conflict of interest arises in respect of a member of the Board of Trustees or its Chairperson, and the conflict of interest is not eliminated within thirty days

of the emergence of the cause of the conflict of interest or of the date of the meeting establishing the conflict of interest, the plenary meeting of the Board of Trustees shall adopt a decision terminating the Board membership of the Chairperson or the member of Board of Trustees. The Chairperson or member of the Board of Trustees may not exercise his/her powers arising from his/her office as of the date of the adoption of the decision establishing a conflict of interest.

(5) The mandate shall be terminated by way of dismissal if the Chairperson or any member of the Board of Trustees is placed under guardianship affecting his/her legal capacity.

(6) The mandate shall be terminated by exclusion, if

a) the Chairperson or member of the Board of Trustees is unable to fulfil his/her responsibilities arising from his/her mandate for more than six consecutive months for reasons within his/her control, or

b) if as a result of criminal proceedings instituted against any member or the Chairperson of the Board of Trustees, the Chairperson or member is declared guilty by the court's final judgement delivering a term of imprisonment, or banning him/her from exercising his/her profession corresponding to the activities of the Board of Trustees or prohibition from participation in public affairs.

(7) The mandate of the Chairperson or a member of the Board of Trustees shall terminate upon his/her death.

**Article 89** (1) Termination of the mandate of the Chairperson or a member of the Board of Trustees due to conflict of interest, dismissal or exclusion shall be established and announced by the plenary meeting of the Board of Trustees.

(2) In the plenary meeting of the Board of Trustees adopts a decision about a conflict of interest, dismissal or exclusion, the Chairperson or member affected by such decision may not take part in the voting process, and the unanimous decision of those entitled to vote is required to resolve such matters. If an unanimous decision is not reached in case of a repeated voting concerning the issues mentioned above, the Chairperson of the Board of Trustees shall initiate the decision making of the Parliament on the subject matter. In this case, the Parliament shall adopt a decision on the conflict of interest, dismissal or exclusion by a two-thirds majority of the Members of Parliament present.

(3) If any suspicion of a conflict of interest arises in relation to the Chairperson of the Board of Trustees, then the member designated in the procedural rules of the Board of Trustees shall exercise the powers of the Chairperson in the proceedings defined under Paragraphs (5)-(6).

(4) If any information comes to light suggesting that any of the legal sanctions defined in Article 88 (6) (b) are applicable to any member of the Board of Trustees, then the Chairperson of the Board of Trustees shall call upon the concerned member of the Board of Trustees in writing, by designating a deadline and by specifying the legal sanctions of failure to comply, to verify having a clean criminal record and not being banned from exercising a profession corresponding to its activities with the Board of Trustees or prohibited from participating in public affairs.

(5) The Chairperson of the Board of Trustees shall be in charge of handling the personal data of the members of the Board of Trustees that have come to his/her knowledge pursuant to Paragraph (4) until termination of the mandate of the member of the Board of Trustees.

(6) The provisions of Paragraphs (4)-(5) shall apply to the Chairperson of the Board of Trustees, with the difference that the Chairperson of the Board of Trustees shall fulfil his/her verification obligation defined under Paragraph (4) to the Board of Trustees, whereas the right defined under Paragraph (5) shall be exercised by the Board of Trustees. The Chairperson of the Board of Trustees shall not be involved in exercising the powers of the Board of Trustees defined in this Paragraph.

## **Powers and Responsibilities of the Board of Trustees**

**Article 90** (1) The Board of Trustees:

a) monitors whether the objectives of the public media service are fulfilled through the activities of the public media service providers,

b) if, according to the opinion of the Board of Trustees, the behaviour of a public media service provider seriously violates or threatens the attainment of public media service objectives, then it may initiate the Media Council's proceedings,

c) safeguards the independence of the public media service provider,

d) establishes and amends the Statutes of public media service providers, and publishes these in the Hungarian Gazette,

e) elects the CEOs of the public media service providers, and determines the terms and conditions of their employment contracts and remuneration,

- f) may terminate the employment relationship of the CEOs of the public media service providers,
- g) elects the Chairperson and members of the joint Supervisory Board of the public media service providers, and may also remove these,
- h) appoints the auditor of the public media service providers, and may terminate the mandate of such auditor. The responsibilities, powers and competence of the auditor are regulated by the Board of Trustees in the Statutes of the public media service provider, in accordance with the provisions of the Act on Business Associations and the Accounting Act,
- i) approves the annual financial management plan of the Public Foundation and adopts its balance sheet,
- j) exercises the rights of the General Meeting pursuant to the Act on Business Associations in relation to public media service providers, subject to the deviations set forth in this Act,
- k) manages the Public Foundation's assets in its capacity as trustee of the Public Foundation,
- l) may increase or decrease the equity capital of the public media service providers, as regulated by the Public Foundation's Statutes,
- m) approves the principles and key accounts of the public media service providers' annual financial management and financial plans,
- n) approves the public media service providers' balance sheet and profit and loss statement,
- o) monitors the funding and financial management of the public media service providers in terms of compliance with applicable requirements of the European Union,
- p) may grant prior authorisation for negotiating such contracts having a value of more than three hundred million forints which public media service providers wish to conclude,
- q) may grant the prior approval necessary for the public media service providers to take out a loan or to conclude contracts having a value of more than one hundred million forints, or to amend or terminate any of the contracts concluded according to the above mentioned provisions,
- r) carries out other duties defined in this Act.

(2) For the purposes of Paragraph (1) (p)-(q), the value of the services to be provided by the public media service provider under various contracts concluded with the same contracting party during the same calendar year, regardless of their content, shall be aggregated.

**Article 91** (1) The Public Foundation shall exercise the founders' and shareholders' rights defined by the Act on Business Associations in respect of the public media service providers. However, it is not entitled:

- a) to change the basic scope of activities of the public media service providers,
- b) to terminate, merge, demerge the public media service providers or transform them into another organisational form,
- c) to withdraw assets from the public media service providers,
- d) to define the programme flow structure of a public media service provider, as well as the content of its programme flow, services or programmes,
- e) to give the CEO of a public media service provider instructions in respect of the employer's rights exercised by such CEO,
- f) to decide in matters falling within the competence of the CEO of another organisation or of a public media service provider pursuant to this Act.

(2) The Public Foundation's Board of Trustees cannot extend its powers defined in Article 90, not even with the founder's rights defined by the Act on Business Associations, but not included in Article 90.

### **Operation of the Board of Trustees**

**Article 92** (1) The Board of Trustees shall meet with the frequency required for fulfilling its responsibilities, but at least once every month. The CEO of the affected public media service provider shall be invited to attend the discussions of any items on the agenda relating to General Meeting issues. The Chairperson of the Board of Trustees shall convene an extraordinary meeting of the Board of Trustees within eight days if the majority of the members of the Board of Trustees so requests by determining the agenda of such meeting. In case of failure to do so, the initiators are collectively entitled to convene the extraordinary meeting.

(2) Members of the Board of Trustees, including the Chairperson of the Board of Trustees, shall have equal voting rights. In the event of a tie vote, the vote of the Chairperson shall be decisive.

- (3) The Board of Trustees has quorum when more than half of its members are present.
- (4) The Board of Trustees shall adopt its decisions by a simple majority of the votes of its members and the Chairperson, unless otherwise stipulated by the Act.
- (5) The Chairperson of the Board of Trustees shall draw up the agenda for the meeting and preside over the meeting. Any member may make a proposal concerning the agenda in advance and in writing, the placement of such proposed item on the agenda shall be decided upon by the meeting.

### **Remuneration of the Chairperson and Members of the Board of Trustees**

**Article 93** The Chairperson of the Board of Trustees shall be entitled to a honorarium equalling sixty-five percent of the remuneration of state secretaries, whereas members of the Board of Trustees shall be entitled to forty percent of the remuneration of state secretaries, and they may require reimbursement of expenses up to fifty percent of the amount of their honorarium at most. Further rules pertaining to the rate of reimbursement of expenses shall be set forth in the Public Foundation's By-laws.

### **Financial Management of the Public Foundation**

**Article 94** (1) The revenues of the Public Foundation shall comprise the following:

- a) financial support received from the Fund to finance operations,
- b) the proceeds from the assets of the Public Foundation,
- c) the proceeds from the utilization of assets managed by the Public Foundation,
- d) other revenues serving foundation purposes (subsidies, targeted subsidies from the state budget, payments made to the foundation).

(2) The expenditures of the Public Foundation comprise the following:

- a) contributions to the operating and development expenses of the public media service providers,
- b) the Public Foundation's own expenses, expenditures.

(3) The Public Foundation may not carry out for-profit economic activities, may not found other business associations and may not acquire shares in other operating business associations, and is not entitled to establish foundations.

(4)

## **CHAPTER III**

### **THE PUBLIC SERVICE CODE AND THE BOARD OF PUBLIC SERVICES**

#### **The Public Service Code**

**Article 95** (1) The Public Service Code (hereinafter as: the Code) contains, in accordance with this Act, the basic principles governing public media services and fine-tunes the public service objectives defined in this Act. The Code may have a general content and also a content relating to individual public media service providers separately. Fundamentally, the Code is meant to provide guidance to public media service providers regarding the appropriate operating principles of the public media services within the framework of the Act.

(2) The Code will first be adopted by the Media Council with the consent of the Board of Trustees and with a view to the opinion of the CEOs of the public media service providers.

(3) The Code may be amended by the Board of Public Services, following its first approval in accordance with Paragraph (2), with the Board of Trustees' consent. Apart from the Board of Public Services, an amendment may also be initiated by the Board of Trustees and the CEOs of public media service providers.

(4) The Institute for Media Studies operating under the aegis of the Media Council shall provide professional support to the drafting and amendment of the Code.

(5) Enforcement of the rules defined by the Code shall be supervised by the Board of Public Services.

**Article 96** The Code can, among other things, regulate the following:

- a) the means and method of attaining the statutory objectives of public media service,
- b) the basic principles of independence from political parties and political organisations,

- c) the principles regarding the presentation of the diversity, objectivity and balanced nature of news and timely political programmes, presentation of disputed matters and the diversity of opinions and views,
- d) the criteria for supporting and sustaining the mother tongue culture,
- e) the principles of the rules of presenting the culture and life of national and ethnic minorities living in Hungary,
- f) the principles of presenting cultural, scientific, ideological and religious diversity,
- g) the principles of performing tasks with regard to the protection of minors,
- h) the principles relating to ethical norms governing the broadcasting of commercial communications, advertising activities and the sponsorship of programmes,
- i) the principles of communicating public service announcements,
- j) the principles relating to the extent and guarantees of the autonomy and responsibility of production companies employed by the public media service provider, and to the guarantees of their participation in the definition of the principles of the production and editing of programmes,
- k) the principles of keeping members of the Hungarian nation living abroad adequately informed, and also of providing adequate information about them,
- l) the principles of formulating basic ethical rules, other than those in this Act, applying to staff members, with special regard to those employed in relation to news and political programmes.

### **The Board of Public Services**

**Article 97** (1) The Board of Public Services is composed of fourteen members, its Chairperson is elected by its own members from among themselves, it adopts its decisions with a simple majority of votes, unless this Act stipulates otherwise. In the event of a tie vote, the vote of the Chairperson shall be decisive.

(2) Members of the Board of Public Services are delegated by the nominating organisations defined in Annex 1 of this Act for a term of three years, in the manner as defined in the Annex. Members may be delegated several times. Failure by any of these organisations to exercise their delegation right shall not impede the operation of the Board of Public Services.

(3) Members of the Board of Public Services shall be delegated at least thirty days prior to the expiry date of the previous members' mandate.

(4) The secretarial duties of the Board of Public Services shall be provided for by the Public Foundation's Office and its costs – including the honorarium of the Chairperson and the members – shall be borne by the Public Foundation.

(5) The Chairperson of the Board of Public Services shall be entitled to a honorarium equalling forty percent of the remuneration of state secretaries, whereas its members are entitled to twenty-five percent of the remuneration of state secretaries. In addition to this, the Chairperson and members may require reimbursement of their travel expenses as necessary for performing their tasks relating to the Board. The conflict of interest rules defined in Article 118 shall be applied regarding the Chairperson and the members – with the exception of those stipulated in Point e) of Article 118 (1) –, as appropriate.

(6) The Board of Public Services guarantees social control over the public media service providers.

(7) The Board of Public Services constantly monitors how public service orientation is manifested, and exercises control in accordance with Paragraphs (8)-(13) over the public media service providers in relation to the enforcement of the provisions of this Act.

(8) Once every year, by 28 February of the year following the current calendar year, the CEOs of the public media service providers prepare a report on whether the media service provider under their management, according to their own assessment, has fulfilled the requirements outlined in this Act regarding the objectives and basic principles of public media service.

(9) The Board of Public Services shall discuss the report and decide on the acceptance thereof by a simple majority.

(10) If the Board of Public Services, after having personally interviewed the CEO, decides to reject the report, the Board of Public Services may consider submitting a proposal to the Board of Trustees for the termination of the CEO's employment relationship. Adopting such a proposal requires the two-thirds majority of the members of the Board of Public Services.

(11) The Board of Trustees shall put on its agenda and debate the proposal for the termination of the CEO's employment relationship within eight days. The CEO and the Chairperson of the Board of Public Services shall be invited to the meeting of the Board of Trustees.

- (12) The Board of Trustees shall decide on the proposal to terminate the employment relationship by a simple majority of the members present. The decision needs to be accompanied with a justification.
- (13) If the Board of Trustees does not terminate the CEO's employment relationship despite the proposal, then in three months time the Board of Public Services shall put a new hearing of the CEO on its agenda.
- (14) If the CEO's employment relationship was terminated due to his/her failure to ensure implementation of public service objectives and principles, then he/she may not be re-nominated for the CEO's position of a public media service provider for a period of ten years.

## **CHAPTER IV**

### **PUBLIC MEDIA SERVICE PROVIDERS**

#### **General Rules**

- Article 98** (1) Public media service providers are responsible for implementing the objectives of public media service as defined in Article 83. Public media service providers shall fulfil their responsibility by joint effort - by coordinating their actions as much as possible – while retaining their autonomy.
- (2) The provisions of the Act on Business Associations pertaining to companies limited by shares shall apply, as appropriate, to the public media service providers, including the common rules applicable to business associations as well, unless otherwise provided for by this Act.
- (3) Each public media service provider shall hold one non-marketable share.
- (4) Public media service providers shall not pay any media service provision fee.
- (5) Public media service providers shall provide at least one radio and at least one audiovisual linear public media service to the overwhelming majority of the population of Hungary. Services provided to the overwhelming majority of the population shall mean, for radio media services, terrestrial media services that may be received by eighty percent of the population in the 87.5 to 108.0 MHz frequency band, or, for audiovisual media services, media services available to ninety percent of the population.
- (6) In addition to its national media services, public media service providers may also provide local or regional media services.
- (7) The Media Council shall decide on the media service facilities used by the individual public media service providers – including media services targeted at foreign countries as well – on the basis of technical, economic, and media policy considerations and after consultation with the CEO of the Fund.
- (8) In relation to public audiovisual and radio media services, the Media Council – after consultation with the CEO of the Fund and taking into consideration economic and budgetary planning related considerations for the next year, and with regard to the fulfilment of the public service objectives set forth in Article 83 of this Act – may supervise the system of public media services annually and may decide whether to maintain the existing media services of public media service providers or to change the system thereof.

#### **Appearance of National and Ethnic Minorities in Public Media Service**

- Article 99** (1) All national and ethnic minorities recognised by the Republic of Hungary are entitled to support and sustain their culture and mother tongue, and to be regularly informed in their mother tongue by way of separate programmes aired through public media service.
- (2) The responsibility defined under Paragraph (1) shall be fulfilled by the public media service provider via national or, having regard to the geographic location of the national or ethnic minority, via local media services by airing programmes satisfying the needs of the national or ethnic minority in question, or via audiovisual media services using subtitles or broadcasting in multiple languages, as required.
- (3) The national self-government bodies of national and ethnic minorities, or in the absence of such their national organisations, shall independently decide on the principles of allocation of the transmission time made available to them by the public media service provider. The public media service provider shall abide by these principles, but these may not affect the contents and editing of the programme.

## **Public Service Media Assets and the Archive of Public Media Service Providers**

**Article 100** (1) All ownership rights and obligations associated with public service media assets shall be exercised by the Fund, with the exceptions set forth under Paragraph (2).

(2) The Fund may not alienate, transfer or encumber public service media assets in any way, neither in full nor in part. This prohibition does not exclude the utilisation of copyright and usage rights existing with respect to certain items of the public service media assets.

(3) The Fund shall be responsible for the storage, safekeeping and utilisation of public service media assets, as well as of physical data carriers containing works and other subject matter subject to copyright law and acquired by the public media service providers and the Fund, but not falling within the scope of public service media assets (hereinafter jointly referred to as: the Archive). The Archive shall qualify as a public collection with a nationwide collection area.

(4) The detailed archiving rules as well as detailed rules of preserving, maintaining and utilisation of the Archive shall be defined by the Fund's CEO in a regulation, with the agreement of the Media Council.

(5) The Fund may use the works in the Archive in accordance with the provisions of the Copyright Act and in accordance with the terms and conditions of the agreement concluded with the copyright owners and holders of related rights.

(6) The Fund shall execute an asset management agreement with the public media service providers for the utilisation of public service media assets. This agreement confers on the public media service providers the right to use those items of the public service media assets free of charge which are under their management, including the right of communication to the public under the aegis of public media service.

(7) Copyrighted works and other intellectual property located in the Archive but falling outside the scope of public service media assets may be used by public media service providers within the framework of the Copyright Act as well as the terms and conditions of agreements concluded with copyright owners and holders of related rights. The Fund may transfer to the public media service providers, for the purpose of communication to the public, works belonging to public service media assets, along with copyrighted works and other intellectual property which fall outside the scope of public service media assets but in respect of which the Fund has a usage right, where such public media service providers shall not need any separate authorisation and shall not have to pay any fees for the privilege of doing so.

(8) If it cannot be decided whether a copyrighted work held in the Archive falls within the scope of public service media assets and if such work is presented in public media service, the holder of the copyright or related rights, stepping up following such presentation, may prohibit any further use of the work. In case of usage that has already taken place, the holder of the aforementioned rights stepping up is entitled to an adequate remuneration from the media service provider. In case of dispute, the amount of the remuneration shall be determined by the court.

(9) Possible holders of copyrights – other than the Fund – on works belonging to public service media assets shall also be entitled to adequate remuneration. In case of dispute, the amount of the remuneration shall be determined by the court.

(10) Unless otherwise agreed or unless otherwise provided for by the asset management agreement under Paragraph (6), the acquisition of usage rights by public media service providers over those items of public service media assets which are under their management, as well as the free transfer of certain public service media asset items between public media service providers shall be exempted from the provisions of Article 30 (3) of Act LXXVI of 1999 on Copyrights.

## **Special Responsibilities of the National News Agency**

**Article 101** (1) The National News Agency Non-Profit Private Limited Company (*in Hungarian: Magyar Távirati Iroda Zártkörűen Működő Nonprofit Részvénytársaság*), as national news agency, shall perform the following public service tasks in addition to being responsible for the attainment of the objectives defined in Article 83:

- a) provides news items, news reports, photographs, data carriers, background materials, graphic images and documentary information about events of general public interest, taking place either in Hungary or abroad,
- b) provides access to all such news items and news reports, which the general public needs to know in order to adequately enforce community and individual rights and interests,
- c) plays a role in transmitting public service announcements made by public authorities, other organizations or natural persons to the printed and electronic media,
- d) provides regular and factual information about the actions of parliamentary parties, other political parties, significant

- non-governmental organizations, the Government, public administration entities, local governments, courts and prosecutor's offices, and shall make the official communications related to the above public,
- e) provides regular and factual information to foreign countries about the most important events taking place in Hungary and the main processes in the country's life,
  - f) provides information regularly and factually about the lives of Hungarians living outside the borders of the Republic of Hungary, and provides news services to them,
  - g) provides regular and factual information about the life of national and ethnic minorities living in Hungary,
  - h) ensures provision of information, as outlined in a separate Act, during election periods,
  - i) in a state of national crisis or state of emergency performs the duties outlined in a separate Act,
  - j) ensures long-term preservation and protection of cultural values and original documents of historical importance that come into its possession in the course of performing its activities,
  - k) participates in the work of international news agency organisations.
- (2) The national news agency, in order to fulfil its public service responsibilities, shall operate a network of correspondents
- a) covering all counties of Hungary as well as the Hungarian capital,
  - b) covering all areas within the Carpathian Basin which have a Hungarian population,
  - c) as the country's international relations and interests may require.
- (3) In case of a national crisis, state of emergency or state of danger, or if the territory of Hungary is subject to unexpected attack by foreign armed groups, furthermore, in the event of having to defend the territorial integrity of the country by the anti-aircraft and stand-by air forces of the Hungarian Defence Forces, the Parliament, the National Defence Council, the President of the Republic and the Government, and/or persons and entities defined by law may, to the extent necessitated by the given situation, order the national news agency, in accordance with Article 32 (6), to provide information.
- (4) The national news agency has an exclusive right to produce news programmes for other public media service providers, and also operates the integrated news hub of public media service providers, along with other online press products of the public media service providers as well as their on-demand media services accessible via the Internet.

### **Electing the CEOs of Public Media Service Providers**

**Article 102** (1) The public media service providers shall be managed by the CEO, as there is no Board of Directors. The CEO shall, within the framework of this Act, exercise all the powers referred to the Board of Directors of a company limited by shares by the Act on Business Associations. An employment contract shall be executed with the CEO, and his/her remuneration shall be defined as a monthly sum payable by the public media service provider under his/her management.

- (2) The Board of Trustees shall exercise the employer's rights in respect of the CEOs of public media service providers, which includes the appointment of CEOs and the termination of their employment relationship. The CEOs shall be nominated and appointed in the following step-by-step order:
- a) the President of the Media Council proposes two CEO candidates to the Media Council in relation to each public media service provider;
  - b) if the Media Council approves of these candidates, then it shall submit the nominations to the Board of Trustees, in order to have one of the candidates selected;
  - c) if the Media Council does not approve of one of the candidates proposed by the President of the Media Council, then the President of the Media Council shall propose a new candidate; the Media Council may make a proposal to the Board of Trustees only if it had approved two candidates;
  - d) the Media Council may also make a proposal regarding the contents of the CEO's employment contract;
  - e) during the first round of voting, the Board of Trustees shall come to a decision concerning the appointment of the CEO by a two-thirds majority of all of its members, including its Chairperson;
  - f) if the Board of Trustees cannot make a selection from the two candidates by a two-thirds majority within thirty days from the date on which they were nominated by the Media Council, then a new nomination procedure shall be conducted;

g) in the course of the new nomination, two new candidates shall be proposed for each public media service provider;  
h) during the vote, taking place after the new nomination, the Board of Trustees shall come to a decision concerning the appointment of the CEO by a simple majority of all of its members, including its Chairperson.

(3) The Board of Trustees shall come to a decision by vote concerning the appointment of the CEO and the terms and conditions of his/her employment contract, drawn up with a view to the Media Council's proposal. The CEO's employment contract shall be concluded for an indefinite period. Should the elected CEO refuse to accept the terms and conditions of the draft employment contract determined by the Board of Trustees, then the Board of Trustees shall take a repeated vote on the employment contract containing the amended terms and conditions. If no agreement can be reached on the terms and conditions of the employment contract, then a new CEO shall be elected.

(4) The CEO's employment relationship shall terminate in the following cases:

- a) upon his/her dismissal;
- b) by termination with notice as per his/her employment contract;
- c) upon his/her death;
- d) in the event regulated by Article 97 (10)-(12), provided that the Board of Trustees decides in favour of termination based on the proposal made by the Board of Public Services.

(5) The CEO's employment relationship shall be terminated by dismissal, if

- a) he/she is placed under guardianship affecting his/her legal capacity;
- b) if, as a result of criminal proceedings instituted against him/her, he/she is pronounced guilty by the court's final judgement delivering a term of imprisonment;
- c) he/she is unable to fulfil his/her responsibilities for three consecutive months for reasons beyond his/her control;
- d) he/she is in breach of conflict of interest rules, and fails to eliminate such conflict of interest within thirty days of the date on which such conflict of interest has arisen;
- e) he/she has been banned by the court from exercising his/her profession or has been prohibited from participating in public affairs.

(6) In case of dismissal, the termination of employment shall be established by the Board of Trustees.

(7) The CEO may appoint two Deputy CEOs. The terms and conditions of the employment contracts of the Deputy CEOs shall be approved by the Board of Trustees.

**Article 103** (1) Persons eligible for the position of the CEO of a public media service provider include those Hungarian citizens with a clean criminal record and a diploma of higher education, who have at least five years of relevant work experience.

(2) Relevant work experience shall include previous experience in programme-making, broadcasting, information, as well as related technical, legal, managerial, administrative, economic, cultural, scientific and opinion polling activities.

(3) Those, who at any time during the two years prior to the date of election, held the post of President of the Republic of Hungary, Prime Minister, member of the Government, State Secretary, State Secretary for Public Administration, Deputy State Secretary, Member of Parliament, Mayor of Budapest, Deputy Mayor of Budapest, Mayor, Deputy Mayor, or officer of a national or local organisation of a political party, may not be appointed as the CEO of a public media service provider.

(4) The process to be applied for the verification of the clean criminal record of the CEO of a public media service provider and applicable legal sanctions shall be governed by the Labour Code.

### **Conflict of Interest Rules Applicable to the Executives of Public Media Service Providers**

**Article 104** (1) The conflict of interest rules under Article 118 (1) (a)-(c) and (f) pertaining to the Authority's President, Vice-President, Director General, Deputy Director General, as well as the grounds for exclusion under Article 118 (3) shall apply to the CEO and executive employees of the public media service provider throughout the term of their employment relationship, as appropriate.

(2) Apart from the conflict of interest rules under Paragraph (1), the CEO and executive employees of the public media service provider or their close relatives cannot be shareholding members or executive officers or Supervisory Board members in a business association which has a business relationship with a public media service provider headed by

the CEO or employing the executive employee. If this rule is violated by a close relative of the public media service provider's CEO or executive employees, then it shall be considered as conflict of interest arisen in respect of the CEO or the executive employee, and the appropriate legal sanctions shall be applied.

(3) Throughout the term of their employment relationship, the CEO and executive employees of a public media service provider shall not be engaged in any revenue generating profession, with the exception of scientific, educational, literary, artistic and other activities under copyright protection, and shall not be entitled to receive any remuneration from the public media service provider under their management not even by virtue of these titles.

(4) The CEO of a public media service provider shall make a written statement, prior to entering into its employment contract, that no grounds for a conflict of interest exist in respect of him/her.

(5) The CEO or executive employee of a public media service provider cannot conclude, on behalf of the public media service provider, an agreement in which he/she, or a close relative of him/her, or such business association is the other contracting party, in which he/she or his/her close relative holds an indirect or direct ownership share, has some other pecuniary rights, or a personal interest. Contracts within the sphere of interest of those affected by this restriction cannot be concluded by any other employee of the public media service provider either.

**Article 105** (1) The CEO shall direct the public media service provider within the framework of this Act, other legal regulations, the Statutes of the Public Foundation and the public media service provider and the decisions of the Board of Trustees.

More particularly, he/she shall:

- a) decide on the programme schedule;
- b) establish the By-laws;
- c) ensure that the Public Service Code is enforced;
- d) draw up and submit to the Board of Trustees for approval the annual financial management plan, and ensure that it is implemented;
- e) draw up the balance sheet and profit and loss statement, and submit both to the Board of Trustees for approval;
- f) submit proposals for the authorisation of contracts or those needing prior approval, in line with Article 90 (1) (p)-(q);
- g) exercise the employer's rights in respect of the employees of the public media service provider, including the employment of the Deputy CEOs;
- h) provide for the preparation of all further submissions as may be required by this Act and the Statutes of the Public Foundation or a decision of the Board of Trustees;
- i) ensure, in collaboration with the Fund, that those engaged in or contributing to the public media service provider's activities receive regular in-service training in media;
- j) have a seat in the Public Service Fiscal Council;
- k) exercise all the rights, subject to the provisions of this Act, which are referred to the Board of Directors of a company limited by shares by the Act on Business Associations.

(2) The CEO of a public media service provider shall receive no remuneration from the Public Service Foundation under any legal title, other than the allowances outlined in his/her employment contract.

### **The Supervisory Board of Public Media Service Providers**

**Article 106** (1) The joint Supervisory Board monitors the management of public media service providers (hereinafter as: Board). The Board is entitled to request reports or information from the CEOs, the employees of public media service providers, and may inspect the books, bank accounts, documents and petty-cash of the public media service providers at any time, or hire an expert to carry out such inspection at the cost of the public media service providers.

(2) The Board consists of a Chairperson and four members.

(3) The Chairperson of the Board and its members are elected by the Board of Trustees for a term and under the terms and conditions as defined in the Public Foundation's Statutes, with the exception of the Board member elected by the employees.

(4) The Board of Trustees determines the remuneration of the Board's Chairperson and the members thereof.

- (5) The Board defines its own operating rules, and the Board of Trustees approves its rules of procedure.
- (6) The Board shall be responsible for inspecting all such reports to be submitted to the Board of Trustees that relate to matters of fiscal nature of the public media service providers, falling within the scope of competence of the General Meeting of the Board of Trustees.
- (7) The internal audit organisations of the public media service providers are under the control of the Board.
- (8) Otherwise, the organisational structure and operations of the Board is governed by the provisions of the Act on Business Associations, and the Public Foundation's Statutes and By-laws.

### **The Auditor of Public Media Service Providers**

**Article 107** (1) The joint auditor of the public media service providers is elected by the Board of Trustees for a term of two years. It is also the Board of Trustees' competence to terminate the auditor's mandate.

(2) The powers and responsibilities of the auditor shall be defined in the Statutes of the public media service provider, within the framework of the Act on Business Associations.

### **Funding and Financial Management of Public Media Service Providers**

**Article 108** (1) The Fund supports the fulfilment of the responsibilities of the public media service providers from its resources defined in Article 136 (3), supports and is directly involved in the production, ordering and purchasing of their programmes, as well as their information and other activities.

(2) The Public Service Fiscal Council (hereinafter as: Council) decides on the distribution of the amount available pursuant to Paragraph (1) between the public media service providers.

(3) The Council is composed of seven members, its members are the following:

- a) the CEOs of the public media service providers;
- b) the CEO of the Fund;
- c) two members delegated by the Chairperson of the State Audit Office on an ad hoc basis. The remuneration for these members shall be determined by the CEO of the Fund and the conflict of interests rules laid down in Articles 104 and 118 shall be applied to them as appropriate.

(4) The Council decides by 30 September each year on the distribution of the funds defined under Paragraph (1) and available for the programmes and the fulfilment of public service responsibilities of the public media service providers in the following year. Its decision shall be made with a view to the public service objectives outlined in this Act and the Code, and to the special tasks of certain public media service providers. The Council adopts its decisions by simple majority and publishes its decision on the Fund's Internet website. In particularly justified cases the Council may subsequently amend its decision by a two-thirds majority of votes. The decision concerning the amendment may be initiated by the Fund's CEO.

(5) The Council shall be convened by the Fund's CEO, who is also the Council's Chairperson, no later than by 30 June each year. The Council shall establish its own operating rules and rules of procedure within the framework of this Act.

(6) The Fund, acting on behalf and in the interest of the public media service providers, shall conclude the agreements concerning the distribution of the linear media services of the public media service providers from its own budget. The provisions laid down in Paragraph (8) shall be applied to media service distribution agreements under which the public media service provider realizes any revenues in return for the distribution licence.

(7) The CEO of the public media service provider shall report to the Board of Trustees concerning the activities of the media service provider under his/her management, approval of the balance sheet and the profit and loss statement shall take place within the framework thereof. The CEO's report shall be submitted to the Board of Trustees together with the opinion of the Supervisory Board of the public media service providers.

(8) A public media service provider may engage in business activities if those serve to promote its public service objectives. Any profits generated may be used exclusively for provision or development of public media service. The right to pursue business activities – with regard to the activities performed by the Fund without remuneration in order

to support public media services – may be assigned to the Fund. Any revenues generated from this by the Fund may be used only to realize the objectives of the public media service providers.

(9) A public media service provider cannot have a share in other media service providers and cannot set up foundations. Business associations under the qualifying holding of public media service providers may launch and provide public media services.

(10) A public media service provider shall keep a separate register for its contracts. This register shall include the current data allowing for the company identification of the contracting parties, as well as the services to be performed by each of the contracting parties and the consideration thereof.

(11) Public media service providers enjoy individually granted exemption from the payment of duties and are not subject to corporate tax. For the purposes of Article 8 of Act CXXVII of 2007 on Value Added Tax, the Fund and the public media service providers shall be considered as affiliated companies, which affiliated relationship may be joined by a new person by separate statutory provision only.

(12) Procurements taking place within the legal relations between the Fund and the public media service providers are not covered by the application scope of the Public Procurement Act.

(13) Pursuant to the guidelines set forth by Parliamentary Decision no. 109/2010. (X. 28.), the Media Council is responsible for determining the detailed rules governing the utilisation of transferred assets and the management of such assets, including the terms and conditions under which the public media service providers may avail themselves of the certain asset components and property items for the purpose of discharging their public service responsibilities.

(14)

## **PART FOUR**

### **SUPERVISION OF MEDIA SERVICES AND PRESS PRODUCTS**

#### **CHAPTER I**

#### **THE NATIONAL MEDIA AND INFOCOMMUNICATIONS AUTHORITY**

##### **General Rules**

**Article 109** (1) The National Media and Infocommunications Authority (hereinafter as: Authority) is an autonomous administrative agency solely subject to laws.

(2) The Authority participates in the implementation of the Government's policy – as defined by law – in the areas of spectrum management and communications. Any function may be assigned to the Authority only by law or other legislation issued pursuant to law.

(3) The Authority comprises the following entities with independent powers: President of the National Media and Infocommunications Authority (hereinafter as: President), the Media Council of the National Media and Infocommunications Authority and the Office of the National Media and Infocommunications Authority.

(4) The Authority reports to Parliament on its activities on an annual basis.

(5) In relation to the communications sector, the Authority is responsible for ensuring – particularly in line with the objectives and basic principles of the Electronic Communications Act – the smooth and effective functioning and development of the communications market, safeguarding the interests of the users and of those pursuing communications activities, fostering the development and maintenance of fair and efficient competition within the electronic communications sector, and for the supervision of legal compliance of the conduct of organizations and persons pursuing communications activities.

(6) The Authority performs its tasks and exercises its powers independently, in compliance with applicable legislation.

(7) The communications regulatory powers of the Authority cannot be withdrawn in any way.

(8) The Government's public administration function pertaining to non-civilian spectrum management shall be provided for by the Spectrum Management Authority (hereinafter as: KFGH).

(9) Within the organisational structure of the Office and under the control of the Director General, KFGH operates as an organisational unit with independent competence.

**Article 110** In relation to the communications sector and subject to separate legislation, the Authority shall:

- a) comment on legislative and amendment requests and proposals concerning its competence;
- b) assess and continuously analyse the functioning of the communications market and of related information technology markets;
- c) continuously evaluate the state of the communications market and prepare comparative analyses;
- d) conduct market analysis;
- e) proceed in connection with the fulfilment and breach of certain obligations imposed on the obliged service providers;
- f) take action in connection with any breach of communications related provisions, as well as in proceedings launched in relation to legal disputes arising from the conclusion of contracts;
- g) perform regulatory tasks provided for under other pieces of legislation in respect of electronic communications and postal services;
- h) as part of its management functions, the Authority shall exercise – in accordance with this Act and other pieces of legislation – the state ownership rights pertaining to radio frequencies and identifiers, and shall manage the radio frequencies and identifiers for civilian purposes;
- i) perform other regulatory and non-regulatory tasks defined by other pieces of legislation.

### **The President and Vice-President of the National Media and Infocommunications Authority**

**Article 111** (1) The President shall

- a) perform the management of the National Media and Infocommunications Authority;
  - b) from the powers defined in Article 110, exercise the powers conferred upon the President by separate legislation;
  - c) submit the annual draft budget and annual institutional budget report of the Authority in accordance with Article 134;
  - d) propose amendments to legislation concerning communications and media services;
  - e) make decisions about the classification of data handled by the Authority in the course of performing its activities, in line with the provisions of the Act on the Protection of Classified Information.
- (2) Further responsibilities of the President are the followings:
- a) convene and chair meetings of the Media Council;
  - aa) with consultative powers until elected by Parliament as President of the Media Council;
  - ab) with voting powers after elected as President of the Media Council;
  - b) arrange for preparing the meetings of the Media Council;
  - c) appoint the Vice-Presidents and exercise the employer's rights over them, including dismissal and recalling;
  - d) appoint the Office's Director General and exercise pertaining employer's rights including dismissal and recalling;
  - e) appoint, dismiss or recall the Deputy Directors General upon the Director General's proposal;
  - f) appoint, dismiss or recall the Media and Communications Commissioner and exercise pertaining employer's rights;
  - g) adopt the Authority's By-laws;
  - h) represent the Authority, particularly when keeping contact and consulting with the European Commission and with regulatory authorities from Member States;
  - i) publish, by February 28 of each year, the annual work schedule of the Authority and key figures of its draft budget, and, by June 30, the annual assessment of the Authority's financial management for the previous year;
  - j) outline, on a yearly basis, tasks to be carried out in connection with professional preparatory works;
  - k) notify the Minister responsible for electronic communications of any circumstances that may jeopardise the safety of communications and make recommendations for the measures deemed as necessary;
  - l) proceed before international organisations on behalf of the state as mandated;
  - m) sign cooperation agreements annually on behalf of the Authority with the consumer protection authority and the competition authority;
  - n) act as second-instance authority on the field of communications concerning the official matters of the Office defined by law;

o) appoint, dismiss or recall the Director of the KFGH, upon the Director General's proposal.

(3) The President shall be appointed by the Prime Minister for a period of nine years.

(4) Persons, who are entitled to vote in parliamentary elections, have clean criminal record, are not banned from exercising an occupation aligned with the President's activities, possess a higher education degree and at least three years of work experience in media service distribution, media services, regulatory supervision of the media services, electronic communications, or work experience in economics, social science, law, technology or management (including membership of management bodies) or in administration with a focus on the regulatory supervision of communications, may be appointed as President.

(5) After the expiry of the period defined in Paragraph (3), the President may be appointed again.

(6) The President may not be instructed with respect to his/her actions and decisions associated with the performance of his/her duties and exercise of powers. The President may not instruct the Office to take ad hoc decisions in respect of the Office's official matters defined by law.

**Article 112** (1) The President is entitled to appoint two Vice-Presidents for an indefinite term. The provisions of Article 111 (4) shall be applicable to the appointment of Vice-Presidents, as appropriate.

(2) The President may be substituted by the Vice-President if the conditions specified in the By-laws are met. The President may delegate his/her second-instance regulatory decision-making powers to the respective Vice-President by virtue of an appropriately detailed authorisation. When acting within this delegated competence, the Vice-President may not be instructed in relation to making second-instance regulatory decisions. Other tasks of the Vice-President shall be defined by the By-laws.

(3) The President shall be entitled to the remuneration and allowances of Ministers, whereas the Vice-President shall be entitled to the remuneration and allowances of State Secretaries. Any issues not regulated by this Act shall be governed by the provisions of other laws pertaining to the legal status of Ministers as far as the President is concerned, and those pertaining to the legal status of State Secretaries as far as the Vice-President is concerned.

(4) Rules applicable to those engaged in public service relationship shall be applicable to the social security status of the President and the Vice-President. The term of their mandate shall be regarded as time spent in public service relationship and pensionable service time.

(5) The President shall – immediately upon being appointed – present an official certificate in verification of his/her clean criminal record and not being banned from occupations aligned with the scope of his/her activities. Should the President fail to fulfil this certification obligation for reasons attributable to him/her, the legal sanctions of conflict of interest shall apply.

(6) The Prime Minister shall be responsible for handling the President's personal data disclosed pursuant to Paragraph (5) until the end of the President's mandate, and may call upon the President at any time to verify the data outlined in Paragraph (5).

(7) The provisions of Paragraph (5) shall be applied to the Vice-President, whereas the powers defined under Paragraph (6) shall be exercised by the President in relation to the Vice-President.

**Article 113** (1) The President's mandate shall be terminated if

a) his/her mandate expires;

b) he/she resigns;

c) he/she dies;

d) he/she is dismissed by the Prime Minister in accordance with Paragraph (2).

(2) The Prime Minister shall dismiss the President, if

a) he/she fails to eliminate the conflict of interest as outlined in Article 118 (1) within thirty days of the date of appointment or the emergence of the ground for the conflict of interest;

b) if as a result of criminal proceedings instituted against the President, the President is pronounced guilty in a final judgement of the court sentencing the President to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as President;

c) the President is placed under guardianship affecting his/her legal capacity;

d) the President fails to fulfil the responsibilities arising from his/her mandate for more than six months for reasons attributable to him/her.

(3) In case the President's mandate is terminated pursuant to Paragraph (1) (a) or (b), the President shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the President has been in office for less than three years, then the prohibition outlined under Paragraph (8) shall be applicable for six months after the termination of the President's mandate, and in this case the President shall be entitled to severance pay equivalent to one month's remuneration.

(4) The Vice-President's mandate shall be terminated, if

a) he/she resigns;

b) he/she dies;

c) he/she is dismissed by the President pursuant to Paragraph (5);

d) he/she is recalled by the President pursuant to Paragraph (6).

(5) The President shall dismiss the Vice-President, if

a) he/she fails to eliminate the conflict of interest as outlined in Article 118 (1) within thirty days of the date of appointment or the emergence of the ground for the conflict of interest;

b) if as a result of criminal proceedings instituted against the Vice-President, the Vice-President is pronounced guilty in a final judgement of the court sentencing the Vice-President to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as Vice-President.

(6) The President may also terminate the Vice-President's mandate by recall. No justification for the recall shall be required.

(7) In case the Vice-President's mandate is terminated pursuant to Paragraph (4) (a) or (d), the Vice-President shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the Vice-President has been in office for less than three years, then the prohibition outlined under Paragraph (8) shall be applicable for six months after the termination of the Vice-President's mandate, and in this case the Vice-President shall be entitled to severance pay equivalent to one month's remuneration.

(8) For one year after the termination of their mandate, the President and the Vice-President

a) may not be engaged in any form of employment or other work-related relationship with a business association;

b) may not establish regular business relationship in the capacity of executive officer or company owner with a business association; and

c) may not acquire an ownership share in a business association;

the rights or lawful interests of which were affected by his/her decisions while serving as President or Vice-President.

(9) With regard to the employment related prohibition affecting the operational sector set forth in Paragraph (8), the President and the Vice-President, upon termination of their mandate, shall be entitled to a compensation, the rate of which shall be the sum of the previous 12 months' net – that is reduced by personal income tax – salary paid by the Authority. The compensation shall be paid from the budget of the Authority. The flat rate compensation determined this way shall be tax-free in the context of compensating for damage. The same provision shall be applicable in relation to the prohibition laid down in Article 129 (9) which is applicable upon the termination of the mandate of the President and members of the Media Council.

(10) If the mandate of the Vice-President is terminated under Paragraph (4) (d), the provisions applicable upon the withdrawal of the executive mandate during the public service relationship shall be applied to the termination of the mandate.

## **Office of the National Media and Infocommunications Authority**

**Article 114** (1) The Office shall be headed by the Director General appointed by the President for an indefinite period.

(2) From the powers defined in Article 110, the Office shall exercise powers that are conferred upon the Office by separate legislation, furthermore it shall fulfil its functions conferred upon it by laws or by the President under the framework of this Act and other legislation.

(3) The Office shall provide the President, the Vice-Presidents, the Media Council, and members of the Media Council with professional assistance for the performance of their duties.

(4) KFGH shall be headed by a Director appointed by the President for an indefinite period based on the recommendation of the Director General, in relation to whom the employer's rights shall be exercised by the Director General, with the exception of appointment, dismissal and recalling. The provisions under Article 117 pertaining to the Deputy Director General shall be applied to the conditions of appointment, dismissal and recalling of the Director of KFGH.

(5) KFGH shall proceed in relation to non-civilian spectrum management in matters defined in separate legislation.

### **The Director General and Deputy Director General of the National Media and Infocommunications Authority**

**Article 115** (1) The Director General shall be appointed by the President.

(2) The provisions of Article 111 (4) shall be applicable to the appointment of the Director General, as appropriate.

(3) The Director General shall be entitled to the remuneration and allowances of State Secretaries.

(4) The Director General may not be instructed with respect to his/her first-instance powers in regulatory decision-making.

(5) The mandate of the Director General shall be terminated, if

- a) he/she resigns from the post;
- b) he/she dies;
- c) he/she is dismissed by the President in accordance with Paragraph (6);
- d) he/she is recalled by the President pursuant to Paragraph (7).

(6) The President shall dismiss the Director General, if

- a) he/she fails to eliminate the conflict of interest as outlined in Article 118 (1) within thirty days of the date of appointment or the emergence of the ground for the conflict of interest;
- b) if as a result of criminal proceedings instituted against the Director General, the Director General is pronounced guilty in a final judgement of the court sentencing the Director General to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as Director General.

(7) The President may also terminate the Director General's mandate by recall. No justification for the recall shall be required.

(8) For a period of one year following the termination of his/her mandate, the Director General

- a) may not be engaged in any form of employment or other work-related relationship with a business association;
- b) may not establish regular business relationship in the capacity of executive officer or company owner with a business association; and

c) may not acquire an ownership share in a business association;  
the rights or lawful interests of which were affected by his/her decisions while serving as Director General.

(9) In case the Director General's mandate is terminated pursuant to Paragraph (5) (a) or (d), the Director General shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the Director General has been in office for less than three years, then the prohibition outlined under Paragraph (8) shall be applicable for six months after the termination of the Director General's mandate, and in this case the Director General shall be entitled to severance pay equivalent to one month's remuneration.

(10) The provisions of Article 112 (5) shall be applicable to the Director General, and the powers defined in Article 112 (6) shall be exercised in respect of the Director General by the President.

**Article 116** Responsibilities of the Director General shall include the following:

- a) perform the organisational and professional leadership of the Office, with the exception of the organisational units subordinated directly to the President, and act as the President's deputy in respect of the management of the Office;
- b) exercise the powers conferred upon the Director General by separate legislation from those defined in Article 110;
- c) ensure the efficient operation of the Authority's organisation;
- d) make recommendations to the President for the appointment, dismissal and recalling of Deputy Directors General, exercise employer's rights in relation to his/her Deputies and the employees of the Office, with the exception of organisational units subordinated directly to the President;
- e) ensure the publication of information defined in this Act;
- f) attend meetings of the Media Council with consultative powers on the basis of the invitation from the President of the Media Council;

g) ensure that the Office provides professional assistance to the extent and in the manner as defined by the President – in case of the Media Council and the members thereof, as the President of the Media Council – to the President, the Vice-Presidents, the Media Council and members of the Media Council as necessary for the performance of their duties; h) fulfil the duties and exercise the powers conferred upon him/her by law or by the President – as the President of the Authority and as the President of the Media Council – within the scope of this Act.

**Article 117** (1) Upon the Director General's proposal the President shall be entitled to appoint Deputy Directors General. The number of Deputy Directors General and the scope of their responsibilities shall be defined in the By-laws of the Authority.

(2) Persons, who are entitled to vote in parliamentary elections, have clean criminal record, are not banned from exercising an occupation aligned with the Deputy Director General's activities, possess a higher education degree and at least three years of work experience in programme distribution, media services, regulatory supervision of the media services, electronic communications, or in economics, social science, law, technology or management (including membership of management bodies) or in administration with a focus on the regulatory supervision of communications, may be appointed as Deputy Director General.

(3) The Deputy Director General is entitled to the remuneration and allowances of State Secretaries.

(4) The provisions of Article 115 (5)-(10) pertaining to the Director General shall be also applicable to the Deputy Director General.

### **Conflict of Interests Rules**

**Article 118** (1) The following persons shall not be eligible for the position of President, Vice-President, Director General and Deputy Director General:

a) the President of the Republic of Hungary, the Prime Minister, members of the Government, State Secretaries, the State Secretary for Public Administration, Deputy State Secretaries, the Mayor of Budapest, the Deputy Mayor of Budapest, Mayors, Deputy Mayors, chairpersons of county-level general assemblies and their deputies, Members of Parliament, Members of the European Parliament;

b) the Chairperson and members of the Board of Trustees of the Public Foundation for Public Service Media and of the Public Service Board, the CEO and Deputy CEO of the Fund, the Chairperson, Deputy Chairperson or members of the National Council for Communications and Information Technology, the CEOs of public service media providers and the Chairperson and members of the Supervisory Board thereof, members of the Media Council, the President of the Media Council with the exception of the President of the Authority, and persons engaged in any other work-related relationship with any of the foregoing organisations;

c) local or county-level municipal representatives, government officials, officials of the national or local organisations of political parties, and persons engaged in any work-related relationship with political parties;

d) executive officers, management board members, supervisory board members of communications or media service providers, media service distributors, advertising agencies, press publishing and newspaper distribution companies;

e) persons engaged in any form of employment or other work-related relationship with a communications or media service provider, programme distributor, media service distributor, advertising agency, press publishing and newspaper distribution company;

f) persons holding direct or indirect ownership share in an undertaking providing communications or media services, pursuing programme distribution, media service distribution, press publishing, advertising agency or newspaper distribution activities;

g) direct and indirect owners of business associations – in case of public limited company, with an ownership share of more than five percent – and persons engaged in any work-related relationship with the such companies, which are involved with the organisations defined in Point (d) under an agency or service agreement;

h) the close relatives of the persons under Points (a)-(b) and (d).

(2) For the purposes of Paragraph (1) (e), other work-related relationships entailing scientific work, the publication of scientific results and the dissemination of scientific information shall not be regarded as grounds for conflict of interest.

(3) The President, the Vice-President, the Director General and Deputy Director General may not be engaged in party politics or make representations on behalf of political parties.

### **Report of the National Media and Infocommunications Authority**

**Article 119** (1) By May 31 of each year, the Authority shall submit a report to the Parliament to give account of its activities during the previous year. In this report the Authority shall:

- a) evaluate the functioning and development of the electronic communications market;
- b) evaluate the decisions adopted in protection of the interests of providers and users of electronic communications services, as well as measures taken in the electronic communications sector to promote the development and maintenance of fair and effective competition;
- c) provide information on the supervision of compliance by entities and individuals engaged in electronic communications with applicable legislation; and
- d) evaluate the consequences of its management of state-owned limited resources.

(2) The report shall be published both in printed format and on the websites of the Authority and of the Ministry overseen by the Minister responsible for electronic communications.

### **The National Council for Communications and Information Technology**

**Article 120** (1) The National Council for Communications and Information Technology (hereinafter as: NHIT) is a counselling and advisory body to the Government on information technology and communications related matters.

(2) The NHIT shall consist of five members. The Chairperson and Deputy Chairperson of NHIT shall be appointed and dismissed by the Prime Minister.

(3) Members of the NHIT – including its Chairperson and Deputy Chairperson – shall be appointed from persons having at least five years of experience in the field of communications or information technology.

(4) Of all NHIT members

- a) two members shall be delegated by the Media Council; and
- b) one member shall be delegated by the Hungarian Academy of Sciences.

(5) The NHIT shall be solely subject laws and its members may not be instructed with respect to their activities.

(6) The Chairperson and Deputy Chairperson as well as members of the NHIT shall be mandated for four years.

(7) Vacant seats shall be filled by the authorized organisation or person within thirty days.

(8) Government officials and civil servants too are eligible for the position of NHIT's Chairperson, Deputy Chairperson or member.

(9) The remuneration of the Chairperson of NHIT shall be equal to sixty-five percent of the remuneration of State Secretaries, the remuneration of the Deputy Chairperson of NHIT shall be equal to sixty percent of the remuneration of State Secretaries, and the remuneration of the members of the NHIT shall be equal to fifty-five percent of the remuneration of State Secretaries during the period between their appointment and the termination of their mandate, and the Chairperson, Deputy Chairperson and members shall also be entitled to a reimbursement of expenses.

**Article 121** (1) On the field of information technology, communications and the media related matters, the NHIT shall provide its opinion to the Government on

- a) the program for building an information society and strategic decisions concerning the promotion of information culture and information society;
- b) setting directions for research and development;
- c) decisions targeting dissemination of social attitudes and culture; and
- d) developing the regulatory framework of the communications market, fostering equal opportunities for market players;
- e) ensuring the harmonisation of government and civil spectrum management;
- f) the Hungarian position to be represented at international conferences concerning radio communications; and
- g) strategic submissions for regulating the infrastructure of the information society, and decisions concerning the program for building an information society.

(2) The NHIT shall provide the Government its opinion on:

- a) the drafts of Government and Ministerial decrees;
- b) all submissions, ad hoc decisions and draft legislation on communications and information technology, upon request from the Government, the Prime Minister, the Minister responsible for electronic communications, or the Minister responsible for information technology;
- c) strategic submissions for regulating the infrastructure of the information society, and the program for building an information society;

in relation to which any submission may be presented to the Government after obtaining the comments by the NHIT and with the opinion of the NHIT only.

(3) The Chairperson of the NHIT shall participate with consultative powers in state executive meetings preceding Government meetings and, by invitation, on Government meetings discussing submissions mentioned in Paragraphs (1)-(2).

(4) The Chairperson of the NHIT may invite with consultative power the representatives of organizations interested in the utilisation of examined frequency bands and services provided thereon.

(5) In line with the Government program on the field of information technology, communications, and media, the NHIT, in relation to the topics mentioned in Paragraphs (1)-(2), may make independent recommendations and initiatives toward the Government, and toward bodies, other organizations controlled or supervised by the Government or a Minister, in order to increase the efficiency of the performance of the public functions concerning such topics. The head of the body or organization shall notify the Chairperson of the NHIT about its comments on the independent recommendation or initiative within 30 days.

(6) Upon invitation by the Government or the Prime Minister, the NHIT shall, on the basis of communication, IT scientific, practicality, and economic considerations, examine the EU and other tenders of bodies and other organization controlled by the Government or a Minister and the implementation of such tenders, and their other projects and procurements as well, in the field of communications and information technology. The opinion of NHIT prepared upon completion of the examination shall be sent to the Prime Minister. On the basis of the examination, the NHIT may also submit independent recommendations and initiatives under Paragraph (5). The bodies and other organizations controlled or supervised by the Government or a Minister shall cooperate with NHIT in the course of completing the examination.

(7) NHIT shall have quorum when more than half of its members are present, and at least the Chairperson or Deputy Chairperson is also present. With the exception of decisions regarding conflicts of interest, the NHIT shall adopt its decisions by majority voting, and in case of parity of votes, the vote of the Chairperson shall decide.

(8) NHIT shall establish its own operational rules.

(9) The resources needed for the operations of the NHIT shall be ensured from the budget of the Authority. These resources may not be reallocated for any other purpose.

(10) The financial operation of the NHIT shall be audited by the State Audit Office. The NHIT shall report on the fulfilment of its duties to the relevant Committee of the Parliament on an annual basis.

**Article 122** (1) The NHIT's Office (hereinafter as: NHIT Office) shall be an organizational unit of the Authority, the head of which shall be entitled to use the title of head of office.

(2) The NHIT Office shall perform tasks related to the operations of the NHIT, and shall perform the necessary administrative activities in relation thereto.

(3) The Policy of Functions and Competences of the NHIT Office shall be approved by the President of the Authority, with the consent of Chairperson of the NHIT.

(4) The administrative activities of the NHIT Office shall be overseen by the head of the NHIT Office, in accordance with decisions of the NHIT and with the instructions of the Chairperson of the NHIT.

(5) Based on Article 121 (1)-(2), the NHIT Office shall prepare for the NHIT preparatory documents for negotiating and decision-making concerning the opinion to be provided by the NHIT to the Government or the Prime Minister.

(6) The Chairperson of the NHIT shall directly control the professional activities of the Office to be carried out in relation to drafting preparatory documents for negotiating and decision-making associated with the tasks defined in Article

121 (1)-(2).

(7) Of employer's rights pertaining to the head of the NHIT Office, the right of appointment and terminating the public service relationship shall be exercised by the President of the Authority based on the proposal of the Chairperson of the NHIT; in all other respects, the employer's rights shall be exercised by the Chairperson of the NHIT.

## **CHAPTER II**

### **THE MEDIA COUNCIL OF THE NATIONAL MEDIA AND INFOCOMMUNICATIONS AUTHORITY**

#### **Legal Status and Organisation of the Media Council**

**Article 123** (1) The Media Council shall be a body of the Authority with independent powers under the supervision of the Parliament and having legal personality. The Media Council shall be the legal successor of the National Radio and Television Commission.

(2) The Media Council and its members shall be solely subject to laws and may not be instructed with respect to the their activities.

(3) The registered office of the Media Council shall be in Budapest.

(4) The Office shall be the administrative unit of the Media Council.

(5) On the basis of a mandate given through the Office, the Media Council and its members may also employ external experts.

#### **Electing the Media Council**

**Article 124** (1) The President and the four members of the Media Council shall be elected by the Parliament – with the two-thirds majority of the votes of Members of Parliament present – for a period of nine years by simultaneous voting by list.

(2) Persons, who are entitled to vote in parliamentary elections, have clean criminal record, are not banned from exercising an occupation aligned with their activities, possess a higher education degree and at least three years of work experience in media service distribution, media services, regulatory supervision of the media services, electronic communications, or in economics, social science, law, technology or management (including membership of management bodies) or in administration with a focus on the regulatory supervision of communications, may be appointed as President or member of the Media Council.

(3) Media Council members shall be nominated

a) no earlier than sixty and no later than thirty days before the expiry of the mandate of members,

b) with the exception of cases outlined in Point (a), within thirty days from gaining knowledge of the termination of a mandate,

by the unanimous vote of an ad hoc committee consisting of one member of each parliamentary faction (hereinafter as: nominating committee).

(4) In each voting round, members of the nominating committee shall have a number of votes corresponding to the headcount of the parliamentary faction they were appointed by.

(5) The parliamentary decision instituting the nominating committee shall specify the time period available for the parliamentary factions to appoint members to the nominating committee. The nomination process may commence even if a faction fails to appoint a member to the nominating committee within the deadline set by the parliamentary decision.

(6) If, in the case outlined under Paragraph (3) (a), the nominating committee fails to nominate four members within the stated deadline, the nominating committee may propose a candidate in the second round of nomination with at least a two-thirds majority of votes.

(7) If, in the case outlined under Paragraph (3) (a), the nominating committee fails to nominate four members within eight days in the second nomination round, its mandate shall be terminated and a new nominating committee shall be set up.

(8) If, in the case outlined under Paragraph (3) (b), the nominating committee fails to nominate a member within the deadline stated therein, the nominating committee may propose a candidate with at least a two-thirds majority of votes.

(9) If, in the case outlined under Paragraph (3) (b), the nominating committee fails to nominate four members within eight days in the second nomination round, its mandate shall be terminated and a new nominating committee shall be set up.

**Article 125** (1) The President of the Authority appointed by the Prime Minister shall become a candidate for the President of the Media Council by virtue and from the moment of appointment.

(2) The President and members of the Media Council shall take office upon being elected or – if elected before the termination of the mandate of the predecessor – upon the termination of the mandate of the predecessor.

(3) If the mandate of the President of the Authority is terminated, his/her mandate as President of the Media Council shall be terminated simultaneously. In this case the new President of the Authority appointed by the Prime Minister shall become a candidate for the President of the Media Council by virtue and from the moment of appointment. The President's election shall be decided upon by two-thirds of the Members of Parliament present.

(4) Even if the Parliament does not elect the President of the Authority as President of the Media Council, the President of the Authority shall call the meetings of the Media Council, which he/she shall attend with consultative powers and with a right to chair such meetings, but without participating in the decision-making process. The President of the Authority shall be empowered to convene and chair meetings from the moment of his/her appointment by the Prime Minister and until elected as President of the Media Council with full powers.

(5) The members and President of the Media Council may be re-elected, provided that their mandates have been terminated for reasons other than conflict of interest, dismissal or exclusion.

(6) The mandate of a new member shall be for the period remaining from the mandate of previously elected members of the Media Council.

(7) The duration of the mandate of the President of the Media Council corresponds to the duration of the mandate of the President of the Authority.

**Article 126** (1) Once elected, members of the Media Council shall promptly verify to the President of the Media Council, by presenting an official certificate, that they have a clean criminal record and are not barred from exercising an occupation aligned with their activities as members of the Media Council.

(2) The President of the Media Council shall handle the personal data of Media Council members that were disclosed to him/her pursuant to Paragraph (1) until the termination of their respective mandates and may call upon members at any time to verify the data under Paragraph (1).

(3) Provisions of Paragraphs (1)-(2) shall apply to the President of the Media Council, with the deviation that the verification obligation of the President of the Media Council defined under Paragraph (1) shall be performed toward the Media Council, whereas the right defined under Paragraph (2) shall be exercised by the Media Council. The President of the Media Council shall not be involved in exercising the power of the Media Council defined in this Paragraph.

### **Conflict of Interests Rules**

**Article 127** (1) The conflict of interest rules defined in Article 118 (1) with respect to the President and members of the Media Council, the President and Vice-President of the Authority, and the Director General and Deputy Director General, as well as the grounds for exclusion defined in Article 118 (3) shall be applied as appropriate.

(2) With respect to members of the Media Council, employment relationships and other work-related relationship entered into with publishers or founders of press products for the performance of scientific activities, the publication of scientific results and the dissemination of scientific information shall not constitute a conflict of interests.

### **The Duties of Members of the Media Council**

**Article 128** (1) Members of the Media Council shall keep all and any classified data and business secrets disclosed to them in relation to the fulfilment of their duties.

(2) Members of the Media Council shall take the oath specified in Annex no. 3 before the President of the Parliament when entering into office.

(3) Members of the Media Council shall make an asset declaration in accordance with the rules applicable to Members of Parliament, in the first instance within thirty days upon being elected. Such asset declarations shall be handled, registered and controlled in accordance with rules pertaining to the handling, registration and control of the asset

declarations of Members of Parliament.

### **Termination of the Mandate of Members of the Media Council**

**Article 129** (1) The mandate of the Media Council member shall be terminated upon

- a) the expiry of the Media Council's term of mandate;
- b) his/her resignation;
- c) the establishment of a conflict of interest;
- d) his/her dismissal;
- e) his/her exclusion;
- f) the member's death.

(2) The mandate of the President or a member of the Media Council shall be terminated on the ground for conflict of interests, if such a ground for conflict of interests arises in relation to the President or member, or if the President or member refuses or fails to fulfil his/her obligations of making an asset declaration, or if his/her asset declaration contains misrepresentations of important data or facts, or if he/she fails to meet the verification obligation under Article 126 (1) for reasons attributable to him/her.

(3) If a ground for conflict of interests is established in relation to the President or a member of the Media Council, and if the ground for conflict of interests is not eliminated within thirty days of the conflict of interests taking effect or the date of the meeting establishing the conflict of interests, the plenary session of the Media Council shall establish, by way of a decision, the termination of the Media Council membership of the President or member. Once the decision establishing the conflict of interest is adopted, the President or member of the Media Council may no longer exercise his/her powers associated with his/her position.

(4) Termination of the mandate of a member of the Media Council shall be established and announced by the President of the Media Council in case of Paragraph (1) (b) and (f), and by the plenary session of the Media Council in case of Paragraph (1) (c), (d) and (e). Termination of the mandate of the President of the Media Council shall be established and announced by the plenary session of the Media Council.

(5) The mandate shall be terminated by dismissal, if the President or member of the Media Council is placed under guardianship affecting his/her legal capacity.

(6) The mandate shall be terminated by exclusion, if

- a) the President or a member of the Media Council fails to meet his/her responsibilities arising from the position for more than six months for reasons attributable to him/her,
- b) as a result of criminal proceedings instituted against the President or member of the Media Council, the President or member is pronounced guilty in a final judgement of the court sentencing the President or member to imprisonment, or barring him/her from exercising an occupation aligned with his/her activities.

(7) If the session of the Media Council decides on a conflict of interests, dismissal or exclusion, the President or member affected may not take part in the voting process, and the unanimous decision of those entitled to vote is required in such matters. If unanimous decision is not reached on the subject matter even in a repeated voting procedure, the President of the Media Council shall recommend to the Parliament to decide on the matter. In such cases, the Parliament shall adopt a decision on the conflict of interests, dismissal or exclusion with a two-thirds majority of the Members of Parliament attending.

(8) If the proceedings outlined under Paragraphs (3), (6) and (7) concern the President of the Media Council, the President's powers shall be exercised by a member designated in the procedural rules.

(9) For one year after the termination of their mandate, the President or member of the Media Council

- a) may not be engaged in any form of employment or other work-related relationship with a business association;
- b) may not establish regular business relationship in the capacity of executive officer or company owner with a business association; and
- c) may not acquire an ownership share in a business association; the rights or lawful interests of which were affected by his/her decisions while serving as President or member of the Media Council.

(10) If the mandate is terminated pursuant to Paragraph (1) (a) or (b), the President or member of the Media Council shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the President or member has been in office for less than three years, the prohibition outlined under Paragraph (9) shall be applicable for six months from the termination of the mandate, and in this case the President or member shall be entitled to severance pay totalling one month's remuneration.

### **Remuneration of the Members of the Media Council**

**Article 130** (1) The President of the Media Council shall be entitled to a remuneration equal to sixty percent of the remuneration of Ministers and to the reimbursement of expenses.

(2) Members of the Media Council shall be entitled to a remuneration equal to seventy-five percent of the remuneration of State Secretaries and to the reimbursement of expenses.

### **Operation of the Media Council**

**Article 131** (1) The Media Council shall set its own rules of procedure, which shall be published in the Hungarian Gazette.

(2) If the President of the Media Council is unable to attend a meeting of the Media Council due to being held up elsewhere, the duties of President shall be performed by members of the Media Council in turn, in the order defined in the procedural rules. The member performing the tasks of the President may participate in voting.

### **Responsibilities of the Media Council**

**Article 132** In accordance with Articles 182-184 the Media Council shall:

- a) oversee and guarantee the freedom of press under this Act and the Press Freedom Act;
- b) ensure the performance of tasks related to the tendering and contract awarding procedure for media service provision rights using state-owned limited resources made available for media services;
- c) perform the supervisory and control tasks prescribed by this Act - by recording programme flows or programmes or examining the programme flows recorded by the media service provider, or by making official requests;
- d) operate a programme flow monitoring and analysis service through the Authority;
- e) express its opinion regarding draft legislation on media and communications;
- f) review regularly compliance with public contracts concluded with it;
- g) elaborate official positions and proposals with respect to the theoretical aspects of developing the Hungarian system of media services;
- h) initiate proceedings with respect to consumer protection and the prohibition of unfair market practices;
- i) prepare a report to the European Commission on the fulfilment of obligations with regard to programme flow quotas;
- j) be entitled to initiate amendments to this Act as may be necessary vis-à-vis the Minister responsible for audiovisual policy;
- k) undertake a pioneering role in developing media literacy and media awareness in Hungary and, in this context, coordinate the activities of other state actors in the area of media literacy, assist the Government in drafting its upcoming interim report to the European Union on the subject matter;
- l) perform other tasks defined by this Act and by other legislation issued under the authorization of this Act.

### **The Report of the Media Council**

**Article 133** (1) By May 31 of each year, the Media Council shall submit a report to the Parliament to give account of its activities for the previous year. In this report it shall evaluate:

- a) the state of the freedom of speech, expression and the press, as well as balanced information provision;
- b) changes in the ownership status of media service providers and media service distributors;
- c) the status of spectrum management serving to satisfy needs for media services;
- d) the economic situation and changes in the financial conditions of media services.

(2) The report shall be published both in printed format and on the websites of the Authority and the Ministry overseen

by the Minister responsible for audiovisual policy.

### **Financial Management of the Authority and the Media Council**

**Article 134** (1) The Authority shall manage its finances in accordance with the legislation applicable to the financial management of budgetary entities as appropriate, shall be entitled to manage state assets under statutory provisions applicable to central budgetary entities, it shall cover costs incurred in connection with the fulfilment of its duties from its own revenues and from central budget funding, its accounts shall be managed by the Hungarian State Treasury. Every year, the Authority may set aside a reserve from its own revenues defined under Paragraph (4) – with the exception of fines – up to twenty-five percent of its effective revenue for the subject year. The reserve thus generated may be used in subsequent years to finance the Authority's operations and the fulfilment of its duties but may not be allocated for any other purpose.

(2) The consolidated budget of the Authority shall be approved by the Parliament in the form of separate legislation in accordance with the provisions of this Act, relying on resources specified under Paragraph (4), and Article 136 (3), which legislation shall also regulate the utilisation of residual amounts, if any, that may have been generated in the Authority's budget for the previous year – with the exception of reserves referred to under Paragraph (1) and residual amounts upon which a commitment had been established by 31 December of the same fiscal year when they were generated. Residual amounts earmarked by way of a commitment by 31 December of the same fiscal year when they were generated may be used in accordance with the terms set out in the legal statement serving as the basis for the commitment. The President shall be entitled to make reallocations between target expenditures stated in the already approved consolidated budget, with the provision that the authorisation of the Media Council shall be obtained for reallocations affecting the budget of the Media Council. Within the consolidated budget of the Authority, the Media Council shall enjoy financial independence as described in Article 135.

(3) The Parliament's budgetary committee shall submit to the Parliament the draft law comprising the Authority's consolidated budget by October 31 of the year preceding the subject year – based on the proposal sent by the President by September 15, which includes the draft budget of the Media Council as approved by the Media Council. The Authority and the Media Council shall operate on the basis of their previously approved budget until the new budget is approved.

(4) The Authority's own revenue shall comprise frequency charges, fees received for the booking and use of identifiers as well as for regulatory procedures; it shall also include supervisory fees, which shall be used to ensure the efficient and highly professional operation of the Authority. Statements indicating the inflow and utilisation of own revenue, and the utilisation of central budget funding shall be published by the Authority on its website every year.

(5) The amount of frequency charges and fees payable for the booking and use of identifiers shall be regulated by the President of the National Media and Infocommunications Authority in a decree. Portions of frequency charges, that were not used by the Authority for operating purposes – under the Act defined under Paragraph (2) – or were not used to generate reserves as outlined under Paragraph (1), shall be paid into the Fund as instructed by the President. The President shall designate in his/her instructions the public purpose for which, and the manner, in which the amount paid into the Fund in accordance with this Paragraph may be used. Any amount transferred pursuant to this Paragraph may be used by the Fund strictly as instructed and for the purpose designated by the President. The CEO of the Fund may, in the course of utilising such amounts, request the President to amend the ordained purpose of use or utilisation rules, if necessitated by public interests. The President may reject or approve either wholly or partially the request of the CEO of the Fund, or may specify a new purpose of public interest or new utilisation rules. If the amount transferred is used by the Fund in violation of the instructions of the President, the Fund, upon notice by the President, shall reimburse the corresponding amount to the Authority without delay. The Authority shall generate reserves from such refunds, which, based on the President's decision, may be used to subsidise the Fund by designating a new purpose in the public interest, or may be used – wholly or partially – directly for a public purpose linked to communications and related markets, or for improving the living standards of consumers. With the exception of subsidies financed from reserves, the Authority shall complete such payments by March 31 of the year following the subject year. Parts of frequency charges earmarked by the President by 31 December of the subject year for payment into the Fund, and the

reserves generated in accordance with this Paragraph – also in view of the provisions of Paragraphs (2) and (12) – shall not be deemed as effective residual amounts.

(6) A supervisory fee shall be paid by electronic communications service providers to cover the costs incurred in connection with the communications regulatory activity of the Authority, and by postal service providers to cover the costs incurred in connection with the postal supervisory activities. This fee shall be maximum 0.35 percent of net sales revenue generated by the electronic communications services of the electronic communications service provider in the course of the previous business year, and maximum 0.2 percent of net sales revenues generated by the postal services of the postal service provider in the course of the previous business year, or – in the absence of sales revenue from the previous year – a prorated part of sales revenue for the subject year projected for the entire year. The amount of the supervisory fee shall be defined every year by the President of the National Media and Infocommunications Authority in a decree within the limitations permitted by law.

(7) The supervisory fee shall be paid to the Authority on a quarterly basis, by the end of every quarter.

(8) If the Authority's supervisory revenues as defined by this Act exceed the amount of costs incurred in a budgetary year in connection with the performance of its statutory responsibilities, any surplus amount shall be credited, once the Authority's annual report was adopted, in the form of supervisory fees payable during the year following the subject year, in proportion of supervisory fees paid during the subject year and up to their amount.

(9) The Authority shall use the entire amount of fines collected during the previous year from actors of the communications and media market for developing the informed decision-making culture of consumers in the area of communications and the media, including particularly for supporting academic and training programmes concerning communications and media law, competition and consumer protection policy, for training professionals specialising in communications and media law and consumer protection policy, and disseminating information in order to increase awareness concerning communications and media policy and consumer decision-making. Any amount earmarked for this purpose but not used in the subject year may be rolled over to the following year, and may be spent on developing the informed decision-making culture of consumers.

(10) The Parliament shall make its decision about implementing the separate legislation referred under Paragraph (2) by adopting the draft law of final accounts as proposed in accordance with the procedure outlined under Paragraph (2), including the annex referred to in Article 136 (15). The deadline for the submission of this Final Accounts Act shall be 31 May of every year.

(11)

(12) For the purposes of Paragraph (2), any legal statement made in accordance with the internal policies of the Authority and of the Fund and giving rise to a payment obligation to be financed from the consolidated budget in accordance with separate legislation as specified under Paragraph (2) shall be considered a commitment.

(13) The fees and administrative service fees payable to the Authority and imposed in any piece of legislation issued under the authorization granted in this Act or in a decision of the Authority, as well as the fines imposed under this Act shall qualify as public debts to be collected as taxes.

**Article 135** (1) The Media Council shall manage its finances in accordance with statutory regulations pertaining to the financial management of budgetary entities, and its accounts shall be managed by the Hungarian State Treasury.

(2) The budget of the Media Council shall be approved by the Parliament - in the Act on the budget of the Authority - as part of the consolidated budget of the Authority as a separate item thereof, to be financed from the amount that may be used to cover the operating costs of the Media Council from the Fund's resources defined in Article 136 (3) of this Act. The Media Council may re-allocate sums between target expenditure headings within its already approved budget.

### **Media Service Support and Asset Management Fund**

**Article 136** (1) The Fund shall be a separated asset management and monetary fund responsible for promoting the structural transformation of public media services, the Public Service Foundation, community media services and public media service providers, for the production and support of public service programmes, supporting contemporary musical works and cinematographic works intended to open at cinemas, for the careful management and expansion

of the Archive and of other assets, as well as for promoting and implementing other activities related to the foregoing.

(2) Assets held by the Fund may be used strictly for the purposes specified in this Act.

(3) The Fund's financial resources shall consist of the followings: media service provision fees, tender fees, default penalty and compensation levied for the breach of broadcasting agreement, fines, public service contributions, surplus frequency fee amounts transferred by the Authority to the Fund pursuant to Article 134 (5), support paid by media service providers providing linear audiovisual media services based on Paragraph (8), target subsidies from the central budget, proceeds from the disposal of assets and from business activities, interest received and voluntary payments received.

(4) Every year the Hungarian State shall pay a public service contribution based on the number of households using equipment suitable for receiving linear audiovisual media services. The amount of this public service contribution shall be defined in Annex no. 4 of this Act. The public service contribution shall be paid by the State in twelve equal instalments, always in advance by the third day of every month, by transfer to the Fund's bank account. With the consent of the Media Council, the Fund shall be entitled to assign its revenues received from public service contributions.

(5) Acting on behalf of the Hungarian State, the Minister responsible for audiovisual policy may enter into agreement with the Fund for a maximum period of seven years on the payment of the public service contribution. The separate authorisation from the Parliament prescribed by the Public Finances Act shall not be required for the conclusion of this agreement.

(6) The Fund shall be a legal person and an economic organization, and shall be managed by the Media Council. The Fund shall be the legal successor of the Broadcasting Fund and of the Broadcasting Support and Asset Management Fund.

(7) The Fund shall have a bank account with the Hungarian State Treasury.

(8) Media service providers with significant market power, providing linear audiovisual media services shall use 2.5 percent of their annual advertising revenues on supporting new Hungarian cinematographic works. This obligation may be performed either by paying the relevant amount to the Fund, or by providing financial support for new cinematographic works specified in an agreement concluded by and between the Fund and the media service provider. The media service provider may deduct this amount paid or used as support from its corporate tax base.

(9) Voluntary payments made into the Fund shall qualify as commitments undertaken in the public interest. If the voluntary payment into the Fund is based on a commitment undertaken in a public contract made with the Authority or the Media Council or an agreement made with the Media and Communications Commissioner, the voluntary payment shall be used in accordance with the provisions of such agreements.

(10) The Fund's support and subsidy policy, business plan and annual report shall be adopted by the Media Council. The Media Council's prior consent shall be obtained before the Fund's financial resources and the assets in the accounts can be used for any purpose not stated in the Fund's support and subsidy policy or business plan, and for undertaking commitments to be financed from the foregoing, or for making payments that exceed the threshold amount defined by the Media Council.

(11) The CEO shall be entitled to represent the Fund. All employer's rights vis-à-vis the Fund's CEO – including his/her appointment, determining his/her salary and allowances, and termination of his/her employment by the employer – shall be exercised by the President of the Media Council.

(12) The CEO shall make a proposal to the President of the Media Council for the appointment of the Fund's Deputy CEOs as well as for termination of their employment, who shall decide about the appointment, wage and allowances, and termination by the employer. In other respects the CEO shall exercise the employer's rights in relation to Deputy CEOs.

(13) The rules of conflicts of interests defined in Article 118 (1)-(2) pertaining to the President and Vice-President, as well as the Director General and Deputy Director General of the Authority, and the rules of exclusion defined in Article 118 (3) shall be applicable to the CEO and Deputy CEO of the Fund as appropriate.

(14) The Chairperson and four members of the Fund's Supervisory Board shall be appointed and recalled by the President of the Media Council. Their remuneration shall be established by the President of the Media Council.

(15) The Fund's annual budget shall be approved by the Parliament as an annex to the separate legislation referred to in Article 134 (2).

(16) The detailed rules of managing the Fund shall be defined by the Media Council.

(17) Under Parliamentary Decision no. 109/2010 (X. 28.), the entirety of the ownership rights and obligations (asset

management rights) concerning the assets transferred to the ownership of the Hungarian State shall be exercised by the Fund. Exercising the ownership rights and obligations by the Fund concerning the assets transferred under the management of the Fund and other assets acquired by the Fund in relation to its economic activities, utilizing, encumbering, or otherwise managing such assets shall not fall within the scope of the Act on State Property. The detailed rules for utilizing the assets managed or owned by the Fund shall be established by the Media Council.

(18) The Fund shall be personally exempted from the payment of duties and shall not be subject to corporate tax or local tax obligations.

**Article 137** (1) Support for public service programmes, community media service providers, cinematographic works intended to open at cinemas – with the exception of cinematographic works supported as defined in Article 136 (8) of this Act –, and contemporary musical works shall be provided for by way of open tendering.

(2) The general conditions of tendering elaborated by the Fund shall be approved by the Media Council.

(3) The Fund shall prepare and publish its invitation to tender based on the already approved general conditions of tendering. The method for evaluating tender bids shall be regulated among the general conditions of tendering.

(4) In order to achieve the purposes of public media services as defined in Article 83, the Fund shall provide further training for persons engaged in producing public service media content in order to promote the creation of media content of appropriate quality. The Fund shall be entitled to make the necessary training arrangements within the scope of its commercial activity.

Institute for Media Studies of the Media Council

**Article 138** (1) The Institute for Media Studies of the Media Council (hereinafter as: Institute) is an independent entity of the Authority, assisting the operation of the Media Council, and pursuing independent scientific activity. The head and members of the Institute are all civil servants of the Authority.

(2) Work at the Institute is supervised by the Media Council.

(3) The Institute's tasks shall be as follows:

- a) support the operation of the Media Council by way of performing research and analysis;
- b) conduct social science research connected to the media;
- c) publish professional materials;
- d) organise professional conferences;
- e) perform other tasks defined for the Institute by the Media Council.

(4) The Institute may also engage the services of external experts.

## CHAPTER III

### THE MEDIA AND COMMUNICATIONS COMMISSIONER

#### General Rules

**Article 139** (1) The Media and Communications Commissioner (hereinafter as: Commissioner) operates as part of the Authority. The Commissioner contributes to the promotion of the rights and equitable interests of users, subscribers, viewers, listeners, consumers of electronic communications services or media services, as well as the readers of press products, regarding electronic communications, media services and press products. The Commissioner shall act in matters vested in him/her under this Act.

(2) The Commissioner shall be appointed and recalled by the President, who shall also exercise the employer's powers over him/her. The Commissioner is a civil servant in the position of a Head of Division. In performing its duties specified in this Chapter, the Commissioner may not be given instructions; he/she shall report on his/her activities to the President and the Media Council as defined in Article 143 of this Act.

(3) The provisions of Article 111 (4) shall apply *mutatis mutandis* to the Commissioner.

(4) The Commissioner is assisted in performing its duties by the Office of the Media and Communications Commissioner (hereinafter as: Commissioner's Office) headed by the Commissioner, the civil servants of the Commissioner's Office shall be appointed and recalled by the President; the employer's powers over these civil servants shall be vested with the Commissioner, with the exception of the powers to appoint and recall employees.

(5) The operation, organisational structure, internal and external relations of the Commissioner's Office is defined in the By-laws of the Authority and the rules of procedure of the Commissioner's Office. The rules of procedure of the Commissioner's Office are prepared by the Commissioner and are approved by the President.

(6) The budget of the Commissioner's Office shall be determined separately within the budget of the Authority.

**Article 140** (1) On detecting a conduct related to the provision of a media service, press product and electronic communications service, which conduct does not constitute a breach of a regulation on media services or electronic communications services and falls outside the scope of competence of the Media Council, the President and the Authority, but is, or may be suitable to cause harm to the equitable interests of the users, subscribers, consumers, viewers and listeners of media services, press products and electronic communications services,

a) the person affected by the harm to interests or exposed to the direct danger of such damage to interests; or

b) the civil association engaged in the protection of consumer rights, when the harm to interests affects or may affect a large number of consumers, shall have the right to resort to the Commissioner's Office with its complaint.

(2) Requests and notifications received by the President, the Office or the Media Council that meet the conditions laid down under Paragraph (1) in terms of content and contain all the data required under Article 141 (5) shall be transferred by the President, the Office or the Media Council within five business days to the Commissioner, and the Commissioner shall adjudge such requests and notifications as complaints received by him/her. This fact, as well as the fact of the transfer shall be communicated to the requesting party and the complainant concurrently with the transfer. The Commissioner, in the absence of such complaint, may take measures *ex officio* when becoming aware from other sources of a harm to interests as defined under Paragraph (1) (b).

### **Proceedings by the Commissioner**

**Article 141** (1) The proceedings of the Commissioner shall not be deemed as a regulatory procedure, moreover, the Commissioner shall not have the right to exercise regulatory powers and may not pass a decision in an official matter on its merits. Complaints as defined in Article 140 (1) shall not be deemed as an official matter. The Commissioner shall proceed in the course of its proceedings related to complaints as defined in Article 140 (1) in accordance with the provisions of Articles 140-141. In the course of its proceedings in investigating the complaint, in matters not regulated in this Act the Commissioner shall suitably apply the provisions of the Act on the General Rules of Administrative Proceedings and Services on regulatory inspections. The Commissioner shall complete its proceedings within the deadline laid down in Article 151.

(2) The following periods shall not be taken into account for the purposes of the deadline specified under Paragraph (1):

a) the period of time necessary to remedy deficiencies as defined under Paragraph (5);

b) the period of time required to the data provision as defined in Article 142 (1);

c) the period of time necessary for the procedure as defined in Article 142 (2);

d) the period of time necessary to make representations as defined in Article 142 (4); and

e) the period of time from the notification as in Article 142 (8) until the service provider or the publisher makes representations, formulates its position and notifies the Commissioner of the measures taken.

(3) The Commissioner shall examine the complaint and if it is obviously unfounded or if the harm to interests therein described or the direct risks thereof is of minor importance, or if the case falls outside the Commissioner's scope of competence, he/she shall notify the complainant accordingly within fifteen days. In his/her notification, the Commissioner shall – to the necessary extent – inform the complainant of his/her rights and obligations under the legislation on electronic communications and/or media services or under the subscription contract, as well as the course of action and means of legal remedy available for such complainant. If the matter described in the complaint falls within the regulatory powers of the Office, the President, the Media Council or another entity, the Commissioner shall transfer the case to the entity having regulatory powers in the matter, and shall concurrently notify the complainant thereof.

(4) The complainant shall have the right to request the restricted handling of his/her personal identification data and address. The Commissioner, with a view to ensuring the right of access to the documents, shall make an extract of the complaint in a manner which prevents the identity of the complainant from being established. For the purposes of investigating the complaint the Commissioner will handle the personal data of the complainant revealed to the

Commissioner in the course of the procedure and directly related to the complaint, for a period of one year after the procedure on the complaint is completed. This fact shall be brought to the complainant's attention.

(5) The complaint shall contain the name, address or mailing address of the complainant, the particulars of the actual or impending harm to interests that call for action by the Commissioner, or the action or conduct that suggest the harm to interests or a direct risk thereof, as well as the circumstances that suggest or substantiate that the other conditions laid down in Article 140 (1) are fulfilled. In case of a defective complaint, if the facts known to the Commissioner suggest that a significant harm to interests is likely to have occurred, the Commissioner shall call on the complainant to remedy the deficiencies within a specific deadline. In case of complaints defective in other respects or if the complainant, despite the Commissioner's call to do so, fails to remedy or improperly remedies deficiencies, the application may not be deemed as a complaint, and therefore the Commissioner shall not proceed.

**Article 142** (1) In order to investigate the complaint or the harm to interests as defined in Article 140 (1) (b) and which he/she has become aware of from other sources, the Commissioner shall have the right to request data, information or representations related to the harm to interests from any media or communications service provider or any publisher of press products, and may suitably apply the measures defined in the Act on the General Rules of Administrative Proceedings and Services regarding regulatory inspections and establishing the facts of the case. The particular media and/or communications service provider shall furnish the Commissioner with the requested data, information or representation within fifteen days even if the particular data qualify as business secrets. The Commissioner shall keep business secrets revealed to him/her confidential and handle them at the request of the data supplier as a document with restricted access.

(2) In the event that the particular media or communications service provider or publisher of the press product fails to furnish the Commissioner with the requested data within the specified deadline, the Commissioner shall resort to the Office. At the initiative of the Commissioner, the Office shall oblige the particular media or communications service provider or publisher to furnish the data related to the harm to interests as specified by the Commissioner in accordance with Paragraph (1). An appropriate deadline shall be set for the provision of the particular data. The service provider or publisher thus obliged shall have the right to resort to the Budapest Metropolitan Court to have the decision reviewed, within eight days of the decision being announced. The Budapest Metropolitan Court shall pass a decision on the case in an out-of-court proceeding within eight days. In the event that the service provider fails to furnish the Office with the requested data, or furnishes it improperly or falsely, the Office may apply the legal sanctions defined in Article 175 (8). The Office shall provide the Commissioner with the received data.

(3) In the course of his/her proceedings, the Commissioner will conduct verbal or written consultations with the communications or media service provider or the publisher of the press product on the harm to interests (conciliation procedure). The Commissioner will involve the complainant in the conciliation procedure, to the extent deemed expedient by the Commissioner and if so requested by the complainant, and, if the matter concerns a large number of consumers, he/she may also involve the representative of the civil association engaged in the protection of consumer interests.

(4) In the conciliation procedure the Commissioner will furnish the communications or media service provider or the publisher of the press product with the description of the harm to interests with the request to provide a statement with their response within a specific deadline.

(5) In justified cases, the Commissioner, on the basis of the written statement or response of the communications or media service provider or the publisher of the press product, will call the representative of the particular service provider and/or, if needed, the complainant or the representative of the civil association engaged in the protection of consumer interests to attend a personal consultation.

(6) In the event that the Commissioner and the communications or media service provider, the publisher of the press product or the media service distributor fail to reach an agreement to remedy the harm to interests or eliminate the direct risk thereof, the Commissioner shall record the results of the conciliation procedure in a report and proceed as defined under Paragraphs (8)-(9). If the conciliation procedure results in an agreement, then the Commissioner and the particular service provider shall incorporate the agreement in writing, which the Commissioner shall send to the complainant, or, if the particular matter affects a large number of consumers, the Commissioner shall post the agreement on his/her website. In the agreement the parties shall provide for the manner of remedying the harm to interests.

(7) The agreement is a concordant and voluntary legal statement of the parties, concluded between the Commissioner and the particular service provider whereby the contractual rights shall entitle the users, subscribers, consumers, viewers, listeners or readers resorting to the particular media, electronic communications service or press product. No obligations encumbering the users, subscribers, consumers, viewers, listeners or readers may be established by or arise from the agreement. The provisions of the agreement shall constitute part of the legal relationship of the particular users, subscribers, consumers, viewers, listeners or readers with the particular service provider, whereby the provisions of the agreement will be applicable in individual cases and the particular users, subscribers, consumers, viewers, listeners or readers may make a reference to these provisions in individual cases, and the Authority will have the right to verify compliance with the provisions of the agreement in the course of a regulatory inspection. The extent of cooperation displayed by the service provider concluding the agreement as per this Paragraph with regard to the effective enforcement of consumer interests shall be taken into account by the Authority in other official matters involving the service provider as well.

(8) Should the conciliation procedure fail to result in an agreement, the Commissioner may initiate (hereinafter as: initiative) at the executive officer of the communications or media service provider or the publisher of the press product that the harm to interests or the direct risk of harm to interests be eliminated or remedied. The service provider shall inform the Commissioner about its statement, its position concerning the initiative and the measures taken, within fifteen days of the initiative being communicated.

(9) The Commissioner shall draft a report on the results of the initiative, and duly inform the President thereof. In addition to the particulars of the harm to interests, in its report the Commissioner shall describe the conduct of the service provider in detail regarding the handling of the existing or impending harm to interests, and, in particular its willingness to cooperate in remedying the harm to interests and enhancing consumer well-being. The Commissioner shall publish his/her report if it affects or may affect a large number of consumers, or may issue a recommendation or guideline for the consumers in the interest of avoiding further harm to interests from being sustained.

### **The Commissioner's Report**

**Article 143** The Commissioner shall prepare a quarterly report on his/her observations regarding the proceedings carried out, the results of the initiatives and recommendations, as well as on his/her reports and proposals, on cases involving communications service providers and media service distributors, for the President and, on cases involving media service providers and publishers of press products, for the Media Council.

## **CHAPTER IV**

### **PROVISIONS ON THE PROCEDURES BY THE MEDIA COUNCIL AND THE OFFICE OF THE NATIONAL MEDIA AND INFOCOMMUNICATIONS AUTHORITY**

#### **Application of the General Rules on Administrative Proceedings**

**Article 144** (1) The Media Council and the Office (hereinafter for the purposes of this Chapter: Authority) shall act in accordance with the provisions of the Act on the General Rules of Administrative Proceedings and Services subject to the provisions of this Act.

(2) The members and the President of the Media Council shall have votes of identical value, that is, each person shall have one vote.

(3) The Media Council shall be deemed to have quorum when a simple majority of the members, including the President of the Media Council, are present.

(4) The decisions of the Media Council shall be passed with the simple majority of the votes of all members of the Media Council, including the President, with the exception of the case defined in Article 129 (7).

## The Complainant

**Article 145** (1) Anyone not deemed to be a client for the purposes of the subject of the notification (hereinafter as: complainant) may lodge a complaint addressed to the Authority in matters falling within the scope of powers and responsibilities of the Authority defined in this Act, claiming infringement of the rules on media administration.

(2) The complaint shall contain the data of the complainant, the circumstances providing the grounds for the Authority's proceedings, the action or conduct that suggests infringement of the rules on media administration, as well as the facts providing the grounds for the complaint.

(3) Based on the complaint the Authority shall have the right to initiate proceedings *ex officio* at its sole discretion. If the Authority does not initiate proceedings on the basis of the complaint, it shall duly notify the complainant in an official letter, without having to specify the reasons for its decision.

(4) The complainant shall not become a subject in the legal relations arising under the regulatory procedure initiated on the basis of the complaint, the complainant shall not have the right to seek legal remedy against the regulatory decision of the Authority passed in the administrative proceedings initiated *ex officio* on the basis of the complainant's complaint.

(5) The complainant may request the restricted handling of his/her data as stipulated in Article 153 (2).

(6)

## Legal Succession

**Article 146** (1) The client having acquired rights under a final decision may be replaced by its legal successor.

(2) The client bound by an obligation under a final decision is replaced by its legal successor, provided that such replacement is not impossible. In case of an obligation established under a final decision the legal successor may voluntarily fulfil the obligation, within a deadline extended upon its request, in justified cases, on one occasion at the most. The Authority and the legal successor may agree on the above in a public contract as well.

(3) In case of an obligation established under a final decision, the third party to whom the original (legal predecessor) client, bound by an obligation, assigns the terms of its operations under a contract, shall also be deemed as a legal successor to such client.

(4) If the legal succession arises in the course of the regulatory procedure and is based on a statutory legislation, the Authority shall establish the fact of legal succession in its order. No separate appeal shall lie against such order.

(5) In the event that the legal succession arises in the course of the regulatory procedure and is based on a contract, the Authority shall establish the fact of legal succession necessary for exercising its regulatory powers in its order. No separate appeal shall lie against such order.

## Confidentiality

**Article 147** (1) During the term of their employment and after the termination thereof, persons currently or formerly employed by the Authority as civil servants or in other work-related relationship shall keep confidential any personal data, classified data and business secrets they may have learnt in relation to the operation and actions of the Authority as well as any other data, fact or circumstance that the Authority is not obliged to make accessible for the public, excepting those that are to be disclosed to other entities under relevant legislation.

(2) The persons listed under Paragraph (1) may not unlawfully disclose, utilize or make known to any third party, any data, fact or circumstance they may have learnt in the course of performing their tasks.

Communications via Electronic Means

**Article 148** In its scope of competence and procedures defined under this Act the Authority may require that contact is maintained via electronic means.

## Commencement of Proceedings

**Article 149** (1) In matters falling within its competence the Authority may initiate proceedings *ex officio*, except if under this Act the proceeding may be initiated only upon application.

(2) If the Authority becomes aware of a breach of law falling beyond the scope of the particular official matter yet closely or indirectly related to such matter, it may *ex officio* extend its proceedings to that particular matter, before passing

its regulatory decision. In accordance with the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services the clients shall be notified of the fact that the proceedings were *ex officio* extended to the particular matter. On the *ex officio* extension of the proceedings, the administrative deadline of the proceedings shall be extended by the period of time applicable to the particular proceedings.

(3) The proceedings of the Authority defined in separate legislation shall be subject to an administrative procedural service fee.

(4) Proceedings of the Authority in relation to violations concerning media contents may be initiated (by request, notification) within three months of publication of the media content or, in case of continuous publication, after the first publication.

(5) If the applicant gained knowledge about the violation only subsequently or was otherwise prevented from filing the request or notification, the deadline set forth in Paragraph (4) shall start from the date of gaining knowledge or from the date the obstacle was overcome. No proceedings of the Authority may be initiated in relation to violations concerning media contents after six months of publication of the media content or, in case of continuous publication, after the first publication. This deadline shall represent the expiry of the limitation period.

(6) Upon violation of Articles 14-20 of the Press Freedom Act, as well as Articles 9-11, Article 12 (3)-(4), Article 14, and Articles 23-36 of the Media Act, the authority may launch the regulatory procedure *ex officio* within one year after the media content was published or – in case of continuous publication – after the media content was published at the first time.

## **Assessment of Competence and Jurisdiction**

**Article 150** If the Authority has no competence or jurisdiction concerning a certain issue, the Authority shall have the right to reject the respective application and/or terminate the proceedings without examination thereof on the merits, without determining the competent authority and without transferring the case to such authority.

## **Administrative Deadline**

**Article 151** (1) Unless otherwise provided for in this Act the administrative deadline of the proceedings conducted by the Authority shall be forty days.

(2) The period may be extended in justified cases on one occasion, by thirty days at the most.

## **Application**

**Article 152** The client shall submit its application in the appropriate official form, and in case contact via electronic means, in electronic form, in the notification procedures defined in Articles 42-47.

Access to Documents for Inspection, Secrets Protected by Law

**Article 153** (1) Persons participating in administering the case and employed by the Authority as civil servants or engaged in other work-related relationship with such Authority, shall have unlimited access to the secrets protected by law.

(2) The client and other participants involved in the proceedings may designate the range of data they deem necessary to be treated as restricted data, by reference to the protection of the secrets protected under the law, in particular business secrets, to other equitable interests as well as to any significant media policy considerations, save for data made public for general public interests and data defined in relevant legislation that may not be rated as data restricted under the law. In this case the client and/or other participants involved in the proceedings shall also prepare a version of the document which does not contain the data defined above.

(3) Data defined under Paragraph (2) shall be handled by the Authority within the document folder separately, as restricted data. The Authority shall ensure that restricted data are not accessible for unauthorised persons in the course of the procedural acts.

(4) Only the officer, the keeper of Minutes, the executives of the Authority, the member of the Media Council, the competent public prosecutor and - in case of judicial review - the acting judge shall be entitled to access the restricted data.

(5) To the extent so required to perform their duties connected to the subject of the official matter, other administrative authorities or government entities may also have access to restricted data, as deemed appropriate by the Authority, provided that such entities ensure at least the same level of protection for the data thus transferred as at the disclosing authority.

(6) With a view to ensuring the right of access to documents for inspection, the Authority shall prepare an extract of the document generated in the course of the proceedings, which document is otherwise in compliance with statutory requirement as to form and content, whereby no conclusions may be made as to the data defined under Paragraph (2).

(7) If the proper enforcement of the law, the enforcement of rights and the exercising of client rights justify it, the Authority may request that the client and other participants involved in the proceedings lift the restriction placed on the data management as defined under Paragraph (2).

(8) In case the client or other participant in the proceedings does not lift the restrictions defined under Paragraph (2), the Authority - if such action is indispensable for law enforcement or for the enforcement of rights vested with clients - may provide for in its order that the restricted data management be lifted. This order may be challenged by the client or the other participant in the proceedings by submitting an appeal to the Budapest Metropolitan Court with a suspensive effect; the court shall decide in the matter with priority in out-of-court proceedings within eight days. No further appeal shall lie against the order the Budapest Metropolitan Court.

## **Exclusion**

**Article 154** (1) In addition to those specified in the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services on exclusions, no person may participate in handling of the case on the merits, who had a legal relationship as defined in Point (a) with the client or with an enterprise with a qualifying holding in the client or with an enterprise operating under the client's qualifying holding within one year of the commencement of the proceedings, or whose relative

a) is in employment relationship, other work-related relationship or membership relationship with the client, or is an executive officer thereof;

b) holds an ownership share in the client;

c) is in employment relationship, other work-related relationship or membership relationship with a private individual, legal person or association without a legal personality that is in regular business relations with the client, or is an executive officer thereof, or has a shareholding in the above;

d) is in a work-related relationship with an organisation that is a supervisory or subordinate entity to the client and/or which has provided any support or exclusive licence for the client, excluding the work-related relationship with the Foundation or the Authority.

(2) The acting officer of the Office shall forthwith report to the Director General any grounds for exclusion in his/her part. The acting officer of the Office shall be bear disciplinary and financial liability for his/her failure to or delay in, making a notification. The decision on the exclusion of a particular officer of the Office shall be made by the Director General and, if necessary, he/she shall designate the officer acting on behalf of the Office.

(3) The Director General shall forthwith report to the President any grounds for exclusion on his/her part. The Director General shall bear disciplinary and financial liability for his/her failure to or delay in, making the notification. The decision on the exclusion of the Director General shall be made by the President. When there are grounds for the exclusion for the Director General, the President - in making its decision - shall consider whether the Director General may proceed in the particular case under the condition that he/she shall notify the President of his/her decision, or whether the President will select one of the Deputy Directors General to exercise the scope of competence.

(4) If the report submitted by the client with the aim of exclusion is obviously unsubstantiated, in the order on rejecting the exclusion the client may be subjected to a procedural fine laid down in Article 156.

(5) The decision on the exclusion of a Media Council member shall be made by the Media Council. The member thus excluded may not participate in handling of the case on the merits. When, as a result of exclusion, the Media Council does not have a quorum, the Media Council will proceed with the involvement of the excluded members in accordance

with the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services, irrespective of their grounds for exclusion, with such members also having a right to vote.

(6) When there are grounds for exclusion in the case of the President, the Vice-President designated by the President shall proceed in handling of the case on its merits.

### **Establishing the Facts of the Case**

**Article 155** (1) In establishing the facts of the case, the Authority shall apply the provisions of the Act on the General Rules of Administrative Proceedings and Services on establishing the facts of the case and on regulatory inspections subject to Paragraphs (2)-(8).

(2) The Authority shall have the right to view, examine and make duplicates and extracts of any and all instruments, deeds and documents containing data related to the media service, publication of a press product or media service distribution, even if containing secrets protected by law.

(3) The Authority may oblige the client, other actors in the proceedings, the agents and employees of such parties, and persons in other legal relationships with the client and other actors in the proceedings to provide data, to provide either verbally or in writing data in a comparable format as defined by the Authority, and to furnish other information.

(4) In particularly justified cases, with a view to establishing the facts of the case the Authority shall have the right to oblige persons or organisations other than the client and other actors in the proceedings to provide data or means of evidence. The order as in this Paragraph may be challenged by the persons obliged to provide data or means of evidence by submitting an appeal to the Budapest Metropolitan Court, having suspensive effect; the Court will decide in the matter with priority in out-of-court proceedings within eight days. No further appeal shall lie against the order of the Budapest Metropolitan Court.

(5) When deemed necessary for establishing the facts of the case, the Authority shall have the right to oblige the client to make representations or provide data, with concurrent warning on the legal sanctions as defined in Article 156, applicable in case of failure or improper fulfilment of this obligation.

(6) With a view to establishing the facts of the case, the Authority, concurrently with setting a deadline for fulfilment and giving a warning on the legal sanctions applicable in case of failure of fulfilment, shall have the right to oblige the client to remedy deficiencies.

(7) A witness may be heard on the business secret of the client even if he/she was not granted exemption from the obligation of confidentiality from the client.

(8) In particularly justified cases, the Authority shall have the right to resort to the deeds, data, documents and other means of evidence generated in the course of a particular regulatory procedure also for the purposes of another procedure, when necessary for reducing the procedural burden on clients or for proper and effective law enforcement.

### **Procedural Fine**

**Article 156** (1) In case of hindrance on the proceedings, the Authority shall have the right to impose procedural fine on the client, other actors in the proceedings or other persons obliged to cooperate with a view to establishing the facts of the case, when these parties act in a manner aimed at the prolongation of the proceedings or preventing the actual facts of the case from being established, or in a manner which may result in the above.

(2) The maximum amount of the procedural fine is twenty-five million forints or, for private person clients, one million forints.

(3) In addition to the provisions of Paragraphs (1)-(2), the Authority shall have the right, and in case of repeated offence, shall be obliged, to impose a procedural fine also on the executive officer of the breaching entity in case of hindering the proceedings or in case of failure or improper fulfilment of the obligation to furnish data, in the maximum amount of three million forints.

(4) When setting the amount of the procedural fine, the Authority shall take into account especially the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions.

## Public Hearing

**Article 157** (1) When so required under this Act or to the extent it deems necessary and justified to perform its duties, the Authority, with a view to familiarizing itself with legislation on media administration and the measures pertaining to its enforcement, and with the experts' positions and opinions on the preparation and implementation of law enforcement procedures, shall hold a public hearing, inviting media service providers, entities providing ancillary media services, publishers of press products, media service distributors, intermediary service providers, self-regulatory professional organisations, civil associations and others.

(2) Unless otherwise provided for in this Act, the Authority shall publish the date, time, place and subject of the public hearing at least thirty days before the scheduled date thereof.

(3) The Authority shall publish the preparatory documents related to the subject of the public hearing, excepting business secrets, at least ten days before the scheduled date of the hearing.

**Article 158** (1) Eight days before the scheduled date of the public hearing the Authority shall post on its website the documents received by it in an electronic format in relation to the public hearing.

(2) The Authority shall prepare a summary or a record on the public hearing containing comments and proposals given and voiced at the hearing, excepting data classified by the commenter or proposer as business secret. The Authority shall publish the summary within thirty days of the date of the hearing.

## Consultations with Stakeholders in Significant Issues

**Article 159** (1) To the extent it deems necessary, the Media Council may initiate consultations with stakeholders in matters falling within its regulatory powers (hereinafter as: consultations). In so doing, the Media Council - at least fifteen days before passing its regulatory decision - shall publish the draft decision and preparatory documents necessary for the consultations, with the exception of data subject to restricted data handling within the proceedings.

(2) Within eight days of publication of the draft regulatory decision as defined under Paragraph (1), anyone may submit to the Media Council in writing his/her position, proposal and other comments he/she may have concerning the draft decision (hereinafter as: comment). The Media Council shall not be bound by the comments so received, which serve for information purposes only, with no obligation on the part of the Media Council to take them into account for the purposes of passing its official decision.

(3) In its regulatory decision the Media Council shall not be under obligation to justify the necessity to hold consultations or - when it initiates consultations - to justify the reasons why comments were taken or not taken into account.

(4) By virtue of the fact of submitting comments, the stakeholders having submitted comments as defined under Paragraph (2) will not become a party to the procedural relationship involving the regulatory decision being the subject matter of the consultations. Stakeholders shall not be entitled to legal remedies within the scope of its comments, even in relation to the portions of the official decision pertaining to the comments.

## Public Contract

**Article 160** (1) In cases defined herein, the Authority shall have the right to conclude a public contract with a client, based on the provisions of the Act on the General Rules of Administrative Proceedings and Services and subject to the provisions of this Act.

(2) Under the public contract concluded with the Authority, the client may assume obligations that are beyond the Authority's regulatory powers, and compliance therewith on the part of the client could not be prescribed otherwise under a regulatory decision. In this case, under the public contract the client agrees that in case of non-compliance on the client's part with the provisions of the agreement the entire agreement shall be regarded as a final and enforceable regulatory decision.

(3) Regarding those contractual terms and conditions which could be imposed on the contractual party by way of regulatory decision under the law, the approval of third parties whose rights and lawful interests are affected by the contract is not a condition to the public contract being validly concluded.

(4) The administrative deadline for the completion of the official matter by a public contract as defined in Article 151 shall apply subject to the provisions of this Act.

**Article 161** (1) The Authority shall check compliance with the provisions of the public contract in the course of a regulatory inspection. When under the regulatory inspection the Authority establishes breach of the public contract by the client, it shall assess, with a view to the facts revealed in the inspection, the gravity of the breach, the effective enforcement of rights, the social, economic and legal relations affected by the contract, the relevant media administration principles and objectives, and the effective enforcement of public interest underlying the contract, whether to initiate in the case involving the breach of the decision the enforcement proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services, or the regulatory procedures to apply the legal sanctions specified in this Act.

(2) When the Authority initiates enforcement proceedings, the client may seek review of the order on enforcement, by claiming infringement of law, at an administrative court within fifteen days of the order being announced. The court will pass its decision, based on the hearing of the parties, if necessary, in out-of-court proceedings within fifteen days. The submission of the application for out-of-court proceedings shall have a suspensive effect on the enforcement of the order. No appeal may be lodged against the order of the Budapest Metropolitan Court.

(3) When the Authority, under Paragraph (1), initiates proceedings to apply legal sanctions specified in this Act, no independent legal remedy shall lie against the institution of the proceedings.

(4) In the regulatory procedure initiated as a result of the regulatory inspection and on account of breach of contract by the client, the Authority may apply the legal sanctions defined in Article 187 and in the public contract.

(5) In case of material or repeated breach of contract by the client, the Authority, unless otherwise provided for in the public contract, shall have the right to terminate the public contract with immediate effect.

(6) An action brought before the court for the amendment of the public contract, shall not affect the fulfilment and enforcement of the public contract and shall not have a suspensive effect on the fulfilment and enforcement of the public contract.

## Notices

**Article 162** (1) The Authority shall comply with the provisions of the Act on the General Rules of Administrative Proceedings and Services on disclosure to the general public by notification posted through its website.

(2) The Authority shall publish its regulatory decisions and the relevant court decisions through its website, having regard to the protection of personal data and restricted data handled in the proceedings.

(3) When the law allows notification through public notice, the notice shall be made public by posting the notice on the bulletin board of the Authority and by posting such notice on the website of the Authority.

## Legal Remedies

**Article 163** (1) No appeal may be lodged against the regulatory decision of the Media Council passed in its capacity as authority of the first instance. Review of the regulatory decision of the Media Council may be requested only by the client, and as regards the provisions expressly applicable to him/her, the witness, the official witness, the expert, the interpreter, the holder of the object under inspection, the representative of the client and the liaison officer, by claiming infringement of law, at the court proceeding in administrative cases, within thirty days upon announcement of the regulatory decision, by bringing an action against the Media Council.

(2) The court proceedings instituted on the basis of the statement of claim for review of the Media Council's decision shall be subject to the provisions of the Act on the Code of Civil Procedure on public administration lawsuits, subject to the provisions of this Act.

(3) The submission of the statement of claim shall not have a suspensive effect on the enforcement of the decision; the court may be requested to suspend the enforcement of the regulatory decision challenged by the statement of claim.

(4) The Media Council shall forward the statement of claim, together with the documents and representations of the case, to the court within fifteen days of receipt thereof.

(5) The application for out-of-court proceedings against the orders of the Media Council which can be challenged by an independent legal remedy shall be submitted within fifteen days of the notification of the order.

(6) No supervisory proceedings may be instituted concerning the regulatory decisions of the Media Council.

**Article 164** (1) In proceedings specified under Article 163, courts of both first and second instance shall pass judgement within thirty days.

(2) Judicial review procedure shall fall within the exclusive competence of the Budapest Metropolitan Court.

(3) The court shall have the powers to alter the decision of the Media Council.

**Article 165** (1) The client shall have the right to appeal against the regulatory decision of the Authority passed according to this Act at the Media Council, with the exception of decisions against which no appeal may be lodged under the Act on the General Rules of Administrative Proceedings and Services or under this Act.

(2) The decision of the Office may be challenged under an appeal only by the client who has participated in the proceedings of the first instance.

(3) Review of the second instance decision of the Media Council may be requested only by the client, and as regards the provisions expressly applicable to him/her, the witness, the official witness, the expert, the interpreter, the holder of the object under inspection, the representative of the client and the liaison officer, by claiming infringement of law, at the court proceeding in administrative cases, within thirty days upon announcement of the regulatory decision, by lodging a statement of claim.

(4) The submission of the statement of claim shall not have a suspensive effect on the execution of the decision, the court may be requested to suspend the execution of the regulatory decision challenged by the statement of claim.

(5) The application for out-of-court proceedings against the orders of the Office which can be challenged by independent legal remedy shall be submitted within fifteen days of the notification of the order.

(6) The judicial review proceedings shall fall within the exclusive competence of the Budapest Metropolitan Court.

### **Specific Proceedings of the Authority**

**Article 166** In conducting its proceedings defined in Articles 68–70 and 167–181, the Authority shall apply the provisions of the Act on the General Rules of Administrative Proceedings and Services and this Act subject to the deviations determined for the various types of proceedings.

### **General Regulatory Supervision**

**Article 167** (1) At request or *ex officio*, the Authority, within the context of its scope of powers and responsibilities, shall have the right to supervise within a regulatory inspection or regulatory procedure the enforcement and observance of the provisions laid down in this Act and the Press Freedom Act, as well as fulfilment of the terms and conditions set forth in its regulatory decisions, broadcasting agreements and in the public contracts concluded by the Authority.

(2) Should the Authority establish infringement of the provisions laid down in its regulatory decision as revealed in the supervision of compliance with its regulatory decision, it shall assess, on the basis of all circumstances of the case, the facts revealed in the inspection, the gravity of the infringement and the effective enforcement of rights, whether to resort to the enforcement procedure as defined in the Act on the General Rules of Administrative Proceedings and Services, or institute a regulatory procedure to apply the legal sanctions specified in this Act, in the case involving violation of the decision.

(3) The Authority shall have the right to apply the legal sanctions defined in Chapter V in cases of infringements revealed in the course of general regulatory supervision.

### **Market Surveillance**

**Article 168** (1) The Media Council, within its scope of competence, with a view to protecting the smooth, fruitful and diverse operation of the media market and protecting the interests of those engaged in media service distribution and media service provision, publishers of press products, viewers, listeners, readers, subscribers and users, as well as preserving the diversity of the national culture and opinions, promoting the maintenance of fair and effective market competition, familiarization with market trends and the comprehensive assessment, analysis and regulatory supervision of media policy considerations and other purposes defined in this Act, shall perform market surveillance activities.

(2) The specific market surveillance procedure may include a number of regulatory powers and official matter types, as defined in the Press Freedom Act and this Act, as a comprehensive regulatory procedure.

(3) The Media Council, in performing its duties defined under Paragraph (1), shall prepare an annual market surveillance plan by 1 December of the year preceding the subject year - taking into consideration the market surveillance experiences of the previous year - and shall publish the same on its website within fifteen days thereof. The Media Council shall ensure that its market surveillance plans are in accordance with one another. The plans may be reviewed on the basis of its findings made in the first six months at the end of that half, and – if necessary – the Media Council shall have the right to modify these plans accordingly. The Media Council shall post its modified market surveillance plan on its website within fifteen days of its modification.

(4) The market surveillance procedure shall be instituted *ex officio*.

(5) The administrative deadline of a market surveillance procedure shall be sixty days. The period may be extended in justified cases on one occasion, by forty-five days at the most.

(6) In its comprehensive and consolidated regulatory decision, the Media Council, as the purpose and as a result of the market surveillance procedure, shall

a) assess compliance of services and activities subject to the procedure with applicable legislation. In so doing, the Media Council shall establish the occurrence of infringements, make an assessment of these instances both on an individual and aggregate basis and shall determine the legal sanctions by suitably applying the provisions of Chapter V. In its market surveillance decision, the Media Council may impose obligations and define the terms of their fulfilment, when no infringement has occurred,

(b) determine the directions, methods, criteria for development and reshaping (if any), and media policy conclusions of state intervention with a view to preventing infringement of legislation, promoting voluntary compliance with the law and smooth flow of market trends.

(7) The Media Council shall prepare an annual report on the fulfilment of the objectives in its market surveillance plans, the results and findings of its market surveillance operations and its proposals on amendment of legislation arising on the basis of market surveillance decisions. The Media Council shall post its report on its website within fifteen days of its approval.

(8) The Media Council shall have the right to conduct market surveillance activities *ex officio* beyond the scope of the market surveillance plan.

## **Inspection of the Media Market**

**Article 169** (1) With a view to assessing compliance with the provisions of this Act and revealing whether regulatory powers specified in this Act should be applied, when the price changes or other market circumstances suggest that competition in the media service market is being distorted or is restricted, the Media Council, in order to gather information on market trends and assess such trends, shall institute a regulatory inspection by its order.

(2) This procedure of the Media Council shall be without prejudice to the competence of the Hungarian Competition Authority to conduct an inspection under the Act on the Prohibition of Unfair and Restrictive Market Practices.

(3) The Media Council shall inform through public notice the media service providers of the commencement of the regulatory inspection, which - in deviation from the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services - must contain the subject of the case and a brief description thereof. The explanatory section of the order shall designate the market conditions that gave rise to the inspection. The order shall be announced through public notice by posting on the bulletin board of the Authority and on the website of the Authority. The order on the institution of the procedure shall be deemed duly served on the fifteenth day from the posting of the notice on bulletin board of the Authority.

(4) The amount of the procedural fine that may be imposed in a inspection, taking into account the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions, shall equal to 0.5 % of the sales revenue of the breaching entity, or, in the absence of revenues or reporting on revenues, it shall be minimum fifty thousand forints and maximum fifty million forints. In addition, in case of non- or improper provision of data, the Media Council shall have the right, and in case of repeated infringement, shall be obliged, to impose a fine on the executive officer of the breaching media service provider in the amount between fifty thousand forints and three million forints.

**Article 170** (1) If the Media Council, on the basis of the findings of the regulatory inspection, establishes that the market trends under review may cause distortions or restrictions in competition in the market for media services, and in its opinion these circumstances may not be remedied by exercising the powers available according to this Act, it shall initiate that the commencement of the Hungarian Competition Authority's competition authority proceeding in the matter.

(2) The Hungarian Competition Authority will not commence the competition authority proceeding initiated by the Media Council as defined under Paragraph (1) if there is an inspection in progress in the same subject and for the same period or, if the Hungarian Competition Authority had already completed an inspection in the same subject for the same period beforehand. The Hungarian Competition Authority shall notify the Media Council of this fact.

(3) When there are no grounds for, or due to absence of competence it is impossible to initiate competition authority proceeding, or when the market distortion may not be remedied within the scope of competence of the Media Council or the Office, it shall duly notify the body entitled for legislation.

### **Proceedings of the Media Council as Special Authority**

**Article 171** (1) The Hungarian Competition Authority shall obtain the position of the Media Council for the approval of concentration of enterprises under Article 24 of Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices (hereinafter as: Competition Act), which enterprises, or the affiliates of at least two groups of companies as defined in Article 15 of the Competition Act bear editorial responsibility and the primary objective of which is to distribute media content to the general public via an electronic communications network or a printed press product.

(2) If the level of independent opinion sources following the merger would still ensure the right for diversity of information within the particular market segment of media content service, then the Media Council, with the exception of the case defined in Article 68 (2), cannot reject granting an approval as special authority.

(3) With regard to applying the provision or condition imposed by the Media Council as special authority in a decision in the merits of a case, Article 30 (3) of the Competition Act shall appropriately apply.

(4) The position of the Media Council as special authority shall bind the Hungarian Competition Authority, however, this fact does not prevent the Hungarian Competition Authority from

- a) prohibiting a merger that has already officially been approved by the Media Council as special authority, irrespective of any condition the Media Council may have set; or
- b) imposing a condition or an obligation as defined in Article 30 (3) of the Competition Act that the Media Council has failed to set.

(5) The statutory period for the proceedings of the Media Council as a special authority shall be twenty days, which may be extended on one occasion by another twenty days. The statutory period of the competition authority proceeding shall not include the period of proceedings of the Media Council as special authority. Failure by the Media Council to issue its position within the prescribed statutory period shall be deemed as an approval on its part.

(6) The amount of the administrative service fee payable to the Media Council for its procedure as special authority shall equal two million forints, which is payable to the Hungarian Competition Authority together with the procedural fee as defined in Article 62 (1) of the Competition Act, except when the applicant had submitted a request for a prior approval of the special authority as defined under Paragraph (7).

(7) On payment of the administrative service fee defined under Paragraph (6), at the request of the applicant defined in Article 68 of the Competition Act, the Media Council shall issue prior approval as a special authority. The applicant shall have the opportunity to request prior approval until the date of submitting a request for approval of merger but not later than the end of the period defined in Article 28 (2) of the Competition Act, and this approval can be used within six months from the date of issue, provided that facts, the market and the regulatory circumstances decisive for the purposes of the approval have - remained unchanged since the date of the position issued by the special authority. The prior approval issued by the Media Council as special authority or the request for approval shall be attached to the form set forth in Article 68 (2) of the Competition Act. When a specific requirement or condition laid down in the prior approval issued by the Media Council as special authority contradicts an obligation or condition deemed necessary by the Hungarian Competition Authority in part or in full, the government entities involved shall proceed as described in Article 45 (2) of the Act on the General Rules of Administrative Proceedings and Services.

## Proceeding in Case of Legal Disputes

**Article 172** (1) In case of infringement of the rights or lawful interests concerning media administration - defined in an agreement concluded under a rule on media administration or in a rule on media administration - of a media service provider, an entity engaged in providing ancillary media services, a publisher of press products or a media service distributor, by another media service provider or media service distributor, and in cases defined in this Act, the affected party may resort to the Media Council to conduct a legal dispute procedure (hereinafter as: legal dispute procedure). The legal dispute procedure may be initiated within six months after the occurrence of the infringement. If the applicant gained knowledge about the infringement only subsequently or was otherwise prevented from filing the request, the period of six months shall start from the date of gaining knowledge or from the date the obstacle was overcome. The legal dispute procedure may not be initiated after one year of occurrence of the infringement serving as ground for such procedure. This deadline shall represent the expiry of the limitation period.

(2) The application for conducting a legal dispute procedure shall clearly describe, in addition to the requisites defined in the provisions of the Act on the General Rules of Administrative Proceedings and Services on applications, the facts and circumstances serving as grounds for claims under Paragraph (1), the legislative and contractual provisions that provide the grounds for the application and verification of its rights and lawful interests.

(3) When the applicant requests the Media Council to bring the contract into existence or to determine its contents, he/she shall expressly and clearly define the particulars of the contractual provisions he/she wishes to be brought into existence or established, in a clear-cut text.

(4) The application may also include a motion for evidence and the applicant shall include its statement as to whether he/she requests that a court hearing be held.

(5) When the application for the legal dispute procedure does not contain or contains improperly the requisites laid down under Paragraph (2), the Media Council shall request the applicant to remedy deficiencies within eight days at the latest. Should the applicant fail to, or improperly remedy the deficiencies within the specific deadline, the Media Council shall reject the application within fifteen days without assessment of the case in its merits.

(6) When the application for the legal dispute procedure does not contain or contains improperly the requisites laid down under Paragraph (3), the Media Council shall request the applicant to remedy deficiencies with a deadline of five days. Should the applicant fail to, or improperly remedy the deficiencies within the specific deadline, the Media Council shall not adopt a decision in the context of bringing the contract into existence or determining its contents, and as regards the subject of the case and the infringement it shall adopt its decision in reliance on the data at its disposal, or it shall terminate the proceedings altogether.

(7) The Media Council shall send the application, provided that it does not reject the same without assessing the case in its merits, to the adverse client and shall request such client to submit its position and the evidence at its disposal within a period of ten days at the most and to concurrently send the same to the adverse client.

(8) In the course of its proceedings, the Media Council shall attempt to mediate a settlement between the parties.

**Article 173** (1) The Media Council shall hold a hearing at the request of any of the parties, which may be attended by the parties and other stakeholders in person or by their representatives, who may put forth their positions and comments and may submit their pieces of evidence by the end of the hearing. The hearing shall be held with public excluded.

(2) Absence of persons duly summoned to and notified of the hearing shall not prevent the hearing from being held and the case from being concluded. In justified cases, persons summoned to and notified of the hearing may seek prior exemption from attending the hearing; in which case the Media Council shall have the right to postpone the hearing.

(3) Absence from the hearing may not be subsequently excused. However, if the Media Council deems necessary to hear one of the persons who failed to appear, then, with regard to the above and by setting a new date, the Media Council may postpone the hearing.

(4) Unless otherwise provided in this Act, the applicant shall provide credible evidence to verify the factual and legal grounding of the contents of the application.

(5) The Media Council may oblige the adverse client to provide data and/or put forth statements on his/her part.

(6) The Media Council shall have the right to issue an interim injunction in the ongoing case at request or *ex officio*, if it can be established that in lack of such interim injunction the breach of the present Act - and in particular its core

principles - will result in a grave and otherwise unavoidable infringement of rights or interests, or in the danger thereof, and provided that the disadvantages arising from issuing the injunction cannot exceed the advantages that may be achieved under the injunction.

(7) As an interim injunction, the Media Council may order that the activity at issue be discontinued, may set the conditions for the activity and may also set obligations.

(8) The interim injunction shall be in place until the conclusion of the proceedings with a final force. During the proceedings the Media Council shall have the right to modify or cancel the interim injunction at request or *ex officio*.

(9) If the Media Council resorts to an interim injunction, the client may lodge an application for remedy against the interim injunction to Budapest Metropolitan Court. The court will pass its ruling in the case in out-of-court proceedings within fifteen days. No appeal may be lodged against the order the Budapest Metropolitan Court. The submission of the application shall not have suspending effect on the execution of the order.

(10) The Media Council will not issue a separate order on rejecting an application for an interim injunction; the grounds for rejection shall be set forth in the decision concluding the legal dispute procedure in its merits.

**Article 174** (1) In a legal dispute procedure, the Media Council shall have the right to bring into existence, modify and determine the contents of the agreement, if there is an obligation to contract under the rules on media administration and the parties fail to agree on the contents thereof, in case of an application in accordance with Article 172 (3).

(2) If under this Act a legal dispute procedure may be instituted also in relation to the consideration for the media service distribution and the media service, the Media Council may prohibit to apply the consideration any longer and shall have the right to set the amount of the rightful price within the framework of this Act and may oblige the media service provider or the media service distributor to apply such rightful price.

## **Data Provision**

**Article 175** (1) The Authority may request that media service providers, publishers of press products, ancillary media service providers and media service distributors provide any and all data that are indispensable for the Authority to perform the duties falling within its regulatory powers specified in this Act, exceptionally also in cases when such data are deemed as data protected by law. No legal remedy shall lie against this request; the request may be challenged in the application for legal remedy against the regulatory decision issued in cases defined under Paragraph (2).

(2) When the party obliged to provide data fails to meet, or improperly meets the request as under Paragraph (1), the Authority shall have the right to oblige the party to provide the data specified in the request under its regulatory decision.

(3) The Authority shall have the right to oblige undertakings under the scope of this Act to provide data on a temporary or continuous basis, under its regulatory decision.

(4) The Authority shall have the right to oblige undertakings under the scope of this Act to execute remote data reporting from an audit system installed on-site, attached to an official register or embedded in process, under its regulatory decision.

(5) No appeal may be lodged against the decision of the Office as defined under Paragraphs (2)-(4). The client may seek review of the decision by claiming infringement of law, from the court proceeding in administrative cases within fifteen days of notification of the regulatory decision. The court will pass its decision, based on the hearing of the parties, if necessary, in out-of-court proceedings within fifteen days. The submission of the application for out-of-court proceedings shall have a suspensive effect on the enforcement of the decision. No appeal may be lodged against the order the Budapest Metropolitan Court.

(6) The client may seek revision of the decision of the Media Council as defined under Paragraphs (2)-(4), by claiming infringement of law, from the court proceeding in administrative cases, within fifteen days of regulatory decision being announced. The court will pass its decision, based on the hearing of the parties, if need be, in out-of-court proceedings within fifteen days. The submission of the application for out-of-court proceedings shall have a suspensive effect on the enforcement of the decision. No appeal may be lodged against the order the Budapest Metropolitan Court.

(7) Legal remedy against decisions as defined under Paragraphs (2)-(4) may be lodged only by the client who has participated in the regulatory procedure.

(8) When the party obliged to provide data fails to meet or improperly meets the obligation of data provision as defined under Paragraphs (2)-(4), the Authority shall impose a fine, taking into account the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions, in the maximum amount of fifty million forints. The legal remedy lies against this decision as defined in Articles 163-165.

(9) In determining the amount of the fine, the Authority shall assess and compare all circumstances of the case, the sales revenue of the breaching entity, the gravity of the disadvantages and the consequences arising from the party's failure to provide data.

(10) An appropriate period of time shall be allowed for the party to provide the requested data, even in case of a request defined under Paragraph (1).

(11) In providing the data as defined under Paragraphs (1)-(4), the data provider shall be responsible for ensuring that the data are appropriate, current, authentic, accurate, verifiable and correct.

(12) The media service provider shall retain the authentic documentation on its programme flow, including the full recording of output signals in the media service, for a period of sixty days from the date of broadcast or in case of on-demand media service, from the last date of accessibility of content and shall furnish the Office with such materials at its request free of charge and without delay. In case of a procedure instituted or a legal dispute arising in relation to a media service the documentation shall be retained for a period of one year from the conclusion of the proceedings with a final force.

### **Proceedings Against a Media Content Provider Established in Another Member State**

**Article 176** (1) When the linear audiovisual media service of a media service provider established in another Member State is aimed only at the territory of the Republic of Hungary, the Media Council shall have the right to apply the legal sanctions defined in Article 187 (3) (c)-(d) regarding the media services transmitted on the territory of the Republic of Hungary, for the period of the infringement but up to one hundred eighty days at the most provided that the following conditions are met:

a) the media service clearly and materially violates Article 17 (1), Article 19 (1) or Article 19 (4) of the Press Freedom Act or Article 9 or Article 10 (1)-(3) of this Act,

b) the media service violated the provisions set forth under Paragraph (a) on at least two occasions within the twelve months prior to the decision to be issued by the Media Council under this Paragraph on the limitation of broadcast;

c) the Republic of Hungary at the initiative of the Media Council notified in writing the media service provider involved and the European Commission of the instances of infringement as defined in Point (a) and the measures the Media Council intends to take in case of future infringement; and

d) no agreement is made between the Republic of Hungary and the Member State in which the media service provider is established within fifteen days from the notification defined in Point (c) on the basis of the consultations made with the Member State involved and the European Commission and the infringement described in Point (a) still exists or is committed repeatedly.

(2) The Media Council shall send the decision defined under Paragraph (1) to the European Commission concurrently with the announcement thereof.

(3) If the European Commission obliges the Media Council to withdraw the decision passed under Paragraph (1) in a decision passed within two months of the notification defined under Paragraph (2), the Media Council shall proceed as provided for in the decision of the European Commission.

**Article 177** (1) When the on-demand audiovisual media service of a media service provider established in another Member State is aimed at, is broadcasted or published in the territory of the Republic of Hungary, the Media Council shall have the right to apply the legal sanctions defined in Article 187 (3) (c)-(d) regarding the media services transmitted on the territory of the Republic of Hungary, for the period of the infringement but up to one hundred eighty days at the most, provided that the following conditions are met:

a) the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors;

- b) the measures are taken against a media service provider of an on-demand media service that violates or presents a serious risk on any of the interests defined in Point (a); and
  - c) the measure is proportionate to the interests to be protected.
- (2) Prior to the institution of the proceedings intended for formulating the decision defined under Paragraph (1), the Media Council shall request the Member State under whose jurisdiction the media service provider rendering on-demand media services as defined under Paragraph (1) belongs to take appropriate measures. When the Member State fails to take, or improperly takes the measure within the reasonable time set forth in the request lodged by the Media Council, the Media Council shall send the draft version of the decision defined under Paragraph (1) to the European Commission and the particular Member State. If the European Commission obliges the Media Council to withdraw the draft decision, it shall proceed as provided for in the decision of the European Commission.
- (3) In cases of exceptional urgency, and with a view to protecting viewers' interests, in the case defined under Paragraph (1) the Media Council shall have the right to pass a temporary decision. The temporary decision shall be enforceable with immediate effect. The Media Council shall send the temporary decision to the European Commission and the Member State involved concurrently with the announcement thereof. The Media Council shall resolve as to whether to uphold or withdraw the temporary decision as provided for in the decision of the European Commission.

**Article 178** (1) When the radio media service or the press product of a media content provider established in another Member State is aimed at, is broadcasted or published in the territory of the Republic of Hungary, the Media Council shall have the right to apply the legal sanction as defined in Article 187 (3) c) against the media service provider under its decision for the period of the infringement but up to one hundred eighty days at the most, if the following conditions are met:

- a) the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors;
- b) the measures are taken against a media content provider of radio media service or press product that violates or presents a serious risk on any of the interests defined in Point (a); and
- c) the measure is proportionate to the interests to be protected.

(2) Prior to the institution of the proceedings intended for formulating the decision defined under Paragraph (1), the Media Council shall request the Member State under whose jurisdiction the media service provider rendering radio media services or the publisher of press product as defined under Paragraph (1) belongs to take appropriate measures. The Media Council may institute the proceedings defined under Paragraph (1) provided that the Member State fails to, or improperly takes the measure within the reasonable time set forth in the request lodged by the Media Council.

(3) In cases of exceptional urgency, and with a view to protecting listeners' and readers' interests, the Media Council shall have the right to pass an interim decision defined under Paragraph (1). The temporary decision shall be enforceable with immediate effect. The Media Council, concurrently with its announcement, shall send the temporary decision to the Member State under whose jurisdiction the media service provider rendering radio media services or the publisher of a press product as defined under Paragraph (1) belongs and shall request such Member State to take appropriate measures. When the Member State takes the measures within the reasonable time set forth in the request, the Media Council shall resolve on the withdrawal of the temporary decision, while in case of failure, or improper delivery of the measures, it shall resolve on upholding the temporary decision.

### **Proceedings Against a Media Content Provider Established in Another Member State in Case of Circumvention of the Law**

**Article 179** (1) This Act and Articles 13–20 of the Press Freedom Act shall be applicable to the linear audiovisual media service of the media service provider established in another Member State, in accordance with the provisions of Paragraphs (2)–(5) of this Act, on condition that the media service provider established in another Member State aims the particular linear audiovisual media service for use in the territory of the Republic of Hungary in its entirety or to a large extent and the media service provider was established outside the territory of the Republic of Hungary with a view to avoid the applicability of more stringent rules thereon under this Act and the Press Freedom Act.

(2) In its assessment as to whether the conditions defined under Paragraph (1) are met, the Media Council shall examine, among others, in which of the Member States the major sources of the advertisement and subscription revenues of the media service provider established in another Member State are to be found as regards its linear audiovisual media service, which is the primary language of the media service, in which Member State can the majority of its broadcast sites be found, and which Member State's audiences the programmes within the media services are addressed to.

(3) When the conditions defined under Paragraph (1) are met, on infringement of the provisions of this Act and the Press Freedom Act, the Media Council shall request measures to be taken by the Member State under whose jurisdiction the media service provider rendering the media service defined under Paragraph (1) belongs.

(4) The Media Council may apply the legal sanctions as defined in Article 187 (3) (b)-(d) against the media service provider defined under Paragraph (1) under its decision when it established that the Member State with jurisdiction as defined under Paragraph (3) failed to take the measures within two months, or improperly took such measures.

(5) The Media Council shall send the draft decision defined under Paragraph (4) to the European Commission prior to the notification thereof. If the European Commission obliges the Media Council to withdraw the draft decision, it shall proceed as provided for in the decision of the European Commission.

**Article 180** (1) This Act and Articles 13-20 of the Press Freedom Act shall be applicable to the radio media service and the press product of the media content provider established in another Member State in accordance with the provisions of Paragraphs (2)-(3) hereunder, on condition that the media content provider established in another Member State aims the particular radio media service or press product for use in the territory of the Republic of Hungary in its entirety or to a large extent, and the media content provider was established outside the territory of the Republic of Hungary with a view to avoid the applicability of more stringent rules thereon under this Act and the Press Freedom Act.

(2) In its assessment as to whether the conditions defined under Paragraph (1) are met, the Media Council shall examine, among others, in which of the Member States the major sources of the advertisement and subscription revenues of the media content provider established in another Member State are to be found as regards its radio media service or press product, which is the primary language of the media service or press product, in which Member State can the majority of its broadcast and report sites be found, and which Member State's audiences the programmes and other media content within the media services or press product are addressed to.

(3) When the conditions defined under Paragraph (1) are met, the Media Council, on infringement of the provisions of this Act or the Press Freedom Act, shall request measures to be taken by the Member State under whose jurisdiction the media service provider rendering the media service or the publisher of the press product defined under Paragraph (1) belongs.

(4) The Media Council may apply the legal sanctions as defined in Article 187 (3) (b)-(d) against the media service provider defined under Paragraph (1) under its decision when it established that the Member State with jurisdiction as defined under Paragraph (3) failed to take the measures within two months, or improperly took the measures.

### **Proceedings in Case of Infringement of the Obligation of Balanced Coverage**

**Article 181** (1) In case of infringement of the obligation of balanced coverage defined in Article 13 of the Press Freedom Act and Article 12 (2) of this Act, the holder of the viewpoint that was not expressed, or any viewer or listener (hereinafter for the purposes of Paragraphs (2)-(6): applicant) may initiate a regulatory procedure. The powers to assess a request concerning the media services rendered by media service providers with significant market power and public media service providers shall be with the Media Council, while in case of other media services with the Office. The Authority shall not have the right to institute proceedings *ex officio* in case of infringement of the obligation of balanced coverage.

(2) Prior to requesting regulatory procedure defined under Paragraph (1), the applicant shall resort to the media service provider with its objection. The applicant, within seventy-two hours from the broadcast of the contested information or, in case of re-broadcast, from the date of the last broadcast, shall have the right to request in writing that the media service provider broadcast the viewpoint required for a balanced coverage, properly, under circumstances similar to the contested information. The applicant may not exercise his/her right of challenge if another representative of the same viewpoint has already been given an opportunity to present the viewpoint not presented earlier, or if this opportunity has been given to the applicant but has failed to take advantage thereof.

(3) The media service provider shall decide on the acceptance or refusal of the objection within forty-eight hours of the receipt thereof. The decision shall be communicated to the applicant in writing without delay. The applicant, within 48 hours of the decision being notified, shall have the right to initiate at the Authority that a regulatory procedure be instituted, or, when the decision is not communicated, within ten days of the broadcast of the challenged or objected communication, together with the exact name of the challenged programme and the particular media service provider. A procedure may also be initiated at the Authority if the media service provider fails to comply with the contents of the objection in spite of its statement of acceptance. In this case, the regulatory procedure must be initiated at the Authority within forty-eight hours of the expiry of the deadline undertaken for complying with the objection. The statutory period of proceedings conducted by the Authority shall be fifteen days, which may be extended in justified cases on one occasion, by eight days at the most.

(4) At the request of the Authority, the media service provider shall furnish the Authority with the recording of the challenged programme without delay.

(5) Should the Authority, in its decision, establish that the media service provider has infringed the obligation of balanced coverage, the media service provider shall broadcast or publish the decision passed by the Authority or the notice defined in the decision, without any assessing comment thereon, as provided for in the decision of the Authority, in the manner and at the time specified by the Authority, or shall provide an opportunity for the applicant to present his/her viewpoint. In addition to the foregoing, the legal sanctions as defined in Articles 186-187 may not be applied against the breaching entity.

(6) The procedure defined under Paragraphs (1)-(5) shall be exempt from dues and charges, and the applicant may not be obliged to pay administrative service fee either. As regards legal remedy against the decision passed in the proceedings, the provisions of Articles 163-165 shall be suitably applied, with the provision that the client or other participant in the proceedings may seek revision of the final decision of the Media Council by lodging a statement of claim against the Media Council before the Budapest Court of Appeal, by claiming infringement of law, within fifteen days. The Budapest Court of Appeal shall adjudge the statement of claim in court proceedings, within thirty days.

### **The Scope of Powers and Responsibilities of the Authority**

**Article 182** Acting in its regulatory powers, the Media Council, in accordance with Article 132,

- a) shall perform general regulatory supervision over public contracts concluded thereby;
- b) shall perform regulatory supervision regarding the following statutory provisions defined in this Act:
  - ba) standards on the protection of children and minors;
  - bb) standards on the broadcast of events of major importance;
  - bc) rules on the broadcast of parliamentary sessions;
  - bd) provisions on extraordinary situations concerning media services;
  - be) requirements on programme quotas;
  - bf) requirements defined in Articles 23-25 on commercial communications;
  - bg) provisions on product placement;
  - bh) provisions on political advertisements, public service announcements and public service advertisements [excepting the provisions of Article 32 (7)];
  - bi) requirements on advertisements and teleshopping as defined in Article 33;
  - bj) must-carry obligation rules applicable to media service distributors;
  - bk) obligations related to the offering of media services;
  - bl) provisions on the diversity of media service distribution;
  - bm) rules on the performance of tasks in public media service.
- c) shall supervise compliance with requirements set forth in Articles 13-20 of the Press Freedom Act;
- d) shall exercise the regulatory powers in relation to infringements committed by media content providers established in another Member State;
- e) shall adopt a regulatory decision on the rating of a programme, at the request of a media service provider;
- f) shall conclude a public contract with the media service provider on exemption from the requirements on programme quotas;

- g) shall determine the amount of the media service provision basic fee;
- h) shall perform the tasks concerning the tendering of media service provision rights for radio and concerning media service provision rights granted for performing public duties;
- i) shall proceed in official matters related to the renewal of media service provision rights for analogue, linear media services;
- j) shall proceed in official matters related to media service public contracts;
- k) shall perform the tasks related to the connecting to the network by media service providers and extension of reception area;
- l) shall exercise the powers on the classification of media service provision as community media service provision, and shall supervise their operation;
- m) shall identify the media service providers with significant market power and shall define the obligations encumbering media service providers with significant market power;
- n) shall act in the context of fulfilment of obligations defined for media service providers with significant market power, excluding obligations defined in Article 39;
- o) shall perform the regulatory tasks related to control over market concentrations;
- p) shall conduct an inspection in the media market;
- q) shall conduct market surveillance procedure;
- r) shall act in legal disputes defined in this Act;
- s) shall perform the tasks related to public contracts on temporary media service provision;
- t) shall perform its tasks as a special authority in cases defined in this Act and the Act on the Prohibition of Unfair and Restrictive Market Practices;
- u) shall proceed in relation to complaints on imbalanced coverage that may arise in media services provided by media service providers with significant market power and by public media service providers [under Article 13 of the Press Freedom Act and Article 12 of this Act];
- v) shall define events of major importance for the society under its regulatory decision;
- x) shall determine under its regulatory decision the public service media services and community media services falling under a must carry obligation [Article 75 (3)];
- y) shall perform regulatory tasks related to the proceedings and decisions of self-regulatory bodies;
- z) shall exercise other regulatory powers as defined by law.

**Article 183** (1) Acting in its non-regulatory powers, the Media Council, in accordance with Article 132,

- a) shall elaborate the recommendations on classifications of media content prescribed for the protection of minors;
- b) shall elaborate the recommendations on requirements for the effective technical solution to enable access to media content for viewers or listeners over eighteen years of age only;
- c) may publish its recommendations on ensuring compliance of product placement and the relevant call with the provisions of this Act;
- d) shall provide information to the Parliament on the observance of the constitutional principle of the freedom of the press and the reasons and circumstances of exemptions from programme quotas granted to media service providers;
- e) shall decide on the reallocation of approved budgetary appropriations of expenditures;
- f) shall define and publish its rules of procedure;
- g) shall provide its opinion on draft legislation concerning spectrum management and communications;
- h) shall prepare positions and recommendations in certain media policy issues;
- i) shall formulate the concept of spectrum management effecting media service provision;
- j) shall prepare an annual report for the Parliament on the operation of the Media Council and the Office;
- k) shall manage the Fund, accept the subsidy policy, annual plan and report of the Fund, define and publish the detailed rules on the management of the Fund and approve the general conditions of tendering elaborated by the Fund;
- l) shall prepare a report for the European Commission on certain programme flow structure requirements;
- m) shall elaborate the rules concerning the utilization of assets handed over to the Public Service Foundation and asset management;

- n) shall cooperate with the media authorities of other Member States;
- o) shall supervise the operation of the Institute for Media Sciences;
- p) shall perform the non-regulatory tasks related to the actions of self-regulatory bodies;
- q) shall perform other, non-regulatory, tasks defined by law.

(2) The Media Council shall be responsible for implementing regulation 2006/2004/EC of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws in relation to intra-Community infringements of the laws of the Member States transposing Articles 19-26 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. In so doing, the Media Council shall proceed in the context of mutual assistance in accordance with Commission Directive 2007/76/EC.

**Article 184** (1) The Office, acting in its regulatory powers, shall

- a) maintain the official registers defined in this Act;
  - b) determine the amount of the media service provision fee payable by media service providers having acquired the right for media service provision through registration;
  - c) supervise observance of the following provisions of this Act:
    - ca) the provisions of Article 32 (7) on political advertisements, public service announcements and public service advertisements;
    - cb) regulations on advertisements published in public and community media service and public service announcements (Article 36);
    - cc) regulations on programmes made accessible to people with a hearing disability (Article 39);
    - cd) regulations on changes in the ownership structure and other data of media service providers, publishers of press products and ancillary media service providers, the relevant reporting of such changes and the publication of certain data;
    - ce) regulations on the ownership structure of the linear media service provider and ownership concentration of companies (Article 43);
    - cf) provisions on media content with violence and suitable to raise disturbance and regulations on the protection of religious convictions (Article 14);
    - cg) certain provisions on advertisement and teleshopping (Articles 34-35);
    - ch) regulations on the sponsorship of media services and programmes (Articles 26-29);
    - ci) the obligations to provide data set forth in Article 175 (12);
  - d) perform the tasks related to the discontinuation and termination of media service provision right in the event of failure to commence service provision;
  - e) act in the settlement of complaints involving the obligation to provide balanced information, excepting cases defined in Article 182 (u) (Article 13 of the Press Freedom Act and Article 12 of this Act);
  - f) check observance of obligations on transmission of public media services (Article 74);
  - g) check observance of the provisions on general contractual framework and conditions within the context of the obligation to offer media services (Article 79);
  - h) exercise other powers vested with it as defined by law.
- (2) The Office, acting in its non-regulatory powers, shall
- a) perform the preparatory tasks in cases falling within the scope of powers and responsibilities of the Media Council;
  - b) perform the preparatory tasks regarding the procedure for tendering media service provision rights, hold public hearing;
  - c) perform market analysis, assessment and other inquiry activities by the programme monitoring and analysis service;
  - d) shall perform other non-regulatory tasks defined by law.

## CHAPTER V

### LEGAL SANCTIONS APPLICABLE IN CASE OF INFRINGEMENT

**Article 185** (1) The Media Council or the Office shall have the right to apply the legal sanction on parties infringing rules on media administration in accordance with the provisions of Articles 186-189.

(2) In applying the legal sanction, the Media Council and the Office, under the principle of equal treatment, shall act in line with the principles of progressivity and proportionality; shall apply the legal sanction proportionately, in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal sanction.

**Article 186** (1) When the infringement is of minor significance and no re-occurrence can be established, the Media Council or the Office, on noting and warning on the fact of the infringement, may request, setting a deadline of thirty days at the most, that the infringer discontinue its unlawful conduct, refrain from infringement in the future and act in a law-abiding manner and may also set the conditions thereof.

(2) In the context of the request defined under Paragraph (1), the considerations defined in Article 187 (2) shall not be applicable.

(3) When, considering all the circumstances of the case, the request may not be applicable or would prove inefficient to force compliance with the obligation to discontinue the infringement, the Media Council or the Office, without stating the reasons for dispensing with making a request, shall prohibit the unlawful conduct and/or may set obligations to ensure observance of the provisions of this Act and may apply legal sanctions.

**Article 187** (1) In case of repeated infringement, the Media Council and the Office shall have the right to impose a fine on the executive officer of the infringing entity in an amount not exceeding two million forints, in line with the gravity, nature of the infringement and the circumstances of the particular case.

(2) The Media Council and the Office shall impose the legal sanction, depending on the nature of the infringement, taking into account the gravity of the infringement, whether it was committed on one or more occasions, or on an ad hoc or continuous basis, its duration, the pecuniary benefits earned as a result of the infringement, the harm to interests caused by the infringement, the number of persons aggrieved or jeopardized by the harm to interests, the damage caused by the infringement and the impact of the infringement on the market, and other considerations that may be taken into account in the particular case.

(3) The Media Council and the Office, taking into account Paragraph (7), shall have the right to impose the following legal sanctions:

a) it may exclude the infringer for a definite period of time from the opportunity to participate in the tenders of the Fund;

b) it may impose a fine on the infringer in line with the following limits:

ba) in case of infringement by a media service provider with significant market power and a media service provider affected by the regulations on the limitation of media market concentration, the fine shall be of an amount not exceeding two hundred million forints;

bb) in case of infringement by a media service provider not covered under Point (ba), the fine shall be of an amount not exceeding fifty million forints;

bc) in case of a daily newspaper of nationwide distribution, the fine shall be of an amount not exceeding twenty-five million forints;

bd) in case of a weekly newspaper or periodical of nationwide distribution, the fine shall be of an amount not exceeding ten million forints;

be) in case of other daily newspapers or weekly newspapers or periodicals, the fine shall be of an amount not exceeding five million forints;

bf) in case of an online press product, the fine shall be of an amount not exceeding twenty-five million forints;

bg) in case of a media service distributor, the fine shall be an amount not exceeding five million forints;

bh) in case of an intermediary service provider, the fine shall be of an amount not exceeding three million forints;

c) the infringer may be obliged to publish a notice on the opening page of its website, in a press product or a designated programme in the manner and for the period of time specified in the decision;

- d) it may suspend the exercise of the media service provision right for a specific period of time;
  - da) the period of suspension may last from fifteen minutes up to twenty four hours;
  - db) the period of suspension in case of serious violation of law may last from one hour up to forty eight hours;
  - dc) the period of suspension in case of repeated and serious violation of law may last from three hours up to one week;
  - e) it may delete the media service from the register as defined in Article 41 (4) in which the infringement was committed and may terminate the public contract on the media service provision right with immediate effect on repeated serious violation of law by the infringer. The media service deleted from the register may not be made accessible for the public once it was deleted.
- (4) For the purposes of Paragraphs (1)-(3), the infringement shall be deemed as committed repeatedly when the infringer committed the unlawful conduct established in the final regulatory decision on the same legal basis and in breach of the same provisions of legislation, in the same subject, at least two times within three hundred sixty-five days, not including minor offences.
- (5) The legal sanctions defined under Paragraph (3) may also be imposed jointly.
- (6) Media service provider of a linear media services may be subjected to the legal sanctions defined under Paragraph (3) (a)-(e), providers of on-demand or ancillary media services to the legal sanctions defined under Paragraph (3) (a)-(d), and publishers of press products to the legal sanctions defined under Paragraph (3) (b)-(c).
- (7) The power to apply legal sanction defined under Paragraph (3) (e) shall be with the Media Council.
- (8) In case of media service providers with broadcasting agreements the penalty defined in the contract and other legal sanctions may be enforced by the Media Council against the media service providers only by way of an administrative procedure.

### **Responsibility of Media Service Distributors and Intermediary Service Providers for Transmission of Media Services and Press Products.**

**Article 188** (1) The media service distributor may be obliged to suspend or terminate the transmission of the media service specified, in accordance with Article 189, by virtue of the regulatory decision adopted by the Media Council, acting in its regulatory powers.

(2) Intermediary service providers may be obliged to suspend the broadcasting of media services and online press products by virtue of the regulatory decision adopted by the Media Council, acting in its regulatory powers.

(3) The media service distributor shall not be responsible for the content of the programme flow of the broadcaster under the jurisdiction of a state party to the Agreement on the European Economic Area and European Convention on Transfrontier Television and in its supplementary Protocol signed in Strasbourg on 5 May 1989 and promulgated by Act XLIX of 1998. The media service distributor, however, may be obliged, by virtue of the regulatory decision adopted by the Media Council, acting in its regulatory powers, to suspend the distribution of the media service under Article 189, taking into account of the provisions of Articles 176–180.

**Article 189** (1) When the Media Council resorts to the legal sanction against the media service provider defined in Article 187 (3) (e), the media service distributor shall, on the basis of the regulatory decision issued in an *ex officio* regulatory proceeding by the Media Council after the decision has become final, terminate the distribution of the media service constituting the subject of the decision containing the applicable legal sanctions.

(2) When, in case of repeated infringement, the Media Council or the Office applies legal sanctions defined in Article 187 (3) (b)-(d) against the media service provider, and the media service provider fails to fulfil the terms of the final and executable decision containing legal sanctions at the request of the Media Council or the Office, the media service distributor may be obliged to suspend the distribution of the media service subject to the regulatory decision adopted by the Media Council *ex officio* and containing legal sanctions.

(3) When, in case of on-demand or ancillary media services, the Media Council or the Office applies legal sanctions defined in Article 187 (3) (b)-(d) against the media service provider, and the media service provider fails to fulfil the terms of the final and executable decision containing legal sanctions at the request of the Media Council or the Office, the intermediary service provider may be obliged to suspend the broadcasting of the linear, on-demand or ancillary media service subject to the regulatory decision adopted by the Media Council *ex officio* and containing legal sanctions.

(4) When, in case of online press products, the Media Council or the Office applies legal sanctions defined in Article 187 (3) (b)-(c) against the publisher of the press product, and the publisher fails to fulfil the terms of the final and executable decision containing legal sanctions at the request of the Media Council or the Office, the intermediary service provider may be obliged to suspend the transmission of the online press product subject to the regulatory decision adopted by the Media Council *ex officio* and containing legal sanctions.

(5) The decision mentioned in Paragraphs (1)-(4) shall contain the method, terms, performance deadline, and period of the termination or suspension, as well as the bearing and reimbursement of the costs associated with the termination or suspension of the distribution or broadcasting of the media service by the media service distributor and intermediary service provider, or with the suspension of the broadcasting of the press product.

(6) The period of suspending the distribution or broadcasting set forth in Paragraphs (2)-(4) shall be proportionate to the weight and extent of the underlying legal sanction, and may not exceed the date of performance by the media service provider or by the publisher of the online press product – as set forth in the relevant final and enforceable decision – increased by the period necessary to terminate the suspension. The period of terminating the suspension by the media service distributor or intermediary service provider may not exceed fifteen days, including the notification of the media service distributor or intermediary service provider by the Media Council.

(7) The costs associated with the termination or suspension of media service distribution or broadcasting shall be borne by the condemned media service provider or publisher of the press product.

(8) No appeal may be lodged against the decision of the Media Council as defined under Paragraphs (1)-(4). The client may seek review of the decision by claiming infringement of law, from the court proceeding in administrative cases within fifteen days of notification of the regulatory decision. The court will pass its decision, based on the hearing of the parties, if necessary, in out-of-court proceedings within fifteen days. The submission of the application for out-of-court proceedings shall not have a suspensive effect on the enforcement of the decision. The court may not be requested to suspend the execution of the regulatory decision challenged by the application, and it may not be suspended by the court. The decision shall be enforceable immediately, irrespective of the filing of the application for an out-of-court proceeding. No appeal may be lodged against the order the Budapest Metropolitan Court.

(9) If the media service distributor or the intermediary service provider fails to comply with the provisions of the decision under Paragraphs (1)-(4), the Media Council shall launch a regulatory procedure against the media service distributor or the intermediary service provider and may apply the legal sanctions set forth in Article 187 (3) (bg) or (bh).

(10) The provisions laid down in Article 188 and in this Article may not be applied until the decision of the court of first instance is adopted in the course of judicial review proceeding initiated on the suspension of the execution of the decision containing the legal sanction set forth in this Article, and may not be applied – until the final closure of the respective public administration lawsuit – if the court had suspended the execution of the decision containing the legal sanction.

## **CHAPTER VI**

### **CO-REGULATION IN MEDIA ADMINISTRATION**

#### **General Rules**

**Article 190** (1) With a view to effective achievement of the objectives and principles set forth in this Act and the Press Freedom Act, facilitating voluntary observance of law and achieving a more flexible system for law enforcement on media administration, the Media Council shall cooperate with the professional self-regulatory bodies and alternative dispute resolution forums of media service providers, ancillary media service providers, publishers of press products, media service distributors and intermediary service providers (hereinafter for the purposes of this Chapter: self-regulatory bodies).

(2) In the context of the cooperation defined under Paragraph (1), the Media Council shall have the right to conclude an administrative contract with a self-regulatory body established and operating in accordance with the pertaining legislation, with a view on the shared administration of cases falling within the regulatory powers expressly specified below, as defined in the present Chapter, and the cooperative performance of tasks, related to media administration

and media policy, not defined as regulatory powers under legislation, but nevertheless compliant with the provisions of this Act.

**Article 191** (1) Under the administrative contract defined in Article 195 (hereinafter as: administrative contract), the Media Council shall have the right to authorise the self-regulatory body to perform self-management tasks, as non-regulatory tasks, in relation to its registered members and media service providers, media service distributors, intermediary service providers or publishers of press products agreed to be bound by the terms of the Code of Conduct as defined in Article 194 (hereinafter jointly as: undertakings under the scope of the Code) in official matters specifically defined in Article 192 (2), within the powers vested with it under the administrative contract, prior to specific exercise of regulatory powers. (2) The authorisation granted under Paragraph (1) shall not vest public administrative, executive and regulatory powers on the self-regulatory body, and the self-regulatory body shall not be deemed as an administrative authority, or a subject of the system of public administration under this authorisation.

(3) The authorisation granted under the administrative contract shall not prejudice the powers of the Media Council under this Act, the Media Council shall have the right to act in official matters, irrespective of this authorisation, subject to the provisions of this Chapter.

**Article 192** (1) The Media Council shall conclude the administrative contract with the self-regulatory bodies fulfilling the conditions set forth in Article 190 (2), whose registered scope of activities covers or directly affects the official matter for which the authorisations was granted and that maintain a precise and verifiable register of the undertakings under the scope of the Code.

(2) In the administrative contract, the Media Council shall have the right to grant authorisations to self-regulatory bodies to manage the following types of official matters as non-regulatory tasks, in relation to the undertakings under the scope of the Code:

- a) exercise supervision regarding compliance with Articles 14–20 of the Press Freedom Act or any of those provisions in relation to printed press products,
- b) exercise supervision regarding compliance with Articles 14–20 of the Press Freedom Act or any of those provisions in relation to online press products,
- c) exercise supervision regarding compliance with Articles 14–20 of the Press Freedom Act or any of those provisions in relation to on-demand media services,
- d) exercise supervision regarding compliance with Part Two, Chapter I of this Act or any of those provisions in relation to on-demand media services.

(3) The authorisation granted to the self-regulatory body by the Media Council for the official matter type defined under Paragraph (2) shall cover:

- a) handling individual cases related to undertakings under the scope of the Code (including the procedure on applications and complaints involving the activities of the members);
- b) settlement of disagreements and legal disputes - involving the scope of the authorisation - between undertakings under the scope of the Code;
- c) supervision of the operation and conduct of undertakings under the scope of the Code in relation to the authorisation.

**Article 193** (1) Under the administrative contract, the Media Council and the self-regulatory body may agree on joint performance of tasks, and implementing principles of activity and service development, programmes of public concern not regulated in legislation but closely linked to media administration and media policy, and any other objective related to media.

(2) The rules on the tasks of self-regulatory body, under an authorisation in an administrative contract, defined in this Chapter are laid down in detail in the administration contract.

(3) The Authority shall have the right to provide financing for the self-regulatory body to perform its tasks defined in this Chapter; the self-regulatory body shall give an account of its usage to the Authority each year by 31 May, on an item-by-item basis.

**Article 194** (1) The administrative contract concluded by the self-regulatory body and the Media Council shall include a professional code of conduct as a substantive part thereof, developed by the self-regulatory body, defining the self-regulatory performance of tasks as defined in this Chapter (hereinafter as: Code of Conduct).

(2) The Code of Conduct shall be prepared by the self-regulatory body in the course of the conclusion of the administrative contract and shall be sent to the Media Council for consultation purposes. The Media Council shall examine the Code of Conduct as to whether it complies with relevant legislation. The condition for the validity of the conclusion of the public contract shall be that an agreement is reached by and between the Media Council and the self-regulatory body concerning the Code of Conduct.

(3) The Code of Conduct shall specify in detail, within the scope of the authorisations granted in accordance with Article 192, the provisions on proceedings and guarantees related to the self-regulatory tasks to be performed by the self-regulatory body, the relevant rights and obligations of the members, the relationship between the members and the self-regulatory body, within the context of the authorisation, and the types, system and the legal impacts of decisions, within the discretion of the self-regulatory body.

(4) In addition to the provisions of Paragraph (2), the substantive part of the Code of Conduct shall describe the rules, conditions and requirements concerning the activities, services and conduct designated by the scope of the authorisation.

**Article 195** (1) The relationship between the Media Council and the self-regulatory body under this Chapter shall be regulated by the parties in detail in the administration contract.

(2) The Media Council shall pass a decision in relation to the conclusion of the administrative contract.

(3) The administrative contract may be concluded in writing only.

(4) The Media Council, following the conclusion of the administrative contract, shall have the right to inspect the register maintained on the undertakings under the scope of the Code and may request that the self-regulatory body provide data from the register so that it may perform its tasks defined in this Chapter concerning the self-regulatory body.

(5) In respect of administrative contracts, the general provisions of the Civil Code of the Republic of Hungary shall apply, subject to the provisions of this Act.

**Article 196** (1) The Media Council shall have the right to terminate the administrative contract with immediate effect, in the event that the self-regulatory body:

- a) commits a grave or repeated breach of the provisions of the administrative contract; or
- b) performs its tasks defined in the administrative contract in deviation from the agreement terms or the terms of the Code of Conduct.

(2) The administrative contract concluded for an indefinite period of time may be terminated by either of the parties with a thirty day notice.

### **Proceedings of the Self-regulatory Body**

**Article 197** (1) The self-regulatory body shall act in official matters subject to the authorisations granted thereto in relation to its members as an entity performing the tasks within its own scope of competence and not as tasks under the regulatory powers of authorities, as provided for in this Chapter and the administrative contract. In so doing, its involvement shall have priority over and supplement the activities of the Media Council acting in its regulatory powers (hereinafter as: self-regulatory procedure).

(2) In official matter types defined in the administrative contract the Media Council shall have the right to proceed against the members of the self-regulatory body only if in its opinion the particular action of the self-regulatory body does not comply with relevant legislation or the provisions of the administrative contract concluded by the parties.

(3) The self-regulatory procedure on the part of the self-regulatory body shall precede the regulatory procedure of the Media Council.

(4) The self-regulatory body shall be responsible for elaborating, accepting and enforcing an internal regulation of procedure regarding its members that is capable of ensuring proper and effective performance of tasks defined in this Chapter and the appropriate observance of the rules contained in this Chapter. When due to failure to fulfil the provisions set forth above, the self-regulatory body is unable to properly perform its tasks defined in this Chapter and the administrative contract concluded with the Media Council, the Media Council shall have the right to terminate the administrative contract.

**Article 198** (1) The self-regulatory body shall act upon an application requesting its self-regulatory procedure. Irrespective of the foregoing, the self-regulatory body shall also have the right to institute proceedings in cases falling within its scope of competence based on its own decision.

(2) The statutory period for the self-regulatory procedure by a self-regulatory body shall be thirty days, which – in justified cases and with due heed to the complexity of the case and the difficulties that may arise in revealing the facts of the case – may be extended by fifteen days. A shorter period may also be provided for under the administrative contract.

(3) When the Media Council receives an application in a subject falling within self-regulatory procedure, it shall forward the application to the self-regulatory body, considering the membership of the self-regulatory body and other associations subject to the Code of Conduct. When the case does not fall within the competence of the self-regulatory body after all, or the undertaking involved in the application is not subject to the Code of Conduct, the self-regulatory body shall forthwith return the application to the Media Council. When the self-regulatory body institutes its proceedings on the basis of the application forwarded by the Media Council, it shall refund to the applicant any dues and fees paid concurrently with the initiation of the proceedings of the Media Council.

(4) In the case defined under Paragraph (2), the application for the initiation of the proceedings of the Media Council shall not be deemed as an application giving rise to the obligation to institute proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services, except when the application is returned by the self-regulatory body to the Media Council. In such cases, the regulatory procedure of the Media Council shall be commenced on the day that the application returned by the self-regulatory body arrives to the Media Council.

(5) When the self-regulatory body receives an application that falls beyond the scope of its competence but is related to the powers of the Media Council, the self-regulatory body shall forthwith inform the applicant about the relevant powers of the Media Council, the opportunities to initiate proceeding and the rules thereof.

**Article 199** (1) The self-regulatory body shall assess the application in light of this Chapter, the administrative contract concluded with the Media Council and in particular the Code of Conduct constituting an integral part thereof and shall pass its decision in the case. The decision of the self-regulatory body has a binding force on the undertakings subject to the Code of Conduct and may set forth obligations. When the decision sets forth obligations, the self-regulatory body shall set an appropriate deadline to allow compliance therewith. The self-regulatory body shall inform the Media Council of the decision containing obligations within ten days of the expiry of the deadline. The Media Council shall review the decisions containing obligations sent by the self-regulatory body. When the review of the self-regulatory body's decision is requested by the applicant or the party obliged under the decision, the Media Council shall review such decision within thirty days.

(2) When the Media Council establishes that the decision of the self-regulatory body does not comply with the provisions of the administrative contract concluded with the self-regulatory body and in particular the provisions of the Code of Conduct, or when in its judgement the decision contradicts legislation, or when it establishes that the self-regulatory body is unable to have its decision properly observed, it will institute a regulatory procedure in the case covered by the application. In its procedure the Media Council shall not be bound by the procedure and decision of the self-regulatory body.

**Article 200** (1) The proper and effective performance of the tasks and activities falling beyond the scope of the regulatory powers of the Media Council but covered by the administrative contract concluded with the self-regulatory body shall be an independent task of the self-regulatory body, in line with practice formulated thereby. The Media Council shall cooperate with the self-regulatory body on a continuous basis, providing support and incentive for performing its tasks.

(2) The parties shall notify one another on a continuous basis of their experiences regarding the performance of non-regulatory tasks defined under Paragraph (1) and the execution of other procedures. The self-regulatory body shall perform these tasks based on the administrative contract concluded with the Media Council and the Code of Conduct constituting an integral part thereof. To the extent possible, the Media Council shall take into account the experience earned in performing these tasks in exercising its regulatory powers, executing its regulatory procedures, performing market analysis, assessment and - in particular - drafting legislation.

## **Supervision over the Activities of the Self-regulatory Body Provided for in this Chapter**

**Article 201** (1) The Media Council shall exercise supervision over the activities of the self-regulatory body under the administrative contract. In so doing, the Media Council shall have the right to check fulfilment of the provisions of the administrative contract concluded with the Media Council on the part of the self-regulatory body on a continuous basis and their delivery in accordance with the contract. In the context of supervision, the Media Council shall have the right to familiarise itself with all the activities performed by the self-regulatory body in connection with the administrative contract, and to this end, may oblige the self-regulatory body to provide data.

(2) To the extent deemed necessary, the Media Council shall monitor the procedures and decisions of the self-regulatory body defined in Articles 197–200 to comprehensive inspection. In so doing, the Media Council shall assess the decisions of the self-regulatory body, in terms of their compliance with the provisions of the administrative contract and the Code of Conduct constituting an integral part thereof on an individual and aggregate basis.

(3) When, in the context of the supervision, the Media Council establishes that the self-regulatory body failed to act or acted improperly in cases subject to the authorisations granted under the administrative contract, in particular

a) the self-regulatory body conducted the proceedings defined in Articles 197-200 in deviation from the provisions of the Code of Conduct;

b) it assesses the applications in deviation from the provisions of the Code of Conduct;

c) it passes its decisions with their content being in deviation from the provisions of the Code of Conduct; or

d) it fails to check compliance with or observance of its decisions and/or fails to take measures to ensure that the provisions of its decisions are fulfilled;

then the Media Council shall request that the self-regulatory body acts in accordance with the provisions of the administrative contract, setting an appropriate deadline.

(4) When the self-regulatory body fails to fulfil the request defined under Paragraph (3) within the specified deadline, the Media Council shall have the right to terminate the administrative contract with immediate effect or with a period of notice defined in the contract.

(5) When, on the basis of the inspection, the Media Council establishes that the proceedings and decision of the self-regulatory body contradict relevant legislation or the provisions of the administrative contract or the Code of Conduct that constitutes an integral part thereof, the Media Council, concurrently with establishing the fact of infringement, shall institute a regulatory procedure in the subject covered by the procedure and the decision.

**Article 202** The self-regulatory body shall prepare a report to the Media Council on its activities and tasks performed under the administrative contract on a continuous basis, but at least annually, while on the course, content, subjects of its self-regulatory proceedings, types, content and observance of its decisions at least every six months, in writing. The Media Council shall assess the report under its decision.

## **PART FIVE INTERPRETATION**

**Article 203** 1. *Audiovisual media service* shall mean media services offering programmes which contain moving images, still images with or without sound.

2. *Transmission system* shall mean the system of technical processes, electronic communications and other instruments ensuring the analogue or digital media service distribution of television or radio broadcast signals, which is connected to the transmission medium used for media service distribution, in particular the air and radio frequency, the vacuum, the coax cable, the stranded twin wire cable, the fibre optic cable.

3. *Qualifying holding* shall mean:

a) direct and indirect ownership in an undertaking, which - in aggregate - provides control in excess of twenty-five percent over the undertaking's assets or voting rights; the direct and indirect shareholding of close relatives shall be added together;

b) a situation which ensures significant influence over the undertaking on the basis of a contract, the articles of association (statutes) or the preferred stock, through the appointment (removal) of the members of the decision-making or the

supervisory bodies, or in any other way.

4. *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.

5. *Documentary* shall mean a non-fictional cinematographic work, the aim of which is to document reality. For example nature, scientific and educational films, historical documentaries, biographical and report films qualify as documentaries.

6. *Electronic communications service* shall mean services provided to another person, generally for consideration, which are entirely or predominantly composed of the transmission and - where applicable - the routing of signals through electronic communications networks; however it shall not include the services of providing content transmitted through the electronic communications networks and electronic communications services or the services of editorial control over such content; furthermore it shall not include services - defined in other laws - in connection with the information society, which not primarily consist of the transmission of signals through the electronic communications networks.

7. *Electronic communications service provider* shall mean the operator of an electronic communications network, and a natural or legal person, or a business association without legal personality engaged in the provision of electronic communications services.

8. *Subscriber* shall mean a natural or legal person, or a business association without legal personality, who or which is in a contractual relationship - concerning the use of the below services - with the provider of publicly accessible media services or electronic communications services or with the publisher of press products.

9. *European work* shall mean:

a) any Hungarian work;

b) any work originating from a European State, and created by authors and workers having an address in one or more European States, provided that it complies with one of the following three conditions:

ba) it is the work of one or more producers established in one or more of those States;

bb) its production is supervised and actually controlled by one or more producers established in one or more of those States;

bc) 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;

c) any work which is produced under the co-production of the production companies of any European State and a state outside Europe, provided that the contribution of European co-producers to the total co-production costs is preponderant, and the production is not controlled by one or more producers who are established in a country other than a Member State; or

d) any programme, which is produced under an agreement, between the European Union and a state outside of Europe, concerning the production of audiovisual works.

10. *User* shall mean a natural or legal person, or a business association without legal personality, who or which uses or requests electronic communications services or media services.

11. *Cinematographic works* shall mean cinematographic works as defined in the Copyright Act, excluding, amongst others, news and political programmes, programmes on current affairs and services, sports programmes or programmes broadcasting other events, game shows and quiz shows and commercial communications. Feature films, television films, television series, animation films and documentaries are in particular regarded as cinematographic works.

12. *Independent production company* shall mean a production company, in which neither the concerned media service provider nor the owner with a qualifying holding in such media service provider has a direct or indirect shareholding; and neither any director, executive employee of the media service provider nor any of their close relatives is in a work-related relationship with or has an ownership share in such production company.

13. *Connecting to the network* shall mean the interconnection of two or more media service providers providing linear media services or of two or more linear media services, for the simultaneous or virtually simultaneous broadcasting of the same programme or programme flow.

14. *Networked media service provider* shall mean any media service provider providing linear media services, whose programme flow or programme is distributed in networked media services.

15. *Local media services* shall mean media services with a reception area covering the annual average population of maximum one hundred thousand people or maximum five hundred thousand people within a city.
16. *Professional disaster management agency* shall mean a law enforcement body participating in carrying out disaster management and executing administrative duties as well.
17. *News programme* shall mean a programme which devotes at least ninety percent of its duration to cover the current events of Hungarian and international public affairs, not including traffic, weather and sports news programmes.
18. *Information society service* shall mean the services defined as such in the relevant act on certain issues concerning the information society services.
19. *Game show* shall mean a programme in which members of the audience or participants in the game show shall answer questions or solve problems in accordance with certain rules, generally for the purpose of winning the prize put up by the media service provider or a third party. Talent search programmes and telephone or interactive games qualifying as teleshopping or teleshopping windows shall not qualify as game shows.
20. *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.
21. *Noninteractive teletext* shall mean any programme broadcasted in linear audiovisual media services that are used primarily to provide text-based information, and may also include still or moving images, sounds, or computer graphics.
22. *Publication* shall mean:
- a) any book in a printed or an electronic format, on a disk, cassette or any other physical medium; online and downloadable book;
  - b) any press product in a printed or an electronic format; online and downloadable periodical publication;
  - c) any other printed material (address registers, name registers, publications containing graphics, drawings or photos, maps; flyers; printed postcards, greeting or similar cards; printed pictures, samples, photos; printed calendars; printed business advertisements, catalogues, brochures, poster ads and similar items; other textual publications) excluding printed stickers, postal-, excise duty-, duty-, etc. stamps; stamped papers, cheques, bank notes, share certificates, security papers, bonds, deeds and the like;
  - d) any products of film-, video-, and television programme production (films intended for public showing on celluloid, video cassette, video disc, other physical medium; downloadable films, videos);
  - e) any sound recordings (intended for public showing, recorded tapes, discs, downloadable sound content);
  - f) any musical works (printed musical works, musical works in electronic format, downloadable musical works)
23. *Ancillary media services* shall mean all services - also containing content provision - which are transmitted through a media service distribution system and which qualify neither as media services nor as electronic communications services. For example, electronic programme guides are ancillary media services.
24. *Small community media services* shall mean - in the case of stereo reception - the local linear radio community media services operating in a reception area covering a geographical area corresponding to a circle with a maximum radius of one kilometre from the transmitting station.
25. *Regional media services* shall mean media services, whereof reception area exceeds that of the local media services, however less than half of the country's population resides within the reception area of such services.
26. *Close relative* shall mean spouses, registered partners, dependent relatives, adopted-, step- and foster children, adoptive-, step- and foster parents and siblings.
27. *Public service announcement* shall mean any announcement released without consideration, originating from an organization or a natural person fulfilling state or local governmental responsibilities, which provides specific information of public interest for the purpose of attracting the attention of the viewers or the audience, and does not qualify as political advertisement.
28. *Audience share* shall mean the ratio expressed in percentage points of the total time of viewing the programmes of the concerned linear audiovisual media services or listening to the programmes of the concerned linear radio media

services to the total time of viewing all the linear audiovisual media services or listening to all the linear radio media services in the examined period. In the course of determining the audience share, the market of linear audiovisual media services and linear radio media services shall be examined separately within the territory of the Republic of Hungary.

29. *Indirect ownership* shall mean the ownership share or the voting rights held by the owners of another undertaking (hereinafter as: intermediate undertaking), which has shareholding or voting rights in the undertaking. If there is any proportional difference between the ownership share and the voting rights, the greater one shall be taken into account. The ratio of indirect ownership shall be determined by multiplying the ownership share or voting rights held in the intermediate undertaking by the ownership share or voting rights held by the intermediate undertaking in the original undertaking. If the undertaking has majority ownership in the intermediate undertaking, it shall be considered as a whole. In the case of natural persons, the ownership shares and voting rights held or exercised by close relatives shall be added together.

30. *Intermediary service provider* shall mean the service provider providing information society services, which

- a) is engaged in the transmission of the information supplied by the recipient of services through telecommunications network or in providing access to such telecommunications network (simple data transfer and network access);
- b) is engaged in the transmission of the information supplied by the recipient of services through telecommunications network, and essentially serves the improvement of efficiency concerning the transmission of information initiated by other recipients of services (caching);
- c) is engaged in the storage of the information supplied by the recipient of services (hosting);
- d) is engaged in providing the recipient of services with tools to facilitate the finding of information (discovery services).

31. *Public media service* shall mean media services provided by public media service providers.

32. *Public media service provider* shall mean only media service providers described – with the purpose of achieving the objectives of public media services – in Article 84 (1) of this Act, and media service providers established by public media service providers described in Article 84 (1), and media service providers established by economic organizations under the qualifying holding of public media service providers described in Article 84 (1).

33. *Public service media assets* shall mean cinematographic and other audiovisual works, radio programmes, sound recordings and other documents ancillary to media services representing cultural values, copyrights and certain related rights of photographs or any other licenses of the aforementioned, and the physical media containing the aforementioned works (e.g. discs, tapes, cassettes, paper based documents, music scores) ordered by the public media service providers, their predecessors, the Media Service Support and Asset Management Fund, produced on any legal grounds, procured by way of a sale and purchase transaction, obtained or created in whole or in part by way of a licensing or any other agreement; furthermore costumes, props, film sets and other copyright material, provided that the copyrights and certain related rights are owned or used to be owned by any of the public media service providers prior to the Act entering into force or by the Media Service Support and Asset Management Fund subsequent to the Act entering into force; and also those, over which any of the public media service providers obtained rights subsequent to this Act entering into force.

34. *Publication* shall mean posting on the bulletin board of the Authority or publishing on the website of the Authority. The effective date of the publication shall be the day of posting on the bulletin board.

35. *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.

36. *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.

37. *Hungarian works* shall mean:

- a) works originally produced in Hungarian in their entirety;
- b) works originally produced in several languages, but when considering their overall length, their parts originally produced in Hungarian are longer than any of their other parts produced in any other language;
- c) works originally produced in the languages of any of the national or ethnic minorities recognised by the Republic of Hungary provided their subject matter concerns the life or culture of the given minority in Hungary;

- d) works based on a Hungarian literary work or musical work;
- e) a musical programme performed in Hungarian or performed in the language of any of the national or ethnic minorities recognised by the Republic of Hungary, provided its subject matter concerns the culture of the given minority in relation to Hungary;
- f) an instrumental musical programme, which, primarily because of its composer, forms part of Hungarian culture or the culture in relation to Hungary of any of the national or ethnic minorities recognised by the Republic of Hungary;
- g) a musical work, at least one of the composers of which is Hungarian;
- h) a musical programme, which was produced in cooperation with Hungarian performers; or
- i) a cinematographic work, which qualifies as Hungarian in accordance with the Act on Motion Picture.

38. *Hungarian musical work* shall mean a textual or instrumental musical work, which qualifies as a Hungarian work.

39. *Rules on media administration* shall mean this Act and Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content, and any legislation issued in respect of the implementation of the aforementioned acts; any directly applicable legal instruments of the European Union concerning media administration; any broadcasting agreement, any public contract entered into by and between the Media Council and the Office, and the regulatory decision issued by the Media Council and the Office.

40. *Media service* shall mean any independent service as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union – provided on a professional and regular basis, for profit, by taking economic risk – 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.

41. *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.

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

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

44. *Programme flow* shall mean a series of radio or audiovisual programmes edited and publicly, continuously transmitted.

45. *Preview* shall mean any programme, which introduces, describes or promotes a programme or programmes the media service provider intends to transmit at a later time.

46. *Transmission time* shall mean the total time of the programmes continuously transmitted in the course of the media service during a specific period of time.

47. *Programme* shall mean the series of sounds or moving images or still 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.

48. *Programme related products* shall mean a product or service directly connected to the content of a programme and distributed by the media service provider, which enables the fuller enjoyment of the programme, for example by promoting the interactivity of the viewers or the listeners.

49. *Broadcasting transmission* shall mean the media service distribution in the course of which analogue or digital radio or audiovisual media services are transmitted to the subscriber or user, by means of a terrestrial transmission system that uses radio frequencies – other than frequencies allocated primarily for satellite services – and usually enabling one-way data transmission. Broadcasting transmission shall also include media service distribution implemented by using a digital broadcasting network or broadcasting station.

50. *Media service distribution* shall mean an electronic communications service implemented by using any type of transmission system, in the course of which the analogue or digital broadcasting signals generated by the media service provider are transmitted from the media service provider to the receiver of the subscriber or user, irrespective of the applied transmission system or technology. In particular, media service distribution includes broadcasting transmission, satellite media service distribution, media service distribution via a hybrid optical-coaxial transmission system, furthermore the transmission of media services using the Internet Protocol through certain transmission system, if the nature and circumstances of the service are identical to those of media service distribution or if it replaces media

service distribution implemented in any other manner. Media service distribution shall also mean such media service distribution to which the subscriber receives access for a special fee or for a fee paid for a package that also contains the fee of some other electronic communications service. Signal transmission through a transmission system suitable for the connection of less than ten receivers shall not qualify as media service distribution.

51. *Media service distributor* shall mean the provider of media service distribution, including the operator of a digital broadcasting network, if it provides the media service distribution itself. If the transmission network is not operated by the media service distributor, the service provider defining the conditions of the services provided to the subscriber or user and/or concluding the contract with the subscriber shall qualify as media service distributor.

52. *National media service* shall mean the media services, in the reception area of which at least fifty percent of the population of the Republic of Hungary resides.

53. *Split screen advertisement* shall mean an advertisement covering a particular portion of the screen displayed during a programme, not qualifying as a commercial communication in the course of audiovisual media service.

54. *Composite programme* shall mean a combination of several programmes bearing a single main title or other distinctive attribute.

55. *Political advertisement* shall mean any programme transmitted for or without consideration, promoting or advocating support for a party, political movement, or the Government, or promoting the name, objectives, activities, slogan, or emblem of such entities, which appears and is transmitted in a manner similar to that of advertisements.

56. *Political programme* shall mean a programme, which devotes at least ninety percent of its duration to the analysis, coverage and evaluation of Hungarian or international political or current public affairs and to the exploration of the background of such affairs or events, which does not qualify as a news programme.

57. *Programme package* shall mean media services offered or provided by the media service distributor to the subscriber in one group.

58. *Radio media services* shall mean media services featuring programmes composed of the sequence of sounds.

59. *Advertisement* shall mean any communication, information or representation, qualifying as a programme, intended to promote the sale or other use of marketable tangible assets – including money, securities, financial instruments and natural resources that can be utilized as tangible assets – services, real estates or 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.

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

61. *Sports programme* shall mean a programme broadcasting a sports event (simultaneously with the event, in a delayed or an edited format), excluding news reports on sports events and programmes containing discussions of sports related topics.

62. *Member State* shall mean a member state of the European Economic Area.

63. *Sponsorship* shall mean any contribution provided by an undertaking to finance a media service provider or a programme with the purpose of promoting its name, trade mark, image, activities or products.

64. *Public service advertisement* shall mean any communication or message with a public purpose, which does not qualify as a political advertisement, is not for profit and does not serve advertising purposes, is transmitted for or without consideration, and which aims to influence the viewer or the listener of the media service in order to achieve a goal of public interest.

65. *Teleshopping* shall mean an advertisement, which contains direct offers for the sale, purchase or other utilisation of goods, services, rights and obligations for payment or consideration, by way of establishing contact with the distributor

or the service provider, including phone-ins operated as business undertakings transmitted in the media service.

66. *Teleshopping window* shall mean a teleshopping facility, the uninterrupted duration of which is at least fifteen minutes.

67. *Thematic media service* shall mean any media service, which broadcasts programmes of a similar theme in eighty percent of the daily transmission time in case of a linear media services and in eighty percent of the total time of all the programmes broadcasted in case of on-demand media services; such as the news or political programmes, programmes for minors, sports programmes, music programmes, educational programmes or programmes introducing a certain lifestyle.

68. *Product placement* shall mean any form of commercial communication, which contains products, services, the trademark of the above or any reference to them and appearing in a programme for payment or similar consideration.

69. *Election campaign period* shall mean the time period as defined in the Act on Election Procedure designated for pursuing the electoral campaign.

70. *Undertaking* shall mean natural persons, sole entrepreneurs, business associations, other legal entities, or business associations without legal personality.

71. *Reception area*:

a) in case of media services provided through broadcasting transmission and media service distribution via satellites, accessible without the payment of a subscription fee, the number of the population residing in a geographically identifiable territory in which the level of the effective signals of the broadcasting transmission service transmitting the programme flow and the calculated level of interference protection reach the minimum values stipulated in the recommendations of the International Telecommunication Union;

b) in case of media services provided through other transmission systems for media service distribution accessible without the payment of a subscription fee, the product of the number of households connected to the transmission system and the average number of persons living in a single household as defined by the Hungarian Central Statistical Office; or

c) in case of media services accessible in return for a subscription fee, the product of the number of households subscribed to such media service or to the media service distribution containing such media service and the average number of persons living in a single household as defined by the Hungarian Central Statistical Office.

72. *Virtual advertisement* shall mean an advertisement inserted - digitally or by any other method - subsequently into the programme signal or the programme.

## **PART SIX**

### **CLOSING PROVISIONS**

#### **CHAPTER I**

##### **ENTRY INTO FORCE**

**Article 204** (1) This Act – with the exception defined under Paragraph (2) – shall enter into force on 1 January 2011.

(2) Articles 222 and 228 (3) of this Act shall enter into force on 2 January 2011. Article 229 shall enter into force on the day when the provision of the Constitution granting regulatory rights to the President of the National Media and Infocommunications Authority enters into force. Article 223 (6)-(8) of this Act and Annex no. 5 to this Act shall enter into force on 2 January 2011.

(3) Articles 220–228 of this Act shall be repealed on 3 January 2011.

#### **CHAPTER II**

##### **SHORT TITLE OF THE ACT**

**Article 205** This Act shall be referred to as the Media Act in other legislation.

## CHAPTER III

### AUTHORIZATIONS

**Article 206** (1) The President of the National Media and Infocommunications Authority shall be authorised to establish by decree

- a) the frequency fees, the fees payable for the reservation and use of identifiers, as well as the surveillance fee of communications and postal service providers,
- b) the administrative service fee of the regulatory procedure related to the rating of programmes and classification of communications,
- c) the method and terms of the payment of the fees of the procedures conducted by the Authority and the Media Council as well as the amount and the rules of calculating such fees.

(2) Until the decrees defined under Paragraph (1) are not adopted by the President of the National Media and Infocommunications Authority, the ministerial decrees governing the relevant issues shall remain in force.

(3) The Government shall be authorised to regulate and define in a decree the suppliers of legal deposits, exemptions from the number of copies provided for by law, the method and deadline for providing legal deposits, the rules of implementation, the list of organisations entitled to receive legal deposits, the method of distribution, the rules of the storage and the use of legal deposits, as well as the procedural rules to be followed in case of failure to provide legal deposits.

(4) The Minister responsible for culture shall be authorised to regulate by decree the detailed rules of providing the imprints of publications.

(5) The Minister responsible for audiovisual policy shall be authorised to establish by decree the detailed rules governing the administrative service fee payable for the proceedings as special authority defined in Article 171, as well as the management, registration and reimbursement of such fees.

## CHAPTER IV

### TRANSITIONAL PROVISIONS

#### Transitional Arrangements for the Broadcasting Agreements

**Article 207** (1) Pursuant to Act I of 1996 on Radio and Television Broadcasting (hereinafter as: Radio and Television Broadcasting Act) media service providers having concluded an agreement granting rights for analogue terrestrial broadcasting shall initiate with the Media Council the conversion of such agreement into a public contract by 31 December 2011. In the event of failure to meet this deadline, the Media Council carries out *ex officio* the procedure aiming the conversion of the agreement.

(2) The public contract concluded as the result of the procedure specified under Paragraph (1) shall not contain terms or conditions less favourable for the media service provider than the previous broadcasting agreement, except where the media service provider has expressly accepted such terms and conditions.

(3) If no public contract is concluded as a result of the procedure, the Media Council shall determine in a regulatory decision the content of the media service provider's rights to provide media services. The regulatory decision may not contain terms or conditions less favourable for the media service provider than the previous broadcasting agreement.

(4) If in the course of conversion into a public contract, the Media Council assesses that the previous broadcasting fee endangers the efficient operation of the media service provider, or the extent of such fee represents such imbalance compared with the broadcasting fees of market competitors, which would give the competitors on the given market an undue competitive advantage, and thereby it would endanger the maintenance of effective competition and media pluralism, the parties - or the Media Council in the case specified under Paragraph (3) - may decrease the broadcasting fee defined in the original broadcasting agreement, in accordance with the criteria defined in Article 44 (5)-(6) of this Act.

- (5) The Media Council shall carry out the procedure specified under Paragraph (1) within ninety days.
- (6) The media service provider of analogue terrestrial national audiovisual media services may not request a programme fee for the provision of its media services until the date specified in Article 38 (1) of Act LXXIV of 2007 on the Rules of Broadcasting and Digital Switchover.
- (7) The broadcasting agreement may not be terminated if such agreement could not have been concluded due to a breach of law, however the media service provider is not solely responsible for such breach of law.
- (8) Until the conversion of the broadcasting agreement into a public contract, the media service provider shall comply with the obligations set forth in its broadcasting agreement, even if the respective contractual obligation contains any provision of the Radio and Television Broadcasting Act, which – according to this Act – does not apply any more or applies with different provisions to the respective media service provider.
- (9) Violations concerning subjects described in the broadcasting agreement and falling under the scope of the Press Freedom Act or of Chapter I of Part II of this Act shall be considered under the Press Freedom Act or the relevant provisions of this Act, instead of the provisions set forth in the broadcasting agreement.

### **Transitional Arrangements for the Requirement of Notification**

- Article 208** (1) Media services listed in the register kept by the National Media and Infocommunications Authority pursuant to the Radio and Television Broadcasting Act at the time of the entry into force of this Act shall provide the data specified in the rules on the notification procedure set out in this Act and not listed in the register, within thirty days, without the initiation of a new notification procedure.
- (2) Press products that are listed in the register kept by the National Office of Cultural Heritage (hereinafter as: National Office of Cultural Heritage) pursuant to Act II of 1986 on the Press (hereinafter as: Press Act) at the time of the entry into force of this Act, shall provide the data specified in the rules on the notification procedure set out in this Act and not listed in the register, within thirty days, without the initiation of a new notification procedure.
- (3) Until 1 January 2012, the National Office of Cultural Heritage shall be responsible for the regulatory tasks related to the registration of print press products and the management of newspaper registration. As of 1 January 2012, the Authority shall perform the duties related to the registration of print press products on the basis of this Act.
- (4) Media services, online press products already operating at the time of the entry into force of this Act, however not registered by the Authority or the National Office of Cultural Heritage, shall be notified to the Authority by 30 June 2011 at the latest, while print press products shall be notified to the National Office of Cultural Heritage by 30 June 2011 at the latest.
- (5) If the publisher of print press products registered in the register kept by the National Office of Cultural Heritage at the time of entry into force of this Act, however not published during the three years preceding the entry into force of this Act, fails to re-launch regular publication of the press product by 31 December 2012, then the press product shall be deleted from the register. In other cases, the period specified in Article 46 (6) (c) subject to the deletion obligation, shall commence on the day of the entry into force of this Act.

### **Transitional Arrangements for the Public Service Programme Broadcasters and Non-Profit Broadcasters**

- Article 209** (1) If media service providers qualifying as public service programme broadcasters or non-profit broadcasters under the Act on Radio and Television Broadcasting Act request the Media Council to recognise their public or non-profit broadcasting as a community media service by 30 June 2011, then the benefits granted to them on the basis of their former status as public service programme broadcaster or non-profit broadcaster pursuant to the Radio and Television Broadcasting Act shall remain in place until the conclusion of the Media Council's procedure. If such providers do not request the recognition by the aforementioned deadline or the Media Council refuses the request in its regulatory decision, the benefits granted to them on the basis of their former status as public service programme broadcaster or non-profit broadcaster shall no longer be applicable. This rule does not affect sponsorships obtained through tenders announced by the Fund for 2011.
- (2) Media service providers broadcasting public programmes on the basis of a broadcasting agreement pursuant to the Radio and Television Broadcasting Act or non-profit media service providers shall initiate the conversion of their

broadcasting agreements into a public contract by 30 June 2011. The Media Council shall not refuse recognition of media services operating on the basis of such public contracts as community media services on the grounds that the media service did not comply with the criteria for community media services, provided that the media service provider satisfied its obligations arising from its public service programme broadcaster or non-profit status up till the conversion of the agreement. If the Media Council does not recognize the media service as community media service, the media service – unless it violates any other provision of this Act – may be pursued as a commercial media service. The provisions laid down in Article 207 – with the exception of the deadline – shall be applied to the regulatory proceeding.

**Article 210** Media services for which Articles 8-8/A of the Radio and Television Broadcasting Act sets forth obligations, shall meet their obligations set forth in Article 8 (3) and Article 8/A of the Radio and Television Broadcasting Act by 1 January 2012 following the entry into force of this Act.

### **Transitional Arrangements for the Members and Office Holders in the Bodies Defined by this Act**

**Article 211** (1) The entry into force of this Act shall not affect the mandate and the term of office of Presidents, Vice-Presidents, Deputy Presidents, Directors General, Deputy Directors General, CEOs, Deputy CEOs and members of the organisations and bodies specified in this Act.

(2) Delegation to the Board of Public Services and the drawing of lots — set forth in Annex no. 1 — preceding such delegation shall be carried out by 31 March 2011.

(3) If the President, the members of the new joint Supervisory Board, and the joint auditor of public service media providers are not elected by the date of the entry into force of this Act, the term of office of the members, presidents of the previous supervisory boards and the auditors shall end when the new Supervisory Board and the auditor are elected.

### **Transitional Arrangements for the Public Media Service Providers**

**Article 212** (1) The drafters of the Public Service Broadcasting Regulation drafted pursuant to the Radio and Television Broadcasting Act shall harmonise the Regulation with the Public Service Code or, in the absence thereof, shall repeal it.

(2) Regarding the term of employment of the persons having worked as public service employees at the Hungarian Radio, the Hungarian Television and the Hungarian News Agency prior to the establishment of Hungarian Radio Pte. Ltd., Hungarian Television Pte. Ltd., and Hungarian News Agency Pte. Ltd. and their employment having been uninterrupted at the same public service media provider ever since, the period spent as public service employees at the Hungarian Television, the Hungarian Radio and the Hungarian News Agency shall be considered as periods worked at the private companies limited by shares.

(3) Notwithstanding Paragraph (2), in respect of the notice period and severance allowance, the term of employment at Hungarian Radio Ltd., Hungarian Television Ltd. and Hungarian News Agency Ltd. shall be calculated from the date of the public service employment having been transformed into an employment relationship. The notice period and severance allowance based on the term of the previous public service employment in compliance with the relevant rules defined in the Act on the Legal Status of Public Service Employees effective at the time of the transformation of the status shall be added to the extent of the notice period and severance allowance.

(4) Regarding claims arising from the public service employment and arising prior to the transformation of the legal status specified under Paragraph (2), the provisions of the Act on the Legal Status of Public Service Employees in effect at the time the claim arose shall apply, and the provisions of Act XXII of 1992 on the Labour Code shall apply to the procedure of enforcing such claims.

**Article 213** (1) In 2011, the Board of Trustees of the Public Service Foundation, the Fund and public media service providers shall receive the sponsorships defined in the State Budget Act for 2011. The methods and amount of public service financing set out in this Act (public service contribution) shall be first applied for the year 2012. In 2011, the operational fee defined in the Radio and Television Broadcasting Act shall also form part of the Fund's financial resources.

(2) Regarding the reduction of share capital of the company limited by shares required in relation to the assets transferred pursuant to the Parliamentary Decision no. 109/2010 (X. 28.), the rules set out in Articles 271-272 of Act IV of 2006 on Business Associations may not be applied.

(3) The transfer of assets specified under Paragraph (2) shall be exempted from charges. The historical cost of the assets transferred free of charge to the Fund pursuant to Act C of 2000 on Accounting shall be equivalent to the book value of the assets recorded by the public media service provider at the time of transfer of such assets.

(4) The public media service providers may transfer their rights and obligations arising from their contractual relations established prior to the entry into force of this provision to the Fund as a whole and on the same terms and subject to the same conditions. The change of the subject due to the transfer shall not affect the original rights and obligations of the contracting parties. Accordingly, in respect of the changes of the subject of contractual relations, the provisions defined in the Public Procurement Act pertaining to contract amendments shall not be applicable. The rights granted to and the obligations undertaken by the public media service provider as contracting authority in public procurement procedures initiated prior to the entry into force of this Act and still ongoing, are transferred to the Fund by the relevant declaration of the public media service provider aiming such transfer.

(5) In the course of the transfer of assets conducted pursuant to the Parliamentary Decision no. 109/2010 (X.28.), additional claims – to be borne by the public media service providers – which have not been barred by limitation and arising from agreements already performed and from obligations already fulfilled, shall continue to be borne by the public media service provider. Such claims shall not be enforceable vis-à-vis the Fund.

(6) The state taxation authority may, on the basis of the application of the Fund and the public media service providers under Article 8 of Act CXXVII of 2007 on Value Added Tax, approve the group taxpayer status as of the date mutually specified by the Fund and the public media service providers.

(7) Paragraph 6 of this Article and Article 108 (11) shall be applicable as of 1 January 2011.

**Article 214** (1) In order to enforce the provisions of this Act, media service distributors and public media service providers may initiate with the other contracting party the review and amendment of media service distribution agreements concluded before 31 December 2010. None of the parties may refuse to negotiate the amendment of such agreements.

(2) If the parties cannot reach an agreement within three months from the communication of the other party's offer regarding the review and amendment of the agreement, any of the parties may initiate a legal dispute procedure before the National Media and Infocommunications Authority pursuant to the rules of the Electronic Communications Act.

**Article 215** In order to preserve artistic standards, the Fund shall be responsible for the maintenance and development of the artistic groups of Magyar Rádió Nonprofit Zrt. following the entry into force of this Act. The Minister responsible for culture and the Fund may conclude an agreement on changing the person responsible for maintaining the artistic groups.

## **Transitional Arrangements for the Authority and its Procedure**

**Article 216** (1) Following the entry into force of this Act, the provisions specified in this Act — subject to the exception provided for in Paragraphs (2)-(5) — shall be applicable in the ongoing procedures before the Media Council or the Office and falling within the scope of this Act.

(2) In tender procedures started before the entry into force of this Act, the Media Council and the Fund shall proceed in line with the rules of procedure effective at the time of the execution of the procedural action, as follows:

a) in tender procedures where the Media Council selected the winner of the tender prior to the entry into force of this Act, the Media Council and the Fund shall conclude a public contract with the winning tenderer following the entry into force of this Act, proceeding in line with the provisions of this Act;

b) in ongoing tender procedures where tenderers have already submitted their tenders, but the Media Council has not yet announced the winner or has not declared the tender procedure as unsuccessful, the Media Council shall, following the entry into force of this Act, proceed in line with the provisions of Act I of 1996 on Radio and Television Broadcasting pertaining to the general conditions of tendering and the invitation to tender, the examination, evaluation and assessment of tenders, with the proviso that its decisions are made in a regulatory procedure in accordance with the rules of procedure defined in this Act and that it concludes a public contract with the winning tenderer. These ongoing tender procedures shall, following the entry into force of this Act and pursuant thereto, qualify as official matters and legal relations of regulatory procedure;

c) in tender procedures for the usage of analogue linear radio media service provision rights started prior to 6 September 2010, the Media Council may review and amend the draft invitation to tender and the wording of the invitation to tender

accepted by the legal predecessor Board. If the Media Council decides to amend the draft invitation to tender or the invitation to tender, the Media Council shall publish the consolidated version of the text and hold a hearing as per Article 50. If the draft invitation to tender or the invitation to tender in the tender procedure has already been published, the Media Council shall notify the public on the reasons for the repeated publication and hearing in a notice posted on its bulletin board as per Article 50 (3) and on its website.

(3) In case of breach of law committed prior to the entry into force of this Act, the provisions of substantive law shall apply, which were in force at the time the breach was committed.

(4) In the event of violations of Articles 14-20 of the Press Freedom Act - against the media service provider of on-demand media services or publisher of press products - and in the event of violations of the provisions specified in Chapter I of Part Two of this Act - against the media service provider of on-demand media services - the regulatory procedure specified in this Act, may only be initiated after 1 July 2011, for breach of law committed after this date. Media service providers and media service distributors shall comply with the obligations defined in Article 9 (3), Article 10 (1) (a), Article 72 (3) and Article 74 (3) of this Act following 1 April 2011. Regulatory procedures for violation of the above obligations may only be initiated against them for breach of law committed after this date.

(5) The stipulations set out in Article 171 shall also be applicable to ongoing procedures, with the proviso that no subsequent special authority fee will be charged.

(6) In 2011, the financial management by the Authority and the Media Council shall be performed from the funds defined in Act CXLVI of 2010 on the 2011 Budget of the National Media and Infocommunications Authority and the Media Council of the National Media and Infocommunications Authority, in accordance with the provisions laid down in Article 134. The remaining uncommitted funds in the budgets of the National Media and Infocommunications Authority and the Media Council, as well as the legal predecessors thereof, accumulated in the course of 2009 and 2010 — including the uncommitted surplus accumulated in the Media Council's budget and the amount held by the National Communications Authority and blocked in 2010 pursuant to the Government's decision — shall be used to generate reserves for funding the public duties related to the implementation of the digital switchover, as well as the Fund's public service- and community media service-related activity. The committed remaining funds reserved until 31 December 2010 shall be used by the Authority in line with the legal statement forming the basis of the commitment.

(7) For the purposes of the Act on the 2011 Budget of the Republic of Hungary, Act CXLVI of 2010 on the Budget of the National Media and Infocommunications Authority and the Media Council of the National Media and Infocommunications Authority, and the contractual obligations; the Broadcasting Support and Asset Management Fund referred to in these acts and in the contracts shall refer to the Media Service Support and Asset Management Fund.

(8) In the case specified in Article 129 (1) (a), the date of termination of the mandate of the President and members of the Media Council shall be the commencement date of the mandate of the recently elected President and members. In the case specified in Article 113 (1) (a), the date of termination of the mandate of the President of the Authority shall be the commencement date of the mandate of the recently elected President.

## **Article 217**

**Article 218** The management, maintenance and operation of the National Audiovisual Archive (hereinafter as: National Audiovisual Archive) shall be carried out by the Authority from 31 March 2011. The transfer of National Audiovisual Archive to the Authority shall be carried out by this date, including the transfer of the prorated part of the budgetary support granted for operation.

## **CHAPTER V**

### **REPEALED LEGISLATION**

**Article 219** (1) The following legislation shall be repealed:

- a) Article 1, Points (1)-(6) and (8)-(52) of Article 2, Articles 3-7, Article 8 (1)-(2) and (4), Articles 9-78, Articles 84-163 and the Annexes to Act I of 1996 on Radio and Television Broadcasting;
- b) Act II of 1986 on the Press;
- c) Act CXXVII of 1996 on the National News Agency;

- d) Article 9, Article 14, Article 14/A, Article 15, Article 16, Article 17, Article 17/A, Article 18, Article 18/A, Articles 73/A-C, Article 126, Article 182 (3) (e) and Article 182 (4) (b) and (d) of Act C of 2003 on Electronic Communications;
  - e) Article 9 (1)-(2), Article 10 and Articles 21-29 of Act LXXIV of 2007 on the Rules of Broadcasting and Digital Switchover;
  - f) Act LXVII of 2007 on the Amendment of Act I of 1996 on Radio and Television Broadcasting for Legal Harmonisation;
  - g) Act XX of 2002 on the Amendment of Act I of 1996 on Radio and Television Broadcasting for Legal Harmonisation;
  - h) Act XII of 2006 on the Amendment of Act I of 1996 on Radio and Television Broadcasting;
  - i) Article 365 (6) (e) of Act IV of 2006 on Business Associations;
  - j) Article 47 of Act CI of 2003 on the Post.
- (2) Article 2 (7), Article 8 (3), Article 8/A and Articles 79–83 of Act I of 1996 on Radio and Television Broadcasting shall be repealed.

## **CHAPTER VI**

### **AMENDED LEGISLATION**

#### **Articles 220–228**

#### **Article 229**

## **CHAPTER VII**

### **COMPLIANCE WITH EUROPEAN UNION LAW**

**Article 230** (1) This Act serves the purpose of compliance with the following legal instruments 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 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive);
- d) Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services;
- e) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests, Articles 2 (1) and 4 (1).

(2) This Act establishes the provisions within the scope of tasks and procedures of the National Media and Infocommunications Authority required to the implementation of the following legal instruments of the European Union:

- a) Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws;
- b) Commission Decision 2007/76/EC of 22 December 2006 implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance;
- c) Commission Decision 2008/282/EC of 17 March 2008 amending Decision 2007/76/EC implementing Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance.

*Annex no. 1 to Act CLXXXV of 2010*

The Nominating Organisations listed below may delegate members to the Board of Public Services as follows:

1. Nominating Organisations:

- a) Hungarian Academy of Sciences

- b) Hungarian Catholic Church
- c) Hungarian Reformed Church
- d) Hungarian Evangelical Church
- e) Alliance of the Jewish Communities of Hungary
- f) Hungarian Olympic Committee
- g) Hungarian Rectors' Conference
- h) Hungarian Chamber of Commerce and Industry
- i) alliances and organisations of the local governments of the Republic of Hungary
- j) national governments of national and ethnic minorities in Hungary
- k) Hungarian cultural organisations with more than one hundred members registered in neighbouring countries of the Republic of Hungary
- l) advocacy groups registered in Hungary falling under the scope of the Act of the Right of Association protecting and representing the interests of families, the by-laws of which reflect the national scope of their operations
- m) advocacy groups registered in Hungary falling under the scope of the Act of the Right of Association protecting and representing the interests of persons living with disabilities, the by-laws of which reflect the national scope of their operations
- n) professional organisations active in the field of literature, theatre, film, performing arts, music, dance, fine or applied arts registered in Hungary, falling under the scope of the Act on the Right of Association, the by-laws of which reflect the national scope of their operations, and the members of which are primarily persons and organisations active in the above listed fields.

2. The organisations listed under Points (a)-(h) may delegate one member each.

3. The organisations listed under Points (i)-(n) may participate in the delegation process if they register with the Office at least thirty days prior to the delegation. The Office shall decide on the registration in a regulatory decision, against which decision no appeal may be lodged, however its judicial review can be requested.

4. The organisations listed under Points (i)-(n) may delegate one member each in a manner that the organisations listed under the same Point may delegate only one member. The organisations listed and registered under the same Point may come to an agreement regarding the delegated person. If no such agreement is reached, the Office shall draw lots to determine the organisation whereof candidate may be delegated.

*Annex no. 2 to Act CLXXXV of 2010*

The Chairperson and the members of the Board of Trustees of the Public Service Foundation shall take the following oath before the President of the Parliament upon taking up his/her office:

"I, ....., swear that, as member (Chairperson) of the Board of Trustees of the Public Service Foundation, I will observe the Constitution of the Republic of Hungary and the laws, and, true to my office, endeavour to enforce the freedom of speech and press. I will fulfil my duties impartially. (Depending on the conviction of the person taking the oath:) So help me God."

*Annex no. 3 to Act CLXXXV of 2010*

The President and members of the Media Council shall pronounce the following oath before the President of the Parliament upon taking up his/her office:

"I, ....., swear that, as member (President) of the Media Council, I will observe the Constitution of the Republic of Hungary and the laws, and, true to my office, endeavour to enforce the freedom of speech and press. I will fulfil my duties impartially. (Depending on the conviction of the person taking the oath:) So help me God."

*Annex no. 4 to Act CLXXXV of 2010*

The amount of the public service contribution in 2012 – based on a calculation taking into account four million Hungarian households each contributing a monthly amount of one thousand three hundred and fifty forints – will be 64,800,000,000 forints that is sixty-four billion and eight hundred million forints. This amount shall be indexed annually as from 2013 at least by the Hungarian index of consumer prices of the year preceding the year under review.

*Annex no. 5 to Act CLXXXV of 2010 [not in force]*

# Constitutional Questions of the New Hungarian Media Regulations

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## List of abbreviations

**AVMS Directive** – Directive 2010/13/EU (the Audiovisual Media Services Directive)

**Data Protection Act** – Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest

**Administrative Proceedings Act** – Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

**Media Act** – Act CLXXXV of 2010 on Media Services and Mass Media

**Hungarian Media Authority** – the National Media and Infocommunications Authority (the current media and infocommunications authority)

**Media Council** – the authority overseeing the media market

**ORTT** – National Radio and Television Commission (the former media authority)

**The Hungarian Code of Civil Procedure** – Act III of 1952 on the Code of Civil Procedure

**Radio and Television Broadcasting Act** – Act I of 1996 on Radio and Television Broadcasting (not in effect)

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

**The Press Act** – Act II of 1986 on the Press (not in effect)

**Competition Act** – Act LVII of 1996 on the Prohibition of Unfair Market Practices and the Restriction of Competition

## I. Introduction

One of the sad experiences regarding the professional debate surrounding the new Hungarian media regulations (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content, hereinafter: the Press Freedom Act and Act CLXXXV of 2010 on Media Services and Mass Media, hereinafter: the Media Services Act) is that a large majority of the opponents criticizing the new laws on theoretical bases believe that they possess unquestionable wisdom and know the only possible path that would lead to a democratic, constitutional media legislation. Their comments charged with serious statements disregard possible counterarguments and the different views crystallized in the course of the centuries long debate over the principle of the freedom of the press. These modern critics depict freedom of the press as a one-dimensional right, where the press is free, and the duty of the state is to leave this right undisturbed. According to this view, the state can take part merely in the enforcement of the general restrictions of the freedom of opinion with respect to the press and the media.

In contrast, the authors of this study believe that the freedom of the press could have – in a manner influenced by a given country, continent, and cultural environment –, more than one, contradicting but well-founded, defensible interpretations. The freedom of the press is not a full, unrestricted right anywhere, not even in the United States. In other words, if we state about a country that they observe the freedom of the press, but at the same time, they have laws and regulations restricting the movement of the press, with this, we accept that the freedom of the press is associated with the definition of necessary restrictions, and regulating the press does not automatically mean a violation of its freedom.

The new Hungarian media regulation received several criticisms in Hungary and abroad. Among these, the most unrealistic accusations were also made, sometimes even by representatives of the profession. This study makes an attempt to focus on, and respond to, the criticisms that can be taken seriously. The authors do not mind at all if after reading this study, somebody would not be persuaded that their view is correct. We apologize if some important criticisms were left out, because although we strived to address all, it was obviously an illusory goal.

This study argues for the so called democratic view of the freedom of the press and regards from this perspective the new Hungarian media regulation as constitutional, but the authors do not view its content as indisputable wisdom. However, they believe that the new Hungarian media regulation was born clearly based on this democratic view of the freedom of the press, and the Hungarian Parliament had the right and opportunity to make this decision – to select from the different views of the freedom of the press – and what is more, we can find several theoretical arguments to support this decision.

We believe that the media regulation of a given state cannot be understood based solely on the letter of the relevant laws, but familiarity with the related constitutional, administrative, judicial, and sometimes international law practice and experience is also necessary. Our study made an attempt to employ such a complex approach when weighing the constitutionality of the disputed provisions.

We wish to note that this study works with the effective text of the amended statute (Act XIX of 2011) resulting from the Government consultations with the European Commission and makes references to the text before the amendments only when necessary. Before each section, we provide a short summary of the section in a box.

## II. A possible interpretation of the freedom of the press

*The freedom of the press is quintessential for the functioning of the democratic public sphere. In the course of this, the state – if necessary and to a reasonable extent – has the right and means, and what is more, the obligation to intervene with the instruments of media regulation in the operation of the media market. The exercise and concept of the freedom of the press, because of its nature, is different from the right and concept of the freedom of opinion, and thus, the level of its regulation can be also different.*

One of the sad experiences regarding the professional debate surrounding the new Hungarian media regulations (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules on Media Content, hereinafter: the Press Freedom Act and Act CLXXXV of 2010 on Media Services and Mass Media, hereinafter: the Media Services Act) is that a large majority of the opponents criticizing the new laws on theoretical bases believe that they possess unquestionable wisdom and know the only possible path that would lead to a democratic, constitutional media legislation. Their comments charged with serious statements disregard possible counterarguments and the different views crystallized in the course of the centuries long debate over the principle of the freedom of the press. These modern critics depict freedom of the press as a one-dimensional right, where the press is free, and the duty of the state is to leave this right undisturbed. According to this view, the state can take part merely in the enforcement of the general restrictions of the freedom of opinion with respect to the press and the media.

In contrast, the authors of this study believe that the freedom of the press could have – in a manner influenced by a given country, continent, and cultural environment –, more than one, contradicting but well-founded, defensible interpretations. The freedom of the press is not a full, unrestricted right anywhere, not even in the United States. In other words, if we state about a country that they observe the freedom of the press, but at the same time, they have laws and regulations restricting the movement of the press, with this, we accept that the freedom of the press is associated with the definition of necessary restrictions, and regulating the press does not automatically mean a violation of its freedom.

The new Hungarian media regulation received several criticisms in Hungary and abroad. Among these, the most unrealistic accusations were also made, sometimes even by representatives of the profession. This study makes an attempt to focus on, and respond to, the criticisms that can be taken seriously. The authors do not mind at all if after reading this study, somebody would not be persuaded that their view is correct. We apologize if some important criticisms were left out, because although we strived to address all, it was obviously an illusory goal.

This study argues for the so called democratic view of the freedom of the press and regards from this perspective the new Hungarian media regulation as constitutional, but the authors do not view its content as indisputable wisdom. However, they believe that the new Hungarian media regulation was born clearly based on this democratic view of the freedom of the press, and the Hungarian Parliament had the right and opportunity to make this decision – to select from the different views of the freedom of the press – and what is more, we can find several theoretical arguments to support this decision.

We believe that the media regulation of a given state cannot be understood based solely on the letter of the relevant laws, but familiarity with the related constitutional, administrative, judicial, and sometimes international law practice and experience is also necessary. Our study made an attempt to employ such a complex approach when weighing the constitutionality of the disputed provisions.

We wish to note that this study works with the effective text of the amended statute (Act XIX of 2011) resulting from the Government consultations with the European Commission and makes references to the text before the amendments only when necessary. Before each section, we provide a short summary of the section in a box.

According to the democratic freedom of opinion theories, the freedom of opinion can be considered as one of the fundamental rights because of its role in free and cooperative decision-making. Being the field of the most effective exercise of the freedom of opinion, the media has a definite importance. The debate can be conducted in the forum it provides. And the media is the number one venue for obtaining and providing information. On the one hand, the media keeps the state under continuous check, and on the other hand, ensures that individual citizens have access to relevant information, and that – with certain restriction – they sound their voices and participate in the debate.

Proponents of the individualistic view believe that the freedom of the press does not mean more than the right of media professionals and owners to exercise without restrictions their right to the freedom of opinion. According to this view, the freedom of opinion is nothing else but one of the instruments of individual fulfilment, one of the especially valuable, and thus, more protectable, expressions of individual autonomy. In comparison, the freedom of the press does not represent a difference *in its quality* and it does not carry different content but merely increases the effectiveness of the expression of opinions. If, however, we evaluate the freedom of opinion from the perspective of the audience (viewers, listeners, and readers) and not of the speakers, ensuring their autonomy requires that to the extent possible, all relevant information reach them: thus, the free press may have obligations in the area of information.

The freedom of the press cannot be considered identical with the basic case of the freedom of opinion, and it does not mean the same freedom enjoyed by the soapbox speaker or a speaker in Parliament.<sup>1</sup> According to this view, the freedom of the press is not an individual right but is the right of the media as an institution. The persuasive and oft-cited article discussing this theory was written by Potter Stewart, a justice of the Supreme Court of the United States.<sup>2</sup> So, the right is an institutional right protecting not the individual working for a media outlet (who, of course, is also entitled to his individual freedom of opinion) but the institution, and, therefore, the institution has additional rights and obligations as well. According to this view, the freedom of the press is clearly a tool, thus, an instrumental right, whose objective is to advance public interest with information and idea exchange, and provision of forums for communication before the public.<sup>3</sup>

William Brennan – also a justice of the US Supreme Court – in one of his speeches stated that he does not view the freedom of the press as a right that cannot be broadly restricted, unlike the freedom of opinion. As he says, the press must be aware that the nature of its work is such that it has to be considerate of multiple, even possibly conflicting interests, and it has to meet certain – community entailed – obligations.<sup>4</sup> Even authors, otherwise representing views that consider individual autonomy with regard to the freedom of opinion as a primary value, emphasize the instrument-like role and institutional nature of the freedom of the press. Edwin Baker in his “liberty model” describes the freedom of opinion as the individual’s justifiable right that cannot be restricted, but he does not extend this principle to the freedom of the press. As he argues, because of its institutional nature, since in the course of its operation the individual’s right to self-expression becomes marginal and primarily other (financial) interests dictate, the individualistic approach no longer makes sense.<sup>5</sup>

The media regulations of some European states have certain content requirements, for example balanced coverage, broadcasting of public service programming, and advertising restrictions. European public view trusts in the state and believes that a certain level of legal regulation – of course, with appropriate safeguards protecting freedom – is necessary. It follows that in the media (especially, in the area of electronic media) in the case of negative programming

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<sup>1</sup> Owen M. Fiss: Free speech and social structure. *Iowa Law Review*, July 1986. 1405; Geoffrey Marshall: Press freedom and free speech theory. *Public Law*, 1992. 40.

<sup>2</sup> Potter Stewart: Or of the press. *Hastings Law Journal*, 1975. 631.

<sup>3</sup> See, e.g. Randall P. Bezanson: Institutional speech. *Iowa Law Review*, May, 1995. 823.; Eric Barendt: Inaugural lecture – press and broadcasting freedom: does anyone have any rights to free speech? *Current Legal Problems*, 1991. 79.; Frederick Schauer: Towards an institutional First Amendment. *Minnesota Law Review*, May 2005. 1256.

<sup>4</sup> William J. Brennan: Address. *Rutgers Law Review*, 1979. 173.

<sup>5</sup> Edwin C. Baker: Human liberty and freedom of speech. New York-Oxford: Oxford University Press, 1989, esp. at 229, 233.; *ibid*: Press rights and government power to structure the press. *University of Miami Law Review*, 1980. 819.

standards (such as hateful expressions and protection of morality), the standard of protection – in the name of social responsibility – may be lower than in the “basic case” of the freedom of opinion.

According to a possible, simplified, and schematic model of the struggle for the freedom of the press, the participants of the bout include, on one side, the heroes fighting for the rights proudly sacrificing their lives and blood, and, on the opposite side, the ruthless and oppressive machinery of the state.<sup>6</sup> According to the conviction of people thinking in this model, the early philosophical foundations of freedom – which, of course, only claimed the provision of the freedom of the press in opposition with the state – are exceptions even today and are valid without alteration. What is more, during the centuries passed, they could not add anything new to it. According to the final conclusion, enemy number one of the freedom of the press is still the state, which has to be deprived by any possible means of the slightest chance of intervention. Although, the more critical authors note that in the course of the operation of the media, there are signs, which confirm the existence of private censorship, but even the imaginable most serious level of this can be rather accepted than the mildest intervention by the state (beyond the necessary market regulation).

The interpretation of the freedom of the press, forming as the result of the debates, is multi-dimensional, and many different interests must be taken into account when analyzing it. The sharp dividing line, if we view the question in a simplified manner, is between the supporters of free market and the supporters of state intervention, but several different shades of these thoughts exist on both sides. Many supporters of the free market trust in the market not because they consider the media as goods to be sold like, say a nail polish, but because they regard with concern all roles of the state that influence the operation of the media. They may be precisely aware of the imperfection of the market, with the dangerous effects of the logic of the market on the freedom of the media, but they do not consider even this price too high for keeping the state at a distance. Others, with blind faith in the market – or perhaps with a good portion of cynicism – believe that the market is omnipotent: with rules created for itself, it ensures the best possible and most effective operation of the media, satisfying private and public interests concurrently. Adamant present day supporters of *laissez faire* want to maintain the arguments of 19th century early liberalism, in a slightly modified version but relentlessly advocating them, and the fundamental values defined there and then (liberty, individualism, autonomy, opportunity, progress, etc.) in opposition to the state and in the safety of unaltered safeguards, for the protection of the now already significantly stronger private sector and multinational companies, which rise above national borders and state interest with unparalleled ease. With the words of Clinton Rossiter, this is nothing else but the “great train robbery of intellectual history.”<sup>7</sup>

However, the operation of the media inherently in the realm of private autonomy and claiming for itself simultaneously several fundamental human rights (freedom of the press, property rights, freedom of entrepreneurship, etc.) is being regulated exactly for the protection of the original meaning of liberty. Although, prohibition of press monopolies, the positive and negative content regulation in the public interest, and the measures aimed at protecting culture doubtlessly restrict the scope of operation of the media, in reality, they are not the constraints of liberty: to the contrary, they serve to repair the concept of liberty possibly deformed by the private sector.

The models of the freedom of the market and public forum are in fundamental and irreconcilable conflict with each other. The market proclaimed of itself that it improves efficiency, facilitates quick reaction time in response to changing circumstances, creates feedback methods (for example, by measuring media consumption), in other words, it does not isolate the audience from the influence of the media; the freedom of enterprise and the lucrative material gains guarantee technological and content development, which of course indirectly also serves the public interest. However,

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<sup>6</sup> John Durham Peters: *Courting the Abyss – Free speech and the liberal tradition*. Chicago-London: University of Chicago Press, 2005. 14–22.

<sup>7</sup> Clinton Rossiter: *Conservatism in America*. (second edition) New York: Vintage Books, 1962. 128.

the market is not democratic the least but is the battlefield of ruthless struggle, where the enterprises with strong capital bases dominate, and moral considerations do not play any role.<sup>8</sup>

In the course of historical developments, the negative character of the right to the freedom of the press was emphasized, which right was identified then as the *prohibition of censorship*; a corresponding view is that the abolition of “preliminary control” would result in the total freedom of the media. Shortly after the adoption of laws eliminating censorship, this view had to be re-evaluated. However, influencing the freedom of the press from the outside is possible to a much broader extent than by merely restricting publication. The media market is much more restricted compared with other enterprises. In order to prevent that catering information to the public become the monopoly of a few, the law regulates the obtaining of property rights associated with media services and press products, defining a limit beyond which the same owner is not permitted to obtain additional rights. With the state financing the public service media, free competition suffers further restrictions. All these rules, of course, have an indirect effect also on the content transmitted by the media.

Interference with the freedom of the press is possible not only externally but also *internally*. This phenomenon stems from the business nature of the media. It is a fundamental truth that the media, which is a rather expensive pastime, is financed not by the readers, viewers, and listeners but by its advertisers. Logically, the following conclusion can be drawn from this: approaching the issue from a business perspective, the “goods” offered for sale are not the newspaper articles and programs produced by the media. If this was the case, the media - at least in its present form and extent - would not be able to support itself. The “goods” are actually the *viewers*, the *listeners*, and the *readers*, who are offered to the advertisers - the larger the number, the higher the advertising fee. Thus, popular products must be offered almost as *bait* to attract many future costumers and turn them into the consumers of the media and with this, of advertisements. The advertisers - who can only be really large companies in case of the most important media outlets due to the high costs - are the primary controllers of the entire process, even if their influence remains only indirect. And on the market, where a lot of money is at stake, the rules are tough: advertisers like to see their advertisements in a media environment they deem satisfactory, possibly together with programs that are popular, non-controversial, entertaining, airing peace and tranquillity, or perhaps - without real stakes - generate excitement and suspense. Variety shows, television series, game shows, magazine shows, and action movies are perfect for these purposes, but programs dissecting real societal problems, fact finding documentaries, programs channelling culture of higher standard, or shows appealing to only a smaller segment of society are less suitable for such functions.<sup>9</sup> This results in the almost complete *homogeneity* of the selection of competing program flows, in which significant deviation (because of the risk of losing customers) cannot be observed. Free competition that provides the possibility for the operation of several competing media outlets, increases only the *quantity* but not the *variety* of programming. Our opinion is that the media market on its own is not necessarily able to guarantee the diversity of programming - it is enough to take a look, for example, at the Hungarian television market. At the same time, it is also true, that diversity can be facilitated directly with regulation only with difficulties and to a limited extent.

And the competition for customers is becoming more intense, the converging media is more and more interwoven with everyday life, and, in the meantime, public debate and societal “*discourse*” is slowly fading away.<sup>10</sup> The advertisers categorize their customers (the target group) based on their financial situation (purchasing power), convincibility, and other such factors that can hardly fit the democratic principle of “one person - one vote.”<sup>11</sup> Nonetheless, internal “*private censorship*” that subordinates everything to profit maximization - which can equally stem from the personal interests of

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<sup>8</sup> David Croteau – William Hoynes: The business of media – Corporate media and the public interest. Thousand Oaks-London-New Delhi: Pine Forge Press, 2006. 17–26.

<sup>9</sup> Robert W. McChesney – Ben Scott (editor): Our unfree press – 100 years of radical media criticism. New York: New Press, 2004. 119–176; Edwin C. Baker: Advertising and a democratic press. Princeton University Press, 1994.

<sup>10</sup> Ronald K. L. Collins – David M. Skover: The death of discourse. Carolina Academic Publishers, 2005.

<sup>11</sup> Owen M. Fiss: The irony of free speech. Cambridge, Massachusetts: Harvard University Press, 1996. 54.

the proprietors or employees of the media as from political conviction - cannot be identified with external censorship. In the former case, there is no arbitrariness involved or even otherwise justifiable external intervention using regulatory safeguards to limit its extent. Censorship, by the way, has long since disappeared in constitutional states. However, its new form, private censorship indirectly deployed by business interest groups commissioning the advertisements has the same effect, just as its original, late "stepbrother" expressly coming into being by external force, can significantly impede or even prevent the fulfilment of the media's public interest obligations. It is worthy to turn to Jürgen Habermas, according to whom "...as newspapers develop into capitalist enterprises, interests outside the industry gain control over it, and these forces try to influence it. The history of big daily newspapers in the second half of the 19th century proves that the press to the extent of its commercialization, can itself become subject to manipulation. Since the sale of the editorial section is in interaction with the sale of the advertisement section, the press, which to date was the institution of private individuals as audience, is becoming the institution of certain members of the audience as private individuals - the gate through which privileged private interests can infiltrate the public sphere."<sup>12</sup>

Behind the birth of public opinion or, in other words, the civil public sphere, lies the development of market economy. The gradually emerging middle class rejected the prevailing authority of the aristocracy; they demanded participation in decisions concerning public matters. The category of public opinion is important for us because democracy that is considered the only acceptable form of society can only function through it. If we fail to discuss "public" affairs in the various public institutions, if the citizens fail to reach out to each other through various forums, if these forums fail to provide minimally required cohesion between the members of society, than - although the laws may be passed by the Parliament based on public representation - the community is not living in a democratic system.

The most prominent supporter of the state intervention in the areas concerning the freedom of the press is without doubt Professor Cass Sunstein of Chicago. His study summarizing the problems of modern age freedom of opinion is an indictment against the free market of ideas.<sup>13</sup> In his book, Sunstein demands a second New Deal, because according to his realization, the media not only fails to lend a helping hand but actually undermines the functioning of democracy. The conclusions of the book focusing on the United States should be taken into consideration in Europe, too. The main problems troubling the author are not new: in proportion to the full expansion of commercial media diminishes the hope for the education of active citizens playing a decisive role in representative democracies. According to the professor, they should quit in the US the stubborn resistance that prevents state intervention - because the strict restraint is only strengthening the status quo, i.e. the ever growing media empire. In certain cases well fortified with firm safeguards, the state is indeed able to promote freedom. Borrowing the metaphor of the market, the foundation of representative democracy is that from time to time citizens give mandate to representatives from among themselves to manage the affairs of the community and make decisions. Obviously, during elections, average citizens generally have less information at their disposal compared to those running for office. The political elite will always be more informed than other members of society. This *information deficiency* should be balanced by the media to the extent of its available means - because the decision of the citizens is irreversible and irreparable. The current system, however, does not guarantee the publication of available views and information, because the public debate is not at all important for the majority of media outlets, and what is more, it would be an explicitly burdensome task. András Sajó reviewing Sunstein's book exclaims with surprise: "Whether »democracy can be still built« with the consumers of mass communications, has been an undecided question for decades and is a source of concerns. In fact, it is a true miracle that political democracy is still functioning despite so many and such television programs."<sup>14</sup>

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<sup>12</sup> Jürgen Habermas: *The Structural Transformation of the Public Sphere*. (Third edition) Budapest: Osiris, 1999. 270–271.

<sup>13</sup> Cass R. Sunstein: *Democracy and the problem of free speech*. (second edition) New York: Free Press, 1995. About the media see esp. 53–92.

<sup>14</sup> András Sajó: *Hírpírítós és sajtótisztesség. Kelet-európai megjegyzések Cass Sunstein könyvéhez [News Toast and Decency of the Press. Eastern European Comments on Cass Sunstein's Book]*. Világosság, 1995/3. 34.

What is ultimately the concept of the freedom of the press? Would A. J. Liebling be right, according to the *bon mot* of whom, “freedom of the press is guaranteed only to those who own one”?<sup>15</sup> Not at all. It can also be observed in the case of the fundamental right of the freedom of opinion that the law protects political communications and public communications to a greater extent than those not willing to contribute to decisions relating to public affairs. This principle applies exponentially in the case of the media and may lead to new conclusions. Opinion with public content not only receives enhanced protection in the media, but also, in addition, the media even has to contribute - in an active manner - to the conducting of the public debate. This is because the freedom of the press “cannot be unlimited without contradicting the moral foundations that justify its existence.”<sup>16</sup> At the same time, the proper interpretation of the freedom of the press is a “matter” of laws and regulations and their application only to a certain extent; the law has only limited resources to spur the media to fulfil its responsibilities of public interest.

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### III. Regulation of print and online press – the material scope of the statutes

*The print and online press similarly to media services are components of the functioning of the democratic public sphere, thus, certain fundamental rules may be applied or prescribed with respect to them also. The reason for this should not be sought necessarily in their potential effect on the readers. Similarly, the scarcity of resources cannot justify their regulation either. The primary justification for the intervention of the law is to ensure compliance to the fundamental “rules of the game” - manifesting in obligations of negative nature - of the public sphere to ensure its appropriate (democratic) functioning. The main issue is not whether restriction of the press may be appropriate but whether the scope of these restrictions is sufficiently narrow and whether the necessarily generalizing legal norms have constitutionally acceptable range of interpretations.*

Such interpretation of the concept of the freedom of the press explained above that contains the interest of forming the democratic public opinion can be generally applied to the players of the media market. It clearly follows also from the traditions of the history of media regulation that the regulations have to differentiate between the (print and Internet) press and the electronic media (traditional television, radio, and on-demand media services). The new Hungarian laws were drafted to comply with this requirement. In spite of this, according to one of the most common criticism raised, any regulation and official oversight of the press is a serious mistake.

According to the almost unanimous opinion of critics, it was a mistake to ignore the theory of “*media effects*” when drafting the regulation; although the regulation of media services having a stronger effect because of the moving pictures and sounds can be justified to a certain extent (although some authors also question the effects of these on the audience), but the regulation of press products cannot be explained with this.

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<sup>15</sup> A. J. Liebling: *The press*. (third edition) New York: Pantheon Books, 1981.

<sup>16</sup> John Laws: *The limitations of human rights*. Public Law, 1998. 265.

One could even agree with this criticism if indeed the theory of media effects would be behind the regulation as its theoretical foundation. However, this is not the case. The new laws prohibit, for example, the violation of human dignity for all media content providers, because the legislature thought that if this rule is not included, those exposed to the content violating human dignity would suffer irreparable damages or inspired by that content, they would commit similar violations themselves in the future. And, although, the regulation pertaining to media services is rather differentiated, it cannot be said even about the additional rules pertaining to the latter that their existence is justified because of the more significant effects of media services on the audience. The restriction of commercial communications are justified by general consumer protection considerations, the requirement of program quotas serves the preservation and enrichment of Hungarian and European culture, the reasons for protecting minors are obvious, and the regulation of exclusive broadcasting rights is related to consumer protection also. In other words, even in the course of the creation of media services regulations, achieving greater effect is not the main and especially not the only theoretical starting point.

The new regulation prescribes - differentiated - obligations for all players of the media market (media services as well as press products), because it wishes to protect through this the “public consultations” and public debates conducted through the press and the media; based on the logic of the regulation, the press can only become a “functioning” (i.e. capable for meaningful debates and respecting others’ rights and freedom) public forum by respecting certain minimal rules. There are no retrograde or dictatorial views behind this idea: general freedom of opinion is also restricted by limitations protecting open public debate and, thus, the rights of others (and only a few realize that, e.g., the privacy protection rules or the unconstitutionality of the crime of incitement against the community would result from the state’s obligation to guarantee the freedom of opinion). On the media market, because the contents published there are *different in quality* from the contents published by practising - not in the media - the freedom of opinion, sometimes stricter, sometimes more lenient, rules apply (in contrast with the civil code, for example, good reputation in the media regulation is only protected by the institution of press correction). The public conference, however, can take place on a platform provided by any player of the media market, and the fundamental rules may be prescribed for everybody, as the interest in providing a “functioning” public forum is independent from how many people use the given forum at the time, or what effects the content published there have on them.

Another group of the criticisms cannot overcome the argument of *narrowness*. Based on the concept of narrowness that was traditionally treated as a basic standard in media regulation, one of the reasons of regulation was the naturally finite number of resources (analogue frequencies), and the state’s obligation stemming from this to manage the media market. However, today - at the eve of transition to digital technology and in the world of the Internet - the narrowness argument should be forgotten. Although, today approximately one-fifth of Hungarian households can only follow three television broadcasting services, the other four-fifth have access to a number of other media services. Today, narrowness cannot be, and is not, the basis of regulation. However, it is worthy to take a look at today’s Hungarian media market: the large number of players - neither on the market of press products nor on the market of media services - brought automatically the anticipated diversity. It is a false claim according to which, today’s Hungarian media market is diverse; especially, the structure of the television market is distorted, as the various media services copy each other, and, thus, they are barely different from each other, while the public service media, which in theory could serve as a counterbalance, has been marginalized. At the same time, promoting diversity in the market can be the responsibility of media regulation only to a certain point (limiting concentration of ownership, or by requiring balanced coverage).

It is important to emphasize that the content of the new regulation is negative regarding the press (i.e. prescribing constraint), and it defines concrete content requirements enforceable against the individual press products (human dignity and human rights, prohibition of the violation of constitutional order and privacy, prohibition of hate speech, rules for the protection of minors, and certain advertising restrictions). In contrast with the regulation of the electronic

media, in their case the regulation does not oblige them for any active conduct. (Only certain advertising rules are the exceptions; see Article 20(1)-(2) and (8) of the Press Freedom Act.)

If we accept the concept of the freedom of the press explained above as a starting point and consider the press (also) as one of the instruments of mass communications, then it is a true statement that the press has certain public responsibilities and some of its obligations stemming from these responsibilities can manifest in legal regulations as well. Based on the differentiation respecting the historical traditions and enforced by the new media regulation, these must not be some norms forcing active conducts, but certain obligations of negative nature - fundamental "rules of the game" - may be prescribed that are necessary for the functioning of the democratic public sphere.

According to Decision No. 37/1992 (VI. 10.) AB of the Hungarian Constitutional Court, *"Article 61 of the Constitution guarantees, on the one hand, the subjective fundamental right to the expression of opinion, and, on the other hand, the state obligation to provide for the conditions and functioning of the development of democratic public opinion."* It follows from the theory of social responsibility that the press is obligated to respect human dignity, constitutional order, and it has to respect other responsibilities as prescribed by law. These can be such fundamental norms that serve the formation and preservation of democratic public opinion, or such issues over which there is almost full social consensus (protection of minors), or - in principal, with a fundamental rights approach also less debatable - consumer protection-like rules in nature (advertising rules). We believe that for the sake of the functioning of democratic public opinion, certain basic rules may be adopted with respect to every players of the media market.

It also follows from the concept of the freedom of the press explained above that the issue is not whether restriction of the press may be appropriate but whether the scope of these restrictions is sufficiently narrow and whether the necessarily generalizing legal norms have constitutionally acceptable range of interpretations. If the answer to these questions is yes, than it logically follows that the narrow norms that can be constitutionally interpreted may be monitored within the scope of official oversight. Actually, Decision No. 30/1992 (V. 26.) AB of the Constitutional Court ruled that *"the right to free expression of opinion has to yield only to a few other rights, in other words, laws restricting the freedom of opinion must be narrowly construed."* Considering that - although, based on our earlier arguments, the standards for the freedom of the press and the freedom of opinion may be different - restriction of the freedom of the press results obviously in the restriction of the freedom of opinion, and, thus, the media authority must narrowly interpret the norms prescribed by the media regulations.

Some critics raise concerns separately regarding the freedom of the Internet. First, these disregard the fact that the Internet has been regulated even before (naturally, the entire Internet is subject to the Civil Code and Criminal Code, as well as Act CVIII of 2001 on Certain Issues of Electronic Commerce Services and Information Society Services). Although, many believe that the new media was born to be free and it cannot tolerate any censorship or oversight authorities, in case this view was accepted, for example, the fight against pedophilia on the Internet would not make any sense at all either.

Such "romantic" view of the freedom of the Internet is debatable. The thought, which is integral part of this view, is also worthy to debate, according to which the Internet had transformed social communication to such an extent based on which any form of media content regulation is unjustified. In other words, since the Internet "subverted" previously well identifiable - and regulated - traditional forms, and a portion of social publicity was transferred into the online world, hence, the regulation of traditional media outlets became obsolete, because it does not make sense to regulate the more and more marginalized media, while the free World Wide Web is flourishing.

Today, we cannot know to where the path of the developments of the media world leads. What is sure, however, is that during the history of human kind, no new medium sidelined entirely the older one: the radio did not destroy the press and the book, and the television did not eliminate the interest in radio communications. It should be not forgotten either that the majority and dominant portion of Hungarian society obtains its information from traditional

media outlets to date, and, although, the present and future of the Internet is appealing, it has not yet taken over the dominance in influencing the social public sphere.

The unregulated marketplace of ideas does not operate perfectly on the Internet either. The competition for customers is tough on the World Wide Web, too. In this competition, arguments for the non-regulation of the Internet and the objective to preserve the “untouched reservation of democracy” are no longer relevant. Players with greater material resources have a huge advantage on the World Wide Web also.<sup>17</sup> The most frequently visited web pages are the properties of such companies that are dominant players of the market outside virtual reality, in the real world, too.<sup>18</sup> These company giants and media empires try to transform the World Wide Web to their own images, and although, because of the character of the medium, they probably will not succeed ever, they may achieve at least that much that they restrict the Internet use of broad masses to contents provided by them. The portion of the Internet that can be included in the definition of “press product” should be regarded as a forum of public conferences similarly to print newspapers; the possible difficulties of legal enforcement in itself cannot provide a sufficiently strong case against regulation.

The press in some manner, and to some extent, is regulated in every European state. In some places this method is self-regulation, and in others the state or an organization established by the state (authority or court) exercises this responsibility. But there is regulation everywhere. The system of “clean” self-regulation has many advantages, where they attempt to apply solutions outside the law - and thus the state - to resolve problems, but this solution also have numerous critics. But it is important to note that in Hungary no culture and mechanism of self-regulation whatsoever has developed since 1989. If this was otherwise, assumingly, the new statutes would also look entirely different in this respect.

It is also important to note that there was a press legislation before January 1, 2011, Act II of 1986 on the Press (hereinafter: the Press Act), with all of its contradictions and constitutionality problems. This law also provided for certain content requirements for the press, but it did not assign to them monitoring mechanisms. In Decision No. 34/2009 (III. 27.) AB, the Constitutional Court ruled that *“without encroaching on the authority of the legislative power, the Constitutional Court wishes to emphasize that Article 3(1) of the Press Act sets forth the fundamental principles of the exercise of the freedom of the press for the legislature and judiciary as a guidance. Thus, it cannot be ruled out that the legislature assigns certain sanctions to the violation of concrete legal rules based on similar provisions of fundamental principles...”*. Thus, the existence of an independent press law - containing concrete obligations - is accepted based on constitutional grounds, too. It is the result of a decision by the legislature whether the Parliament tasks an independent organization (an authority) with the monitoring of these or it refers the decision of legal disputes directly to the courts (of course, the administrative proceedings could end up before the courts independent from this).

“Platform neutrality” is a fashionable expression in the media regulation. This means that the regulation pertaining to the individual media outlets is getting independent from the content distribution method. But if we accept that television contents must be regulated independent from whether they are broadcasted via analogue frequency, cable, or satellite, than why could not we accept that the interest in human dignity can be protected with respect to every media service and press product serving mass communications?

According to Decision No. 30/1992 (V. 26.) AB, *“thus, it is not enough in itself for the constitutionality of the restriction of fundamental rights that it is imposed to protect another fundamental right or freedom or to realize another constitutional objective, but it is necessary that the restriction meets the requirement of proportionality: the importance of the objective to be realized and the weight of the violation of the fundamental right caused in order to achieve this objective are in*

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<sup>17</sup> Seth F. Kreimer: Technologies of protest: insurgent social movements and the First Amendment in the era of the Internet. University of Pennsylvania Law Review, 2001. 119.

<sup>18</sup> Andrew Chin: Making the World Wide Web safe for democracy. Hastings Communication and Entertainment Law Journal, 1997. 322–325. and 328–329; James Curran – Jean Seaton: Power without responsibility. London-New York: Routledge, 2003 (sixth edition). 248–250. and 281–282.

*appropriate proportion with each other. In the course of the restriction, the legislature is required to use the least restrictive means. It is unconstitutional to impose restrictions on the substance of the right without compelling reasons, arbitrarily, and disproportionately to the objective to be achieved.*" From the view point of the media outlet against whom a complaint was filed, an administrative proceeding is necessarily more lenient and less restrictive than if the complaining party could only file the case with the courts, because an administrative decision can always become a subject to judicial review, thus, the case is reviewed by more tribunals independent of themselves and from each other. Although, in principle, it is possible that based on a statement published in a press product or media service, criminal, civil, or administrative proceedings can be filed; in other words, in certain cases the official oversight of mass communications forums may increase the number of potential proceedings that can be initiated. However, first of all, the media authority looks at the legality of the communication at issue from a fundamentally different perspective (we will talk about this later in more detail), and secondly, in the course of exercising its enforcement activities, the authority cannot extend its jurisdiction as stipulated by the statute, i.e. it cannot exercise judicial powers.

It is worthy to note-refuting with this, too, the argument in connection with the by itself restrictive effect of simultaneous proceedings-that the content requirements contained in the Press Freedom Act are not required in these forms by other branches or areas of the law. Criminal law does not recognize the violation of human dignity as an independent crime, and civil jurisprudence-although it appears in the Hungarian Civil Code as an independent individual right-rarely references it either (not to mention that the civil law and constitutional law concepts of human dignity are different). In general, privacy is not protected either by the legal system, just as hate speech has an entirely different meaning under criminal law than in the media regulation. The protection of the constitutional order as a restriction of the freedom of opinion does not appear in any other laws or regulations. Thus, it is not true that the causes of action of the Press Freedom Act redundantly "duplicate" rules already existing in the legal system.

#### *The material scope of the Press Freedom Act and the Media Act*

The material scope of the Press Freedom Act and the Media Act covers linear media services (traditional radio and television), on-demand media services, as well as print and online press products. Under the statute, the content of the above services is collectively referred to as "media content" and the individual service providers and publishers are collectively referred to as "media content providers". The content offered by all media services and in press products is considered as media content.

The concept of the media service includes four clearly distinct elements:

- as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, independent business-like service provided on a regular basis, for profit, by taking economic risk,
- for which a media service provider bears editorial responsibility,
- with the primary aim of delivering programs to the general public for information, entertainment, or educational purposes,
- through an electronic communications network.

Linear media services are media services "provided by a media service provider for simultaneous viewing of programs on the basis of a program schedule" and in case of on-demand services, „the user may view or listen to programs at the moment chosen by him/her and at his/her individual request, on the basis of a selection of programming selected by the media service provider." The statutes essentially adopt word by word the definitions under Article 1 of the AVMS Directive. At the same time, the definition of press product - which is not covered by the Directive - also aims to conform with the definition of media service to the greatest extent possible.

Accordingly, press product means:

- individual issues of daily newspapers and other periodical papers, as well as Internet newspapers or news portals,
- any independent business-like service provided on a regular basis, for profit, by taking economic risk,
- and for the content of which a natural person or legal entity, or a business entity with no legal personality has editorial responsibility,
- with the primary aim of delivering textual and/or image content to the general public for information, entertainment, or education purposes,
- in printed format or through an electronic communications network.

It is important to note that when applying the concept of linear and on-demand audiovisual media services, the commentary in the preamble of the AVMS Directive (Recitals 21-24) should also be taken into consideration.

Accordingly, those services may be considered as audiovisual media services, which

- are intended for a significant part of the general public, and
- may clearly influence it.

The services may not be considered as audiovisual media services, which

- are primarily not of an economic nature, and
- are not competing with television broadcasting.

Furthermore, those services may not be considered as audiovisual media services either, which have a

- primary objective different from broadcasting, including also those, which may contain audiovisual content, but this is not the primary objective of the service.

On demand audiovisual media services

- are similar to television services, i.e. they compete for the same audience as television broadcasts,
- the concept of „program“ should be interpreted dynamically, taking into account the developments in television broadcasting.

The scope of the AVMS Directive does not cover press products; however, the quoted commentaries may be of assistance for the accurate interpretation of the latter concept. After examining certain criteria of these concepts, it can be clearly established that private or company websites and Internet blogs featuring both text and embedded video content are generally not covered by the statute. In the course of the amendments resulting from the consultation with the European Commission, the term “economic service” was clarified in the concepts of both media services and press products (and thus it can only mean “independent business-like service provided on a regular basis, for profit, by taking economic risk” economic services), and with this, the interpretation also mentioned before was also clarified, according to which Internet blogs -including blogs featuring advertisements but not qualified as economic services - are not governed by the statute.

## IV. Geographical scope (Article 2 of the Press Freedom Act and Articles 1-2 of the Media Act)

*The regulation pertaining to the geographical scope of the Press Freedom Act and the Media Act does not violate Union law at all, but, what is more, it codifies the relevant provisions of the AVMS Directive and jurisprudence of the Court of Justice of the European Union.*

Pursuant to the Press Freedom Act and the Media Act, the Authority may act in connection with the media services or press products of media content providers established in Hungary or media services or press products directed towards Hungary. The starting point, according to which, services directed towards Hungary -but which are not under Hungarian jurisdiction - cannot be regulated at all by statute enacted by the Hungarian state is wrong; this view contradicts many EU directives regulating various areas (among others, in the area of media administration, Directive

2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, and in the area of infocommunications directives regulating the infocommunications framework).

Pursuant to Article 176 of the Media Act, linear audiovisual media service providers established in other Member States may be sanctioned if their media services infringe the requirements pertaining to the protection of minors or the prohibition of hate speech. This rule is the adoption of Article 3(2) of the AVMS Directive.

Article 177 of the Media Act provides for measures against on-demand audiovisual media services established in other Member States, if certain conditions - contained in, and adopted from, Article 3(4) of the AVMS Directive - are met.

Article 178 of the Media Act defines possible measures against content coming from other Member States with respect to media content services outside the scope of the legal harmonization of the Union (radio and press products). These are identical with the conditions included in Article 177(1) of the Media Act and Article 3(4) of the AVMS Directive, which is the codification of the jurisprudence of the European Court of Justice. It can be concluded that measures against radio media services and press products coming from other Member States even in absence of Article 178 of the Media Act - in other words, if exclusively the rules of the Treaty on the Functioning of the European Union and related jurisprudence would have to be applied - would be applicable exactly the same way; but, in any case, the codification of Union jurisprudence create a clear situation. The rules of the Media Act list here the restriction criteria of the free flow of goods and services permitted by the EU; thus, it would be hard to allege the violation of Union law in this respect (it is not what the European Commission did either).

Articles 179-180 of the Media Act include rules applicable in case of the so called "circumvention of national measures" or circumvention doctrine. Article 179 of the Media Act implements into the Hungarian legal system Article 4 of the AVMS Directive with respect to linear audiovisual media services under the jurisdiction of other Member States. The conditions for taking measures are textually identical with the text of the AVMS Directive, and to a certain extent, they provide more favourable treatment for the media provider, as Article 179(2) also adopts the jurisprudence of the European Court of Justice into the text of the Media Act, and, thus, it becomes clear to whom the circumvention doctrine applies.

Article 180 of the Media Act extends the circumvention doctrine also to media content providers not governed by the AVMS Directive, and, with this, essentially codifies the jurisprudence of the European Court of Justice even though it was not an obligation of legal harmonization.

Those provisions were also criticized according to which the regulation of the prohibition of circumvention is too broad, is not in harmony with community law, as it aims at enforcing compliance with the entire Hungarian media regulation by foreign service providers and publishers.

According to the consistent jurisprudence of the Court in Luxembourg since Case 33/74, the Van Binsbergen case<sup>19</sup> "the European Court of Justice recognized the prohibition of circumvention as a general restriction on the freedom to provide services". Pertaining to media services within the scope of the AVMS Directive, the Directive codified the foregoing jurisprudence of the European Court of Justice in Article 4(2)-(5).

However, the implementation by the Media Act is more than the simple adoption of Article 4(2)-(5) of the AVMS Directive, as, by creating additional safeguards, the Media Council is obligated to wait two months for the action of the Member State. With this, the statute takes into account the basic doctrine of the Centros case<sup>20</sup> in which the European Court of Justice established that every instant of circumvention must be examined on a case by case basis based on a transparent system of criteria: "However, although, in such circumstances, the national courts may, case by case, take account - on the basis of objective evidence - of abuse or fraudulent conduct on the part of the persons concerned in

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<sup>19</sup> Case 33/74 Van Binsbergen v Bestuur van de Bedrijfsvereniging [1974] ECR 1299.

<sup>20</sup> C-212/97 Centros v Erhvervs-og Selskabsstyrelsen [1999] ECR I-1459.

order, where appropriate, to deny them the benefit of the provisions of Community law on which they seek to rely, they must nevertheless assess such conduct in the light of the objectives pursued by those provisions."

In the TV 10 case<sup>21</sup> the European Court of Justice provided the criteria to be taken into account in cases of circumvention that was summarized in Paragraph 42 of the AVMS Directive's Preamble. These rules were adopted by Articles 179(2) and 180(2) of the Media Act: "(2) In its assessment as to whether the conditions defined under Paragraph (1) are met, the Media Council shall examine, among others, in which of the Member States the major sources of the advertisement and subscription revenues of the linear media service provider established in another Member State are to be found, what is the primary language of the media service, in which Member State can the majority of its broadcast sites be found, and which Member State's audiences the programs are addressed to."

According to the critics, the proportionality of the restriction is questioned, because the Authority may enforce the entire Media Act and all content regulation related provisions of the Press Freedom Act. Section 2 of the Operative Part in the European Court of Justice's decision in the TV 10 case states exactly this:

*"2. The provisions of the EEC Treaty on freedom to provide services are to be interpreted as not precluding a Member State from treating as a domestic broadcaster a broadcasting body constituted under the law of another Member State and established in that State but whose activities are wholly or principally directed towards the territory of the first Member State, if that broadcasting body was established there in order to enable it to avoid the rules which would be applicable to it if it were established within the first State."*

The fact that a Member State may treat the circumventing service provider that is under the jurisdiction of the other Member State as if it was established domestically, precisely means that it can fully apply the rules applicable to domestic service providers, because only this make circumvention "pointless". The arbitrary domestic (Hungarian) application of the rules is precluded even in theory also by the cooperation of the media authorities of the two Member States concerned, the notification of the European Commission, and the condition of proportionality required by the Media Act.

It should be noted that the Press Freedom Act and the Media Act may be applied without invoking similar procedures against non-EU media content providers with respect to services distributed in Hungary.

It is also worthy to mention the objection of the European Commission according to which the fine under Articles 176-177 of the Media Act that can be imposed on media service providers established in another Member State is a disproportionate sanction. The basis of the objection was the different interpretation of the term "measures". While the Hungarian Government believed that the term "measures" include fines, the Commission assumed that if under the laws of a Member State exercising jurisdiction, the use of fines as a sanction is not allowed, than, if the Hungarian media authority imposes fines, it alone may be disproportionate. At the same time, the content of the term "measure" is not even clarified within the EU either; nonetheless, the misunderstanding was later clarified via statutory amendment. The Commission did not object to the possibility of imposing fines with respect to Articles 179-180 of the Media Act (i.e. circumventions) - taking into account that these rules establish the applicability of the full Hungarian media regulation against media services and press products under foreign jurisdiction, including, of course, the application of the system of sanctions.

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<sup>21</sup> Case C-23/93. TV 10 v Commissariaat voor de MEDIA [1994] ECR I-4795.

## V. Protection of human dignity and human rights (Articles 14 and 16 of the Press Freedom Act)

*The protection of human dignity and human rights in the media regulations does not provide for legal remedies for individual violations; such remedies continue to be available under criminal and civil law. The relevant rules of the Press Freedom Act protect not the - identifiable - person whose rights were violated but the audience (viewer, listener, and reader) of the media content. The restrictions seek to provide the audience with publicity in an appropriate manner, while respecting the fundamental social and civil norms. This justifies the prescription in the Press Freedom Act of other obligations (prohibition of the violation of privacy and constitutional order, and prohibition of hate speech).*

The conflict between respecting human dignity and human rights, and the fundamental right of the freedom of the press is one of the most serious and, at the same time, most complex issues of the media regulation and its application by the media authority. The conflicting rights are high in the hierarchy of fundamental rights, which makes the resolution of the conflict especially difficult. Under the interpretation of the Constitutional Court, the right to human dignity is the “mother right” for all other individual rights, and, thus, the source of all other concrete individual rights (Decision No. 8/1990 (IV. 23.) AB). Human dignity is a paramount value, that is unapproachable and inaccessible for the law. The law is unable to define human dignity, cannot summarize all of its sub-elements, cannot grasp its essence in the technical sense, but it can protect it even in absence of a detailed definition.

One of the functions of the right to human dignity is to guarantee autonomy, as human dignity “*is the seed of individual self-determination free from any other person’s will, which ensures that [...] the person can remain an individual and does not become an instrument or object*”. (Decision No. 8/1990. (IV. 23.) AB).

The other function of this right is to guarantee equality by ensuring that dignity is the equal right of everybody. According to the interpretation of the Constitutional Court, it follows also from the “mother right” nature that human dignity is “*such subsidiary right that the Constitutional Court as well as other courts may invoke for the protection of the individual’s autonomy if none of the concrete, specific fundamental rights can be applied to the specific facts of the given case.*” (Decision No. 8/1990. (IV. 23.) AB).

Human dignity is only unrestrictable in connection with, and forming a whole with, the right to life (see the issues of death penalty, abortion, and euthanasia); if it is separated from the right to life, the different individual partial licenses deriving from it can already be restricted.

In Decision No. 30/1992 (V. 26.) AB, which can be considered the “basic decision” on the freedom of expression of opinion, the Constitutional Court stated that: “*Thus, besides the subjective right to the freedom of expression of opinion, from Article 61 of the Constitution follows the state’s obligation to provide for the conditions and functioning of the development of democratic public opinion. The objective, institutional aspect of the right to the freedom of expression of opinion pertains not only to the freedom of the press, the freedom of education, etc., but also to the aspect of the institutional system that inserts the freedom of expression of opinion among the other protected values. Hence, the constitutional limits of the freedom of expression of opinion have to be determined in such a way that those, besides the subjective rights of the person expressing his opinion, take into account the formation of public opinion as well as its free shaping, which is essential for democracy*”.

Thus, in the interpretation of the fundamental right appears both the right of the individual and the interest of the community - manifesting through the openness of public debate and the free shaping of public opinion -, and this double foundation will remain valid in future decisions, too.

The freedom of expression of opinion is placed to an exclusive position in the imaginary hierarchy of fundamental rights: according to the interpretation of the Constitutional Court, it can be found immediately at first place right behind the inseparable right to life and right to human dignity. Although this does not mean that in the event of conflict, every

other fundamental right has to yield to the freedom of opinion, it means that the right on the opposite side has to be interpreted restrictively, and the right to expression of opinion has to be presumed to enjoy priority.

The Constitutional Court defined the freedom of expression of opinion - similarly to human dignity - as a “mother right”, which gives rise to the other “fundamental communications rights”: the freedom of the press, freedom of information, artistic freedom, scientific freedom, freedom of the conscience and religion, as well as freedom of assembly (Decision No. 30/1992 (V. 26.) AB). In the interpretation of the tribunal the “power” of the mother right emanates into the other derivative special rights (Decision No. 21/1996 (V. 17.) AB).

Simultaneous enforcement of the two mother rights, thus, means a conflict hard to resolve. Practically, in the media, the case of the violation of dignity could be an issue by exercising the freedom of the press; in other words, through the exercise of one fundamental right another fundamental right can be violated. When considering these cases, on the one hand, interests in the freedom of the press have to be weighed (primarily, the public interest in the development of the open, democratic public opinion), as well as the aspects of protecting human dignity. Considering that these are rights of similar “strength”, prior opinion regarding the “priority” of one over the other cannot be formed without knowing the concrete facts.

In the case of conflicting fundamental rights, for the identification - on a case by case basis, regarding concrete fact patterns - of boundaries between legal and illegal behaviour, there are certain “reference points” for the adjudicator. The basic principles of the Media Act are such that cannot be considered as pure declarations or written divine grace, but they assist legal interpretation, and in case of conflicting laws, they help to resolve it, or if a legal loophole appears, they help to define the missing legal provisions (with the choice of word of legal literature, the basic principles operate as “general clauses” - facilitating the application of the law).

Article 3 of the Media Act is about the freedom of the press, which always represents the basis and starting point of media regulation in a democratic constitutional state, and Article 5 is about the right to receive and provide information, as well as about democratic publicity. Based on the latter, the citizens of the state have the right to receive information about issues concerning them or the public, and sometimes this interest may be stronger than other individual rights (this is the reason, for example, that public figures can be subject to broader criticism under civil and criminal law).

In the course of its activities, the Media Council takes into consideration the decisions of the National Radio and Television Commission (hereinafter: ORTT) as well as relevant case law. Although, the nearly 15 years of ORTT practice may provide a number of useful starting points for deciding the cases, the work of the previous tribunals was tainted by numerous debilitating factors, wherefore there is no such solid, clear judicial or administrative practice available in every area concerned, which could essentially provide ready recipes for deciding the cases before the Media Council.

The media authority, as a player of the administrative institutional system, functioning at the field of public law, may act in the protection of public interest and apply legal rules concerning media contents that could appear as a restriction of the freedom of opinion and the press. The basic model of European media regulation rests on two fundamental values: provision of the freedom of the press and the necessary protection of public interest against the freedom of the press.

The freedom of the press is a protected value because a democratic society cannot exist without free press; debates of the public can only be conducted by and through the press. This is only paradoxical for the first sight, because precisely this interest justifies the restriction of the freedom of the press, too, since in the interest of open debate, the press may become a subject of legal obligations. Accordingly, the norms, positive in nature (prescribing active behaviour), found in content regulations, typically serve the development of democratic public opinion (primarily the diversity of the press) or the protection of national or European culture; an example for the former is the rule of balanced coverage, and for the latter, the requirement of program quotas.

The protection of human rights is one of the negative obligations (i.e. it prescribes restraint, in other words, avoidance of infringements), which - similarly to certain positive obligations - protects the appropriate functioning of the democratic public sphere and not the individual. Because the main justification of rules appearing as restrictions to the freedom of the press is the protection of the viewer/listener/reader (collectively: the audience) - "entitled" to such protection as a member of society.

The negative obligations set forth in the Press Freedom Act establish through the press such basic "rules of the game", the respect of which is a condition for conducting the debate. At the same time, the community has an interest in knowing all opinions, thus, even the strong, sometimes offensive or disturbing opinions, in other words, the freedom of the press - open debate - can only be restricted, referring to human rights violations, for adequately serious reasons.

In Decision No. 46/2007 (VI. 27.) AB the Constitutional Court states that *"if a broadcaster violates an individual right, the injured person may decide whether to enforce his individual rights, for instance, by initiating litigation, against the broadcaster having committed the violation. In addition to judicial action, Articles 112(1) and 136(1) of the Media Act provides for administrative proceedings. The ORTT - proceeding pursuant to Article 3(1) of the Media Act - in these administrative proceedings does not decide on the violation of the rights of individual legal entities. Article 3(1) of the Media Act is a provision of principle. Accordingly, the ORTT during the administrative proceedings is entitled to establish whether the broadcaster carries out its activities while respecting human rights, and whether the subject-matter, nature, and perspective of its different programs violate fundamental values embodied in human rights."*

In this decision, the Constitutional Court also stated with respect to the right to self-determination that *"an important element - among others - is the right of the person to enforce his subjective rights covered by the claim before various state authorities, thus, including also the courts. However, the right to self-determination also includes - as a general right to act - the right to refrain from enforcing claims or non-action. Since this right is intended to protect the autonomy of the individual, in general, everyone is free to decide whether to enforce claims by way of administrative proceedings available under the Constitution for the protection of rights and lawful interests, or to refrain from doing so"* (Decision No. 1/1994 (I. 7.) AB). Therefore, the right to self-determination also covers the right to refrain from resorting to court action in case of violation of one's rights or refrain from enforcing his rights in any other way. *"If a broadcaster violates an individual right, the injured person may decide whether to enforce his individual rights against the broadcaster having committed the violation (...)"*

Thus, based on the decision of the Constitutional Court, the jurisdictional and procedural provisions of the Media Act, and general administrative law theory, it can be established that, in general, the Media Council has the authority to monitor compliance with the provisions of Article 14 of the Press Freedom Act, but in the course of these proceedings, it can only make a finding of the fact of the violation of a fundamental right by "anonymizing" it. The Media Council cannot be a tribunal restricting the individual right to self-determination, and as a general rule, it cannot act in the defence of others' - individual - rights, irrespective of the fact that whether or not the person concerned has acted before other available forums. In the course of deciding such cases, the Media Council has to take into account also the option of initiating other (criminal or civil court) actions to an extent it needs to shield its own competence from such proceedings. Thus, the Media Council is not called to enforce individual fundamental rights but the abstract public interest; it has to ensure that the functioning of the media remains within constitutional limits.

The primary objective of criminal law is to deter citizens from the commitment of crimes in the future with the instruments of the state's penal authority, while the objective of civil law is to provide, in the case of the violation of a right, the injured party with appropriate remedies (for example, compensation for damages) - this justifies, for example, the conducting of simultaneous proceedings for the protection of the person. At the same time, no similarly strong arguments can be raised for creating the option for a third proceeding (that of the media authority) protecting the individual. This is because the media regulation protects primarily the audience and not the individual attacked in the media. Its task is not to protect the audience from outrageous, disturbing, and offensive content but to guarantee

for the audience a press, properly functioning in accordance with the “rules of the game,” that is necessary for the democratic provision of information.

It is important to emphasize that the protection of human dignity within the framework of media regulation should not be imagined as exactly categorized fact patterns. Accordingly, we believe that the Media Council can only establish the violation of the fundamental value of human dignity, if the injury has reached the “threshold” of the assertion of a public claim - of the threat to the democratic public -, for example, if a program suggests that the human personality does not have untouchable regions, that human dignity can be made available to anyone out of financial interest. Especially - but not exclusively - cases could be considered as such of the explicit, recognizable depiction of people in vulnerable, helpless, or degrading situation - e.g., victims of accidents or crimes - (in their cases the enforcement of rights is inherently limited, and showing people in these situations violates the rules of social coexistence also), or showing minors in a way which violates human dignity (individual enforcement of rights is limited in their cases also, and the appropriate development of the personality of minors is common social interest, and action against content threatening that is justifiable).

Such infringements violate and destroy one of the generally accepted foundations of social coexistence and European civilizations - the recognition of people as beings with unrestrictable, equal dignity; in this case, action taken for public interest cannot be considered disproportionate.

The Press Freedom Act explicitly instructs the Media Council to act in cases of violation of dignity occurring in the course of the production of programming. In the case of such programming, whose participants are “deprived” by contract - with their consent but under dubious circumstances - from the possibility of future enforcement of rights and legal remedies, or in the case of whom - also by contract - they exclude the possibility to prevent the broadcasting of program recorded (even if the broadcasting is clearly injurious with respect to the contracting party, and the withdrawal of the consent to broadcasting would not cause disproportionate damages to the media service provider), the media authority may initiate proceedings. Another important novelty is that Article 14(2) of the Press Freedom Act provides explicit protection to people in vulnerable or humiliating situations, thus codifying the previous practice of the ORTT.

## VI. Obligation to respect constitutional order (Article 16 of the Press Freedom Act)

According to Decision No. 46/2007 (VI. 27.) AB of the Constitutional Court, the obligation to respect constitutional order can be constitutionally prescribed by the media regulation. Accordingly, the tribunal found the provision in Article 3(2) of the Radio and Television Broadcasting Act, which is the same word by word than the new statutory provision, constitutional. Constitutional order is not an indefinable “elastic concept” but a legal category that is not defined separately in the media regulation but which appears in the legal system with clearly identifiable content. *“The duty of constitutional institutions is to protect and guarantee the order stipulated in the Constitution, in other words, parliamentary democracy was founded on the respect of constitutional rights. (...) Broadcasters, like any other legal entity, must respect the constitutional order, and this obligation is specified by the provision of the Media Act setting forth basic principles. Based on this provision of basic principles, pursuant to Article 112 of the Media Act (...), the Media Authority may impose sanctions in case of legal violations if justified by extraordinary circumstances. Such situation would be for example, if a broadcaster were constantly propagating an ideology disregarding equal human dignity, which constitutes the foundation of constitutional order. With respect to the rule of the Media Act pertaining to the respect of human rights, such penalties applied based on the relevant paragraph of the Media Act may have an important role in such special situation in the course of action against broadcasters disrespecting the fundamental constitutional structure.”*

## VII. Prohibition of violation of privacy (Article 18 of the Press Freedom Act)

In the jurisprudence of the Court of Justice of the European Union, proceedings initiated because of privacy violations gained great importance in recent times, which primarily aimed at preventing the intrusions of boulevard media (see, for example, *Von Hannover v Germany*, where the Strasbourg Court took a stand for the broad interpretation of privacy). While provisions concerning human dignity, constitutional order, and prohibition of incitement to hatred were already included in the Radio and Television Broadcasting Act, too, the protection of privacy is a novelty. It must be emphasized with respect to this rule also that application of the law cannot be directed to the protection of individual rights: protection of the private sphere in the media regulation is possible, when the level of infringement makes action necessary for the public interest, because the media content provider at issue violates a basic rule of the democratic public, with which it threatens the proper functioning of the public sphere. In the case of privacy, we face the same apparent paradox (enforcement of specified individual rights for public interest), but, actually, this is not the case: the objective is always the protection of the public without affecting the enforcement of individual rights.

## VIII. The prohibition of hate speech (Article 17 of the Press Freedom Act)

*The standard of hate speech in the media regulations is lower than its general criminal law standard. The reason for this is not exclusively the theoretically more significant social effect of the media, but its role played in the functioning of the democratic public sphere: some opinions may be justifiably excluded from the public debate. The Constitutional Court has already recognized before - in connection with the Radio and Television Broadcasting Act - the constitutionality of the causes of action set forth in the Press Freedom Act, thus, the only issue that can be a subject of constitutional debate is perhaps the scope of subject matter (on the latter issue see more above at III.).*

The constitutionality review of the previous Radio and Television Broadcasting Act provisions on the prohibition of hatred was done by the Constitutional Court in 2007 (Decision No. 1006/B/2001 AB). In this decision, the Court found that the regulation was constitutional, stating that the possibility for intervention by the media authority - independent from the will of the injured community or person - does not pose restrictions on the right to self-determination, and also, it does not substitute the enforcement of the claims of the holders of subjective rights.

In the course of assessing constitutionality, the reasons for the considerably lower level of restriction standards – compared to those pertaining to criminal law – were also questioned. Article 17 of the Press Freedom Act is in many respect similar to the rules of the Radio and Television Broadcasting Act, and, thus, according to this: “the media content may not be suitable for incitement to hatred against any nation, community, national, ethnic, linguistic and other minority, or any majority as well as any church or religious groups” and “may not be suitable for the exclusion” against these.

The decision of the Constitutional Court mentioned above states that “the option of simultaneously available legal remedies and even proceedings that can be conducted simultaneously under different branches of law regarding the fundamental rights complementing each other does not violate, and, what is more, does not even restrict unnecessarily the freedoms of expression of opinion and of the press”. Accordingly, actions against hate speech may be constitutionally promulgated also outside of criminal law system within the framework of media regulations.

However, based on a provision - not particularly relating to the media - of the Criminal Code, conviction on grounds of hate speech requires more than the offence of the community or the suitability for incitement to hatred; it requires the “instigation of hatred”, which is clearly a more severe behaviour. The constitutionality of this difference was established by the Constitutional Court partly by making a distinction between the sanctioning systems of criminal and media law, as sanctions available under the media regulations are less severe. What is protected under the general freedom of opinion (incitement to hatred against, or exclusion of, a community) is not protected by the freedom of the press. According to the decision: “In the system of legal liability, criminal law is the last resort. This means that if with respect to

*a socially harmful conduct - in this case instigation of hatred and incitement to hatred - even criminal liability is not an exaggeration and is not unconstitutional, then other less severe prohibitions possibly promulgated with respect to the given conduct under other branches of law could not be unconstitutional either."*

The Decision mentions the significant opinion forming power of the electronic media as another reason for the distinction, thus referring to Decision No. 1/2007 (I. 18.) AB: *"it is generally accepted that the opinion forming powers of radio and television broadcasting and the persuasive effects of animated images, audio and live coverage are multiple times more effective than the ability of other social information services to provoke thought."* Further elaborating on this thought, the Decision states that *"the media is therefore of critical importance for the existence of diversity of opinion, also serving as one of the most important stages for community debate; however, one must also take into account the fact that the broadcasting of programs found to be offensive or exclusionary to, or discriminative against, persons or certain groups within society (whether minorities or the majority) may have similarly considerable negative effects of unforeseeable magnitude."* Based on the above, the prohibition of the incitement to hatred and of the abuse of communities in the media regulation is constitutionally acceptable. In the decision, the Constitutional Court pointed out also that *"the criticized paragraph of the Media Act does not mean that there would be no place for debates in radio and television programs or that there could not appear a plurality of opinions regarding society. The objective of the provision is to prevent radio and television to be the "amplifier" of hateful and offensive people who judge based on race and who call for exclusion and hatred."*

In response to the argument citing the lack of a precise definition of the cause of action, the tribunal held that *"the fact in itself that the regulation provides the adjudicator with the discretion to assess whether a conduct is suitable to incite hatred does not lead to the conclusion that the provision violates Article 8(2), Article 60(1)-(2), or Article 61(1)-(2) of the Constitution"*.

It must also be noted, that the decision of the Constitutional Court has only ruled concerning the restrictions on television and radio media services. Meanwhile, the respective rules of both the Media Act and the Press Freedom Act are applicable to media content providers of all types. Can a prohibition of such general scope be justified under the Constitution? The Constitutional Court's statement about the opinion forming powers of media is also true to media contents other than radio and television. Media usage habits vary between different social classes and age groups; therefore, it is true for all media types that they are of considerable significance with regards to their own audience or a segment thereof (some people obtain information only from the Internet, whereas others might prefer reading print media, or primarily watch television). A national daily newspaper reaches a broader audience than a local radio station, thus, the opinion forming power depends not primarily on the nature of the media outlet but the audience it actually reaches, therefore, it is not reasonable to differentiate in the regulation based merely on the manner of distribution of the content. At the same time, regarding its adjudication practice, when applying possible sanctions, the media authority may and should take into account the size of the audience actually reached. At this point it is worthy to note again that we do not find the "media effect" theory in itself as a good basis for the regulation, because the primary justification of the regulation is much more the maintenance of the functioning of the democratic public sphere.

We disagree with the criticism according to which the new regulation would extend the circle of protected communities. Article 3(3) of the Radio and Television Broadcasting Act has been protecting every minority group since 1996 and "any majority" from offensive conduct and exclusion, and only the scope of incitement to hatred under Article 3(2) of the Radio and Television Broadcasting Act was narrower. This differentiation cannot be justified: why would the regulation protect against the less serious violation – i.e. exclusion – more communities than against the more serious – i.e. incitement to hatred?

We also disagree with the criticism according to which the concept of "any majority" is unclear, and such protection of majority communities is not justified anyway. First, if the concept of "majority" is unclear, than, necessarily, the concept of "minority" cannot be clear either (as these concepts have to be defined in relation to each other), and, secondly, the adjudicator can interpret these concepts without any difficulties. And, although, it can be concluded that, generally, minorities might need protection more frequently, against hate speech, majority communities also deserve protection.

Often appears in the scientific literature the argument, according to which, protection needs to be provided only to groups that live in a minority in society, because the majority is always “safe”, as the majority community cannot be threatened by minorities.<sup>22</sup> We disagree with this for many reasons: First, a majority community, similarly to minorities, represents value, and, under certain circumstances, protectable value, the members of those communities have the same human dignity as members of a minority group, and it can be offended the same way (even by its own members: the Hungarian nation can be disparaged by a Hungarian, too). The injury, that does not necessarily mean physical threat and does not always have visible results either, can occur the same way. Second, a member of the majority community can easily become minority in a given life situation (in a town, a public square, or in an argument), when his vulnerability might increase. Third, the potential protection of the majority does not decrease at all the intensity of the protection of minorities, in other words, we do not take away from the minority what we give to the majority.

Article 17 of the Press Freedom Act resolved the inconsistency, according to which the previous Article 3(2) of the Radio and Television Broadcasting Act prohibited the *suitability* for incitement to hatred while paragraph (3) prohibited the *intention* to offend and exclude. In the former situation it regulated the possible effect of the publication, while in the latter it restricted it based on the intention thereof. However, the protection of the democratic public sphere can only justify the restriction based on the former approach, in other words, it can only provide for the restriction independently from the intent of the speaker - whom, by the way, the media authority most of the time cannot even locate.

(Finally, it should be mentioned that, as a result of the consultations between the European Commission and the Hungarian Government, the rule pertaining to the prohibition of “open or concealed offence” of communities was rescinded from Article 17(2) of the Press Freedom Act. The Commission criticized the content and not the material scope of the subject matter of the rule. For our part, we can agree with this amendment, however, it is curious that here the Commission requested the amendment of a rule, which it had once approved before our 2004 EU accession.)

## IX. Offences against public morals (Article 4 (3) of the Press Freedom Act)

*The prohibition of offences against public morals may constitute in theory a constitutional restriction to the freedom of the press, but in its current form - similarly to the 1986 Press Act - it exists exclusively as a declarative rule in the area of media regulation, considering the competences as defined by law of the media authority and the general and theoretical nature of the wording of the rule.*

Media content providers may not be sanctioned for violating public morals. Even though the Press Freedom Act does adopt provisions declaratory in nature from the earlier the Press Act (Article 4(3) of the Press Freedom Act “the exercise of the freedom of the press may not constitute or abet an act of crime, violate public morals, or prejudice the moral rights of others”); however, according to the Media Act, the Media Council does not have a supervisory competence over these provisions. Article 182 c) of the Media Act charges the Media Council with the supervision of compliance with the requirements set forth in Articles 13-20 of the Press Freedom Act, but does not mention Article 4 whatsoever. However, an administrative body may only exercise powers as defined by law, without being able to expand their scope at will. This kind of extension of authority would be clearly unconstitutional, and a decision issued in absence of jurisdiction is void under Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (hereinafter: Administrative Proceedings Act).

Pursuant to Article 4(3) of the Press Freedom Act - in absence of the specification of the precise legal obligation - media authority proceedings could not be initiated anyway, because public morals is such a general category that has to

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<sup>22</sup> See, e.g. András Hanák: Szent szólásszabadság [Sacred Freedom of Speech]. Fundamentum, 2009/4. 59.

manifest in concrete fact patterns to be enforceable within the framework of the administrative authority. Such rules protecting morals are for example rules -serving the protection of minors -under Articles 9-11 of the Media Act that sets forth obligations primarily with respect to violent or pornographic programs; pursuant to these, administrative proceedings are possible, but not with reference to Article 4 of the Press Freedom Act.

Decision No. 20/1997 (III. 19.) AB of the Constitutional Court analyzed the rule of the Press Act protecting public morals. At the time of the 1989 amendment of the Press Act such a provision remained in effect, pursuant to which the court was entitled, upon prosecutorial motion, to prohibit or immediately suspend the publication of a press product or other writings that violated the section cited above. The rule, making preliminary restriction possible, thus, was applicable for the protection of public morals. The option of preliminary control pursuant to motion filed with the Constitutional Court and the right of the prosecutor to act without the consent of the victim in the event of an infringement of the otherwise only personally exercisable individual rights, violate the freedom of the press. Further, the prohibition of communications offending public morals, which are otherwise not prohibited by the Criminal Code and the prohibition of publication because of the suspicion of the commission of a crime before the courts even issued a final verdict, all violate the freedom of the press and the right to self-determination to initiate legal proceedings. The petitioner requested a finding of unconstitutionality based on these grounds.

The Constitutional Court with its decision rendered unconstitutional in its entirety the disputed provision pertaining to preliminary restriction (not discussing the rule requiring the protection of public morals), but merely for legal technicalities, because it only discovered unconstitutionality with respect to the right of the prosecutor to initiate proceedings -violating others' individual rights and referencing the commission of a crime subject to private criminal complaint and independent of the will of the people concerned. At the beginning of the opinion, the judges cite to the International Covenant on Civil and Political Rights and the European Convention on Human Rights, which provide for the restriction of freedom of opinion to protect public morals, and, then, deny the unconstitutionality of the restriction: *"Decision No. 21/1996 (V. 17.) AB have already concluded that: "The Constitutional Court does not review the content of public morals enforced in law. As the Court basically made it over to the legislature to define "public interest" [...], enforcing public order as well as morals is the right of representatives - before, for other reasons, they come up against the boundaries of the Constitution." Since no laws and regulations determine, in the examined context, the definition and content of public morals, therefore, their determination falls under the competence of adjudicators. Judicial Decision No. BH1992.454 of the Civil Collegium of the Hungarian Supreme Court set forth guiding principles regarding the adjudication of request for the prohibition of publication of press products. In this decision, the Supreme Court, among others, concluded that the concept of public morals include those rules of behaviour that are generally accepted by society. The press product's conflict with public morals can be established if this is clear and undisputable according to public opinion. According to the position of the Constitutional Court, the restrictive provision of the Press Act concerning offences against public morals cannot be classified as unnecessary and disproportionate."*<sup>23</sup>

Since the provision found unconstitutional was in the same paragraph with others, the Court annulled the entire paragraph, and the legislature have not substituted the annulled rules. Later László Sólyom wrote that "presumably, there was a silent agreement on that (in the appropriate proceedings) public morals can restrict the freedom of the press."<sup>24</sup> In other places he stated that: "I find exaggerating the criticism, according to which adjudicating issues of morality means returning to the ages before the Enlightenment. [...] Public morals are such theoretical values, behind which it is hardly possible to find any violation of certain individual fundamental rights, and, thus, it can hardly serve as a basis for restriction. At the same time [...] the human rights conventions all provide for the restriction of rights in the protection of public morals, if »necessary in the democratic society«."<sup>25</sup>

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<sup>23</sup> Section III/3 of Decision No. 20/1997 (III. 19.) AB of the Constitutional Court.

<sup>24</sup> László Sólyom: Az alkotmánybíráskodás kezdetei Magyarországon [The Beginnings of Constitutional Adjudication in Hungary]. Budapest: Osiris, 2001. 484.

<sup>25</sup> Gábor Attila Tóth: A „nehéz eseteknél” a bíró erkölcsi felfogása jut szerephez – beszélgetés Sólyom Lászlóval [In "difficult cases" the moral views of the judge take a role - interview with László Sólyom]. Fundamentum, 1997/1. 41.

## X. The media system and the role of information (Article 10 of the Press Freedom Act)

According to the statute *"all persons shall have the right to receive proper information on public affairs at local, national, and EU level, as well as on any event bearing relevance to the citizens of the Republic 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."* Originally, the second sentence of the provision was in Article 13 with a different wording. As a result of consultations with the European Commission, the new text made it obvious for everybody that the requirement of the obligation to inform does not result in concrete obligations with respect to the different media content providers. The earlier text of Article 13 of the Press Freedom Act does not refer to the "media system as a whole", but to the duties of "all media content providers", essentially repeating the content of Article 2(1) of the Press Act. The provision did not mean in either the 1986 Act or the Press Freedom Act that everybody, e.g., the thematic media services, too, is obligated to provide general information; this is merely - in its new, currently effective version - a declarative rule setting forth the public interest duties of the media. The obligation to inform - stemming from the right to information to which everyone is entitled - is an obligation required from the media market as a whole. This rule in itself does not impose a concrete obligation on individual media content providers but sets forth a general media law principle. The prescription of concrete information obligation is only justified in the case of certain media service providers, and it has to be regulated within the framework of the media law, as it is the case currently (in the case of public service media and media services having significant influencing power).

## XI. Rules on balanced coverage (Article 13 of the Press Freedom Act and Article 12 of the Media Act)

*The rules of balanced coverage have changed, compared to previous rules, in that the relevant provisions of the new laws were promulgated based on the intentions of the Constitutional Court. Based on this, balanced coverage can be examined not only within one certain program but also a series of programs. The requirement of balanced coverage already adjudicated by the Constitutional Court can be considered a constitutional provision even today.*

The requirement of balanced coverage stems from the recognition of the public interest responsibilities of the press. Based on the rule, information and news coverage about matters concerning the community must present the conflicting views. In connection with a given issue, the relevant opinions must be collected for, and presented to, the audience, ensuring with this that they make informed decisions regarding the disputed question, thus serving the idea of democracy. Compared to pluralism, balanced coverage is a specific requirement: an obligation relevant generally to information programs (but not necessarily exclusively to news programs). Genre characteristics must be taken into account also, and based on these, certain programs (for example, political satire) cannot necessarily be expected to provide the level of balanced coverage similar to news programs.

Obviously, the rule of balanced coverage can be applied only with the assistance of media ethics and professional standards, always subject to the circumstances of the given situation. It cannot mean precisely calculated, up to the second coverage of the same length when it comes to the presentation of certain views, although the Hungarian media authority primarily looks at the temporal length of the coverage when considering balanced coverage. It is because the instruments of law are not capable of measuring precisely the equal and impartial treatment of the interviewees or the interviewer's tone of voice or gestures. Obviously, there is not always an opportunity to present *every* conflicting views, and in the course of editing, sometimes, choices have to be made between the relevant, appropriately important, and sufficiently represented views (however, this cannot mean every time the exclusive presentation of "prevailing" views).

The different views and not their representatives have to be presented: in a given situation, the editor may choose between several representatives, but when justified (for example, in absence of an interviewee representing the other side), even the reporter or journalist can cover the task of balancing by presenting the conflicting opinion. Impartial coverage does not necessarily have to be realized in every single program, because it would make significantly more difficult the production of, for example, informative magazine shows. In certain cases, it is adequate if - in connection with programs consisting of several episodes or broadcasted regularly - balanced coverage is realized only throughout the whole program series or program flow itself.

According to certain views, the current, general requirement of balanced coverage should be significantly narrowed in the near future, and it would be adequate to impose it exclusively on public service or perhaps terrestrial broadcasting national channels. The idea is based on the premise that with the expiration of frequency scarcity and the new methods of distribution of media services, such level of intervention in the freedom of media outlets is no longer justified today. Today, numerous television, radio, and press products provide information, as the era of previous state monopolies and limited privately owned media outlets is now over. And people interested in the truth should take the time to watch the news of more than one media services (even if separately they are biased) or read through more than one newspaper a day.

We agree that to a certain extent it can be expected that the interested citizen obtain information from more than one source, but we believe that based on this argument, the general obligation of balanced coverage cannot be eliminated. This is because if we are indeed serious about democracy, we have to create a situation that fosters informed decision-making regarding community affairs for as many people as possible: and it can be expected from only a few with enough time on their hands to watch more than one news programs a day. Access to the increased number of media outlets is not universal, and, what is more, the larger quantity does not necessarily guarantee the proportionate distribution of views they represent and, thus, the resulting balanced coverage.

The obligation of balanced coverage does not apply to press products and on-demand media services but only to linear (traditional) media services engaged in the provision of information services. The regulation on balanced coverage exists in the Hungarian legal system since 1996 (and is used in many other European countries); therefore, the media authority and the courts also developed a solid case law (which, because of the operational dysfunctions of the previous media authority is not necessarily without contradictions, but which can be relied on as a starting point in future adjudications).

The content of the obligation of balanced coverage set forth in the Media Act is in compliance with the constitutional requirement of clear norms. The content of balanced coverage is specified jointly by Article 12 of the Media Act and Article 13 of the Press Freedom Act. Linear media services engaged in information services are required to provide "in the informational or news programs they produce, comprehensive, factual, up-to-date, objective, and balanced coverage" of events of public interest and of disputed issues, based on criteria defined by law. It has to be highlighted that this obligation - just as in the past - does not mean the disproportionate restriction of editorial freedom: only the editor or the media service provider can decide what events are of public interest, in other words, what events will be reported in their different programs.

In Decision No. 1/2007 (I. 18.) AB, the Constitutional Court deemed constitutional the obligation of balanced coverage of media service providers within the scope of the Radio and Television Broadcasting Act. In Decision No. BH 2007. 253, the Hungarian Supreme Court explained that the concept of balanced coverage also includes the requirements of diversity, factuality, timeliness and objectivity; in other words, "balanced coverage" is a general category with several of its sub-elements specified by the statute. However, pursuant to Article 181(1) of the Media Act, such an interpretation is also possible according to which the authority may only examine the last requirement out of the requirements of Article 13 of the Press Freedom Act (obligation of "diverse, factual, timely, objective, and balanced coverage"), i.e. balanced coverage. Because Article 181 of the Media Act provides for the initiation of proceedings exclusively in case of an infringement of

the balanced coverage obligation. Since the list of competences (Articles 182-184) also reveals that the authority only examines the balanced coverage obligation, accordingly, the rest of the requirements remains *lex imperfecta*.

The requirement of pluralism is one of the basic principles of the media regulation. The expression itself originates from the so called third television decision of the German Constitutional Court,<sup>26</sup> in which the judges differentiated between internal and external pluralism. *Internal pluralism* (which, according to the decision, only binds public media service providers) requires from the given service to ensure the development of some sort of a balance in its programming as a whole with respect to the presentation of the different views found in society; in other words, it requires the programs of the channels to be unbiased toward any directions but present different disputed (not necessarily political) issues providing an opportunity for the presentation of all opinions; and it further requires that the different programs be diverse and satisfy the needs of the broadest possible audience. *External pluralism* requires that all of the media service providers *collectively* provide for the *diversity* of views and available content, and establish the *balance* thereof. Thus, although privately owned media service providers are not bound by the requirement of internal pluralism, they collectively have to comply with the requirements of plurality.

It could be concluded from this - erroneously in our opinion - that pluralism is identical with the requirement of balanced coverage, though the obligation is much broader than that. Pluralism summarizes in the most general way all those obligations that facilitate compliance with the democratic duties of the media. This stems from the recognition that the media has a significant cultural and political influence, in connection with which, in some way, the interest of the audience must be ensured. According to another realization - that leads to the requirement of pluralism - keeping the state away from the media, without a doubt, serves the interests of the audience, still, in itself it is not capable to ensure them. Viewing pluralism and balanced coverage as identical is not justified either, because the latter is often made the concrete obligation of media service provider in different media laws, while, in contrast, pluralism only rarely appears in constitutions or media laws, and even if it does, only as a principle.

The requirement of pluralism prescribes not only content requirements but also restrictions that influence the structure of the media market, and in addition it restricts potential market behaviour. It is possible to step up in the name of pluralism against the excessive concentration of media restricting property rights on the media market; influencing through competition law rules the behaviour of market participants; requiring the obligatory transmission of certain channels from program broadcasters (must carry); and defining concrete content requirements for media service providers (public service obligations, obligatory broadcasting of news programs, balanced coverage, etc.)<sup>27</sup> The different content requirements are only obligatory within the scope of "internal" pluralism, in other words, with respect to program flows produced by a given media service provider, while structural and competition law requirements contribute to the creation of "external" pluralism. The Hungarian Constitution and media regulation do not refer to pluralism, but mention its equivalent, diversity (Article 61(2) of the Constitution and Article 4(1) of the Press Freedom Act).

In Decision No. 1/2007 (I. 18.) AB, the Constitutional Court concluded that the requirement of balanced coverage is not in conflict with the fundamental right of the freedom of the press even in an era of broader and broader selection of programming. It is confusing that the decision uses the expression *pluralism* when analyzing the Radio and Television Broadcasting Act rules prescribing *balanced coverage*. The Court finds that "*having regard to the full scale of radio and television programs offered, external pluralism has been achieved by the creation of a multi-actor market. However, the multi-colored offer of programs does not make it needless to apply the requirements of balanced coverage (internal pluralism).*"<sup>28</sup> Thus, the Constitutional Court uses the two concepts in part interchangeably. At the same time, it concludes that the liberated media market in itself is not sufficient to achieve pluralism (balanced coverage): "*In order to maintain*

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<sup>26</sup> 57 BVerfGE 295, 326 (1981)

<sup>27</sup> Lesley P. Hitchens: Broadcasting pluralism and diversity. A comparative study of policy and regulation. Oxford-Portland, Oregon: Hart Publishing, 2006.

<sup>28</sup> Section III/3.2 of Decision No. 1/2007 (I. 18.) AB

*the pluralism of opinions, the balanced supply of information is to be examined in the case of public service broadcasters established and operating by means of public funds and in respect of commercial radio and television stations whose opinion forming power has become significant.*"<sup>29</sup> This last sentence of the opinion could be misunderstood, as in its decision the Constitutional Court did not find unconstitutional the balanced coverage requirement binding every radio and television media service provider. Those who find this as the most important sentence of the decision disregard the fact that the Constitutional Court did not touch upon the generally prevailing requirement of balanced coverage.

The decision also applies the expressions of pluralism and balanced coverage somewhat confusingly causing a lot of misunderstanding, as while it acknowledges the materialization of (external) pluralism, the Court continues to find the requirement of balanced coverage sustainable. The two - if we do not use the concepts as each other's synonyms - of course, are not mutually exclusive.

The operative part of the decision prescribes as a constitutional requirement that the balanced coverage of information - depending on the character of the program - must be examined within the different programs and within the totality of different programming. According to the explanation: *"... the broadcaster enjoys a freedom to present the relevant opinions about a topic of public interest in a series of program units broadcasted on a regular basis. The requirement of balanced coverage may not be interpreted in a manner expecting the broadcaster to present all individual opinions in every single program unit. Requiring the broadcaster to present all individual opinions in every single program unit in order to enforce the requirement of balanced coverage would impair the freedom of the press – and in particular the freedom of editing – to an extent not justified by the legitimate legislative aim, i.e. ensuring the plurality of opinions."* This interpretation of the Constitutional Court has been now codified in Article 12(2) of the Media Act.

Compliance with the obligation of balanced coverage can now be assessed in the course of separate proceedings defined under a separate title (Article 181 of the Media Act) clearly under administrative procedural rules. The statute expressly states that such proceedings may not be initiated *ex officio*, but only exclusively upon request. Similarly to the Radio and Television Broadcasting Act, the applicant is required to contact the media service provider with his complaint before initiating the administrative proceeding.

Under the Radio and Television Broadcasting Act, only the "person representing the unrepresented opinion" or "individuals suffering damages" had the right to file a complaint for the lack of balanced coverage, in other words, the statute and the practice of the authority required "involvement" for the initiation of proceedings. This rule meant the misunderstanding of this legal institution. Not only and primarily the person representing the unrepresented opinion is protected by the balanced coverage requirement, but also the audience wishing to receive information. In other words, incomplete coverage infringes the rights of everybody wishing to receive information, and, thus, everybody should be given the right to file a complaint. This is not a violation of the right to self-determination, but, to the contrary, it is another instrument for the "audience" to step up for the protection of their interests and rights.

In contrast with the media authority's general administrative supervisory proceedings, the regulatory proceedings examining compliance with the obligation of balanced coverage is special also in the sense that, in case an infringement is established, only the specific legal consequences defined by the act may be imposed. That is, in case an infringement is established, no fines may be imposed, the media license may not be suspended, no „blackouts" may be ordered, and neither the media service agreement nor the media license may be terminated. Once the infringement has been established, the authority may only require the media service provider to have the decision - made in the proceeding - as well as the announcement defined therein published, or to provide the petitioner with an opportunity to publish its position. It should be noted that before the statutory amendments made after the Government consultations with the European Commission, the requirement of balanced coverage was extended to the news and informational programs of on-

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<sup>29</sup> *ibid.* at III/3.2

demand media services as well. The reason - as explained in the January 31, 2011 letter of Tibor Navracsics, Minister of Justice and Public Administration to Neelie Kroes, Commissioner - was that "In the future, a significant decline of traditional television can be predicted, and thus, the role of on-demand content will further increase also in the field of public information. The preservation of political pluralism and diversity of information justify the requirement of the obligation of balanced coverage regarding the relevant programs of on-demand media services." Nonetheless, after this, the rule was amended with respect to the on-demand media services, and in its current, effective version only covers linear media services.

## XII. Right to maintain the confidentiality of sources (Article 6 of the Press Freedom Act)

*The right to maintain the confidentiality of information with respect to criminal proceedings is created by the Press Freedom Act. The Press Freedom Act also defines the exceptions from the right to confidentiality, but none of these pertain to the media authority, so it could not oblige journalists to reveal their sources.*

Pursuant to Article 6 (1) of the Press Freedom Act, all media service providers, and publishers of press products, and journalists are entitled "to the right to keep the identity of their informants confidential". This general right of confidentiality also applies to judicial and administrative proceedings, thereby enabling the media to be exempt from the duty to testify. The 1986 Press Act failed to provide protection for the press in the most important cases, namely in criminal proceedings, when it failed to guarantee the right of confidentiality, but referred the resolution of the issue within the scope procedural law.

According to Article 11(1)(b) of the previous Press Act, journalists „are entitled – and are obliged upon his request – to keep the identity of the person providing information confidential. When receiving information pertaining to a criminal act, the provisions of criminal law shall prevail." Thus, as a general rule, in civil litigations and administrative proceedings, refusal to reveal information sources was permitted. At the same time, pursuant to Article 82(1)(c) of the Criminal Procedure Act, testimony may be refused when a person is *bound by confidentiality* due to the nature of his profession. Given the nature of their profession, journalists are not required to maintain confidentiality or, more precisely: such obligations may originate not from the nature of the profession (as is the case with doctors and attorneys), but from an agreement concluded with their sources. This means that the obligation they are subject to is not related to their profession but to a civil agreement, which may be concluded by anyone - non-journalists, too - with the source of important information. Prior to the new regulation, therefore, journalists could be obliged to reveal their sources in criminal proceedings.

Under the new rule, the general right of confidentiality is not unlimited. It does not cover the protection of journalists' sources transmitting classified data without authorization and, in exceptionally justified cases during judicial and proceedings by investigating authorities, media content providers may be obliged to reveal their sources "in the interests of protecting national security and public order or uncovering or preventing criminal acts". The scope of exceptions is narrow and justify the restriction of journalists' rights to confidentiality (even the most debated category of "public order" can be interpreted based on criminal law jurisprudence). The courts and competent authorities must construe these exceptions narrowly in order to ensure that the freedom of the press is respected.

However, the Media Council cannot be regarded as an authority entitled to proceed under Article 6(3) of the Press Freedom Act in the investigation of sources. First of all, the Media Council is not an investigating authority. Article 182(c) of the Media Act precisely defines the administrative powers of the Media Council concerning the supervision of the obligations set forth in the Press Freedom Act ("the Media Council shall... supervise compliance with requirements set forth in Articles 13-20 of the Press Freedom Act"). Article 182 and other provisions of the Media Act provide an exhaustive list, in accordance with the Administrative Proceedings Act, on the Media Council's administrative powers. Meanwhile, based on relevant judicial and Constitutional Court jurisprudence, the "narrowly defined" range of

administrative powers is unambiguous and therefore cannot be extended (pursuant to the Administrative Proceedings Act, a decision made in absence of authority is to be annulled). For purposes of Article 6(3) of the Press Freedom Act, no additional administrative powers or cases are being introduced under the Media Act, and Article 6(3) of the Press Freedom Act also falls outside the investigative rights in administrative proceedings, as no references to such powers on data provision are made even in the procedural rules of the Media Act.

Accordingly, the provisions of the Media Act on clarifying the facts (Article 155) and on data provision (Article 175) cannot be applied in connection with Article 6 of the Press Freedom Act. Obviously, it is not the task of the Media Council to protect „public order“ and „national security“ and investigate and prevent „criminal acts“; as these are tasks of the police and the authority responsible for national security. Provided, strictly on a theoretical level, that the Media Council would decide to use the above provisions for the disclosure of sources, the media service provider or publisher concerned could, in all cases, seek legal remedy under the Administrative Proceedings Act against such order of the Council, and the order would be adjudicated by the administrative court. Furthermore, the court conducting the legal review may not consider the annulment of the respective administrative decision, since decisions made without authority are void.

### XIII. Protection of investigative journalism (Article 8 of the Press Freedom Act)

Is the press entitled to commit, as part of its investigative work and in order to uncover a criminal act or other abuse, illegal and unlawful acts, and where are the limits of investigative journalism? If we want journalists to assist in the continuous supervision of the transparent, democratic functioning of the public authorities, then -if they cooperate - charging the contributing journalists as suspects by the law enforcement authority may already be unjustified, and investigative journalists failing to notify the police in advance may not be convicted for their offence, as their act clearly poses no danger to society.

The Press Freedom Act provides investigative journalists exemption from any liability, provided that the violation has been committed in connection with obtaining information of public interest, which could not have been otherwise obtained or could have been obtained only with unreasonable difficulties. The condition of exemption is that the infringement committed by the journalist should not cause disproportionate or serious harm and that the information is not obtained by the violation of the statute protecting classified data. The scope of exemption does not cover civil litigations initiated for the compensation of material damages caused by the journalist's unlawful behaviour.

According to certain critics, the category of “information of public interest” in the text of the statute is undefined and unclear. It was mentioned as a problem that “information of public interest” is not defined in a normative manner. The urge to define terms, that occasionally overcome some lawyers, is not required with respect to this rule, because the adjudicators will be able to precisely define on a case by case basis the content of “information of public interest”. We believe that it is deeply insulting to journalists and editors to assume that perhaps they are unable to determine what information is of public interest and what is not - as this is one of the basic reference points of their profession, their work. Our opinion is that the concept of information of public interest does not violate the requirement of clear norms under Article 2(1) of the Constitution, and it cannot be stated that this concept cannot be interpreted by the adjudicator. To define the concept of information of public interest, the starting point can be the concept of *information of public interest* in Article 61(1) of the Constitution as found in Act LXIII of 1992 on the Protection of Personal Data and Disclosure of Information of Public Interest (hereinafter: the Data Protection and Freedom of Information Act) - although information of public interest has a broader meaning pursuant to the Press Freedom Act - and the main function of exercising the freedom of the press (democratic provision of information). Following from the foregoing, information of public interest as applied by the Press Freedom Act is any information or data, which relates to, or aimed at, the constitutional functioning of the state, providing information about which is the fundamental responsibility of the media.

## XIV. Right to withdraw a statement (Article 15 of the Press Freedom Act)

The new rule significantly increases the possibilities of media content providers and, at the same time, in order to protect the democratic public sphere, limits the right relating to the withdrawal of statements.

Article 15(1) of the Press Freedom Act codifies the general prohibition of taking advantage of the consent to publish a statement, and paragraph (2) prescribes the mandatory presentation of statements prepared for publication. Following the presentation, the person giving the statement may only withdraw his consent to publication, if the media content provider “has substantially altered it, and the alteration would prejudice the person giving the statement”. This narrowed the possibility of withdrawal in principle, as before, pursuant to the Press Act, it was possible to withdraw any, even unsubstantial and non-prejudicial, alterations (Article 11(1)(d) of the Press Act).

The legal consequence of taking advantage of the consent in Article 15(1) of the Press Freedom Act pursuant to paragraph (3) can be also the withdrawal of the statement, but only if the statement is not of public interest, was not pertaining to a public event, or was not made by a public figure (a person charged with official or public functions or a political figure). Thus if anybody made a statement with respect to public affairs or if a public figure made a statement about anything, even in the case of misuse, they cannot withdraw the statement. Of course, paragraph (2) contains a separate cause of action, and the option provided therein is available with respect to statements made on any subjects by anybody.

Presumably, the most important reasons for the regulation were the abuses taking place earlier in the so called talk shows and reality shows, when the media service providers restricted the right to withdraw by contract, and later published the statements of the participants to their detriments. Thus, it is important to emphasize that Article 15 of the Press Freedom Act covers not only the press and merely “conventional” interviews, the category of “statement” is broad enough to include any statements made in the media. At the same time, under the Press Freedom Act, the withdrawal must take place “sufficiently in advance of the publication” and it cannot cause “the media content provider disproportionate damages”. “Sufficient time” differs by the type of media outlet, and the specifics will be developed by the jurisprudence of the adjudicators. At the same time, in contrast to anomalies experienced in the past, Article 15(3) of the Press Freedom Act gives adequate protection, which provides the right to withdraw statements made by private individuals in instances of private nature, and in case of abuse by the media content provider, and at the same time, renders the contracts restraining this right void.

## XV. Rules on registration (Article 5 of the Press Freedom Act and Articles 41-42 and 45-47 of the Media Act)

*With respect to the registration related rules of the Media Act, it must be emphasized that registration is merely a formality, an administrative procedure, which does not mean the substantive review of the content or “permission” of the media content service. The Media Act only allows a formal review during registration, and the authority has no discretionary powers concerning the evaluation of the registration; in other words, the authority is required to enter a media content provider into the register, provided that the statutory requirements are met; what is more, in the case of notification of a press product, registration cannot be denied. Accordingly, registration cannot be interpreted as a restriction of the freedom of the press.*

### *General justifications of the registration related rules*

The Constitutional Court in Decision No. 20/1997 (III. 19.) AB found the following: “the mandatory notification about the production and publication of a periodical as well as its registration is a traditional and necessary aspect of press regulation.”

The public administration theory and dogmatic justification of the media content services registration is the supervisory powers of the Authority (Media Council and the Office), which includes the power of control (authorizations and tools of control). Beside the right of inspection, the supervisory powers of the Authority include - depending on the result of the inspection - the tools of intervention, the competence of applying various legal measures, and the tools to remedy the legal violation discovered as a result of the inspection.

The Authority, thus, exercises official oversight over legal entities precisely defined by the Media Act (and the Press Freedom Act). This official oversight is exclusively directed to enforce the substantive law norms contained in the Media Act and the Press Freedom Act, as well as to ensure that expressly defined legal entities meet their legal obligations. (All this is true also regarding the special oversight proceedings - market surveillance procedures and media market sector inspections - and in the course of these proceedings the Authority conducts inspection directed at specifically defined legal entities and performs acts of public authorities and makes administrative decisions.)

The official oversight described above requires at the same time that the Authority possesses adequate, up to date information and an authentic register of the legal entities within the scope of the Press Freedom Act and the Media Act. If the media regulation did not include the registration obligation, then in every oversight proceeding the Authority would have to first clarify what type of providers fall under the personal jurisdiction of the oversight authority, which would significantly hinder the assurance of legal enforcement on the one hand, and on the other, determination of the legal entities concerned would not be guaranteed and predictable.

It should be emphasized also that the authentic official registry of the legal entities under official oversight has an importance of warranty, as the registration of the data it contains is prescribed by law, anybody can review the data, and until otherwise proven, the data must be presumed authentic.

#### *Notification or licensing?*

The new media regulation expressly abandons the previous approach of the Press Act, and - with respect to press products, as well as on-demand and ancillary media services - does not require notification of the Authority as a condition of the commencement of services or activities (Article 41(2) of the Media Act). However, despite this, notification is mandatory and must be completed within sixty days of the commencement of services or activities. In the event of failure of notification a fine up to one million Hungarian forints may be imposed (Articles 45(8) and 46(8a) of the Media Act).

In connection with registration, Article 5(1) of the Press Freedom Act contains a safeguarding rule, according to which *"the conditions set for registration may not restrict the freedom of the press"*. Thus, the Authority may not interpret the relevant rules of the Media Act pertaining to registration in a way so they unnecessarily or disproportionately restrict the publication of press products and the commencement of media services. Registration in itself cannot be viewed as a restriction of the freedom of the press (only if the regulation provided the authorities with the power of discretion, as it was done by Article 14(1) of the previous the Press Act).

The conditions of registration in reality do not contain any requirements that would enable the Authority to exercise any discretion. Pursuant to the Media Act, certain data of the notifier are to be provided (name, address, contact information, name of the executive officer, and company registration number) as well as data of the service or press product (category, title, type, scheduled launch date) and an administrative service fee have to be paid for the process. The registration of these particulars does not restrict the freedom of the press to any extent. According to Decision No. 34/2009 (III. 27.) AB of the Constitutional Court, the registration could only be viewed as a restriction of the freedom of the press if *"registration was not merely an administrative act, but the Authority - as in the present case - had discretionary power over the subject of the petition"*. The Media Act does not contain such power.

### *Material scope*

Certain critics complain that the rule of registration also extends to online press products. In case of the online press products too, the requirement of notification is only a formal requirement and it clearly follows from the rules of the Press Freedom Act and the Media Act pertaining to material scope.

With respect to the registration of press products, it must be emphasized that under the 1986 Press Act, the notification of activities and registration with the Authority was also mandatory, and with respect to online press products, this obligation was extended by the judicial case law of recent years (see for instance Decision No. BDT 2009. 2148 of the Budapest Metropolitan Court of Appeal). Accordingly, numerous online newspapers and portals have already registered - before the adoption of the new regulations - with the official register.

### *Grounds for revocation and cancellation*

The grounds for revocation and cancellation defined by the Media Act (Articles 45(4)-(5) and 46(5)-(6)) are not based on the content of the press product or media service and do not provide the registering authority with discretionary power.

The Media Act only provides for revocation of registration, thus registration cannot be denied. (This is only important for formal reasons, as according to the effective regulation, the media service or press product must be registered no matter what, then, as a result of the inquiry during the notification - if certain conditions exist - the registration must be revoked, which in the administrative proceeding takes place with the issuance of an administrative decision. All this provides the clients with guaranteed legal protection.)

The Office revokes the registration in case of conflict of interest with respect to the notifier, or if the name or title of the media service or press product that is the subject of the notification is identical with, or confusingly similar to, that of an on-demand media service or press product, which was previously registered and which is in the register at the time of the notification.

Cancellation can take place if after the registration such circumstances arise, based on which the law provides for the application of this legal consequence. It must be emphasized that this type of cancellation is not a sanction, as it is not applied because of a legal violation; similarly to registration it is a necessary component of the regulations regarding the press.

On-demand media services or press products must be cancelled in the register if revocation of registration would be proper; the media service provider/founder/publisher requested the cancellation in the register; the media service is not started within one year of the registration or if an ongoing service is interrupted for a period of more than one year (in case of press product: the publication is not started within two years of the registration or the publication is interrupted for a period of more than five years); or a final court decision ordered the discontinuation of trademark infringement by the name of the media service or title of the press product and the banning of the infringing party from further violations.

The automatic cancellation after a certain period of time of services that has been interrupted for a long period of time or never commenced made it possible to handle the anomalies caused by earlier rules pertaining to registration. The system of the periodicals register contains a large number of such periodical titles even today, which their notifier never intended to publish but only wanted to decrease the options of their competitors by reserving periodicals' titles.

The resolution of disputes over periodical titles also became simpler and received substantial guarantees. Pursuant to the Media Act, the registration must be revoked if the name or title of the media service or press product that is the

subject of the notification is identical with that of an on-demand media service or press product, which was previously registered and which is in the register at the time of the notification, and the on-demand media service or press product must be cancelled in the register if a final court decision ordered the discontinuation of trademark infringement by the name of the media service or title of the press product and the banning of the infringing party from further violations.

#### *Special rules pertaining to linear media services*

The notification procedure pertaining to linear media services differs in many aspects from similar procedures pertaining to on-demand media services and press products. First of all, the linear media service can commence only after registration (Article 41(1) of the Media Act), and with respect to these services, more data and information must be provided for the Authority (Article 42(1)), and, here, the Authority may deny registration (Article 42(6) - thus, it is not necessary to revoke with another decision the automatic registration). Reasons for denial include violation of rules pertaining to media market concentration and the failure to pay the administrative service fee in the registration process, and reasons for cancellation include cancellation for repeated and serious legal violations (Articles 42(6)(c) and (f), Article 42(7)(f), and Article 187(3)(e)).

The broadening of the scope of data required for notification is justified because the Authority can assess the media service fee to be paid after the linear media service in the possession of these data.

The cancellation contained in Article 42(7)(f) of the Media Act may only be applied as a sanction if, following the registration, the media service committed more than once serious legal violations, and the Media Council, observing discretionary factors prescribed by law (gradualism, proportionality, and equal treatment), sees the sanction of cancellation justified. By the way, the instances of cancellation of linear media services almost identical with instances of cancellation of on-demand media services and press products, but they include one additional situation: owing - for over thirty days - the media service fee to the Authority.

The Radio and Television Broadcasting Act also provided the option - with respect to linear media services - of cancellation as a sanction that can be applied in case of legal violation, but the previous media authority did not take advantage of this option. Even though the application of the cancellation sanction remains possible in theory, after the cancellation of the media service provider concerned - following new registration - the application of this legal measure does not influence the functioning of the media service, so contrary to criticism, the Media Act does not intend to "stigmatize" the infringing media service providers.

It should be noted that as a result of the consultations with the European Commission, the rules of registration were also amended. Within the framework of this amendment a rule was added to the Media Act, based on which the registration of on-demand media services and press products cannot be denied, though this rule is rather formal due to the option of subsequent revocation. And also, the one million Hungarian forint ceiling of the fine for the violation of the registration rules was added to the text as well. But such amendments did not change the basis and essential elements of the rules.

## XVI. Election and composition of the Media Council (Articles 124-129 of the Media Act)

*Regarding the election of the Media Council, the Media Act contains the same constitutional safeguards with respect to which the Constitutional Court found before the similar rules of the Radio and Television Broadcasting Act constitutional. The new law contains, without exceptions, the formal guarantees of the Media Council's independence, including election by the Parliament, the fact that they cannot be recalled or instructed, the long duration of the mandate, possibility of review of administrative decisions, etc.*

The National Media and Infocommunications Authority (hereinafter: Hungarian Media Authority) is the convergent authority in charge of the supervision of media and communications. The President of the Hungarian Media Authority is responsible for the supervision of communications, while the Media Council — operating within the Hungarian Media Authority, but autonomous and with an independent legal personality — is responsible for the supervision of media. The President of the Media Council and the Hungarian Media Authority is the same person, however, the Media Council comprises five members and passes its decisions by a majority of votes.

The Media Council is elected by a qualified two-third majority of the Parliament. The members of the Parliament cannot be influenced in their decision regarding the election of the members of the Media Council, and members of the Media Council cannot be instructed, cannot be recalled and are independent in all respects. The elected members of the Media Council may not have any ties — either formal or informal — with the Government. Pursuant to the Act, persons *“with higher education qualification and with at least three years of experience in economic, social, legal, technical sciences or management (membership in managing body) in the field of media service distribution, media service provision, regulatory supervision of the media, electronic communications or regulatory supervision of communications”* are eligible to become members of the Media Council. Moreover, strict conflict of interest rules apply to the members.

In the course of personal decisions, the Constitution does not differentiate between representatives of the governing party and the opposition. With this respect, within the paradigm of constitutional law, it is not important as to in what proportion the representatives of the governing party and the opposition voted for the candidate(s), which in the case of secret ballots cannot even be proven. It is a different issue that an independent body after its election must become independent from the representatives who elected them.

With respect to all this, our opinion is that the current composition of the Parliament does not affect the constitutionality of Articles 124-129 of the Media Act.

Similarly to the Media Council, members of the ORTT, established pursuant to the former Radio and Television Broadcasting Act, were also elected by the Parliament, upon the recommendation of the factions of the parliamentary political parties. The Constitutional Court has examined the constitutionality of the election of the members of the ORTT, and established the following on the respective rules in its decision No. 46/2007 (VI 27) AB: *“that the Media Act allows judicial action against material decisions of the ORTT regarding the legality of broadcasting provides adequate safeguards that parliamentary parties cannot exert substantial influence on the contents of programs through the ORTT. [...] In and of itself, the nomination right of parliamentary factions indeed does not guarantee the independence of the ORTT. However, nomination by parliamentary factions does not automatically mean the election of the person recommended for ORTT membership. The fact that MPs elect the members of the ORTT ensures that the decision on members is the outcome of a democratic process. The fundamental principle of representative democracy is independent mandate, and an MP cannot legally be obliged to cast his vote in a certain manner. [...] Pursuant to Article 31 (2) of the Media Act, members of the ORTT are subject only to the law and cannot be instructed in their actions. The free mandate of members and the fact that they cannot be recalled ensure independent operation free of any influence. Political and economic conflict of interest rules provide further safeguards of independence. The mandate of ORTT members elected by the Parliament is distinct from the legislative cycle. [...] These statutory provisions are theoretically capable of ensuring the independence of ORTT members and excluding parliamentary parties from formally exerting their influence.*

Based on the above, the regulation of the election of the Media Council complies with the requirements of constitutionality: its members are elected by the Parliament, and, moreover not by single majority vote under the disposal of the governing parties, but with qualified two-thirds majority, requiring agreement with the parties of the opposition. Members' term of mandate is distinct from the legislative cycle: they are appointed for a term of nine years.

Article 123(2) of the Media Act also states that the Media Council and its members are subject only to the laws and may not be instructed with respect to their activities. The mandate of members is free and they cannot be recalled. Beyond the similarities, the election procedure of the Media Council is indeed different in one aspect from that of the election of the previous body, and this is the nomination process. While the president of the ORTT was nominated jointly by the President of the Republic and the Prime Minister, the president of the Media Council is nominated exclusively by the Prime Minister. Under the Radio and Television Broadcasting Act, the parliamentary factions nominated separately one member each to the council, while under the Media Act, an ad hoc committee comprised of one member of each faction nominates the four members. In the ad hoc committee, every parliamentary faction has a number of votes in proportion to the number of its members, and in the first round they have to agree unanimously, and in the second round, with a two-third majority on the persons of the four candidates. This solution presents a greater pressure for compromise on the parliamentary factions, and at the same time, it does not guarantee without a doubt that the candidates of all parliamentary factions participate in the Media Council. Only in one situation can the pressure to compromise be avoided: if any of the political powers obtain a two-third majority in the Parliament. In such situation, however, the following sentence of a Constitutional Court decision is appropriate, according to which *"the fact that MPs elect the members of the ORTT ensures that the decision on members is the outcome of a democratic process."*

The fact that the system of the nomination process can result in a situation where not all parliamentary factions are represented among the members of the Media Council does not render in itself the composition of the Media Council unconstitutional. As it was concluded in Decision No. 37/1992 (VI. 10.) AB of the Constitutional Court, *"any controlling, substantive influence of the Parliament on radio and television is just as unconstitutional as that of the Government. The same applies to local governments, political parties, and other non-governmental organizations, advocacy organizations and groups. The duty of the legislature is to determine the legal solution that is able to guarantee comprehensive, balanced and accurate presentation of opinions and impartial reporting."* Even if exclusively the Government appointed the members of the Media Council it would not be in itself a constitutional problem. This is supported by the previously cited Constitutional Court decision: *"in terms of its content Paragraph 6 of Decree No. 1047/1974 (IX.18) MT of the Council of Ministers is unconstitutional not because it charges the Government with the oversight of the Hungarian Radio and the Hungarian Television - including the approval of the organizational and procedural rules - but because it does not contain any substantive, procedural or organizational regulation which would preclude the possibility of the Government using its license to assert - even indirectly - a controlling influence on program content."*

Considering also that the Media Act (contrary to the previous Radio and Television Broadcasting Act, with respect to all decisions of the Media Council) provides the opportunity of judicial review, the above referenced nomination and election process cannot provide in any way the opportunity to one or more political parties, the Government, or the Parliament to impose controlling influence on the content of media services and press products. As the Constitutional Court concluded in Decision No. 46/2007 (VI. 27.) AB, in connection with the initiative objecting the nomination of the members of the ORTT by parliamentary factions, that *"the fact that Media Act allows judicial action against material decisions of the ORTT regarding the legality of broadcasting, provides adequate safeguards that parliamentary parties could not exert substantial influence on the contents of programs through the ORTT. It is because the intention of the ORTT and of the parliamentary parties to influence the content of programming can become at any time the subject of judicial proceedings, during which the presiding judge is obligated to make an impartial and independent decision [Article 50(3) of the Constitution] on whether the decree met the requirements of the freedom of the press"*.

The Prime Minister nominates the President of the Media Council by appointing him/her as the president of the Hungarian Media Authority. However, in this respect, the Prime Minister's nomination right does not mean at all that at the same time he has the right to appoint: the candidate can only become the president of the Media Council, if the Parliament votes in favour by a two-third majority. This creates an enhanced responsibility for the Prime Minister to nominate a candidate who presumably enjoys a broad support among the Members of the Parliament.

*Some argue that by the nomination, the Prime Minister extends his exercise of power with respect to the time period over the government cycle and his mandate as Prime Minister. According to this argument the nomination by the Prime Minister raises the possibility of executive oversight over the freedom of the press.*

In the Hungarian legal system, the heads of many authorities are appointed or nominated by the Prime Minister, for periods exceeding the government cycle. Thus, for example, the president of the Hungarian Financial Supervisory Authority is nominated by the Prime Minister and appointed by the President of the Republic of Hungary for six years. The President appoints, upon the recommendation of the Prime Minister, the presidents of the Hungarian Competition Authority and the Hungarian National Bank, also for six years. The Parliament elects the president of the State Audit Office for twelve, and the judges of the Constitutional Court as well as the prosecutor general for nine years.

In connection with the election and appointment of the judges, the Constitutional Court pointed out that there are many ways to guarantee the independence and to neutralize political influence. One such way is election by a two-third majority of the votes of the members of the Parliament; but the same result may be achieved by the recommendation regarding appointment made by the Government or one of its members to the President of the Republic of Hungary (Decision No. 38/1993 (VI. 11.) AB).

The requirement that the president of the Hungarian Media Authority nominated by the Prime Minister has to be elected as the president of the Media Council by a two-third majority of the votes of the Parliament significantly limits the individual decision making authority of the Prime Minister, as when making a decision, he has to consider who that person might be that presumably will be supported by two-third of the Parliament.

Under the Constitution, the Parliament has an "organizational freedom" (right), which clearly includes - based on both constitutional law and public administration organizational theory and organizational law - the determination of the term of supervisory legal status and legal relations. In addition, the Parliament has the most general and extensive organizational right (compared to which, the other organs named in the Constitution - e.g., the Government or local government - have more limited powers in this area). However, neither the Constitution, nor the Constitutional Court decisions analyzing the composition of the media oversight system formulated any requirements regarding the diversity of these organizations. It is not diversity the Constitutional Court requires under the Constitution, but it sets up the requirement that no groups of society or community of interest (including the Government and the Parliament) should have the chance to exercise controlling influence on the content of media services.

In the case of different public offices and mandates, the long term of the mandate promotes independence from the Government and the Parliament. From the perspective of the functioning of the state and society, the Media Council has important, significant tasks. For the sake of "keeping distance" from the Government and the Parliament, its president and members receive their mandates for a term extending beyond a parliamentary session. According to certain critics, the current larger Government party ensured its influence on public life for nine years by electing the Media Council, regardless of its results at the next and following elections. This claim is somewhat self-exposing: this is because, indirectly it complains that other Government parties after a possible Government change will not be able to assert their own intent to influence because of the long duration of the appointment. But why would it be a problem from a constitutional perspective if after the next election parties different from the current governing parties would form a Government while the Media Council was elected during the previous parliamentary session? What is the reasonable connection, from a constitutional point of view, between the result of the next elections and

the composition of the Media Council? Contrary to the claim cited above, the solution is that the Authority keeps its distance from the current as well as the following Government, too.

## XVII. Tools of the Authority to reveal and establish the facts (Articles 153, 155, and 175 of the Media Act)

*The new media regulation established a clear, transparent, and predictable system of exercising one's rights, which implements the European and constitutional requirement of public administration being subject to public law provisions. The Media Act places all procedures of the Authority related to media administration and media supervision within the scope of the Administrative Proceedings Act. The law of administrative procedure represents a legal regime enabling clear, guaranteed, client-friendly, and effective exercise of rights, which regulates the entire system of legal relationships between the Authority and external legal entities (clients), as well as the order and course of the procedure from start to finish, the institutions representing safeguards for clients, and the subjective rights ensuring the legal protection of clients against public authority; it also contains the detailed rules of legal remedies and judicial review.*

*The Media Act thoroughly regulates the toolset that can be used to establish the factual basis of different cases, and in this context, the Media Act also provides for the application of the toolset for regulatory inspections defined in the Administrative Proceedings Act, for the sake of clarity and due to priority safeguards aspects. The monitoring rules of the Administrative Proceedings Act may be specific, but they nonetheless represent a set of fundamental rules and instruments accepted for all sectors of public administration and also comply with the principles of "fair procedure" specified by the European Community with regard to regulatory proceedings, and therefore cannot be questioned from either a procedural, constitutional, or community law perspective.*

*The guaranteed limit of evidentiary tools used by the Authority in evidentiary procedures, on the one hand, is its statutory authority set forth by law. And, the "strictly defined" and, therefore, non-extendable nature of administrative powers is clearly established based on relevant judicial and Constitutional Court practice (pursuant to the Administrative Proceedings Act, a decision made in absence of authority is grounds for annulment); thus, the Authority does not have the power (outside of proceedings) to "arbitrarily" require the provision of data not necessary for the clarification of the facts of an individual administrative case.*

*On the other hand, the evidentiary procedure of the Authority and the guaranteed limitation of evidentiary tools mean that evidence can be viewed legal in the scope of such relevant facts, which are necessary for the clarification of the facts and render a decision with respect to the administrative case. In addition, from the perspective of constitutional safeguards and the public administrative legal theory bases of the statutory regulation of the Media Act, it must be emphasized that in every stage of the procedure of the Authority, the requirements of fundamental principles of lawfulness, proper exercise of powers, and the fair procedure must prevail. In accordance with the clients' rights set forth in the Administrative Proceedings Act and the Media Act, because of the subordination of procedures to public administrative procedural law, judicial control is also implemented; therefore, the option to judicial review is ensured in all procedures, taking of evidence, and clarification of facts (e.g., provision of, or familiarization with, data) conducted by the Authority.*

The data provision rules of the Media Act was several times criticized for the fact that the Authority in its procedures is entitled to arbitrarily and without limitation require data provision, as a result of which, it can get to know and manage any personal data. In order to assess the criticism and constitutional objections on the finding of the facts, first of all, it is necessary to analyze the legal theoretical and dogmatic background, constitutional bases, and safeguards provisions of procedures conducted under the Media Act.

### *The guaranteed administrative rules of procedures of the Media Act*

The Media Act has established a system of clear, transparent, and predictable enforcement regime and implements and enforces the European and constitutional requirement of subordination under the public administration act. The

Media Act places all procedures of the Authority related to media administration and media oversight within the scope of public administration authority procedural law, i.e. the Administrative Proceedings Act. Administrative procedure law represents a legal regime enabling clear, guaranteed, client-friendly, and effective enforcement of rights, which regulates the entire system of legal relationships between the Authority and the external legal entity (client), as well as the order and course of the procedure from start to finish, the institutions representing safeguards for clients, and the subjective rights ensuring the legal protection of clients against public authority, and it also contains the detailed rules of legal remedies and judicial review. Thus, the guaranteed administrative procedure law basis of the Media Act as a whole can be found in the general procedural rules of the Administrative Proceedings Act and the Media Act.

#### *Constitutional bases and principles of procedural safeguards of the administrative procedure law related to media administration*

It can be set out as a theoretical starting point of constitutional requirement of public administration authority procedure related to media administration, that constitutionality in a formal sense means the existence (and enforcement) of fundamental rules pertaining to procedural order, and in a contextual sense means the guarantee of freedom rights serving as control to arbitrary exercise of power.

From the perspective of the present analysis-constitutional requirements to be examined in the scope of the establishment of the facts and in the scope of the enforcement of procedural safeguards-first the provisions of the basic principles of the Administrative Proceedings Act must be mentioned, considering that the basic principles of the Administrative Proceedings Act must be observed in every procedure of the Authority, and these rules lay out the most fundamental requirements with regard to all procedures of the Authority.

The basic principles of the Administrative Proceedings Act refer to such constitutional rights whose observance and protection is the primary responsibility of the state; these basic principles are the requirements of those provisions, including the adequate rules of fundamental rights and of the Constitution, which are mandatory for everyone with respect to administrative proceedings. These provisions, thus, supersede the detailed procedural rules in content, and provide the restrictions for their applications. It is important to emphasize that the basic principle provisions of the Administrative Proceedings Act are binding in every administrative proceeding of the Authority; they have to prevail in every stage of the proceeding, in other words, while enforcing the law, they may be cited to and they have to be applied in the decisions, in other words, they have normative power. Violation of the principles affects the legality of the Authority's decisions, may serve as a basis for initiation of legal actions, and has procedural consequences.

The requirement of legality is the central category of administrative legal theory. The principle of legality is a basic principle permeating the entire administrative procedure, which defines the fundamental objective of administrative procedure, and that the administrative authority in the course of its proceedings is obligated to observe and have others observe the provisions of the laws and regulations. The legal constraint (legality) of individual administrative acts is a complex requirement, which requires that the acting administrative organ be established by law, and that its legal capacity, powers, and jurisdiction be defined by law. This rule of law and constitutional requirement in itself refutes the criticism of the Media Act, according to which the Authority can arbitrarily-even without administrative proceedings-conduct procedural actions, issue administrative acts, and prescribe data provision obligations.

In connection with the exercise of legal authority, the other component of the legality principle, i.e. the rules of the Administrative Proceedings Act pertaining to the principle of proper exercising of powers must be mentioned, being one of the basic constitutional principles ensuring the avoidance of arbitrary proceedings by the Authority. According to Article 1(1)-(2) of the Administrative Proceedings Act, administrative powers and administrative authority may be used exclusively to achieve the objectives as intended by the legislature (prohibition of abuse of power). From the perspective of administrative legal theory, it can be stated that the principle of legality, and within that, appropriate exercise of power and the basic constitutional principle of fair procedure and guaranteed rights of the client ensure the substantive protection against arbitrary administrative proceedings.

As the legal theory component of the basic principle of legality, it is necessary to mention the principle of enforcement upon the authority's own motion (ex officio action). The principle of ex officio action pervades administrative procedure

as a whole, but with respect to the subject matter of the present analysis, we examine its forms relating to the burden of proof and the clarification of the facts. Ex officio proof is such a unique feature of administrative proceedings, which differentiates it from the procedural rules of civil or criminal cases. Because while in judicial proceedings the parties have the burden of proof, in administrative proceedings, the Authority bears that burden. Thus, in administrative proceedings, it is not the right but the obligation of the Authority to reveal and establish the true facts, and the Authority is required even in absence of a motion by the client to carry out all evidentiary acts necessary for the clarification of the facts.

Among the basic principles of administrative proceedings and the necessary elements of the paradigms of constitutionality, reference must be made to the right to legal remedies. Articles 163-165 (and Articles 155(4) and 175(5)-(6) containing the important rules regarding the subject matter of this analysis) of the Media Act guarantee the right to legal remedies against every administrative decisions rendered under the administrative powers of the Authority. It is important that it is possible to request judicial review on any grounds of legal violations - both substantive and procedural - against the decision of the Authority, and the courts are entitled to fully review the decisions of the Authority (Article 164(3) of the Media Act). Judicial review thus extends to the contents (issues of substantive law), and procedural grounds and form (procedural issues) of administrative decisions, and furthermore, to the rationality and legality of reviewing the discretion and the criteria thereof included in the administrative decision. It is important to emphasize that based on the regulatory regime of the Media Act, in the course of the review of the administrative decision, the court has a quasi oversight - amending - power (Article 164(3) of the Media Act).

The legal regulation established in accordance with the foregoing constitutional requirements and defined by constitutional standards means the basic constitutional foundation and relevance and the guaranteed procedural framework of administrative proceedings related to media administration.

#### *Safeguard rules regarding the clarification of the facts under the Media Act*

Regarding the regulatory instruments for the clarification of the facts defined in the Media Act, first, it should be highlighted that ensuring the operation of the media system and market, economic, social, public service, constitutional, and human rights correlations thereof is a primary responsibility of the state, in which adequate law enforcement is quintessential. The basis for law enforcement is, however, the establishment of the facts of the specific cases and knowledge of data related to media services. On the other hand, however, state intervention in the media system and establishment of the facts of the case are significantly limited by the constitutional principle and safeguards of the freedom of the press. Based on these constitutional foundations, the method and instruments by which the State intervenes in the domain of media represent a central issue and are the target of a now permanent critical attention from the media and society.

First of all, it is important to emphasize that based on the provisions of the Media Act, provision of data may only be (legally) requested within the framework of administrative proceedings or administrative inspections. From the perspective of safeguards, with respect to the constitutional basis of statutory regulations of the Media Act, it must also be emphasized that data provision is only possible in the course of administrative proceedings conducted under administrative authority, and it must be ensured that the requirements embodied in the basic principles, as described above, of legality, appropriate exercise of power, fair process, etc. are observed at every stage of these proceedings.

#### *The three main types of data provision in the regulatory system of the Media Act*

##### **(1) Data provision in the course of the administrative proceeding**

It is just natural in all administrative sectors that the state reveals, assesses, and analyses certain facts for the purpose of proper law enforcement, but in the domain of media this became an issue of central "interest." In order to avoid criticisms referring to harsh intervention and censorship, the Media Act thoroughly regulates the toolset that can be used to establish the factual basis of different cases, and in this context, for the sake of clarity and to ensure the

priority safeguards, the Media Act also requires the application of the toolset for regulatory inspections defined in the Administrative Proceedings Act (Article 155(1) of the Media Act).

It is important to emphasize that although the inspection rules of the Administrative Proceedings Act may be specific, they nonetheless represent a set of fundamental system of rules and instruments accepted for all public administration sectors and also comply with the “fair process” principle of the European Union regarding administrative proceedings; therefore, they cannot be questioned from either a procedural, constitutional, or community law perspective.

It can be stated based on the regulatory system of the Media Act that in pending administrative proceedings, on the one hand, the Authority has the right to request data from the client pursuant to Article 51 of the Administrative Proceedings Act (which under the provisions of the Administrative Proceedings Act does not mean data provision obligation for the client, only an opportunity to provide evidence, make statements, and provide data). On the other hand, under Article 155 of the Media Act, the Authority has the right to obligate the client (and persons defined under this Article of the Media Act) to provide data. If the obligor fails to fulfil his obligation to provide data under Article 155 of the Media Act, a procedural fine may be imposed on him/her under Article 156 of the Media Act.

With respect to the regulation of data provision, it is also important to emphasize that the Administrative Proceedings Act itself refers to separate regulations (statute or government decree) the task of defining those proceeding categories where the disclosure of data and making of relevant factual statements as specified by separate regulations is mandatory and their denial may be punishable by separate sanctions. The reason for the wording of the Administrative Proceedings Act-among other things-is that since the Authority is obligated to act in administrative cases under its competence and, further, obligated to clarify ex officio the facts necessary for rendering a decision, and also, in the majority of cases of social relationships governed by sectoral laws, generally the client has the information that may serve as a basis of the decision, therefore, with legal regulation, the Authority must be enabled to prescribe data provision obligations in order to familiarize itself with these data.

Compared with the mandatory data provision specified in the authorization of Article 51(3) of the Administrative Proceedings Act, the Media Act contains only one important additional rule: based on Article 155(4) of the Media Act, in particularly justified cases, for the sake of the clarification of the facts of the case, the Authority has the right to obligate persons or organizations other than the client and other actors in the proceedings to provide data or means of evidence. The critics of the Media Act often attack this paragraph stating that it enables arbitrary application of the law and the unlimited prescription of data provision.

These statements, however, are refuted, on the one hand by the safeguards provisions introduced above: the Authority has the right to prescribe the provision of data exclusively in administrative proceedings initiated in an administrative matter under its competence as defined by law in order to clarify the facts (i.e. in order to establish the legally relevant facts of an individual, concrete case). Based on relevant judicial and Constitutional Court practice, the “strictly defined nature” of administrative powers is unambiguous and therefore cannot be extended (as per the Administrative Proceedings Act, a decision made in absence of authority is grounds for annulment), thus, the Authority legally is not entitled to “arbitrarily” require data provision outside of administrative proceedings or when it is not necessary for clarifying the facts of the individual case of the administrative matter.

The question also emerged, as to whether persons besides the client could be obligated to provide data under the Media Act, if these persons are bound by confidentiality obligations pursuant to other laws and the Media Authority requests from them data that falls within the scope of this confidentiality obligation. Article 172(f) and (n) of the Administrative Proceedings Act differentiates between concepts of “privileged information based on profession” - physician-patient or attorney-client privilege, etc. confidentiality - and “statutory secrets.” The Media Act, however, only mentions “statutory secrets”, thus, it only differs from the rules of the Administrative Proceedings Act in respect to the management and familiarization with statutory secrets. Thus, professional secret is not an issue of the procedural law regulation of the Media Act, but the general procedural rules of the Administrative Proceedings Act applies to them fully.

From the perspective of safeguards, it should be separately emphasized that obligating persons besides the client for data provision can only take place in especially justified cases and only as an exception. In other words, exclusively in situations if in the individual case—after the evidentiary procedure and clarification of the facts—relevant data, documents, and evidence necessary for rendering a decision on the merits are not available. Thus, the order instructing data provision is only legitimate in this respect, if the Authority has justified in detail, and provided adequate and reasonable legal as well as factual reasons to support all these circumstances in the order. Besides this, it has to be emphasized that the determination of the subject and content of data provision obligation under the Media Act is not without examples in the sectoral regulatory system of the Hungarian public administration.

Because of the criticism directed at the Media Act, it is also important to emphasize that in the course of ordering data provision, the Authority is not entitled to conduct a “search of the premises” or resort to other similar instruments or legal institutions falling within the scope of criminal law. It may only resort to the instruments regulated and authorized in all sectors of public administration, as it must conduct its procedures according to the rules of the Administrative Proceedings Act generally applicable in all sectors of public administration.

Critical statements regarding arbitrariness by the Authority in connection with data provision, on the other hand, are refuted by the rules of the Media Act on the guarantees for legal remedies. This is because pursuant to the special legal remedies rules of Article 155(4) of the Media Act, judicial control is also available against the Authority’s order instructing data provision, as the person obligated to provide data and evidentiary instruments may turn to an administrative court for legal remedy (as an independent legal remedy) against the order of the Authority. With this respect, it is important to emphasize that based on the safeguards rules of the Media Act, the judicial petition for legal remedy - unlike the general rules of the Administrative Proceedings Act - has a suspensive effect. In other words, the person or organization obligated to provide data is only obligated to comply with the data provision challenged by the petition for legal remedy after the decision of the reviewing authority becomes final - i.e. if the court declares the order legitimate in the review procedure. Thus, it is wrong and unfounded to claim that the refusal to provide information results in immediate and automatic fine, because exactly as a result of the safeguards regulation of the Media Act only in case of final finding of failure to comply with the data provision obligation (failure to comply or failure to adequately comply) can the Authority apply legal sanctions.

## (2) Requirement of data provision obligation in individual cases pending as administrative matter outside of administrative proceedings

Based on the particularities of the tasks and competencies of media administration, the Authority is entitled to prescribe data provision obligation outside the pending administrative proceeding based on Article 175 of the Media Act. With respect to data provision, the statute sets forth that the Authority may instruct persons and organizations under the jurisdiction of the statute to provide such data, which are essentially necessary for the administration of the tasks rendered under the administrative powers of the Authority.

Thus, it is important that because of safeguards reasons, the Media Act only provides for the prescription of data provision exclusively for the administration of tasks rendered under the administrative powers of the Authority for the sake of the exercise of its authority, and data provision obligations may be prescribed exclusively with respect to persons and organizations under the jurisdiction of the statute. According to Article 175 of the Media Act, in general the objective of data provision is to enable the Authority to make well-founded decisions, after getting familiar with relevant data, as to the necessity of the initiation of an administrative proceeding. With regard to the foregoing, the provision entitles the Authority to request data in separate administrative proceeding for the exercise of its administrative powers even if under the given administrative power, there is no pending administrative proceedings yet.

Since Article 175 of the Media Act contains data provision authority outside the scope of pending administrative proceedings, in this case, the prescription of data provision is an independent administrative matter, whose subject is the prescription of data provision itself. In other words, the only and exclusive subject of an administrative proceeding initiated under Article 175 is the data provision, and the subject of administrative decisions terminating the proceeding

is also the prescription of the data provision itself. It should be separately highlighted that this legal institution of the Media Act may be found in other sectoral regulations as well.

According to Article 175 of the Media Act, both the Office and the Media Council are entitled to issue data provision requests and orders, but only within the scope, and for the sake, of its own administrative powers. In other words, decisions based on Article 175 may be rendered only by the organ, under whose competence the case regarding the data provision belongs. For the objective of the flexible exercise of the administrative power under this Article, fundamentally based on voluntary compliance with the law, directed to the prescription of data provision, and for the objective of taking into account the interests of the entities obligated to provide data, the Authority first issues an official notice (not requiring formal decision) requesting from the obligor the provision of the data specified in the notice. In the case of failure to comply with the notice, the Authority has the right to render a decision.

In the case of the data provision obligation regulated under Article 175 of the Media Act - with respect to its special aspects - the statute regulates an individual legal remedy. There is no administrative legal remedy (appeal) against the notice, however, the client may request judicial review of the decision rendered for "failure to comply" with the notice. The data provision notice may be challenged in this petition for legal remedy.

### (3) Special data provisions and data provision procedures

The category of special data provision includes special data subject matters regulated by the Media Act or specially prescribed data provision "processes," such as, for example, data provisions regulated by Articles 77(1), 81, and 175(3)-(4) of the Media Act. These data provisions, however, are only special with respect to their subject matter. The bases of their constitutionality and legal theory (thus, especially: their being subject to administrative proceedings, existence of guaranteed client rights, right to legal remedies, etc.) are the same, wherefore, we omit the detailed analysis of these special data provisions.

### *Rules governing the data management of the Authority*

Because of its role on the media and electronic communications market and regulatory tools provided to achieve its statutory objectives, the Authority bears a special responsibility in the course of the fulfilment of its duties: it has to enforce the requirement consistently that it manages the confidential information that came into its possession or official attention in accordance with the law. With respect to the data and information brought to the official attention of the Authority, the Authority has the obligation to manage this confidential information (e.g., personal data, trade secret, etc.) exclusively in accordance with the laws and regulations, as well as protect it from disclosure to any unauthorized entity (individual or organization).

Due to the Authority's scope of activities and major role on the media and communications market, as well as the work of the staff carrying out its activities, in many cases they get to know the trade secrets of service providers also, the confidentiality of which is the legally protected right of the concerned entities.

During the term of the proceedings, the Authority ensures that secrets defined in the Administrative Proceedings Act and protected by law are not disclosed to the public or to unauthorized persons, and that personal data is protected. For the guaranteed enforcement of the abovementioned rules, the subjects of the regulatory proceeding may, with respect to each data, request limitation of access to documents or of making copies or taking notes of such documentation, in other words, restricted handling of the data (Article 153 of the Media Act). The only situation where restricted handling of documents cannot be requested is in the case of data that is publicly available for reasons of public interest and which, according to the law, cannot be considered a secret otherwise protected by law.

The Media Act contains safeguards rules for the protection of trade secrets of media service providers and publishers of press products, which rules ensure the protection of information in the course of the regulatory proceeding and also thereafter. Under Article 147(1) of the Media Act, the scope of data enjoying special protection in the course of the data management by the Authority include personal and qualified data, trade secret with which the Authority became familiar in connection with its official activities and the fulfilment of these activities, and any other data, fact, or circumstance that the Authority is not obligated by law to make accessible for the public.

Based on all this, it can be concluded that the Authority is authorized to manage data only for the purpose of legitimate objectives defined in the Media Act. Articles 147 and 153 of the Media Act and Article 17 of the Administrative Proceedings Act, to be applied as a framework regulation, ensure that the legal restriction is carried out in the least intrusive manner for the subject of the data necessary for achieving the objective. Under these Articles, the Authority has a duty to ensure the safeguarding of the protected data and professional secret, as well as the protection of personal data. The statute sets out that the Authority must ensure that this data is not disclosed for the public, and that it is transmitted only in accordance with laws and regulations or upon consent by the person concerned.

#### *The scope of data clearly accessible by the public*

Out of the provisions pertaining to the data to be disclosed to the public the following can be highlighted, including but not limited to:

- The Authority maintains a register of service providers (or services) defined under Article 41(4) of the Media Act, and pursuant to paragraph (6) of the same Article, the data concerning the names, contact information of media service providers, press product founders and publishers, as well as the names and titles of the media services and products are public and accessible on the website of the Authority.
- Pursuant to Article 58(1) of the Media Act, the Media Council maintains a public tender register and publishes the list of tenderers recorded in the tender register on the Media Council's website.
- Pursuant to Article 162(2) of the Media Act, the Authority publishes - subject to protection of personal data and data restricted in the proceedings - its administrative decisions, and the relevant court decisions on its website.

The Authority is obligated to release upon request data of public interest (with the exception of data defined in relevant laws and regulations).

## XVIII. Regulations relating to the Media and Communications Commissioner (Articles 139-143 of the Media Act)

*The legal institution of the Commissioner is an efficient problem-solving forum operating through its special procedure - with an administrative toolset not available in other proceedings - protecting consumer and user interests, and thus promoting consumer welfare while constructively cooperating with service providers. The institution and procedure of the Commissioner complement public administration activities; he carries out activities of mediation, consultation, and cooperation, which are generally used and well functioning administrative solutions in the regulatory systems of both the European Union and Hungarian public administration. The Commissioner acts in cases of such legitimate violations to interests - public interest or threat to rightful private interest - where the Authority with its tools cannot act in order to rectify the violation, and at the same time, the consumers and users turning to the Authority - taking into account also that in these markets virtually the entire population is involved - rightly expect intervention and assistance. The legislature, taking into account the protectable objective and considering also the constitutional expectation that the interference should be on the lowest possible level and with the mildest possible means, developed special procedural rules - fundamentally based on publicity and positive incentives -, according to which the Commissioner's proceedings do not qualify as administrative proceedings, the Commissioner may not exercise administrative powers, may not render a decision in an official matter on the merits, and the complaint handled is not an official matter.*

In connection with the appointment of the Media and Communications Commissioner, there were concerns that the Commissioner's legitimacy cannot be compared to that of the commissioners elected by the Parliament, that the Commissioner is a simple civil servant of the Hungarian Media Authority whose mandate can be revoked at any time according to the relevant rules.

It was raised as a concern that -compared to the ombudsmen- the President of the Hungarian Media Authority appoints and dismisses the Commissioner and his staff, and also, the President approves the Commissioner's standing order. The budget of the Commissioner's office is formulated within the budget of the Hungarian Media Authority, the Commissioner reports to the President and the Media Council, and thus the Commissioner is the "extended arm" of the President that can "harass" and "spy on" the players of the media market.

The Media and Communications Commissioner in his legal status, or in his legitimacy, indeed cannot be measured to the ombudsmen elected by the Parliament, but this could not even have been the intention of the legislature. The Parliament elects the parliamentary commissioner - as a representative reporting exclusively to the Parliament - for the protection of fundamental rights. Anybody can turn to the parliamentary commissioner if he believes that in the course of its activities, a government agency or public service organization caused anomalies regarding the fundamental rights of the petitioner, given that the petitioner has exhausted all available administrative legal remedies - not including the judicial review of an administrative decision - or there is no legal remedy available for the petitioner. The ombudsman may implement measures as defined by law. The ombudsmen elected by the Parliament belong to the legislative branch of the Government, and their objective is to scrutinize the enforcement of fundamental rights upon authorization by the Parliament.

In comparison, the Media and Communications Commissioner acts within the executive branch, and his duty is to contribute to the promotion of other "rights" and equitable interests outside of the administrative jurisdiction of users, subscribers, viewers, listeners, consumers of electronic news services or media services, as well as the readers of press products, regarding electronic communications, media services and media products (Article 139(1) of the Media Act). Thus, the similarities between the ombudsmen and the Commissioner is exhausted in that both legal institutions serve to remedy complaints, the settlement of which is not possible through administrative procedures; but with respect to their principles, legal status, the manner of remedies - the resources at their disposal - the two institutions are so different from each other that to compare their "legitimacy" or "independence" is impossible. Namely, a basic difference is that the parliamentary commissioners (ombudsmen) are independent organs of parliamentary oversight, and thus their activities is linked to the legislative power. In contrast, the Commissioner under the Media Act can be linked to the Hungarian Media Authority, as an organization engaging in executive activities. Differences between the legal statuses and competences of the ombudsmen and the Commissioner stem from these differences.

Thus, the Commissioner functions within the executive branch. In the legislative history of the Media Act, the legislature clearly specifies the objective of the role of the Commissioner: the legal institution of the Commissioner operates as an efficient problem-solving forum, protecting consumer interests, that cannot be enforced in other proceedings, by using his special procedure and administrative toolset set out in the statute, thus promoting consumer welfare while constructively cooperating with service providers. Thus, the institution and procedure of the Commissioner complement public administration activities, it is an organization that carries out activities of mediation, consultation, and cooperation, which are generally used and well functioning administrative solutions in the regulatory systems of both the European Union and Hungarian public administration.

The Commissioner is a civil servant appointed and dismissed by the head of the organ, who also exercises the employer's right pursuant to Act XXIII of 1992 on the Legal Status of Civil Servants. Organizational hierarchy is a natural component of the executive branch just as the exercise of management authority competences over the budget; in other words, the budget of the Commissioner's office is formulated within the budget of the Hungarian Media Authority.

The critics failed to mention that extremely important aspect, which is also a special feature of the executive branch, namely, that the Media Act sets forth the Commissioner's competences, detailed procedural rules, which can be precisely differentiated from the organs of the Hungarian Media Authority exercising administrative powers, and states that in the course of the fulfilment of his duties under Chapter III of the Media Act, the Commissioner cannot be instructed by anybody - thus, of course, not even by the President (Article 139(2) of the Media Act). Thus, regarding the independence in carrying out of his duties in connection with his competences, it is indifferent that otherwise the Commissioner functions within the framework of an organization.

It is important to emphasize here that regulatory authorities (e.g. some of the Government offices, the Hungarian Energy Office, etc.) are under organizational control, but with respect to their duties and authorities, they are independent, cannot be instructed, and their competences cannot be revoked. All these are public administration organization theory questions that clearly guarantee the professional independence and autonomy regarding the competences of these organizations.

The Commissioner's report provides important information for the organs mentioned above regarding the situation of the markets monitored, and most of all, as to whether public interest in the increase of consumer welfare adequately prevails, because this can be clearly measured based on direct experience by assessing the complaints filed in the fields of both electronic communications and media market.

The critics also complained that the Commissioner can act even in absence of any suspicion concerning specific legal violations. Under Article 140(1) of the Media Act, if a conduct related to the provision of a media service, press product, or electronic communications service is identified, which conduct does not constitute a breach of a regulation of media services or electronic communications services and falls outside the scope of the competence of the Media Council, the President, or the Office, but is, or likely to be suitable to cause harm to the equitable interests of the users, subscribers, consumers, viewers and listeners of media services, press products, or electronic communications services, the person that suffered the harm to the interest or with respect to whom an imminent risk of harm to the interest exists, or a non-governmental organization representing the interest of consumers, if the harm to the interest concerns or likely to concern a significant number of consumers, may file a complaint with the office of the Commissioner.

Thus, the Media Act defines those situations when the Commissioner may act, and this is the domain of such equitable harms to interest, where the Authority cannot act with its own means to remedy the harm. "Equitable interest" may be public or justified private interest. Justified private interest in this context means all such -statutory- interests, the harm to which or the risk of harm to which arises in connection with the provision of a media service, press product, or electronic communications service, which does not expressly constitute a breach of a regulation of media services or electronic communications services and cannot be protected by the administrative instruments of the Media Council, the President, or the Authority.

The legislature, by setting forth the Commissioner's authority in such form, accepted that certain harms to interest may exist on the electronic infocommunications and media market - with special regard to the weight of participants on the market and the significant difference between the ability of users and consumers of the services to enforce their interests - whose protection for the sake of assisting users and consumers is the duty of the state, because, although, they do not reach the threshold of concrete legal violations where action with administrative means is possible, but they threaten concrete, just, and legitimate private or public interests.

The objective of the Media Act is to protect the communications related fundamental rights of the members of society. The convergent Authority is simultaneously keeping guard over the enforcement of rights and obligations related to communications with respect to aspects relating to content and the supporting infrastructure.

According to the experience of the Authority, the Commissioner, and his predecessors, consumers and users on these markets contact the Authority with numerous harms to interests, where rules pertaining to media service or electronic communication is not violated in a manner that it would enable the Authority to initiate proceedings. But at the same time, the consumers and users turning to the Authority - taking into account also that in these markets virtually the entire population is involved - rightly expect intervention and assistance in the protection of their legitimate interests. The legislature, taking into account the objective to be protected and considering also the expectation that the interference - considering the absence of concrete administrative authority - should be on the lowest possible level and with the mildest possible means, developed a special "non-administrative" procedure that may be suitable for the effective achievement of the legitimate objective, and, at the same time, it does not restrict without justification and to a disproportionate extent the participants of the electronic communications and media market.

The critics also objected the competence and procedural tools of the Commissioner. Article 141 of the Media Act sets out that the Commissioner's proceedings do not qualify as administrative proceedings, the Commissioner may not exercise administrative powers, may not render a decision in an official matter on the merits, and the complaint handled is not an official matter. Accordingly, the Commissioner does not have the power to render decisions having a legal effect and is not authorized to establish rights or obligations.

The critics cited Decision No. 1/2007 (I. 18.) AB of the Constitutional Court, which found Article 48(3) of the Radio and Television Broadcasting Act unconstitutional and annulled the provision. In connection with this, it is important to emphasize that the Commissioner's proceeding is sharply separated from the regulation proved to be unconstitutional, since the statute exhaustively sets out the detailed rules of the Commissioner's proceeding. In the case of the Commissioner there is no alternative proceeding that would be suitable to achieve the legitimate statutory objective, and most importantly, the Commissioner does not render decisions, has no competence to make a decision with respect to the case in the complaint, and his responsibility is to help to enforce the interests of consumers and users within the framework of a defined consultation procedure in cooperation with the service provider.

It has to be noted here that the objective of the Commissioner's proceeding is to prevent the harm to interests, therefore, he primarily seeks agreements. In accordance with the Media Act, this agreement means a concordant and voluntary legal statement (representation) of the parties, concluded between the Commissioner and the particular service provider, whereby the contractual rights entitle the users, subscribers, consumers, viewers, listeners, or readers resorting to the particular media, electronic communications service, or press product (Article 142(7) of the Media Act).

In one particular case, in the proceeding specified under Article 142(2) of the Media Act-exclusively for the more effective enforceability of equitable consumer interests and to render complaints more examinable, and exclusively with respect to the media or communications service provider concerned - the statute permits the exercise of public powers in order to ensure data provision. But even in such cases, the statute empowers the Office and not the Commissioner. Accordingly, the Office, upon the Commissioner's initiation, orders the concerned media or communication service provider, or publisher to provide the data related to the harm to interest, as designated by the Commissioner. The Media Act provides the service providers and publishers concerned the right to legal remedies against this administrative act, too, by permitting the obligor to request within eight days from the announcement of the decision the review of the decision from the Budapest Metropolitan Court. The Budapest Metropolitan Court shall adopt its decision about the case in an out-of-court proceeding within 8 days. In case the Commissioner receives trade secrets, he is obligated to keep them confidential.

In order to allow the Commissioner-even in the absence of public power-to represent equitable consumer and user interests more effectively than consumers and users, the Act provides a precisely defined toolset for the Commissioner, even in the absence of public powers. It is important to emphasize that the legislature, in order to achieve the protection of equitable consumer interests as a legitimate objective, prescribes the application of the least intrusive means. Thus, the Commissioner's system of instruments is not of public authority and has safeguards in every components of the procedure. The objective and basis of the relevant regulation is the guaranteed protection of external legal entities.

The Commissioner's system of instruments has two basic pillars, publicity and positive incentives. The Commissioner, as the representative of consumer rights, holds consultations with service providers, requests them to tolerate certain procedural acts, requests their cooperation in the interest of consumers, and communicates the outcome of this process, whether successful or not, as well as the reasons thereof, to the consumers concerned.

## XIX. Legal measures applicable in case of infringement (Articles 185-189 of the Media Act)

*The legal consequences applicable pursuant to the Media Act form a differentiated system of sanctions in line with the applicable constitutional principles and the general legal framework of public administration. The Media Act takes into account the constitutional and jurisprudence expectations for administrative legal consequences, as well as the practice of the former media authority and the diverse nature of possible breaches of law. The legal consequences, as well as the principles and aspects defined with respect thereto clearly reveal that the Media Act establishes an objective, clear and predictable regulation based on the principles of proportionality, progressivity and equal treatment, which, besides complying with the rule of law and legal certainty, places emphasis on the encouragement of voluntary compliance with the law. Besides the elaborateness of the method of imposing sanctions, in concert with the general rules of administrative proceedings and in line with constitutional provisions, the Media Act sets forth the rule of rendering the sanctioning administrative decision, and in line with the general legal principles and constitutional rules, it contains safeguards provisions protecting the interests and rights of the clients. In accordance with requirements stemming from the Constitution, the Media Act further guarantees the right to legal remedies both via administrative proceedings (ordinary remedies) and judicial review (extraordinary remedies), and within the scope of this, the statute provides for the possibility of suspending the sanctioning decision.*

*The constitutional basis of the provisions of the Media Act pertaining to the liability in connection with transmission of intermediary service providers and media service distributors is supported by the objective of the regulation, the fortification of procedural rules with safeguards elements, as well as by the development of the framework of liability in a manner that is compatible with the Hungarian legal system and Community law. Because the release of an official notice issued under non-administrative powers, as set out in the relevant provisions, can only take place, given that the conditions prescribed by law exist, for the prevention or remedy of media administration damages connected to the failure of the enforcement of final administrative decisions and, with this, lack of compliance: thus, as a special enforcement tool, it does not substitute but complements the implementation and enforcement of the decision with the involvement of intermediary service providers who play a key role in its transmission to the public, but who - similarly to Act CVIII of 2001 on Certain Issues of Electronic Commerce Services and Information Society Services-, according to the regulations of the Media Act, is not responsible for the content transmitted.*

The administrative activity of public administration primarily serves the enforcement of laws and regulations enacted to protect the public interest protected by law, the rights and legitimate interests of a community, public order, public safety, as well as the life, bodily integrity, security, and rights of an individual human being, i.e. the enforcement of rights. The administrative duties of public administration are directed to the implementation of public interest as defined by law, compliance with, and enforcement of, the laws and regulations - with the application of sanctions as an ultima ratio instrument. However, besides the mechanism of the enforcement of rights in the classical sense - resulting from the regulating authority quality of the Authority - sanctioning is not the fundamental objective and dominant element of the functioning and activity of the Authority. Due to the special structure, extremely rapid development, and functioning of the media market, the regulating authorities in general - thus, the Authority, too - have tools and powers of intervention and administration concerning the functioning of the media market as a whole, carry out numerous tasks that are not related to public powers and authority. On the other hand, the scope of their duties and powers have special characteristics, whose relationship with sanctioning is special. It can be generally concluded with respect to the proceedings of the Authority, that it aims to develop a close relationship with market participants based on mutual cooperation, and in the course of legal enforcement related to dominant market surveillance in the area of sanctions, it also thrives to avoid sanctions by applying alternative proceedings provided in legal norms. In line with the function, objective, and characteristic of the sanction, as well as the scope of activities of the Authority, the application of detrimental legal consequences is the Authority's last resort, fundamentally to protect consumer interests (in particular, numerous consumer and social groups, for example, children and minors), the democratic public opinion, the right to be informed and to inform, to maintain diversity and media market competition, and to achieve fair and effective competition.

The Constitutional Court has emphasized in a number of its decisions that legal certainty is an essential element of the rule of law. Legal certainty charges the state - and primarily the legislature - with the obligation to guarantee that the law as a whole, its different sub-areas, and the individual laws and regulations are clear, unambiguous, predictable with respect to both their function and application, and foreseeable for the addressees of the norm. Legal certainty, thus, not only requires the unambiguity of the different norms, but also the predictability of the functioning of legal institutions. That is why procedural safeguards are fundamental from the perspective of legal certainty besides the unambiguity of substantive law rules and norms. Because, only through observing the rules of formalized procedures can valid laws and regulations develop, and only through compliance with procedural norms can legal institutions constitutionally function. The Constitution does not contain provisions with respect to the sanctions of administrative law. The legislature has a broad discretionary authority in the course of the regulation of the conditions of application and level of sanctions. The decision-making power of the legislature is only restricted by the Constitution's general provisions (e.g., the applied regulation cannot violate in an unconstitutional manner the principle of equality of rights regulated in the Constitution, the right to human dignity, personal liberty, the requirements of the rule of law, etc.).

Thus, the media administration sanction is an act, containing legal disadvantages defined in media law norms, which can be realized by state public authority by application of constraints, carried out by the Authority, as an organization having the authority and jurisdiction in the scope of its activity as a public authority, which reacts to illegal behaviour and action, and whose goal primarily is to restore the violated (social, economic, and legal) order; but besides this, however, sometimes it has different functions. The main functions of administrative sanctions manifest in the area of media administration, regarding the sanctions as a whole: a) enforcement of rights; b) prevention; c) repression by prevention; d) compensation of damages; and e) fines as a "price" of violation.

Sanctions may be applied only in cases of legal violations. The law defines which acts and violations of norms constitute legal violations, and it prescribes competence rules specifically, by the different groups of cases. (The detailed provisions pertaining to substance and competence are contained in the laws and regulations, and the administrative decisions may be issued in every case only in the scope of, and based on, the competence provided to the Authority by the regulation.) Considering the fact that the characteristics of legal violations, the concerned legal object, and the threatened social interest can be so diverse and different, that the itemized, exhaustive listing of possible legal violations is impossible. A regulation undertaking such an itemized listing would make administrative enforcement significantly difficult and would lead to the development of a casuistic, regulatory regime, which, in the end, would endanger legal certainty. Considering the fact that the Media Act clearly sets out what qualifies as a rule pertaining to media administration, that the violation of these acts and norms is considered a legal violation, and, in addition it also sets out what sanctions the legal violation could result in, thus the statute fulfils the requirement of predictability and does not violate constitutional principle.

The legal consequences applicable pursuant to the Media Act form a differentiated system of sanctions in line with the applicable constitutional principles and the general legal framework of public administration. This system of sanctions is adapted to the characteristics of modern media market, the continuously advancing technical conditions, and changing economic relations. The Media Act takes into account particularly the constitutional and jurisprudence expectations for administrative legal consequences, as well as the practice of the former media authority and the diverse nature of possible legal violations. The Media Act establishes an objective, clear, and predictable regulation based on the principles of proportionality, progressivity, and equal treatment, which, besides complying with the requirements of the rule of law and legal certainty, places emphasis on the prevention of legal violations and encouragement of voluntary compliance with the law.

One of the special legal institutions of the principle of progressivity, hitherto unregulated in media administration and promoting voluntary compliance with the law, is the instrument of official notice. In case of minor, non-recurring infringements, the Authority, instead of imposing a sanction, has the option of requesting the offender, by setting a deadline, to discontinue its unlawful conduct, refrain from infringement in the future, and act in a law-abiding manner. It is a further novelty that the Media Act significantly broadens the range of applicable sanctions as compared with the previous regulation, thereby allowing for more differentiated sanctions, better suited to the legal violation and the perpetrator (in other words, the statute also contains previously unavailable alternative sanctions, other than fines, so that the imposition of fines may be avoided in certain cases). With the limitation of substantive law fines, besides that, a

heterogeneous system can be discovered among the substantive law sanctions in line with the sectoral regulation aligned to the particularities thereof for the achievement of the most effective possible sanctioning. The introduction of the “publicity sanction” particularly serves the interests of the persons affected by the legal violation, for example, by warning parents of contents detrimental to children, without causing direct financial detriment to the offender. In addition, exclusion from participation in the tenders of the Fund means financial loss with respect to the future, in other words, ineligibility for potential financial subsidy. The so called “blackouts” combine more than one function: convey a message towards the consumers and the viewers, cause indirect financial loss, and have a character of temporary injunction. Other sanctions as sanctions restricting rights, aim at directly affecting the infringing activity or the locality thereof, thereby decreasing the repetition and continuation of the chances of legal violations. The final, ultima ratio sanction of the Media Act is the cancellation of the media service from the register and termination of the public contract with immediate effect, restricted to cases of serious and repeat violations of the offenders’ obligations. The fact that the given public law norm within the sanctions provides the possibility for the adjudicator to make the functioning of the offender “impossible” (ultimately, preventing the continuation and repetition of the violation), if no other public law tools are available for the adjudicator, it is aligned with the function and objective of sanctioning, thus, it does not raise constitutional concerns. The ultimate sanction of the given ultima ratio right must be applied in case of a particularly serious and repeated legal violation, which is especially dangerous to society, violating or threatening protected values. Obviously, a sanction imposed as a result of an infringing behaviour cannot mean the violation of the right to the freedom of the press, if it is proportionate and is aligned with the individual circumstances and characteristics of the legal violation or the offender. This requirement is ultimately guaranteed by the review provided for by an independent judicial forum.

Besides the organization itself, the Media Act permits the sanctioning (fining) of executive officers of the infringing organization as well. This solution is not entirely uncommon in media administration, since, pursuant to the previous press act and the Civil Code, the editor-in-chief, the head of the reproduction services, and the publisher etc. could also be held personally liable in certain cases. The requirement for administrative sanctions to continuously adapt to modern economic conditions, however, warrants that norms containing sanctions fundamentally applying to organizations also provide for the option of holding the executive officers of such organizations liable.

The Media Act applies the principle of proportionality in respect to the cap of substantive fines, taking into consideration the position of market actors. In other words, fixing various amounts as maximum fines for each distinguishable service and product type, and by setting a separate maximum fine for the sanctioning of executive officers. Maximum fines are imposed in case of multiple repeat or even continuous, serious infringements having a significant impact, thus, only after several procedures, final decisions, and probably even judicial reviews. With regard to this objective upper limit, the amount of the fine imposed in specific, individual cases is determined as a result of apportionment and discretion exercised by the adjudicator. Besides legislative or, more specifically, statutory apportionment, the Authority takes into account in every single individual case the criteria defined by the Media Act (seriousness of the legal violation, the repeatedness, continuity and duration of the legal violation, financial gain resulting from the legal violation, harm to interest caused by the legal violation, the number of persons suffering harm to interest and the number of persons at risk, the damages caused by the legal violation, and the affect on the market of the legal violation) and - as also highlighted by the statute - all other (mitigating and aggravating) circumstances that are relevant to the case at issue, including the capacity and financial standing (revenue) of the organization or person affected by the sanction. All these criteria must be recorded in the decisions in the course of the justification of the amount of the fine. It is because, pursuant to the Media Act, the court is entitled to review the decisions of the Authority in their entirety. The judicial review extends to the contents (issues of substantive law), as well as procedural grounds and form (procedural issues) of administrative decisions, and furthermore, it extends to the rationality and legality of reviewing the discretion and the criteria thereof included in the administrative decision. In the course of the review, the court, in order to ensure the professionally supported review of issues of content (substantive law), may appoint an expert or use other effective means of proof. In this respect, it should be emphasized, that with respect to discretion as one of the legal institutions of administrative sanctioning of particular importance, the Constitution does not define special principles and provisions.

Pursuant to the provisions of the Hungarian Code of Civil Procedure, an administrative decision rendered on a discretionary basis can be construed lawful if the administrative body has appropriately ascertained the relevant facts of the case,

complied with the relevant rules of procedure, the aspects of discretion can be identified, and the justification of the decision demonstrates causal relations as to the weighing of evidence. The court may intervene with respect to the evaluation of the discretionary criteria only, if the Authority failed to evaluate them, or weighed them in a seriously disproportionate manner, or failed to meet its justification obligation even with regards to the explanation as to why it discarded or accepted the different criteria. Besides the general procedural rules covering the entire proceeding and the appropriate finding of the relevant facts of the case, it has to be emphasized that the different discretionary criteria should be identifiable, and the justification thereof (to show that the sanction complies with the principle of proportionality and progressivity, and that the sanction is adequate and appropriate to achieve its objective) has to be revealed by the decision. Thus causal relations means justifiability and justified discretion, covering all of its elements. One of the legal institutions of particular importance of judicial review is the suspending of the enforcement of the decision. With respect to the implementation of the enforcement, pursuant to the Administrative Proceedings Act, the Authority - upon relevant motion - cannot enforce the decision before the independent court renders a decision with respect to the suspension of the enforcement, in other words, before the review and assessment thereof is made in accordance with the criteria prescribed by the Hungarian Code of Civil Procedure regarding administrative decisions. Thus, if the service provider requests the suspension of the decision of the Media Council or the Office, it cannot be enforced until the court renders a decision. It has to be emphasized that in the scope of the review of the suspension of enforcement, the court evaluates not only the criteria of legitimacy but pursuant to the Hungarian Code of Civil Procedure, during the decision-making process regarding the suspension, it has to consider whether after the enforcement, the original state of affairs can be restored or whether the lack of enforcement causes more serious damages compared to damages caused by the lack of the suspension of the enforcement. It is, thus, obvious that the Media Act, in concert with the Administrative Proceedings Act and in accordance with constitutional requirements, is correct when it provides that the filing of a complaint - in the case of a decision by the Media Council and the Office - does not have suspensive effect on the enforcement of the decision; however, the suspension of the decision challenged by the complaint may be requested from the court.

It is reasonable to apply a regulation that is based on a system diverging from that of substantive fines upon the violation of the provisions of procedural law (as the consequence and impact of the violation differs). For instance, it is mandatory in the context of sectoral inspection and provision of data, according to the Media Act, to take into account discretionary aspects of various amounts and regulated on different statutory levels. In terms of the statutory principle of proportionality, the discretionary aspects and the fine limits, the Media Act takes into account the fact that procedural violations and the procedural sanctioning thereof differ in respect of each type of official matter and regulatory procedure. Moreover, in the field of procedural fines, the Media Act takes into account not only the severity of violations, but the person committing such violation as well, so the maximum fine that may be imposed on natural persons is only a fraction of the fine imposable on organizations.

## XX. Establishment of a new co-regulation system (Articles 190-202 of the Media Act)

*The co-regulation system of the Media Act provides an opportunity for self-regulatory organizations to participate in the arrangement of cases falling under the competence of the Media Council. This, compared to other types of self-regulations found in other sectors and administrative areas (e.g. alternative dispute resolution procedures such as conciliation or mediation), is a stronger - the strongest possible and still constitutional - authorization ensured to self-regulatory organizations to conduct proceedings prior to the Media Council exercising its administrative powers. The self-regulatory organization upon the authorization by the Media Council provided in an administrative contract based on its activities conducted, exercises a public function. This justifies the prescription of rules, which can be considered guaranteed and constitutional, in the Media Act regarding the oversight of procedures and activities of the organization falling within the scope of the authorization, as well as the termination of the administrative contract. Also because of the provision of public function, the Media Act permits that the Hungarian Media Authority provide financial assistance to the self-regulatory organization for carrying out its duties, subject to its annual itemized accountability.*

*The determination of the scope of organizations participating in the co-regulation system, and the type of press products and media services included in the scope of co-regulation, as well as the Media Act and Press Freedom Act provisions that can be monitored, is not a constitutional question but a license of the Parliament stemming from its legislative and organizational authority. With this respect, it can be only examined from a perspective of constitutionality whether the relevant rules satisfy the requirements of the rule of law and legal certainty, which constitutional principles, in our opinion, are not violated in any respect by the co-regulation rules of the Media Act.*

The chapter on co-regulation is a completely new element of the Media Act compared to the previous regulations, which enables professional self-regulatory organizations to participate in the application of law. In the following section “co-regulation” refers to cooperation between professional organizations and the Authority for the sake of complying with statutory regulations, but as these organizations are primarily self-regulatory due to their nature and may also define norms that are binding on their own members, the term “self-regulation” also appears in the text.

The Media Act thereby acknowledges the significance of the self-governing activity of self-regulatory organizations in media administration. The importance of self-regulation and co-regulation is recorded by the AVMS Directive as well. The AVMS Directive highlights in this context that the measures aimed at attaining objectives of public interest in the media service sectors will be more efficient if they are taken with the active support of service providers. The co-regulation procedure regulated in the Media Act is a novelty with respect to both Hungarian public administration and its administrative sectors, as a whole. It is a unique solution subject to the rule of law, which complies not only with the regulations of the European Community, but with the Hungarian constitutional principles as well, despite its novel nature. The main novelty of the co-regulation system introduced by the Media Act, compared to forms of self-regulation existing in other sectors (such as alternative dispute resolution procedures such as conciliation and mediation, and ethical codes of conduct), is the authorization granted by the Media Council. Based on such authorization, self-regulatory organizations may fulfil the public duty of applying the statute when they may examine the complaints making reference to a legal violation in the course of their own procedure, prior to the regulatory procedure.

The new co-regulation system is not a dispute resolution procedure (which can only settle disputes falling outside the competence of the Authority, arising between two or more parties, similarly to arbitration courts). The new system extends the regulation and the framework of shared enforcement of rights to the entire “civil sector” linked to media administration (associations and other self-regulatory organizations, in other words, not just public organizations or other administrative institutions).

The statute provides the strongest (and still constitutional) authorization that may be granted in this context to self-regulatory organizations. The Media Council may authorize the self-regulatory organization in an administrative

contract to proceed prior to the Media Council's procedure, without exercising any public authority, with respect to its members and all such other media service providers or publishers who voluntarily subject themselves to the self-regulatory procedure, in case a complaint is filed.

The role assumed by self-regulatory bodies affects those official matters within the Media Council's competence the resolution of which is shared by the Authority with the self-regulatory organizations. The Media Act defines the types of cases, with respect to print and online press and to on-demand media services (in relation to all rules affecting media content), for the resolution of which regulatory organizations may be authorized.

The regulation provides participation opportunities in enforcement activities for the self-regulatory organization with respect to on-demand media services and press products. With respect to linear media services, the Media Act does not define administrative authority and case type within the framework of co-regulation, because regarding this type of media service, the legislature deemed necessary to fully keep the oversight of relevant provisions within a state-maintained administrative framework.

The definition of duties, types of media services, and scope of self-regulatory organizations involved within the framework of co-regulation is the discretion and right of the legislature to decide. By passing laws, the Parliament is entitled to determine the division (sharing) of state tasks and also the type of non-state organizations it involves and the extent these organizations are involved in performing the public functions. (In order to ensure compliance, the Media Act contains safeguards provisions.) Within this, constitutionality questions can only be raised regarding whether the involvement of non-state organizations in the state duties took place in accordance with the requirements of the rule of law and without risking legal certainty, and whether the legal regulation of the issues mentioned complies with these fundamental constitutional principles and norms. It is important to emphasize that the Parliament has organizational power and constitutional authority. In other words, our opinion is that it is not a constitutional issue (since the Constitution itself provides this possibility) as to what kind of organizations the Parliament involves in the system of carrying out state duties, but only the regulatory method of task sharing and the assignment of duties and competences can be examined. (Similarly, it cannot be a constitutionality issue whether the Parliament establishes a given public body to carry out a task of public interest.)

Within the framework of self-regulation, the other field, besides administering specified official matters, is cooperation in fulfilling non-regulatory tasks, as well as in providing programs and pursuing objectives that are not of public interest, but are closely related to media administration. In the context of cooperation, the Media Council may provide support to self-regulatory organizations in fulfilling their duties, on the use of which the latter must report annually.

The novelty and unique feature of the co-regulation system of the Media Act compared with other self- and co-regulation systems in other administrative sectors is the fulfilling of tasks concerning administrative cases. In other words, that the self-regulatory organization, based on the authorization provided by the Media Council, fulfils the public function (administrative duty) of applying the Media Act and the Press Freedom Act, as it is authorized to examine complaints of legal violations under its own proceedings, prior to an administrative proceeding. The self-regulatory organization does not exercise administrative authority during these activities, as its proceeding precedes but does not substitute the exercise of administrative authority and proceeding of the Media Council.

From the perspective of safeguards, it is important to set out the main rules of the proceeding preceding the exercise of administrative authority of the Media Council, and the possibility of the termination of cooperation by the Media Council in case of inappropriate fulfilment of the tasks has to be guaranteed on a statutory level (so it can terminate the administrative contract). It should be emphasized that before the termination of the agreement, the Media Council issues an official notice (Article 201(4) of the Media Act), in other words, the self-regulatory organization has an opportunity to rectify the mistakes and omissions before the termination.

Based on the system of co-regulation, self-regulatory organizations and the Media Council conclude a cooperation agreement (administrative contract), in which they specify the detailed rules governing the performance of duties. The administrative contract containing the authorization contains public law elements, but essentially, it is a private

contract. With respect to the contract, the Media Act instructs to apply the general rules pertaining to contracts of the Hungarian Civil Code. Termination is an element of the contract governed by public law. Since the self-regulatory organization performs public functions, the legislature may consider and define what kind of legal violations result in the discontinuation of the activities and the termination of the contract.

The professional code of conduct, approved by the Media Council, in which the self-regulatory organization defines the administration of duties, is a compulsory element of the administrative contract. Although the code of conduct is formulated by the self-regulatory organization, it must be sent to the Media Council for consultation. In the context of consultation the Media Council only examines compliance with applicable laws and regulations, but the institution of consultation has a particular significance, as the acceptance of the code of conduct by the Media Council is a condition of the conclusion of the administrative contract.

According to the Media Act, in the co-regulation system, a procedural and substantive system of rules and professional code of conduct created by the self-regulatory organization - that has a binding effect on its membership - is particularly important. In the code of conduct, within regulatory limits, the organization is free to establish the rules and requirements its members are obligated to observe, and the organization is also entirely free to define under what procedural order it monitors its own rules and the rules of the Press Freedom Act and Media Act regarding the authorization, and how it chooses to proceed in case a complaint is filed claiming the violation of the code or the regulation. The self-regulatory organization is also free to establish a sanction system to penalize its members violating the norms. Membership in the organization is voluntary, so the potential members have the option to decide whether or not they accept the sanctioning and other rules of the code. Since the self-regulatory organization does not receive an authorization of public power and administrative authority, therefore it is not necessary to regulate under the Media Act the system of "legal consequences" that can be defined in its relevant procedures. The Media Council examines the code exclusive based on legitimacy. And the fact that the code is a compulsory, substantive element of the administrative contract and that the agreement regarding the content of the code between the Media Council and the self-regulatory organization is a validity condition of the conclusion of the contract is a safeguards rule and is prescribed by the Media Act for the sake of the appropriate performance of duties.

The authorization contained in the administrative contract may extend to content regulation provisions of the Media Act (Articles 9-40) and Articles 13-20 of the Press Freedom Act regarding oversight by the self-regulatory organization. These rules, especially the relevant provisions of the Press Freedom Act, are legal norms worded on a high abstraction level. In the course of the self-regulatory proceeding, the organization analyzes and applies these rules to the concrete case. If the members bound by the decision of the self-regulatory organization or the persons/organizations filing the complaint against these members disagree with the decision of the organization, they may contact the Media Council. The self-regulatory proceeding only precedes but does not substitute the administrative proceeding of the Media Council, and in this proceeding, the Media Council is not bound by the decision and legal analysis of the organization (Article 199(1)-(2) of the Media Act). Pursuant to Article 201(5) of the Media Act, in case of legal violation of the proceeding or decision of the self-regulatory organization, the Media Council initiates a regulatory proceeding with respect to the proceeding or decision. Based on the foregoing, it can be concluded that the Media Council can act only in a proceeding of legal remedy or in an inspection performed within the framework of its oversight authority over the self-regulatory organization, but it cannot revoke at any time the procedural authorization from the self-regulatory organization. The legislature is entitled under its organizational authority to enact the rules regarding oversight of the activities of the self-regulatory organization. From a constitutional perspective, the only aspect that can be examined is whether the relevant rules establish an organized oversight system that comply with the requirements of the rule of law.

In the official matters defined in the administrative contract, enforcement by public authority and administrative powers "recedes" in order to provide space for private and self-governance. On account of the affected administrative powers, the statute contains detailed provisions on the contents and framework of the authorization and defines the

fundamental rules of the self-regulatory organization's procedure, so as to provide a framework of safeguards. Regarding the self-regulatory organization's procedure, it is important to highlight that the self-regulatory organization does not hold administrative powers when administering the cases, and therefore, does not take on the status of a "quasi" administrative body. The Media Council may theoretically use its powers in specified cases following the conclusion of the administrative contract, thus, the self-regulatory organization's procedure precedes, but does not substitute the exercise of powers by the Media Council. In these cases, the self-regulatory organization shall proceed regarding those who have voluntarily subjected themselves to the code.

If voluntary enforcement is inadequate in the relations between the self-regulatory organization and the service providers and publishers that have accepted the code (for example, if the self-regulatory organization finds the violation of the code, and thereby, of the statute, but the affected party refuses to execute the sanction imposed), the Media Council may exercise its administrative competence and powers. In respect of the official matters itemized in the statute and forming the subject of authorization, the domain of public administration law and enforcement flexibly recedes and entrusts the self-regulatory organization with the administration of the public duties within the scope of its own self-governing activities, without granting any public authority or administrative powers. This does not mean a form of decentralization of state duties but ensures, within a guaranteed framework, the participation of self-regulatory organizations in the process of enforcement.

Decisions made by self-regulatory organizations pursuant to the co-regulation provisions of the Media Act are binding on the parties that are subject to the code. This power of self-governance is offset by strong public safeguards, in particular, by the fact that self-governance can only be exercised regarding those who have either voluntarily assumed membership as a self-regulatory organization or have voluntarily subjected themselves to the code of conduct. The self-regulatory organization must keep a register of its membership and of the companies that have accepted the code of conduct, in order to clearly identify the scope of persons the self-regulatory organization can proceed against.

The financial assistance for the performance of duties by the self-regulatory organizations is an option and not an obligation of the Media Council. The statutes defined this option with respect to the fact that the self-regulatory organization performs public functions in the framework of the authorization. When an organization performs public duties, taking into account its financial resources, on occasion, it may become necessary that the entity assigning the duty provides financial assistance for the performance of the duties.

The itemized accountability obligation of the self-regulatory organization ensures that the use of the financial assistance is transparent and can be monitored. With respect to the possibility of influencing the activities of the organization through financial assistance, it has to be emphasized that the Media Council has only oversight authority over the activity of the organization, and the relevant rules of the Media Act guarantee that the Media Council only intervenes in the performance of duties of the organization within the framework of oversight and monitoring and with the tools of oversight.

We wish to note that the functioning of the Media Council is monitored by the Parliament, and its financial management is expressly monitored by the State Audit Office pursuant to Article 134(11) of the Media Act, which guarantees that the financial assistance provided to the self-regulatory organization be justified and well-founded.

The annual or semi-annual reporting obligation of the self-regulatory organization (Article 202 of the Media Act) serves the oversight over the activity of the organization. Oversight does not imply the supervision of the entire organization or the entire scope of activities of the self-regulatory organization. Its scope only applies to the oversight of the self-regulatory activity.

The Media Council's supervision allows the review of the individual procedures of a self-regulatory organization, on the one hand, since the undertaking affected by such decision may initiate a review of the decision in this respect, if it considers the decision unsatisfactory. On the other hand, the Media Council also conducts general reviews of the procedures of the self-regulatory organization. The latter, however, does not imply the supervision of the entire scope of activities and the organization of the self-regulatory organization. The Media Council's competence only and exclusively extends to the supervision of the self-regulatory organization's activities and decisions performed and adopted within the context of co-regulation in order to verify whether the self-regulatory organization passes its

decisions in compliance with the authorization, legislation, and the code of conduct. If the Media Council discovers deficiencies, errors, or deviations from the code of conduct or the administrative contract, it first issues an official notice. If the stipulations of the official notice remain unfulfilled, the Media Council may terminate the administrative contract.

## Examples from European Union member states similar to the most important criticized provisions of the new Hungarian Media regulation

The new Hungarian media regulation had to face several criticisms also from outside Hungary. In a comparative study, the National Media and Infocommunications Authority (NMHH) had collected the most controversial provisions of the Hungarian statutes, and after reviewing the media regulation of all Member States of the European Union, NMHH has found that the criticized points of the Hungarian acts are present in the regulation of several other European countries.\* The following is a non-exhaustive list of some of these examples.

### **1. Criticism: “all types of media, such as printed and internet press are regulated, and this fact itself is harmful to the freedom of the press”. In contrast, we find that there are regulations intended especially for the press in several European countries, mostly in the form of an independent press act. In several countries internet press falls under the same legal rules that are applied to the printed press.**

- **Austria:** The printed press is mainly regulated by the Federal Act dated 12 June 1981 on the Press and other Publication Media (Media Act). Regulations of the Media Act addressing printed press do also apply to online newspapers and other internet portals.
- **Cyprus:** The printed press is mainly regulated by an independent legislation, the Press Law No. 145/89. Although no law expressly regulates internet press, the provisions of the printed press law also apply to journalistic material available on the internet.
- **Czech Republic:** The main regulation of the press is contained in Act No. 46/2000. Coll., on rights and duties connected to publishing of periodic press (Press Act).
- **Denmark:** The Danish printed press and online newspapers/periodicals fall under the scope of the Consolidating Act 1998-02-09 no. 85., the Media Liability Act as amended by L 2000-05-31 no. 433 and L 2005-12-21 no. 1404.
- **Finland:** The Act on the Exercise of Freedom of Expression in Mass Media 13.6.2003/460 contains detailed provisions on the exercise of the freedom of expression in the media. The Act on Television and Radio Operations 9.10.1998/744 as well as the Act on Freedom of Expression on Mass Media applies to internet newspapers and press.
- **France:** The Press Act (adopted on 29 July, 1881) provides a framework for press regulation. French courts widely find that the Press Act also applies to online communication.
- **Germany:** Printed publications are regulated by the state press laws of each of the sixteen German federal states.
- **Greece:** A noteworthy characteristic of the Greek legal system, with regards to regulation of the printed media and the electronic media, is the lack of comprehensive codification. Various laws and presidential decrees regulate the printed press.
- **Ireland:** The printed press is subject to a regulatory structure combining both statutory and self-regulation. The Press Council of Ireland is a creation of statute (pursuant to Section 44 of the Defamation Act, 2009), but it is independent of government in its funding and design.
- **Italy:** The printed press is mainly regulated by an independent legislation, i.e. the Press Act, Law No. 47 of 8 February 1948 (*Disposizioni sulla stampa*).
- **Malta:** The main law covering the printed media is the Press Act (Chapter 248 of the Laws of Malta).
- **Poland:** The press is regulated by independent legislation, i.e. the Press Act (26 June 1984). Online newspapers or news portals are subject to the general provisions set forth in the Press Act.
- **Portugal:** The printed press is mainly regulated by the Press, Radio and Television Act (Law 2/99 of 13 January 1999 as amended by Law no. 18/2003 of 11 June). The general principles of the printed press law apply also to printed publications provided on the internet.
- **Slovakia:** Printed media is subject to the regulations of Act No. 167/2008 Coll. on Periodicals and Agency News Service.

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\* The study is based on a research organized by DLA Piper Hungary between March and June 2011.

- **Slovenia:** The printed press is regulated by the Public Media Act (Official Gazette of the Republic of Slovenia, No. 35/01) (*Zakon o medijih*). It applies to publications on the internet as well.
- **Spain:** The printed press is regulated by the Press Law of 18 March 1966.
- **Sweden:** The printed press is regulated by the Freedom of the Press Act (SFS Tryckfrihetsförordningen 1949:105, last version 2002:908), which gives an exclusive protection and regulation for printed media. Chapter 7 Section 4 and 5 of the Freedom of the Press Act regulates the offences committed through the press.

**2. Criticism: “the fact itself that the printed and internet press is subject to statutory regulation system is harmful to the freedom of the press”. In contrast, we find that there are boards, (regulatory, co-regulatory or self-regulatory) authorities for the supervision of the press market, established by statutes in several European countries.**

- **Cyprus:** The Press Law No. 145/89 has amended and consolidated the laws setting up a Press Authority and a Press Council Authority, and regulating the publishing, circulation and sale of newspapers and other publications.
- **Czech Republic:** Under the Press Act, the locally competent Regional Administrative Authority imposes penalties to those publishers having their seat in the area of its local jurisdiction and which breach the obligations stipulated by the Press Act.
- **Denmark:** The Press Council was established under the provisions of the Media Liability Act (2008-02-09 No. 85.). The Council handles complaints from all media under the Media Liability Act (with the exception of radio and TV commercials). Furthermore, the Council can initiate *a case of its own volition* if its Ethical Guidelines have obviously been violated.
- **Italy:** AGCOM, the convergent authority has the competence to monitor the press, the broadcasting, electronic media, and telecommunications.
- **Luxembourg:** The Act, adopted on 20 December 1979, on the recognition and protection of the professional title of journalists has created the *Conseil de Presse*. Within the Conseil de Presse exists the Commission of Complaints that is competent to receive and handle complaints regarding information which has been published in the media. The Commission is competent to verify publications on their accordance with the code of conduct for journalists. The Commission is competent for publications in all media (periodicals, news papers, internet press, etc.).
- **Portugal:** The ERC is as an administrative authority with financial and administrative autonomy. Sanctions by ERC are provided for in connection with breaches of Press or Media Laws or regulations issued by ERC. The core competences of the ERC are the ones attributed by the Constitution, Law and its Statutes. Hence, according to the Constitution, the ERC's obligation is to assure in the Media: i) the right to information and freedom of press; ii) concentration of the media; iii) the independence of the media *vis a vis* the politic and economic powers; iv) the respect of fundamental rights; v) the respect of the laws applicable to the media; and vi) the exercise of the rights of media airtime, right of reply and politics reply.
- **Sweden:** The Swedish Press Council has established a code of ethics that its members are bound to respect. If the Council finds that a newspaper has violated the code of ethics, the newspaper is expected to publish the written decision of the Press Council and pay an administrative fine.

**3. Criticism: „in the Media Council there are only members who are close to the biggest party in the government”. In contrast, we find that the members of the Hungarian media authority were elected by a two-thirds majority of the Parliament. In several European countries there are fewer guarantees of independence of the authorities' members.**

- **Cyprus:** The main media authority is the Radio and Television Authority. Its members are appointed by the Council of Ministers.
- **Czech Republic:** The Broadcasting Council and the Czech Telecommunication Office are the main media and press authorities in the Czech Republic. The Broadcasting Council has 13 members appointed and removed by the Prime

Minister. The Czech Telecommunication Office has a five-member council, the so called Czech Telecommunication Office Council. The chairman and the members of the Council are appointed and withdrawn by Government of the Czech Republic.

- **Denmark:** Seven members of the Radio and TV Board are appointed for a four-year period by the Minister of Culture. A further member is appointed by SLS (a Danish non-governmental organisation).
- **Finland:** FICORA (Finnish Communications Regulatory Authority) is an independent authority under the Ministry of Transport and Communications. The highest decision making power within FICORA lies with the Director-General, appointed by the Government.
- **France:** Three of the nine members of the Board of the *Conseil supérieur de l'audiovisuel* (CSA) are appointed by the President of the French Republic, while the presidents of the French Senate and of the French Assemblée Nationale are in charge of appointing three members each.
- **Greece:** The National Council for Radio and Television (NCRTV) is an independent administrative authority. It consists of seven members, selected by the (current and former) Presidents of the Parliament.
- **Ireland:** Section 8 of the Broadcasting Act provides that there shall be nine members of the Broadcasting Authority of Ireland. Five are appointed by the Government on nomination by the Minister for Communications and four are appointed by the Government on nomination of the Minister after a process of consultation has taken place with a Committee of the National Parliament.
- **Italy:** AGCOM is the convergent authority established by Law No. 249 of 31 July 1997. Each of the houses of the Italian Parliament elects four Commissioners that are formally appointed by the President of the Republic. The President of the Authority is appointed by the President of Republic upon joint proposal of the Prime Minister and the Minister of Communications.
- **Malta:** The Broadcasting Act provides that members of the Broadcasting Authority shall be appointed by the President of Malta, acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition.
- **The Netherlands:** The Dutch Media Authority is an autonomous administrative authority accountable to the Ministry of Education, Culture and Science. The Authority is presided by three Commissioners, appointed by the Minister of Education, Culture and Welfare.
- **Portugal:** The regulatory authority's (ERC) Board is composed by a President, Vice President, and three board members. Four of them are designated by the Parliament, and the fifth member is co-opted by those members designated by the Parliament.
- **Slovakia:** The Council for Broadcasting and Retransmission consists of nine members elected by the Slovak Parliament.
- **Slovenia:** The Post and Electronic Communications Agency (APEK) is an independent regulatory body. The director, assisted by two deputy directors, performs the management functions of APEK. All three positions are filled by candidates selected and appointed by the government.
- **Spain:** The Broadcasting Committee is regulated by Section 44 et seq. of the General Audiovisual Law. The members of the Broadcasting Committee are appointed by the Government, the Parliament's later approval is necessary.
- **Sweden:** The Government appoints the members of the Swedish Broadcasting Commission.
- **The United Kingdom:** The exact number of the members of the board of the media authority, the Office of Communications (Ofcom), is determined by the state secretary, who also nominates the chairman and the other members. The chairman and the non-executive members are appointed together by the minister of the Department for Culture, Media and Sport and the minister of the Department for Business, Innovation and Skills, and the executive members are appointed by the chairman and non-executives.

**4. Criticism: “the mandatory registration required from the press is seriously harmful to the freedom of the press”. In contrast, we can see that there are requirements for registration in several European countries, which, in many cases, are extended also to the internet press.**

- **Cyprus:** It is mandatory, prior to the publication of a newspaper, to submit to the Minister of Interior an affidavit by the owner of the newspaper containing the information specified in the Press Law No. 145/89.
- **Czech Republic:** Pursuant to Section 7 of the Press Act the periodic press must be registered before its first publication with the Ministry of Culture, which issues the registration numbers for the registered press.
- **Italy:** The Press Law provides for registration with a public registry maintained by the competent Court, where the relevant publication is made. The above obligations have been extended also to periodic online newspapers by Section 1 of Law No. 62 of 7 March 2001. Pursuant to Section 16 of the Press Law, where a publication is published before being registered with the Court Registry, the responsible may be subject to imprisonment up to two years or a fine up to EUR 250,000.00.
- **Malta:** The Press Act imposes an obligation on whosoever becomes an editor or a publisher of a newspaper, to produce to the Press Registrar a declaration containing specific information within ten days of his becoming editor or publisher.
- **Poland:** Regarding the press (including printed and internet press), pursuant to the Articles 20-24 of the Press Act, each publisher is required to register with a public registry held by the competent court having jurisdiction over the registered office of the publisher.
- **Portugal:** As for printed press, Article 5 of the printed Press Law sets forth that printed press is required to mandatory and public previous register with the communications authority (ERC).
- **Slovakia:** According to Article 11 of the Press Act, periodicals shall be registered with the Ministry of Culture with a public Registry of Periodicals.
- **Slovenia:** Media operators (publishers) with seat or permanent domicile in Slovenia or having its editing seat in Slovenia are required to register with the Court of Registry. In addition the media itself must be registered in the Slovene Media Registry, kept by the Ministry for Culture, and operating permit issued by the media authority (APEK).
- **Sweden:** There is a mandatory registration requirement if the printed media is planning to be published more than four times a year under a distinct title. Internet press must register their websites with the Swedish Broadcasting Authority.

**5. Criticism: “potential sanctions are disproportionately serious, and this itself is harmful to the freedom of the press”. In contrast, we find that media regulations in several European countries allow even imprisonment (which would be unthinkable in the Hungarian media acts). High fines and other serious sanctions are present in many European statutes.**

- **Austria:** The maximum penalty for some media contents offences is either a custodial sentence up to one year or a fine of up to 360 daily rates. The amount of one daily rate depends on the economic performance of the offender and varies between EUR 2.00 and EUR 5,000.00. Theoretically, the highest possible fine is EUR 1,800,000.00, but, additionally, corporate liability and the to pay damages may apply.
- **Cyprus:** According to Radio and Television Stations Law, anyone who does not comply with the provisions of Article 19, which provides for various restrictions in relation to the issue of a license for the establishment and operation of a radio organization to companies, is guilty of a criminal offence punishable with imprisonment of up to three years or with a fine of up to EUR 85,400.00 or both.  
According to Article 41D(1), a person who provides media services without the required license or in breach of the terms included therein, or a person who intentionally or systematically interferes with the transmission of a television or radio organization is guilty of a criminal offence punishable with imprisonment up to three years or with a fine of EUR 34,000.00 or both.

- **Finland:** The penalty for a broadcaster is determined by a special court (the Market Court) on the proposal of the media authority (FICORA). The maximum amount of the penalty is one million euros (Act on Television and Radio Operations, Chapter 6, Section 36 a). In cases of extraordinarily serious violation, the fine can be even higher, but it cannot exceed 5% of the revenues of the broadcaster resulting from its licensed activity (Act on Television and Radio Operations, Chapter 6, Section 36 a).
- **France:** Pursuant to Article 32 of the Press Act, in case of defamation/libel committed by press means, against a person or a group of persons because of their origin or because they belong or not to a determined ethnic group, a nation, a race or a religion, the responsible party may be subject to up to 1 year of imprisonment or up to a fine of EUR 45,000.00. The most important financial penalties in connection with breaches of the 1986 law may range between 2% to 5% of the net annual turnover of the operator responsible for the breach.
- **Germany:** Pursuant to section 49 of the Interstate Treaty of Broadcasting (RStV) includes a list of 57 administrative offences where the sanctions range from a monetary fine of EUR 50,000.00 to EUR 250,000.00 to EUR 500,000.00. Section 24 of the Interstate Treaty governing the protection of minors (JMStV) lists 28 administrative offences that can be sanctioned with monetary fine up to EUR 500,000.00.
- **Ireland:** The Censorship of Publications Board may examine periodicals upon a complaint from any member of the public on the grounds or where the periodical has devoted an “unduly large proportion of space to the publication of matter relating to crime.” Periodicals may be banned for up to 12 months. The entire periodical could be banned for up to 12 months as the definition of periodical includes every edition and every issue of a periodical, not only the relevant issue. In linear media, Section 71(6) of the Broadcasting Act provides that where programme material contravenes the Prohibition of Incitement to Hatred Act, 1989, the Authority (BAI) may terminate the broadcaster’s broadcasting contract where this has happened more than once in a six-month period.
- **Italy:** Pursuant to Section 16 of the Printed Press Law, where a publication is published before being registered with the Court Registry, the responsible person may be subject to imprisonment up to two years or a fine up to EUR 250,000.00.  
Pursuant to Section 13 of the Press Law, in case of libel committed through the press, the responsible may be subject to imprisonment up to six years and a fine not lower than EUR 250,000.00. Pursuant to Section 14 of the Press Law, in case of publications which describe events (whether real or not) with repulsive details in a way that is against public morality, the responsible may be subject to imprisonment up to three years and a fine. AGCOM has the power to issue sanctions against the press. Such power is mainly concerned with breaches of antitrust provisions and of the obligations to communicate to AGCOM certain information when required by the applicable law. Such sanctions include fines up to EUR 250,000.00 and sanctions calculated as a percentage of the turnover of the responsible operator. The most serious financial sanctions are provided for in connection with breaches antitrust provisions and may range between 2% to 5% of the turnover of the operator responsible for the breach.
- **Luxembourg:** The following are liable to an imprisonment of eight days to one month and a fine of EUR equivalent between LUF 25,000.00 to LUF 500,000.00: any person (i) transmitting a Luxembourg audiovisual media or sound service, or (ii) causing it to be transmitted, without the service provider holding a license or permission or when such license or permission was withdrawn.
- **Malta:** Under the Press Act, it is an offence for anyone to incite others, by means of the publication or distribution of printed matter in Malta, to take away the life or the liberty of the President of Malta or of any Minister. The mere incitement is punishable by conviction to imprisonment for a term not exceeding nine years and to a financial penalty.
- **Poland:** Pursuant to Article 52 of the Broadcasting Act, the transmission of a radio or television programme service without a licence is punishable by a fine, restriction of freedom or a term of imprisonment of up to two years. Retransmission of a radio or television programme service without registration is punishable by a fine, restriction of freedom or a term of imprisonment of up to one year. Pursuant to Article 45 of the Press Act, the publishing of a newspaper or magazine for which the registration with the Court Registry has not been obtained by the publisher or where publishing was suspended is subject to a fine or restriction of freedom.

- **Portugal:** Pursuant to Article 72 of the Television and On-Demand Audiovisual Services Law and Article 66 of the Radio Law, the person who practices television or radio business without being legally entitled to do so is subject to a punishment of imprisonment up to three years or a fine up to 320 days.
- **Spain:** The General Audiovisual Law sets out a range of breaches that are categorised as very serious, serious and minor. For serious breaches the fine can be up to EUR 100,000.00-500,000.00. For very serious breaches (for example, broadcast of hateful, deprecating, or discriminatory content, etc. or improper dealing with a licence) the fine can be up to EUR 500,000.00-1,000,000.00.
- **Sweden:** According to Chapter 17 of the Media Act, the Swedish Broadcasting Authority can sanction the media service provider. Such sanctions are of a financial nature and may range between EUR 500.00 and EUR 500,000.00, depending upon the seriousness violation of the breach. In some cases, the authorities have the right to confiscate property, which has been used in connection with certain offences in the Media Act if necessary to prevent any further misuse (Chapter 17, Section 4 of the Media Act). A natural or legal person that intentionally or as a result of negligence broadcasts programmes without a licence when a licence is required, under the Media Act, can be fined or sentenced to imprisonment for a maximum term of six months.
- **The United Kingdom:** The media authority (Ofcom) prepared a statement containing guidelines, in which it determined the maximum amount of penalty. In most cases, the maximum financial penalty for commercial television or radio licensees is GBP 250,000.00 or 5% of the broadcaster's 'Qualifying Revenue', whichever is the greater. For licensed Public Service Broadcasters, the maximum financial penalty is 5% of 'Qualifying Revenue'. For the BBC or S4C, the maximum financial penalty payable is GBP 250,000.00.

**6. Criticism: “the obligation of journalists to reveal their sources of information and the possibility of the obligation to name their sources is harmful to the freedom of the press.” In contrast, we find that in specific cases it is possible in most European countries – similarly to Hungary – to oblige journalists to reveal their sources of information.**

- **Belgium:** The journalists can be obliged to reveal their sources, if this is absolutely necessary to prevent a crime, provided that the requested information cannot be obtained in any other way.
- **Denmark:** If the court is considering a question of a serious offence with a maximum penalty of at least four years imprisonment, the editor/editorial employee can be required to answer all questions relevant to the criminal offence. This exception, however, only applies if the editor's/editorial employee's information is essential to prove the crime, i.e. there is no alternative method of demonstrating that a crime has been committed and if the interest of the case obviously outweighs the journalist's interest in protecting his or her source.
- **Finland:** A journalist may be ordered to answer questions in a case otherwise protected by confidentiality of source. This is required only in a case which concerns an offence punishable by imprisonment for six years or more, or to attempt of or participation in such an offence, or information that has been given in violation of a duty of confidentiality.
- **Germany:** Section 53 (2) of the Criminal Procedural Code (StPO) stipulates that the right to refuse testimony is omitted if the testimony serves the solving of a crime (criminal acts which are punished with imprisonment up to one year or above) or some other specific offences listed in this paragraph, and if the investigation of the facts or the whereabouts of the accused would be otherwise without success or obstructed considerably.
- **Greece:** There is no explicit legal recognition of the confidentiality, on the contrary, explicit procedural rules (Penal and Civil Courts Procedural Codes) seem to disregard it.
- **Ireland:** Every time a journalist asserts privilege in order to protect sources, then this will be balanced against the factors in Article 10 (2) of the European Convention of Human Rights including “formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”. Therefore, the assertion of such

privilege depends on the facts of the case and the interpretation and balancing of these factors by the court.

- **Italy:** A judge can order a journalist to reveal the source of information covered by the duty of professional confidentiality only in the event that both of the following circumstances arise: (i) the news is essential to prove the crime, i.e. there is no alternative way to demonstrate that a crime has been committed; and (ii) the truthfulness of the news can be ascertained only by knowing the source or the information of the journalist.
- **Malta:** Section 46 of the Press Act provides as follows: "No court shall require any [author, editor or publisher] to disclose, nor shall such person be guilty of contempt of court for refusing to disclose, the source of information contained in a newspaper or broadcast for which he is responsible unless it is established to the satisfaction of the court that such disclosure is necessary in the interests of national security, territorial integrity or public safety, or for the prevention of disorder or crime or for the protection of the interests of justice".
- **Poland:** The Code of Criminal Procedure provides exceptions that may be applied only by the court. Pursuant to Article 180 of the Code of Criminal Procedure, journalists may be questioned as to the facts covered by the confidentiality of the journalist profession, only when it is necessary for the proper administration of justice, and when the facts cannot be established on the basis of other evidence.
- **Portugal:** The court can order the journalist to reveal the sources of its information, whenever such disclosure is justified according to the principle of prevalence of overwhelming interest, particularly given the indispensability of the testimony to establish the truth, the seriousness of the crime, and the need for protection of legal rights.
- **Spain:** There are no specific legislative provisions for the protection of sources. The FAPE Code, which binds all journalists who are members of FAPE and associated press associations and represents an industry standard, states that the confidentiality of information sources is both a journalist's right and represents an obligation to keep confidential his or her sources, if so requested by those sources. Nevertheless, that obligation does not apply in such exceptional situations where there is irrefutable evidence showing that the source has consciously falsified the information or where revealing the source is the only way of avoiding serious and imminent harm to persons.
- **Sweden:** Pursuant to the Freedom of the Press Act, the identity of the sources can be revealed only in exceptional cases: (i) if the person in whose favour the duty of confidentiality operates has given his or her consent to the disclosure of his or her identity; (ii) if the information is related to a case in which an attack on the freedom of the press was realized; (iii) if the matter concerns an offence against the state specified in the Act; and (iv) when, in any other case, a court of law deems it to be of exceptional importance, with regard to a public or private interest, for information concerning identity to be produced on examination of witnesses or of a party in the proceedings under oath (Chapter 3, Articles 1-6).
- **The United Kingdom:** According to Section 10 of the Contempt of Court Act (1981) „No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

**7. Criticism: "the media authority has too strong powers for exploring the facts of a particular case (power to enter the premises, seizure, possibility of copying documents, etc.)." In contrast, we find similar tools used in administrative procedures in several European countries.**

- **Austria:** The Austrian Communications Authority (KommAustria) respectively the Broadcasting and Telecommunications Regulatory Authority (RTR) has power to enter offices or other premises in specific cases.
- **Cyprus:** The Radio Television Authority has the power, following due notice, to enter into the offices of radio and television organizations in order to carry out inspections, and such organizations are obliged to allow such inspections and to facilitate the authority in every way possible.

France: Pursuant to Article 19 of the Act of 30 September 1986 on the Freedom of Communication, Conseil supérieur de l'audiovisuel (CSA) can have investigations conducted in the premises of companies broadcasting audiovisual media services in order to monitor whether providers comply with their obligations set forth in the 1986 Act and in the convention entered into with the CSA, if any.

Germany: According to Section 22 of the Interstate Treaty of Broadcasting (RStV), the competent State Media Authority may conduct all investigations and collect all evidence necessary to fulfill its obligations according to Sections 26-34 RStV. For this purpose, the State Media Authorities may, in particular, obtain information, hear involved parties as witnesses or experts, collect documents and files, and personally judge those obtained information and documents.

Italy: AGCOM has the power to carry out inspections, to access the offices of the regulated entities or other relevant third parties as well as to collect documentation and information (see Section 2 (12) (g) of Law No. 481 of 14 November 1995). The denial, refusal and/or the delay in providing the required information and documentation may be subject to monetary sanctions.

Malta: The Malta Communications Authority is entitled to enter, at any reasonable time, any place, other than a place of residence, where such activity takes place, or the MCA suspects that such activity takes place, and search and inspect the said place and any books, documents or records found therein; require any person to produce for inspection and take extracts from any books, documents or records relating to such activity, which are under the control of that person and, in the case of information in a non-legible form to reproduce it in a legible form, and to give to the MCA such information as the MCA may reasonably require in relation to any entries in such books, documents or records; and remove and retain such books, documents or records for such period as may be reasonable for further examination.

The Netherlands: Based on Article 7:19 of the Dutch Media Act 2008 in conjunction with Article 5:17 of the General Administrative Law Act, the Media Authority is authorized to enter a home against the will of its occupant, to seize the required equipment, and place seals on business spaces and objects, as far as required for inspection and copying of the documents.

- **Portugal:** The communications authority (ERC) has the power to carry out inspections, to access the offices, equipment and services of the regulated entities, request documents for review, request written information, and identify any and all individuals who break the laws and regulations.
- **Slovenia:** The Slovene Ministry of Culture and its officers have the right to carry out inspections, to access the offices of the regulated entities or other relevant third parties as well as to collect documentation and information in accordance with the rules on administrative procedure.
- **Spain:** Under Article 48 of the General Audiovisual Law, the Broadcasting Commission has the power to require service providers to provide information proving compliance with their obligations and carry out inspections, for which purposes it shall act as a public authority and have the corresponding powers under administrative law.

**8. Criticism: “the obligation of radio and television organizations to ensure balanced communication is harmful to the freedom of the press.” In contrast, we find that similar provisions exist in most European states.**

- **Austria:** Section 41 of the Audiovisual Media Services Act states that television programmes have to comply with the fundamental principles of objectivity and diversity of opinions. In an appropriate manner, and in particular, they have to present cultural and economic life to the public in their service area and also to give the major groups from society and organizations from this area the opportunity to air their views.
- **Belgium:** According to Article 5 of the Decree of 27 June 2005 of the German Community, the audiovisual media services must express and respect a diversity of opinions: all important political, philosophical, and ideological opinions must be represented, while minority opinions must also be taken into account.
- **Cyprus:** Article 45 of the Radio and Television Stations Law provides for the obligation of all radio/television organizations (broadcasters) to ensure the equal treatment, especially during electoral periods, of all political parties and political candidates, as well as the citizens in general, in order to ensure that all the information reaching the general public is substantial and that all citizens have the greatest amount of knowledge about the candidates and political parties during electoral periods, as well as the greatest amount of knowledge in general, without, however, affecting the rights of journalists to evaluate the facts and circumstances according to their value and importance as news.

- **Czech Republic:** Based on Section 31 of the Radio and Television Broadcasting Act, radio and television broadcasters are obliged to provide objective and balanced information as needed for opinions to be freely formed.
- **France:** Pursuant to Article 13 of the Act of 30 September 1986 on the Freedom of Communication, the *Conseil supérieur de l'audiovisuel* shall monitor whether pluralism obligations have been complied with. Particular attention is given to political and general information programs.
- **Germany:** Sections 25-34 of the Interstate Treaty of Broadcasting (RStV) serve the granting of diversity of opinion, this time in regard to private broadcasting. The diversity of opinions has to be displayed and the meaningful political, ideological, and social powers and groups have to receive an appropriate chance to speak.
- **Greece:** Balanced communication is regulated by the Greek laws under the light of proportional equality. This legislation regarding balanced communication focuses mainly on equal access of the candidates of various political parties during pre-election periods to the electronic media. During non-electoral periods, Article 3 of law No. 2328/1995 provides for all broadcasters to ensure the presentation of all political views to the public.
- **Ireland:** Regarding the linear media, there is obligation under Section 39 (1) of the Broadcasting Act 2009 on a broadcaster that all news is reported and presented in an objective and impartial manner and without any expression of the broadcaster's own views. Where the broadcast concerns a treatment of current affairs, it must be "fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner". In the press, the Code of Standards contains principles relating to balanced communication. Principle 1 of the Code requires truth and accuracy and Principle 3 imposes a fairness and honesty requirement.
- **Italy:** During non-electoral periods, all broadcasters have the general obligation to ensure on a fair and non-discriminatory basis the possibility to express the various political opinions and positions at debates, roundtables, interviews, and other types of programmes that provide the different political positions. During electoral periods the rules are stricter and more detailed.
- **Latvia:** The Media Act provides among the fundamental principles (Section 3) that news programmes of the broadcasters have to be objective and impartial. All the broadcasters are obliged to the balanced communication (Article 5).
- **Malta:** Article 13 of the Broadcasting Act obliges the authority to ensure that so far as possible the programmes of broadcasting services in Malta comply with certain special requirements. Thus, sufficient time shall be given to news and current affairs and that all news given in the programmes (in whatever form) shall be presented with due impartiality. Due impartiality shall be preserved in respect of matters of political or industrial controversy or relating to current public policy.
- **Portugal:** According to Article 40 of the Portuguese Constitution, political parties, trade unions, and other organizations are entitled, according to their importance and representation and according to the criteria and objectives set by law, to airtime in the radio and television public service.
- **Sweden:** The regulatory obligation for media to ensure balanced communication is contained in Chapter 4, Section 8 of the Media Act, which states that licence to broadcast television (or teletext) may be conditioned upon the requirement that the right to broadcast shall be exercised impartially and objectively.
- **The United Kingdom:** The Broadcasting Code of Ofcom, which contains details about the provisions of the Communications Act 2003, provides the requirement of balanced communication. The Code has separate chapters about "due impartiality", "due accuracy" and "undue prominence of views and opinions" (Sections 319(2)(c) and (d), 319(8), and 320 of the Communications Act 2003, and Section 5 of the Broadcasting Code).

**9. Criticism: “limitation of media content is possible also on the grounds of undefined, imprecise notions (e.g. human dignity)”. In contrast, we find that media and press laws in European countries (containing necessarily general wording) determine several different provisions that constitute a limitation of media contents.**

- **Cyprus:** Pursuant to Section 26 (1) of the Radio and Television Stations Law, audiovisual media providers must ensure that their broadcastings respect the rights and freedoms of individuals. In specific they must respect the individual's personality, reputation, and privacy and the ideals of democracy.
- **Czech Republic:** In the case that the Broadcasting Council become aware that a radio or television broadcaster has breached the Radio and Television Broadcasting Act (including infringement upon inherent (personal) rights), it is entitled to impose a fine on the radio and television broadcaster and is also entitled to withdraw the broadcasting license of such radio and television broadcaster.
- **France:** Article 15 of the Act of 30 September 1986 on the Freedom of Communication includes, among the fundamental principles of the audiovisual media services, that the content must not contain, among others, any incitement to hatred on grounds of race, religion, sex, or nationality.  
Article 1 of the 1986 Act states that *“this freedom may be limited only, to the extent required, for the respect of human dignity.”* As a consequence, the media authority (CSA) ensures that programs made available to the public by an audiovisual media service provider respect the principle of human dignity.  
Pursuant to Article 27 of the Press Act, in case of publication in bad faith of false news which is likely to disturb public order, the responsible party may be subject to a fine up to EUR 45,000.
- **Ireland:** Section 39 of the Broadcasting Act 2009 imposes an obligation on broadcasters not to broadcast anything that *“may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime or as tending to undermine the authority of the State.”*  
Part 5 of the Defamation Act provides that a person who publishes or utters blasphemous matter shall be guilty of an offence.  
The Censorship of Publications Board may examine periodicals upon a complaint from a member of the public or if the periodical has devoted an *“unduly large proportion of space to the publication of matter relating to crime.”*  
In the area of linear media, Section 71 (6) of the Broadcasting Act provides that where programme material contravenes the Prohibition of Incitement to Hatred Act 1989, the authority (BAI) may terminate the broadcaster's broadcasting contract if this has happened more than once in a six month period.  
Principle 8 of the Code of Conduct states that newspapers and magazines shall not publish materials intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the traveling community, gender, sexual orientation, marital status, disability, illness, or age.  
In the area of linear media, Section 39 (1) (e) of the Broadcasting Act 2009 provides that in the broadcasting of programmes, the privacy of any individual *“is not unreasonably encroached upon”*.
- **Italy:** Any limitation of freedom of expression can be justified by the protection of public morality, as specifically mentioned in Section 21 of the Italian Constitution, but also of the right to privacy, state secrets, honor and reputation. Pursuant to Section 14 of the Printed Press Law, in case of publications describing events (whether real or not) with repulsive details in a way that is against public morality, the person responsible may be subject to imprisonment up to three years and a fine. Sections 3 and 32 of the Media Code include, among the fundamental principles of the audiovisual media services, the protection of ethnic and cultural diversity. Pursuant to Section 10, the authority (AGCOM) must ensure that audiovisual media services respect fundamental human rights. Also on the basis of this provision, AGCOM issued some decisions aiming at reinforcing that audiovisual media services must respect and protect fundamental rights.
- **Lithuania:** The Media Act contains provisions for the protection of personality, and prohibits certain behavior for the protection of personality rights, human dignity, and reputation.

- **Luxembourg:** According to article 26bis of the Media Act, audiovisual media services may not offer any incitement to hatred on grounds of race, gender, opinion, religion, or nationality. Pursuant to article 1 (2) (c) of the Media Act, the respect of human beings and their dignity are fundamental principles in the sector of audiovisual media services. It is the National Programme Board which is competent to monitor the content of audiovisual programmes, especially focused on the protection of minors and human dignity. Anyone who feels prejudiced by the content of an audiovisual programme may file a complaint with the Board that will then analyze the file and render an advice.
- **Malta:** The freedom of the press can be limited by law if it imposes restrictions on public officers or if it is reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health or for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings. The freedom of the press can also be limited for preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of the Parliament etc.

The Press Act lists a set of press offences which are committed by whosoever by means of the publication or distribution in Malta of printed matter, from whatsoever place such matter may originate, or by means of any broadcast. The said offences include, inter alia: Incitement to take away the life or liberty of the President of Malta or of any Minister; Imputation of ulterior motives to acts of the President of Malta; Contempt toward the National Flag of Malta; Racism and similar offences; Obscene libel; Divulging professional secrets; Malicious publication of false news; Negligent publication of false news; Defamatory libel; Publication of matter with intent to extort money; Instigation to commit an offence; Justification of crimes; Incitement to disobey the law; and Where the instigation or incitement to commit an offence has produced its effect.

Article 13 of the Broadcasting Act makes it clear that the Broadcasting Authority is obliged to ensure that nothing is included in programmes that offends against religious sentiment, good taste or decency, or is likely to encourage or incite to crime or to lead to disorder or to be offensive to public feelings.

- **The Netherlands:** Civil courts have the authority to decide whether in the event a person causes damage through a humiliating, blasphemous, or discriminatory publication, the unlawful publication in the press needs to be rectified and whether imposing a fine is necessary. Furthermore, civil courts have the authority to order the payment of compensation for damages.
- **Portugal:** The freedom of expression is also subject to certain limitations, resulting from the collision with other fundamental rights with equal importance as the right to good name and reputation, image, word, privacy of family life and private and personality development. Also the right of State safety and the realization of justice, which protect the community general interests, may limit the freedom of expression. Media Laws state that broadcasts must respect human dignity and the fundamental rights, freedom and guarantees and shall not instigate the commission of crimes. As for Printed Press Law, according to the provisions of Article 3, press freedom is limited in order to guarantee the rights to good reputation, privacy of private life, image and the defence of public interest and the democratic order.
- **Slovenia:** Article 6 of the Media Act formulates the protection of human personality and dignity as one of its general principles. Moreover, if through a media outlet human dignity is violated, or if discrimination on grounds of race, sex or ethnicity is carried out, or political or religious intolerance is incited, or if a person's behavior damages public health, safety, the environment or cultural heritage, or offence is made on grounds of religious or political beliefs, or if consumer interests are damaged, then the Culture and Media Inspectorate of the Republic of Slovenia can impose fines upon the publisher and the responsible person (Article 129 of the Media Act).
- **Sweden:** The Sweden Freedom of the Press Act lists those acts that shall be regarded as offenses against the freedom of the press if they are committed by way of printed matter and if they are punishable under law (Chapter 7, Articles 4 and 5): (i) high treason, including any attempt, preparation, or conspiracy to commit such high treason; (ii) instigation of war; (iii) espionage, including any attempt, preparation, or conspiracy to commit such espionage; (iv) unauthorized trafficking in secret information including any attempt or preparation to commit such trafficking in secret information; (v) carelessness with secret information, whereby through gross negligence a person commits

an act referred to unauthorized trafficking in secret information; (vi) insurrection, including any attempt, preparation or conspiracy to commit such insurrection; (vii) treason or betrayal of country, including any attempt, preparation or conspiracy to commit such treason or betrayal of country; (viii) carelessness injurious to the interests of the Realm, whereby a person through negligence commits treason or betrayal of country; (ix) dissemination of rumours which endanger the security of the Realm, whereby, when the Realm is at war or provisions of law relating to such offence otherwise apply; (x) sedition; (xi) agitation against a population group or other such group with allusion to race, color, national or ethnic origin, religious faith or sexual orientation; (xii) offenses against civil liberty, whereby a person makes unlawful threats with intent to influence the formation of public opinion or encroach upon freedom of action within a political organization or professional or industrial association, thereby imperiling the freedom of expression, freedom of assembly or freedom of association, including any attempt to commit such an offence against civil liberty; (xiii) unlawful portrayal of violence, whereby a person portrays sexual violence or coercion in pictorial form with the intent to disseminate the image, unless the act is justifiable having regard to the circumstances; (xiv) defamation; (xv) insulting language or behavior; (xvi) unlawful threats; (xvii) threats made against a public servant, including any attempt or preparation so to threaten a public servant, unless the offence, if realized, would have been deemed to be trifling; (xviii) perversion of the course of justice.



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