

**REPUBLIC OF CROATIA**

**THE ELECTRONIC MEDIA ACT**

## I GENERAL PROVISIONS

### Article 1

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

### Article 2

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

1. *Electronic media*: audiovisual programmes, radio programmes and electronic publications.
2. *Electronic publications*: edited websites and/or portals containing electronic versions of printed press and/or media information thus being available to general public regardless of their volume.
3. *Audiovisual media service*: a service as defined by Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and their Member States, which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of the provisions of Electronic Communications Act. Such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service and/or audiovisual commercial communication as defined in this Act.
4. *Audiovisual programme*: set of moving images with or without sound constituting an individual item within a schedule or a catalogue of programmes established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama.
5. *General television or radio programme channel*: channel of varied contents which has the programme basis containing mainly information, education, cultural and entertainment programmes pursuant to Article 23 paragraph 1 and 2 of this Act.

6. *Specialised television or radio programme channel*: channel which has the programme basis containing a programme scheme more than 70% of which are the programmes of the same kind pursuant to Article 23 paragraph 3 of this Act.
7. *Editorial responsibility*: the exercise of effective control both over the selection of programmes and over their organisation either in a chronological programme schedule, in case of television or radio broadcasts, or in a catalogue of programmes, in case of on-demand audio and audiovisual media services. Editorial responsibility does not necessarily imply any legal liability for the content or the services provided, unless defined otherwise under this Act or a separate act.
8. *Media service provider*: the natural or legal person who has editorial responsibility for the choice of the audio and audiovisual content of the audio and audiovisual media service and determines the manner in which they are organised.
9. *Television broadcaster*: a media service provider of television broadcasts.
10. *Radio broadcaster*: a media service provider of radio broadcasts.
11. *Television media service or television broadcast (i.e. a linear audiovisual media service)*: an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.
12. *On-demand audiovisual media service (i.e. a non-linear audiovisual media service)*: an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.
13. *Near video on demand audiovisual media service*: an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a programme schedule.
14. *Audiovisual commercial communication*: images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.
15. *Advertising*: any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertakings or natural persons in connection

with craft, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.

16. *Surreptitious audiovisual commercial communication*: the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a service provider in programmes, when such representation is intended by the media service provider to use such representation as advertising that might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.
17. *Misleading advertising*: any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor.
18. *Comparative advertising*: any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.
19. *Sponsorship*: any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products.
20. *Teleshopping*: direct offer broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.
21. *Product placement*: any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration.
22. *Radio media service*: the initial transmission and/or publication of the radio programmes intended for reception by the public, by wire or over the air, including that by satellite, in encoded or unencoded form. The term includes the forms of mutual mediation or exchange of radio programmes between radio media service providers with a view to their being relayed to the public.
23. *Radio on demand media service*: radio media service provided by a media service provider for the listening of programmes at the moment chosen by the user at his individual request on the basis of a catalogue of programmes selected by the media service provider.
24. *Radio programme*: edited audio and voice information of all kinds (news, opinions, announcements, messages and other information) and authors' works which are broadcast through radio for the purpose of providing

information and satisfying cultural, educational and other needs, and public communication.

25. *Protected service*: television media service and radio media service and other audiovisual media service as well as information society service where provided against remuneration and on the basis of conditional access, or the provision of conditional access to the mentioned services considered as a service in its own right. It is assumed that the information society service is any information society service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.
26. *Conditional access*: any technical measure and/or arrangement whereby access to the protected services in an intelligible form is made conditional upon prior individual authorisation by service provider.
27. *Conditional access device*: any equipment, software and/or arrangement designed or adapted to give access to a protected service in an intelligible form.
28. *Illicit device*: any equipment, software and/or arrangement designed or adapted to give access to a protected service in an intelligible form without the previous authorisation by service provider.
29. *The competent ministry*: the ministry that is competent for the tasks in the area of electronic media.
30. *Minister*: the minister of the competent ministry.

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

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

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

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

## **II GENERAL PRINCIPLES**

### **Article 3**

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

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

### **Article 4**

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

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

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

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

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

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

### **Article 5**

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

### **Article 6**

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

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

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

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

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

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

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

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

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

## **Article 7**

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

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

## **Article 8**

The Republic of Croatia shall ensure the freedom of transmission and reception of audio and audiovisual media services from the EU Member States and other European states parties to the European Convention on Transfrontier Television of the Council of Europe and it may, in particular cases, restrict the freedom of broadcasting of those services only in compliance with international agreements and this Act.

## **Article 9**

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

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

## **Article 10**

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

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

# **III AUDIO AND AUDIOVISUAL MEDIA SERVICES**

## **I General Provisions**

### **Article 11**

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

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



## **Article 12**

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

(2) In audio and/or audiovisual services it shall be prohibited to promote, favour the promotion of and spreading of hatred or discrimination based on race or ethnic affiliation or colour, gender, language, religion, political or other belief, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation, as well as anti-Semitism and xenophobia, ideas of the fascist, nationalist, communist and other totalitarian regimes.

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

## **Article 13**

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

(2) Media service provider is obliged to fairly conduct the prize competitions (quiz shows, riddles etc.) or various forms of rewarding participation of the viewers or listeners in the audiovisual or radio programmes, as well as to announce the unequivocal rules on these contents and the public promise of rewards.

(3) Conditions for the providing of audio and audiovisual media services which include the contents referred to in paragraph 2 of this Article shall be closely regulated by the Electronic Media Council's ordinance referred to in Article 26 paragraph 4 of this Act

## **Article 14**

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

## **Article 15**

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

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

## **Article 16**

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

(2) Surreptitious audiovisual commercial communications shall be prohibited.

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

(4) Audiovisual commercial communications shall not:

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

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

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

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

(8) Audiovisual commercial communications shall not:

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

(9) Pursuant to Article 10 of this Act, media service providers may develop codes of conduct regarding inappropriate audiovisual commercial communication, included in or accompanying children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

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

## **Article 17**

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

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

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

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

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

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

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

## **Article 18**

(1) Product placement shall be prohibited.

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

- in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, with the exception of children's programmes, or
- where there is no payment to the media services provider, but certain goods or services are provided free of charge, such as production props and prizes, with a view to their inclusion in an audiovisual programme.

(3) It is assumed that the product and services placement in the sense of paragraph 2 subparagraph 2 of this Article exists if the goods or services involved in the audiovisual programme are of significant value. The Electronic Media Council shall determine by an ordinance the manner of determining the significant value of the goods and services placed taking into account that the significant value is assessed in relation to the budget of the production or the costs paid for the product placement of the product or service in this programme.

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

- their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider,
- they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services,
- they shall not give undue prominence to the product in question,
- viewers shall be clearly informed of the existence of product placement,
- they shall be appropriately identified at the start and the end of the audiovisual programme and when a audiovisual programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

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

- (6) In any event audiovisual programmes shall not contain product placement of:
- tobacco products or cigarettes or product placement of natural and legal persons whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or
  - specific medicinal products or medical treatments available only on prescription.
- (7) The provisions of this Article shall apply only to audiovisual programmes produced after 19 December 2009.

## **2 Audio and Audiovisual Media Services On Demand**

### **Article 19**

- (1) The activity of providing audio and/or audiovisual media services on demand can be carried out by legal or natural person which fulfils conditions set out in Articles 5 and 6 of this Act and has the Electronic Media Council's licence for providing these activities (hereinafter: on demand media service provider).
- (2) The Electronic Media Council issues the licence from paragraph 1 of this Article on the basis of the request of the on demand media service provider which has fulfilled the technical conditions for the transmission of audiovisual and/or radio programme and programme basis which contains the programme orientation of the on demand media service provider (general or specialised).
- (3) Before deciding on issuing the licence, the Council is authorised to exchange information on the on demand media service provider with regulatory bodies of other Member States of the European Union, if the activities from paragraph 1 of this Article refer to other Member States of the European Union as well.
- (4) The Electronic Media Council shall decide on issuing the licence from Article 1 or refusing the issuing the licence as soon as possible, and at the latest within 30 days from receiving the correct request.
- (5) On the basis of issuing the licence from paragraph 1 of this Article, the on demand media service provider shall be registered into the Register administered by the Electronic Media Council.
- (6) The Council shall ex officio take a decision on termination of permit from paragraph 1 of this Article and cancel the media service provider from the Registry in the following cases:
- if the media service provider notifies the Council in writing on the cessation of the activity providing,
  - if the media service provider ceases to provide the activities for a period longer than a year,
  - if the media service provider does not fulfil anymore the technical conditions for the transmission of audiovisual and/or radio programme,
  - if the media service provider was prohibited by an effective decision of the court to perform the registered activity,
  - after the cessation of the legal person of a media service provider or the cessation of craft.
- (7) The licence for providing the activities of audio and/or audiovisual media services on demand can be transferred to another person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the licence, with the prior consent of the Council.

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

(9) The content and manner of management of the Register from paragraph 5 of this Article is regulated by the Electronic Media Council's ordinance from Article 75 paragraph 6 of this Act.

### **Article 20**

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

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

### **Article 21**

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

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

(3) The on-demand audiovisual media service providers shall attain and increase the financial contribution or the share and/or prominence of European works in the catalogue of programmes referred to in paragraph 2 of this Article in accordance with the criteria and method laid down in the ordinance referred to in Article 42 paragraph 2 of this Act adopted by the Electronic Media Council.

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

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

## **3 Television and Radio Media Services**

### **Conditions for Providing the Television and Radio Media Service**

### **Article 22**

(1) The activity of providing the television and/or radio media services may be performed by legal and natural person (hereinafter: television and/or radio broadcaster) entered in the court register or other register prescribed in the Republic of Croatia in accordance with this Act and separate regulation, and which has

obtained a concession and concluded a concession contract in accordance with this Act and the Concessions Act.

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

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

## **Programme Principles and Obligations**

### **Article 23**

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

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

(2) The television broadcaster shall determine, on the basis of programme basis set out in paragraph 1 of this Article, the proportion of European works referred to in Article 41 and 42 of this Act and independent audiovisual works referred to in Articles 43 and 44 of this Act.

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

- the type of audiovisual or radio programmes of which over 70% shall be of the same kind,
- the foreseen quantitative ratio among individual content groups,
- the foreseen maximum scope of advertising contents,
- the foreseen scope of its own audio and audiovisual works and the share of the Croatian audio and audiovisual works,
- the proportion of European works referred to in Article 41 and 42 of this Act, independent audiovisual works referred to in Articles 43 and 44 of this Act and other works for the broadcasters of specialised television programme,
- time of broadcast.

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

(5) In order to change or make an addition to the programme basis relating to more than 10% of its content from paragraphs 1 and 3 of this Article pursuant to which the concession was awarded, the television and/or radio broadcaster shall obtain the

prior consent of the Electronic Media Council. Along with the request for the prior consent, the broadcaster shall enclose the opinion referred to in paragraph 4 of this Article.

(6) The programme basis is a supplement and forms part of the employment contract between the television and/ or radio broadcaster and its editor or journalist. Special rights of editors and journalists resulting from changes or additions to the programme basis shall be regulated by an annex to the employment contract.

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

## **Article 24**

The audiovisual or radio programmes shall in particular:

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

## **Article 25**

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

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

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

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

## **Article 26**

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

- to publish footage which offends human dignity,
- to publish footage which especially contains immoral and pornographic content,

- in any manner to encourage, promote and glorify violence and crime and encourage citizens, especially children and youth, to use tobacco products, alcohol or drugs.

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

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

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

### **Article 27**

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

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

(3) The way of keeping the record set out in paragraph 1 of this Article and the quality of the taped material shall be stipulated by the Electronic Media Council's ordinance set out in Article 22 paragraph 3 of this Act.

### **Article 28**

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

## **Advertising**

### **Article 29**

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

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

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



### **Article 30**

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

(2) Advertising which depicts women and men in an abusive or humiliating way in relation to gender and sexual orientation shall be prohibited.

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

### **Article 31**

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

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

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

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

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

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

### **Article 32**

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

(2) Provision of paragraph 1 of this Article shall not apply to announcements made by the television broadcaster in connection with its own programmes and ancillary

products directly derived from those programmes, sponsorship announcements and product placements.

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

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

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

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

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

### **Article 33**

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

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

### **Article 34**

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

(2) The provisions of this Act shall apply *mutatis mutandis* to television programme channels exclusively devoted to advertising and teleshopping as well as to television programme channels exclusively devoted to self-promotion, with the exception of the provisions of Article 32 paragraphs 3, 4,5 and 6 and Articles 42 and 44 of this Act.

## **Sponsorship**

### **Article 35**

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

## **Time of Broadcast**

### **Article 36**

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

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

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

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

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

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

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

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

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

## **Private Production**

### **Article 37**

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

- (2) If several television and/or radio broadcasters had an input in the production of an audiovisual and/or radio programme, a private production for each of them shall be considered a part proportional to the input.
- (3) Opening night and first re-runs of Croatian audiovisual works shall be considered a private production.
- (4) The broadcast of Croatian music shall also be considered private production of a radio programme, in compliance with provisions of Article 38 of this Act.
- (5) Advertisements, including radio and television sale and paid information, shall not be considered audiovisual and/or radio programme made in a private production.
- (6) The Electronic Media Council shall, by an ordinance, stipulate more detailed measures for determining audiovisual and/or radio programmes considered to be a private production.

### **Article 38**

- (1) The portion of private production shall amount to at least 20% of the daily time for broadcast of each audiovisual programme of a television broadcaster, out of which at least 50% shall be between 16 and 22 hours, save if otherwise stipulated under this Act .
- (2) The portion of private production shall amount to at least 30% of the daily time for broadcast of each radio programme of a radio broadcaster, save if stipulated otherwise under this Act
- (3) The re-run of a radio or television show shall be clearly marked in line with the technical possibilities. Only the first re-run of a show may be calculated into the portion referred to in paragraphs 1 and 2 of this Article
- (4) The Electronic Media Council shall stipulate in the ordinance referred to in Article 26 paragraph 4 of this Act the form of identification of the re-run shows referred to in paragraph 3 of this Article.
- (5) The provisions of this Article shall not apply to the broadcaster of the specialised television and/or radio programme channel.

### **Article 39**

- (1) Croatian music shall comprise at least 20% of the daily broadcast of music programme anticipated by the programme scheme of the radio programme.
- (2) Not more than 20% of the daily broadcast in which Croatian music is performed may be calculated into the portion referred to in Article 38, paragraph 2 of this Act.
- (3) The provisions of this Article shall not apply to the broadcaster of the specialised television and/or radio programme channel.

## **Croatian Audiovisual Works**

### **Article 40**

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

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

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

## **European Works**

### **Article 41**

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

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

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

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

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

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

### **Article 42**

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

(2) Television broadcaster who cannot attain the proportion of European works referred to in paragraph 1 of this Article shall progressively increase the proportion of

such works every year in relation to the past year in accordance with the criteria and the method laid down in the ordinance which is adopted by the Electronic Media Council, taking into account the television broadcaster's informational, educational, cultural and entertainment responsibilities to its viewers, where the minimum initial proportion is 20%.

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

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

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

(6) The Electronic Media Council shall report to the European Commission no later than 3 October 2011 and every two years thereafter on the implementation of the paragraphs 1 to 4 of this Article.

## **Audiovisual Works of Independent Producers**

### **Article 43**

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

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

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

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

### **Article 44**

- (1) Television broadcaster shall use its best efforts to reserve for European works produced by independent producers at least 10% of the time in the annual audiovisual programme.
- (2) Television broadcaster which cannot attain the proportion of audiovisual works produced by independent producers referred to in paragraph 1 of this Article shall progressively increase the proportion of such works every year in relation to the past year in accordance with the criteria and the method laid down in the ordinance which is adopted by the Electronic Media Council, taking into account the media service broadcaster's informational, educational, cultural and entertainment responsibilities to its viewers.
- (3) At least half of the works referred to in this Article shall be produced in the previous five years.
- (4) The annual transmission time referred to in this Article does not include the time earmarked for news, sports events, games, advertising, teletext services and teleshopping.
- (5) The provisions of the previous paragraphs shall not apply to television broadcaster which has a local concession and which is not affiliated with the national network.
- (6) The Electronic Media Council shall report to the European Commission no later than 3 October 2011 and every two years thereafter on the implementation of the paragraphs 1 to 4 of this Article.

## **Right to Short News Reports**

### **Article 45**

- (1) For the purpose of short news reports, any television and/or radio broadcaster established in the European Union has access under the equal conditions to events of high interest to the public which are transmitted on an exclusive basis by a television and/or radio broadcaster under the jurisdiction of the Republic of Croatia.
- (2) If a television and/or radio broadcaster established in the Republic of Croatia has acquired exclusive rights to the event of high interest to the public, another television and/or radio broadcaster established in the Republic of Croatia may seek access to the mentioned event from that television and/or radio broadcaster. All television and/or radio broadcasters have the right of access to events of high interest to the public under the equal conditions.
- (3) The Electronic Media Council shall ensure that access to the events referred to in paragraph 1 and 2 of this Article is guaranteed by allowing television and/or radio broadcaster to freely choose short extracts from the transmitting television and/or radio broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source. The way of ensuring the access to the transmitting signal shall be stipulated by the Electronic Media Council's ordinance, upon the previous opinion of the Croatian Post and Electronic Communications Agency.
- (4) Television and/or radio broadcaster may, before and instead of access to the signal within the meaning of paragraph 3 of this Article, accomplish access to the events referred to in paragraph 1 and 2 of this Article for purposes of shooting short extract or using the taped material of other television and/or radio broadcaster which has exclusive rights for the transmitting of the event of high interest to the public.

(5) Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.

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

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

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

(9) If an event of high interest to the public is composed of several organisationally self-contained elements, each self-contained element is considered to be an event of high interest to the public.

(10) If an event of high interest to the public takes place over two or more days, the television and/or radio broadcaster has the right to produce one short news report for each day.

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

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

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

### **Article 46**

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

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

(3) The Electronic Media Council shall immediately notify the European Commission of the list referred to in paragraph 2 of this Article and other measures taken or to be taken, which conducts procedure to verify whether such measures are compatible with Community law and communicates them to the other Member States of the European Union. The Electronic Media Council shall also forward the notification of the list and measures to the states signatories of international treaties by which the Republic of Croatia is bound.



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

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

## **Networking of Television and Radio Programmes**

### **Article 47**

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

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

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

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

## **Non-profit Audiovisual and Radio Programmes**

## **Article 48**

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

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

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

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

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

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

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

## **Article 49**

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

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

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

## **IV PROTECTED SERVICES**

### **Article 50**

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

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

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

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

### **Article 51**

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

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

## **V PROTECTION OF PLURALISM AND DIVERSITY OF ELECTRONIC MEDIA**

### **Publicity of Ownership**

#### **Article 52**

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

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

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

### **Linked Persons**

#### **Article 53**

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

deciding about the financing and business management, i.e. deciding about the programme basis of the media.

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

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

## **Restriction of Concentration**

### **Article 54**

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

- the television and/or radio broadcaster who has concession at the state level and a share exceeding 25% of the capital of another broadcaster who has the same kind of concession or a concession on the regional, county, city or municipality level, and vice versa,
- the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa,
- the television and/or radio broadcaster who has concession at the state level and a share exceeding 10% of the capital of a legal person who performs the activity of a newspaper agency, and vice versa,
- the television and/or radio broadcaster who has concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies,
- the television and/or radio broadcaster with a concession at the local or regional level of coverage and shares exceeding 30% of the capital of another such broadcaster with the concession at the local or regional level of coverage in the same area,
- the television and/or radio broadcaster who has a concession at the regional or local level of coverage and simultaneously publishes daily newspapers of local importance in the same or in the neighbouring area,
- the media service provider set out in Article 79 of this Act who simultaneously publishes daily newspapers printed in more than 3,000 copies,

- the media service provider set out in Article 79 of this Act who has a share exceeding 10% of the capital of a publisher who publishes daily newspapers printed in more than 3,000 copies, and vice versa.

### **Article 55**

It shall also be considered that impermissible concentration exists in the area of media also when, in cases referred to in Article 54 of this Act, a natural or legal person, who is the founder of the television and/or radio broadcaster or the media service provider set out in Article 79 of this Act, or a founder, or persons related to him/her in the sense of Article 53 of this Act, has a share in the capital of another television and/or radio broadcaster, newspapers publisher of a daily newspaper or news agency, above the determined amount of capital.

### **Article 56**

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

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

(3) The media service provider set out in Article 79 of this Act shall be obliged to enclose a statement along with the request for issuing licence for satellite, internet and cable transmission of the audiovisual and/or radio programme indicating that the licence issuing shall not create impermissible concentration in the sense of this Act.

### **Article 57**

(1) The television and/or radio broadcaster and the media service provider set out in Article 79 of this Act shall report in writing on any change in the ownership structure to the Electronic Media Council.

(2) Should the Electronic Media Council determine that the occurred changes in the ownership structure resulted in an impermissible concentration in the area of media, it shall give an order to the television and/or radio broadcaster and the media service provider set out in Article 79 of this Act to conform its ownership structure, within a certain deadline, in a manner which is not contrary to the provisions of this Act.

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

(4) Should the media service provider set out in Article 79 of this Act fail to comply with the order of the Electronic Media Council, the provisions of this Act stipulating the termination of validity of the licence for satellite, internet and cable transmission of the audiovisual and/or radio programme shall be applied.

### **Article 58**

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

(2) Should it be subsequently determined that one of the founders of the television and/or radio broadcaster to whom a concession was awarded is a foreign legal person referred to in paragraph 1 of this Article, the provision of Article 57 paragraph 2 and 3 of this Act shall apply.

### **Article 59**

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

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

### **Article 60**

(1) A legal person whose activity is collection, shaping and mediation in advertising, as well as a natural or legal person, or a group of connected persons, which has more than 10% of the ownership share in the capital, i.e. property of that sort, or which has more than 10% of management or voter's rights, may not be a television and/or radio broadcaster and/or founder of radio and/or television broadcaster, nor can it have ownership of stocks or shares in the capital of the television and/or radio broadcaster.

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

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

### **Article 61**

An operator who performs the activity of audiovisual and/or radio programme transmission may not be the television and/or radio broadcaster as well as the media service providers referred to in Articles 79 of this Act.

## **Article 62**

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

## **Fund for Promotion of Pluralism and Diversity of Electronic Media**

### **Article 63**

(1) The Fund for Promotion of Pluralism and Diversity of Electronic Media (hereinafter: the Fund) is the Fund of the Electronic Media Agency.

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

### **Article 64**

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

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

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

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

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

- significance of the audiovisual and/or radio programme for the realisation of objectives referred to in paragraphs 1 and 2 of this Article,
- the quality and content-related innovation of the offered audiovisual and/or radio programme,
- interest for overall i.e. local and regional cultural development,
- other criteria determined by the Electronic Media Council by means of the ordinance referred to in paragraph 6 of this Article, pursuant to Article 10 of this Act.

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

- for audiovisual and/or radio programmes which are already co-financed, regardless of the grounds, from the budgetary funds, with the exception of the programmes of the non-profit television and/or radio broadcaster,

- for the television and/or radio broadcasters to which the Electronic Media Council passed a warning in the previous twelve months and/or which were sentenced in the previous twelve months on the basis of court res judicata for violating provision of this Act.

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

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

## **VI. PROTECTION OF THE COMPETITION ON THE MARKET OF ELECTRONIC MEDIA**

### **Article 65**

(1) Regulations on the protection of market competition shall apply to media service providers.

(2) Regulations on the state aid shall apply on every individual aid grants and programmes containing grants from this Act.

## **VII ELECTRONIC MEDIA AGENCY AND ELECTRONIC MEDIA COUNCIL**

### **Electronic Media Agency**

#### **Article 66**

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

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

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

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

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

(6) General employment regulations shall apply to the realisation of the Agency's employees' rights and obligations from the employment relationship. The salaries of



the director of the Agency and Council members shall be determined by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia.

(7) The means for the functioning of the Agency, including the means for the director of the Agency and Council members' salaries, shall be ensured, in compliance with the Agency's annual financial plan, in the amount of 0.5 % of the total annual gross income made in the previous year by media service providers by the activities of providing on-demand audio and/or audiovisual media services referred to in Article 19 of this Act and activities of providing television and/or radio media services referred to in Articles 22 and 79 of this Act as well as activities of providing electronic publication services referred to in Article 80 of this Act.

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

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

## **Electronic Media Council**

### **Article 67**

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

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

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

### **Article 68**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) The president, deputy president and member of the Council can not within a year from relieving of duty be appointed as members of board of directors, supervisory boards or administrative boards of legal persons subject to provisions of this Act.

(14) The president, deputy president and members of the Council, after relieving of duty in case referred to in paragraph 11, subparagraphs 4, 5 and 8 of this Article and until the beginning of receiving the salary on other basis or the right for receiving pension in compliance with general provisions, and at the longest for a year after relieving of duty, shall be entitled to a remuneration in the amount of the last salary paid in the last month before relieving of duty.

## **Article 69**

(1) The Council shall:

- conduct the procedure of granting a concession in compliance with this Act, Concession Act and the ordinance referred to in Article 73 paragraph 3 of this Act;
- enter into a concession contract with the most advantageous tenderer pursuant to this Act.
- pass a decision on the cancellation of concession and granting in cases anticipated by this Act,
- undertake appropriate measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states pursuant to Article 77 of this Act,
- conduct the procedure of granting licences for providing the activities of providing of audio and/or audiovisual media services on demand and satellite, internet and cable transfer of audiovisual and/or radio programmes,
- caution in cases of violation of provisions of this Act and executive regulations and/or charge pursuant to violation provisions of this Act and Misdemeanours Act,
- pass the legislation for passing for which is authorised by this Act,
- pass its rules of conduct,
- keep records of media services providers,
- grant the approval referred to in Article 59, paragraph 2 of this Act,
- implement the provisions of this Act relating to the protection of pluralism and diversity of electronic media,
- ensure supervision over the implementation of provisions on the programme principles and obligations determined by this and a special act, save for electronic publications, and shall pass the annual monitoring plan,
- ensure supervision over audiovisual and radio programmes broadcasted via satellite, internet or cable transmission,
- ensure monitoring of the purposeful spending of the Fund's means in line with Article 64 of this Act,
- conduct the procedure of determining whether the provisions of this Act are respected or violated,
- consider the complaints of citizens on the media services providers' behaviour with regard to the implementation of acts, and shall undertake measures in compliance with this Act,
- pass recommendations for implementation of this Act,
- promote self-regulation and co-regulation for the implementation of this Act,
- cooperate with regulatory bodies of other states and/or European Commission in the exchange of information for implementation of this Act, especially provisions of Article 6, Article 19 paragraph 3, Article 73 paragraph 6, Article 77 and Article 79 paragraph 3 of this Act,
- submit reports to the Croatian Parliament and other competent bodies, in compliance with this Act and other acts,
- submit reports to the European Commission, in compliance with this Act and other acts,
- promote media literacy,
- organise public counselling and expert gatherings and conduct analysis concerning certain issues in the electronic media sector,
- pass the annual work programme of the Agency, and
- also perform other tasks stipulated by this Act and a special act as well as the Statute of Agency.

(2) Regulatory and other tasks referred to in paragraph 1 subparagraph 1 to 18 of this Article comprise tasks related to the public authorities of the Agency implemented by the Council.

### **Article 70**

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

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

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

### **Article 71**

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

### **Article 72**

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

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

### **Article 73**

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

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

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

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

- the programme conditions in accordance with this Act, and especially the quantity of own production, European audiovisual works and works of independent producers,

- the time of service providing,
- the quality and diversity of audiovisual and/or radio programmes,
- special technical, financial (amount of resources and financial guarantees) and personnel conditions,
- abiding the provisions of this Act and legislation regulating tax and other obligations of legal entities towards the state budget and budget of the units of local and regional self-government, and legal persons in their ownership.

(5) An offer for the public tender referred to in paragraph 1 of this Article shall contain evidence on the fulfilment of conditions stipulated by the tender, a programme basis in compliance with this Act, data on the ownership structure of a legal person submitting the tender, personal data on the company and its head office, i.e. name and family name and permanent residence of persons who directly or indirectly, through other legal persons, have stocks or shares in that legal person, as well as data on the percentage of those stocks or shares. A tender must contain data on the tenderer's financial capability for the performance of the activities of television and radio broadcaster.

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

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

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

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

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

## **Article 74**

(1) The right to perform the activities of providing television and radio media service broadcasting shall be obtained on the basis of a decision on the selection of the most advantageous tenderer and the contracted concession contract.

(2) The Council and the Croatian Post and Electronic Communications Agency shall, on the basis of a decision on the selection of the most advantageous tenderer, enter into a concession contract with the selected tenderer.

(3) The concession contract shall, in addition to the conditions important for the exercise of the concession, contain the programme basis and other conditions from the tender for the award of concession.

(4) The Council shall annul the decision on the selection of the most advantageous tenderer and the tenderer shall have no right to compensation of damages if the most advantageous tenderer fails to sign, within the time limit established in the decision referred to in paragraph 2 of this Article, the concession contract which was drawn up in writing in accordance with the tender documents, the data contained in the public tender, the selected tender and the decision on the selection of the most advantageous tenderer.

(5) It shall be possible, pursuant to the entered contract and upon acquiring the prior consent of the Council in compliance with this Act, to transfer the concession to another legal person together with the property, rights and obligations essential to the uninterrupted continuance of exercising the concession. The request for the prior consent of the Council may be submitted only after 3 years counting from the entering into the concession contract. In such case an annex to the concession contract shall be made or a new concession contract shall be entered into.

#### **Article 75**

(1) The area of a concession may be at the national, regional, county, city, municipality or other level determined on the basis of a special regulation.

(2) The area of a concession at the national level shall comprise at least 60% of the population of the Republic of Croatia, while at the regional level it shall comprise at least 70% of the population of the region.

(3) A concession shall be granted for a period of time which may not exceed fifteen years or be shorter than eight years. The criteria for the determination of the duration of the concession shall be prescribed by the Council's ordinance referred to in Article 73 paragraph 3 of this Act.

(4) A fee shall be paid for the concession. The concession fee shall be paid in the account of the State Budget.

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

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

#### **Article 76**

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

1. that the concession was awarded on the basis of incorrectly presented data important for passing the decision on the selection of the most advantageous tenderer,
2. that the television and/or radio broadcaster has not started to exercise the concession within the deadline determined by the concession contract or it does not respect the technical conditions from the concession contract for a period longer than one month since the beginning of the exercise of the concession, or if it stops exercising the concession for a period longer than 48 hours,
3. that the media service provider performs an activity even after the third warning by the Council which they issued in the previous 12 months, contrary to the provisions of this Act and the regulations adopted on the basis of this Act or to the concession contract,
4. that the television and/or radio broadcaster no longer fulfils the conditions for the performance of activities referred to in Article 22 of this Act,
5. that the broadcaster publishes audiovisual or radio programmes contrary to the Article 12 and/or 20 and/or 26 of this Act,
6. that the media service provider, even after receiving a warning by the Council, fails to adhere to a minimum of 90% of the programme basis,
7. that the media service provider, even after receiving a warning by the Council, doesn't comply to the established time of broadcasting set out in Article 36 paragraph 3 and/or 4 and/or 5 and/or 6 and/or 7 of this Act,
8. that the media service provider failed to enable another media service provider the exercising of the right to short news reports pursuant to Article 45 paragraph 3 of this Act, contrary to the Council's order,
9. that the media service provider failed to pay the concession fee more than twice consecutively or is generally disorderly in paying the concession fee,
10. that the media service provider failed to forward information on the change of data referred to in Article 52 paragraph 1 of this Act within a determined deadline, even after receiving a warning by the Council,
11. the existence of an impermissible concentration as determined by this Act,
12. that the media service provider failed to obtain the approval of the competent association for collective exercise of copyrights and related rights within a determined deadline, even after receiving a warning by the Council,
13. that the media service provider transferred the concession to another person contrary to the Article 74 paragraph 5 of this Act,
14. that the media service provider transfers the licence to another person contrary to the Article 19 paragraph 7 and Article 79 paragraph 7 of this Act,
15. that the media service provider, regardless of the Council decision on measures for the purpose of temporary limitation of the freedom to broadcast audiovisual media services from other states, publishes audiovisual programmes referred to in Article 77 of this Act.

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

- 1 upon expiration of the period for which it was granted,
2. if the media service provider renounces the concession,
3. by the cessation of the legal person of a media service provider or the cessation of craft,
4. if the media service provider was prohibited by an effective decision of the court to perform activity for which the concession was awarded,

5. by mutual termination of the concession contract,
6. by permanent termination of a concession.

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

## **Article 77**

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

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

- a television broadcast coming from another Member State of the European Union manifestly, seriously and gravely infringes the provisions of Article 26, paragraphs 2 or 3 of this Act and/or promotes hatred on grounds of race, sex, religion or nationality,
- during the previous 12 months, the television broadcaster acted within the meaning of the previous sub-paragraph of this Article on at least two prior occasions,
- the Republic of Croatia has notified the television broadcaster and the European Commission in writing of the determined infringements referred to in this Article and of the measures it intends to take should any such infringement occur again,
- consultations with the transmitting Member State of the European Union and the European Commission have not produced an amicable settlement within 15 days of the notification referred to in the previous paragraph, and the stated infringement persists.

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

- the measures are necessary for one of the following reasons: public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, the protection of public health, public security, including the safeguarding of national security and defence, the protection of consumers, including investors,
- measures are taken against an on-demand audiovisual media service which prejudices the objectives referred to in the previous subparagraph or which present a serious and grave risk of prejudice to those objectives,
- measures are proportionate to the objectives referred to in subparagraph 1, paragraph 3 of this Article,
- before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Republic of Croatia has asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate,



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

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

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

### **Article 78**

(1) The Council may, at the request of the television and/or radio broadcaster, take a decision to grant again the concession for the following period with inviting a public tender, if the television and/or radio broadcaster performs an activity in compliance with this Act, the regulations and the concession contract as well as fulfils the criteria stipulated by the ordinance referred to in paragraph 4 of this Article.

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

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

(4) The criteria on the passing decision referred to in paragraph 1 of this Article shall be stipulated by the Electronic Media Council's ordinance referred to in Article 73 paragraph 3 of this Act.

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

### **Article 79**

(1) The Electronic Media Council issues the licence for satellite, internet and cable transmission of the audiovisual and/or radio programme or other permissible ways of transmission to the media service providers as referred to in the Article 5 or 6 of this Act, which do not use the concession as referred to in Article 74 of this Act and which are not on demand media service providers as referred to in the Article 19 of this Act.

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

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

(4) The Electronic Media Council shall decide on issuing or refusing to issue the licence from Article 1 as soon as possible and at the latest within 30 days from

receiving the correct request.

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

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

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

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

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

(9) The content and manner of management of the Register from paragraph 5 of this Article is regulated by the Electronic Media Council's ordinance from Article 75 paragraph 6 of this Act.

(10) The provisions of Article 23 to 46 of this Act shall apply also to the audio and audiovisual media services referred to in paragraph 1 of this Article.

## **VIII ELECTRONIC PUBLICATIONS**

### **Article 80**

(1) The provisions of Articles 12, 15, 26 and 27 of this Act shall be adequately applied to the electronic publications.

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

(3) The contents of the request, the contents and the manner of keeping the Register referred to in paragraph 2 of this Article shall be prescribed by the Electronic Media Council by the ordinance referred to in Article 75 paragraph 6 of this Article.

## **IX PROHIBITION AND CESSATION OF PERFORMANCE OF ACTIVITIES**

### **Article 81**

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

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

## **X PENAL PROVISIONS**

### **Article 82**

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

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

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

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

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

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

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

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

8. undertakes the transfer of licence onto another person contrary to the provisions of Article 19 paragraph 7 of this Act,

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

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

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

12. broadcasts audiovisual or radio programme contrary to the prohibition referred to in Article 26 of this Act,

13. broadcasts comparative advertising contrary to the Article 29 paragraph 3 of this Act,

14. broadcasts advertising and teleshopping without complying with the provision of Article 29, paragraph 1 and 2 of this Act, or acts contrary to the provision of Article 30 of this Act,

15. broadcasts advertising and teleshopping contrary to the provisions of Article 31 of this Act,
16. broadcasts advertising and teleshopping for a duration exceeding that stipulated in Article 32, paragraph 1 of this Act and broadcasts advertising and teleshopping contrary to the provisions of Article 32, paragraph 3, 4, 5 and 6 of this Act,
17. broadcasts windows intended for teleshopping for a duration shorter than that stipulated in Article 34, paragraph 1 of this Act or conducts advertising or teleshopping on channels that are exclusively devoted to teleshopping or self-promotion contrary to Article 34, paragraph 2 of this Act,
18. broadcasts sponsored programme contrary to the provisions of Article 35 of this Act,
19. does not fulfil the obligations of broadcasting audiovisual and radio programmes in the prescribed time referred to in Article 36, paragraphs 3, 4, 5, 6, 7 and 8 of this Act
20. does not fulfil the obligations on the prescribed portion of private production referred to in Article 38, paragraphs 1 or 2 of this Act,
21. does not achieve the proportion of European audiovisual works referred to in Article 42 of this Act,
22. does not achieve the proportion of audiovisual works of independent producers referred to in Article 44 of this Act,
23. does not fulfil the right of short information in accordance with Article 45, paragraph 1, 2, 3, 9 and 10 of this Act,
24. fulfils the right of short information contrary to the provisions of Article 45, paragraph 7 of this Act,
25. uses the right of short information contrary to the provision of Article 45, paragraph 5, 8 and 11 of this Act,
26. broadcasts an event significant for the public of the Republic of Croatia or other Member States of the European Union or state which is a party to any international treaty that imposes obligations on the Republic of Croatia, contrary to the provisions of Article 46, paragraph 1 or 4 of this Act;
27. performs connection of audiovisual and radio programmes into networks contrary to the provisions of Article 47, paragraph 1, sub-paragraphs 1, 2 and 3 of this Act,
28. does not broadcast the proportion of its own production prescribed for the media service provider of non-profit television and/or radio in compliance with Article 48, paragraph 1 of this Act, or broadcasts promotional messages of longer duration than prescribed in Article 48, paragraph 6 of this Act,
29. does not fulfil his obligation of submitting information on stockholders and holders of shares referred to in Article 52, paragraph 1 of this Act after receiving a warning by the Electronic Media Council,
30. establishes an impermissible concentration contrary to the provisions of Articles 54 and/or 55 of this Act,
31. does not report the change in the ownership structure in compliance with the provisions of Article 57, paragraph 1 of this Act,
32. undertakes the transfer of concession onto another person contrary to the provisions of Article 74, paragraph 5 of this Act,
33. performs satellite, internet or cable transfer of audiovisual and/or radio programme without licence from Article 79 of this Act or contrary to the issued licence,
34. undertakes the transfer of licence onto another person contrary to the provisions of Article 79 paragraph 7 of this Act.

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

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

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

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

### **Article 83**

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

1. broadcasts the prize competitions or various forms of rewarding participation of the viewers and listeners in the audiovisual or radio programmes contrary to Article 13 paragraph 2 and 3 of this Act.

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

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

4. use the profit from its activities contrary to Article 48 paragraph 3 of this Act,

5. acts with regard to devices or means which enable free access to protected services contrary to the Article 50 of this Act,

6. participates in a public tender for the allocation of concession contrary to the provision of Article 58 of this Act,

7. becomes a broadcaster of a radio or television and/or founder of the broadcaster of a radio or television, or acquires more than 10 % of ownership in stocks or shares in the capital or management of voting rights of the broadcaster of the radio or television contrary to the provisions of Article 60, paragraph 1 of this Act,

8. does not fulfil the obligation to submit a request for entry into the Register of electronic publications providers from Article 80, paragraph 2 of this Act.

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

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

(4) A natural person shall be fined for an offence referred to in paragraph 1 subparagraph 5 of this Article with a fine from HRK 5,000.00 up to HRK 40,000.00.

(5) Objects gained from the offence from paragraph 1 subparagraph 5 of this Article shall be impounded and destroyed, and objects intended or used for the offence from paragraph 1 subparagraph 5 shall be impounded.

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

consequences of the offence, repeated commitment or other circumstances of the committed offence which make it especially serious.  
(7) Assets gained from an offence shall be impounded.

## **XI TRANSITIONAL AND FINAL PROVISIONS**

### **Article 84**

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

(2) It is considered that the media service providers as referred to in Articles 19 and 79 of this Act which have begun their activities before the entry into force of this Act have the licence for their activities providing as stipulated in this Act, if within 60 days of the date of entry into force of this Act they submit to the Electronic Media Council a correct request for issuing the licence from Articles 19 and 79 of this Act.

### **Article 85**

The procedures which have begun pursuant to the provisions of the Electronic Media Act (Official Gazette, no. 122/03, 79/07, 32/08 and 65/09) until the date of entry into force of this Act shall be completed under the provisions of that Act and rules passed on the basis of that Act.

### **Article 86**

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

### **Article 87**

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

### **Article 88**

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

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

- Rules for the Amount and Manner of Payment of the Fee for a Concession for the Performance of Radio and/or Television Activities, as well as the Amount and Manner

of Payment of Fees for the Tender Documentation and for a Bid to a Public Tender (OG 28/06)

- Rules for the Content and Procedure for the Public Tender for Granting a Concession for the Performance of Radio and/or Television Activities (OG 98/07 and 105/07)
- Rules for the Special Technical, Spatial, Financial and Personnel Conditions for the Performance of Radio and Television Activities (OG 111/07)
- Rules for the Content and Procedure for the Public Tender for Co-financing Programme Contents from the Resources of the Fund for the Promotion of Pluralism and Diversity of Electronic Media, as well as for the Criteria for the Allocation of the Resources and the Manner of Monitoring Their Usage and the Production of Relevant Programme Contents (OG 07/08 and 11/08)
- Rules for the Criteria and Manner of Increasing the Share of European Audiovisual Works (OG 47/08)
- Rules for the Criteria and Manner of Increasing the Share of European Audiovisual Works by Independent Producers (OG 47/08)
- Rules for Exercising the Right to Reply in the Television and Radio Programmes (OG 139/05)
- List of Major Events (OG 47/08)
- Rules of Conduct for Television Broadcasters in Order to Protect Minors (OG 130/08)

#### **Article 89**

Upon the day of the accession of the Republic of Croatia to the European Union, Articles 49 and 50 of the EC Treaty shall be applied to the definition of services described in the term audiovisual media service referred to in Article 2 paragraph 1 subparagraph 3 of this Act instead of Articles 56 and 57 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and its Member States.

Upon the day of the accession of the Republic of Croatia to the European Union, Articles 43 to 58 of the EC Treaty shall be applied to the determining whether a media services provider falls under the jurisdiction of the Republic of Croatia or another EU Member State in the sense of Article 6 paragraph 8 of this Act, instead of the provisions of the Articles 48 to 50 of the Stabilisation and Association Agreement between the Republic of Croatia and European Communities and its Member States.

#### **Article 90**

On the day this Act enters into force, the Electronic Media Act (OG 122/03, 79/07, 32/08 and 65/09) shall cease to be valid.

#### **Article 91**

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