



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media**

**Analysis for the OSCE of the proposal for a Law on Electronic Media
Republic of Croatia - New version of the draft law May 2003**

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This analysis comments upon the changes made to the draft law by the drafting group in the Ministry of Culture of the Republic of Croatia. It is pleasing to note that most of the suggested and discussed changes have been taken into account. The regulatory agency, the Council, has been given a clearer and more independent role. Several provisions of the draft are clearer and easier to read. The freedom of expression has been stressed more prominently and a citizens (viewers/listeners) complaints procedure has been introduced into the draft. Most of the changes that have not been adopted are of a minor character and in some cases depend on Croatian legal drafting style, as was discussed with the drafting group. In conclusion it may be said that all substantial suggestions have been taken into consideration in this new draft. This Memo should be read together with the previous one, with an Article-by-Article commentary, as the substance of the suggestions is not repeated here.

Introductory Memo

The list of European rules is still not clear as to what is EU, what is Council of Europe, etc. However, this is not of great importance (as was already said in the first memo).

General provisions

The comments made in relation to terminology have not been adopted. As discussed, some of the comments may have had to do with the translation. Provided that in Croatian language all relevant terms are properly defined, this is obviously sufficient. The only comment still to make may be that certain terms defined when used could instead be here in the list (like teleshopping). The suggestion to repeat definitions rather than to refer to (undefined) other laws has not been accepted. This was discussed with the Ministry and appears to relate to a method of drafting that is normal in Croatia.

General principles

The suggested change to Article 3 (to highlight freedom of expression) has been made exactly in accordance with the proposal. Articles 4 and 6 have also been amended for the better and are now clearer. The change to Article 9 does not follow any suggestion made but poses no problem, just changes the formulation.

Activity of Radio and Television

In Article 10 the reference to different ministers is not changed and thus is still a bit unclear. It was explained that this was due to the fact that the issue of which ministry does what is not finally settled (so it is unclear on purpose in the draft). This is in any case not a major issue for this law. Other comments made in the earlier Memo (e.g. to Article 11 and 15) were more like questions or to highlight issues and did not necessitate any change. The reference in Article 12.2 to no political views is potentially very far-reaching, but as discussed it is possible to rely on the good work and common sense of the regulatory agency to make a correct interpretation. The addition introduced to Article 16 (about recordings) is good and facilitates the agency's work.

The change made to Article 19.7 about not interrupting news is in line with the suggestion made. The change to Article 21 also appears to reflect suggestions made in connection with Articles 20 and 21. Article 22 still may be a bit unclear but this is a minor issue. The definition of Croatian authors (Article 23) was discussed at some length with the drafting group without coming up with any better suggestion, so the old definition may be the best possible. As for the other change to Article 23, point 6, this is very good and together with the change to Article 26 reflect what was suggested about increasing the role of the regulatory agency. Also the changes – clarifications - to Article 25 are positive and reflect suggestions made. In Article 29 it still says 50% where European rules ask for a majority, so it could be changed to 51%. The other comments made (about the transitory period) were reflected in the discussion held and did not mean that a change was needed. No changes have been made to Articles 32, 33 and 37, but the comments were only minor. The addition to Article 35 (permission from the agency) is good.

Electronic Publications

This is the one context where the exact extent and objectives of the draft law may still not be so clear. The changes made to Article 38 are improvements in that it is clear that Internet use by individuals is not covered. The need for these provisions (if the needed content cannot be covered by a wide definition of broadcasting, as other uses of Internet should not be restricted) is still questionable. However, as said, the new version is an improvement.

Protection of pluralism and diversity of electronic media

The change in Article 47 is an improvement that covers the comments made to Articles 45 and 47. Article 58 (fee for car radios) has been deleted. This Article was questioned only in so far as it was not sufficiently clear, not that it was impossible, but obviously as it is no longer part of the draft the comments are not relevant. Other points made in connection with this chapter were discussion points.

The Council for Electronic Media

It may be worth repeating again the importance of this body and its independence. As stated above, suggested changes to the draft have been made in line with suggestions to strengthen the role, which of course is positive. The alternatives to Article 58 (old 59) are still in the text so the comment that certain of the alternative provisions are better remains valid. The comments about specifying the role of family members as well as the nature of crimes that may exclude persons are also still valid. The need for quorum rules is also still there as is the suggestion to include a provision allowing expressly for having a professional staff of the agency. The addition to Article 59 (former 60) on the allowance is completely acceptable. The additions to Articles 60 (former 61), 61 (former 62), 62 (former 63) and 64 (former 65) are all good and reflect the enhanced role of the Council, introduce a citizens complaints procedure and make allowance for transfer of licences. All these follow suggestions made. The same is true for the minimum time introduced in Article 63 (former 64).

Supervision

Also in this Article 67 (former 68), the Council is given a greater role, which is in line with suggestions made. It is now clear what the role of the ministry should be (as was also explained in the discussions).

Prohibition and cessation of performance of activities

The amendment made to Article 68 (former 69) is good and in line with suggestions. It emphasises the role of the regulatory agency.

Interim and final provisions

The change to Article 72 (former 73) is positive. No other changes have been made, but most points were sufficiently cleared at the discussion.