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

ANALYSIS AND COMMENTS

on

DRAFT LAW ON CROATIAN RADIO-TELEVISION (2002)

(WORKING VERSION)

DRAFTED BY THE CROATIAN MINISTRY OF CULTURE

by

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2. Greater political and administrative control over HRT may be the real reason for proposing the adoption of a new law on HRT.
3. Therefore it would be best if work on the present draft law could be stopped, all the more so that the text appears to be hastily written and contains many drafting and substantive mistakes and inconsistencies.

Regulatory Priorities in the Broadcasting Field in Croatia

The real priority is to adopt a new Broadcasting Act (Law on Electronic Media) which should be drafted in such a way as to:

- Provide full and effective regulation of broadcasting and the commercial broadcasting sector, including the creation of a true regulatory authority for broadcasting;
- Transpose into Croatian law the provisions of the European Convention on Transfrontier Television;
- Achieve a satisfactory level of alignment with the EU directive "On Television Without Frontiers" and other EU regulation;
- Create legal conditions for introduction of digital terrestrial broadcasting into Croatia.

The debate on the new draft Law on Croatian Radio-Television is distracting attention and legislative effort away from

Proposal for HRT Structure and Organization

The proposal is structured so as to fit all three possible scenarios: retaining one HRT, splitting it into completely separate public institutions of HR and HTV, and creating an association of public institutions. Its objective is to:

- Retain as much as is possible of the present organizational framework in order to avoid unnecessary change; and to
- bring Law on Croatian Radio-Television into closer conformity with European standards as regards the regulatory framework for public service broadcasting, and for this purpose ensure far-reaching independence of the organization(s) and eliminate prospects for external interference into its/their operation.

HRT as one institution (structure also to be applied to HR and HTV as separate institutions)

Body or top managerial position	Manner of appointment, powers
HRT (HR/HTV) Broadcasting Council	Composition and manner of appointment as now, membership reduced to 21 persons, decision-making powers on strategic issues
HRT (HR/HTV) Supervisory Council	3 members appointed by parliament (2 by opposition parties, one by ruling party/coalition) – supervises management and finances of HRT (HR/HTV), reports any improprieties to Broadcasting Council
HRT (HR/HTV) Director General	Appointed by Broadcasting Council by public tender, manages the institution
Head of Programmes, Radio Head of Programmes, Television	Appointed by Broadcasting Council by public tender, after consultation with HRT (HR/HTV) Director General, sole responsibility for programming,

HRT as an association of public institutions

Body or top managerial position	Manner of appointment, powers
HRT Broadcasting Council	Composition and manner of appointment as now, membership reduced to 21 persons, decision-making powers on strategic issues (see below)
HRT Supervisory Council	3 members appointed by parliament (2 by opposition parties, one by ruling party/coalition) – supervises management and finances of HRT, reports any improprieties to Broadcasting Council
HRT Director General (if the position is retained; see below)	Appointed by Broadcasting Council by public tender, coordinates the work of HR, HTV, HRT Joint Services (see below)
Directors of HR, HTV, HRT Joint Services	Appointed by Broadcasting Council by public tender, after consultation with HRT Director General; manage their institutions
Head of Programmes, Radio Head of Programmes, Television	Appointed by Broadcasting Council by public tender, after consultation with, respectively, Director of HR and Director of HTV, sole responsibility for programming

I. REGULATORY PRIORITIES IN THE BROADCASTING FIELD IN CROATIA

Broadcasting in Croatia is regulated by the Public Communications Act, the Telecommunications Act which has a section on broadcasting, and the Law on Croatian Radio-Television (HRT).

As a public institution, HRT also comes under the Institutions Act.

The chapter of the Telecommunications Act on broadcasting is brief, outdated and completely inadequate. The powers of the Council for Radio and Television are limited to licensing alone. It has no staff and cannot really rely on the Croatian Institute of Telecommunications for support, as the Institute has no broadcasting expertise. As a result, Croatia has a largely unregulated and uncontrolled private broadcasting sector without any transparency of ownership or any monitoring of whether broadcasters comply with the terms of their licences.

The first priority therefore is to adopt broadcasting regulation which rectifies this situation. This should take the form of a complete broadcasting law, separate from the Telecommunications Act. There are plans in Croatia to do just that by developing a Law on Electronic Media. This should be done as quickly as possible.

Croatia has acceded to the European Convention on Transfrontier Television and has thereby accepted an obligation to bring its television regulation into conformity with the Convention. Croatia also intends to align its broadcasting regulation with European Union standards (see Appendix for an overview of the EU acquis in broadcasting, telecommunications and e-commerce regulation), in preparation for future accession negotiations.

The new Law on Electronic Media should be drafted in such a way as to:

- transpose into Croatian law the provisions of the European Convention on Transfrontier Television;
- achieve a satisfactory level of alignment with the EU directive "On Television Without Frontiers" and other EU regulation;
- create legal conditions for introduction of digital terrestrial broadcasting into Croatia.

None of this requires any changes in the Law on Croatian Radio and Television. However, preparation for future entry into the European Union should also involve changes in that law, oriented to meeting the Copenhagen criteria (see Annex).

Therefore, the Law on Croatian Radio and Television should be analysed to see whether it meets European standards as regards public service broadcasting, and as an institution guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities. Any revision of the law should be oriented i.a. to meeting those goals.

The draft Law on Croatian Radio and Television does not serve any of these objectives.

II. ANALYSIS OF THE OFFICIAL REASONS FOR PROPOSING A NEW LAW ON CROATIAN RADIO-TELEVISION

The Law on Croatian Radio-Television (HRT) now in force was adopted by the House of Representatives of the Croatian Parliament on February 8, 2001.

Any difficulties with the implementation of the law are a natural consequence of the change of the system and were to be expected. Any new institutional framework needs time to settle down. Time is also required for participants in the new system fully to understand what role they are expected to play in it. Mistakes may have been made in the early period, but they should not be the reason for adopting a completely new law, unless the intention is really to improve it. This does not appear to be the case in the present instance.

According to information obtained at the Ministry of Culture, the following reasons account for the need to revise the law after such a short period of time:

1. Ratification by Croatia of the European Convention on Transfrontier Television (on Dec. 12, 2001) and the need to align Croatian broadcasting legislation with its provisions;
2. The obligation created by the House of Representatives in the current law (see Art. 47) to divide the Croatian Radio-Television Public Institution into the Croatian Radio Public Institution and the Croatian Television Public Institution by July 1, 2002. This has not been achieved and so a new law is necessary to carry out the separation of Croatian Radio and Croatian Television;
3. The need to meet Croatia's OSCE commitments.

Below follow brief comments on how, and to what extent, the present draft achieves these objectives.

As we will also see below, proposed changes go far beyond these stated objectives and in fact may be seen as contrary to some of them.

Alignment with the European Convention on Transfrontier Television

The Convention applies to all transfrontier broadcasting, and not just to public service broadcasting. Given Croatia's size and shape, the programme services of all or most Croatian television stations meet the criterion of Art. 4 of the Convention [1]. Therefore, provisions in conformity with the Convention should not be introduced into the Law on Croatian Radio-Television, but into the new Law on Electronic Media, which would be binding on all broadcasters, both public and private.

[1] It states that "The Convention shall apply to any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a Party …. which can be received, directly or indirectly by one or more other Parties".

This future Law on Electronic Media which should contain provisions equivalent to Article 4 (freedom of reception and retransmission); Article 5 of the Convention (duties of the transmitting Parties, including jurisdiction criteria); Article 9 (access of the public to information); Article 9a (access of the public to events of major importance), the entire Chapter III (advertising and teleshopping), Chapter IV (sponsorship); Chapter IVa (programme services devoted exclusively to self-promotion or teleshopping). None of these crucial aspects of the Convention are transposed into the Law on Croatian Radio-Television by the present draft, nor should they be.

Apart from some general clauses, only articles 15, 16 and 17 can be said partly to transpose provisions of the Convention. This, however, is done in an incomplete and – in some cases – erroneous manner (see below) which will prevent implementation of these articles.

CONCLUSIONS:

1. Ratification by Croatia of the European Convention on Transfrontier Television (in itself a very welcome development) cannot be the reason for adopting a new Law on Croatian Radio-Television;
2. Where it is thought necessary to introduce selected provisions from the Convention into the Law on Croatian Radio-Television, this should be done fully in keeping with the letter and spirit of the Convention;
3. The present draft requires further detailed work on achieving proper alignment with the Convention in those areas where this is desirable, but Croatia will not meet the obligations resulting from ratification of the Convention until either the Law on Telecommunications has been revised, or a Law on Electronic Media (aligned with the Convention) has been adopted.

Separation of Croatian Radio and Croatian Television

The present draft goes far beyond the mere implementation of the unrealised objective of separating HR from HTV, as required by Art. 47 of the current Law on Croatian Radio-Television.

It was never entirely clear why the separation was proposed, or how it would benefit public service broadcasting in Croatia. Nor are any estimates known as to the financial and consequences of separation of HRT into two public institutions, as envisaged by the law now in force. The reason why the separation has not been completed by now are not clear, either. However, both in Articles 47 and 48 of the current law, and in Art. 3 para. 2 (joint functions of the Association) and in Art. 77 of the new draft, only very general indications are provided as to the financial, administrative and legal aspects and consequences of separation (and, as in the new draft, of joining the three public institutions into one association). Art. 70 of the Law on Institutions provides no guidance on the financial and other relations between institutions joined into one association.

It may be that precisely lack of regulation of the process of separation was the reason why it has not been carried through so far. If so, the present draft creates even more difficulties in the process of implementation, because an even more complex process is also described and regulated in an inadequate way.

In addition to creating Croatian Radio (HR) and Croatian Television (HTV) as separate public institutions, the draft law:

1. Provides for the creation of HRT Music Production (to employ some 300 people), as a separate public institution, with its own Administrative Council and Director;
2. And for transformation of HRT not into separate public institutions, but into an association of public institutions, operating under the umbrella of HRT Broadcasting Council and HRT Director General.

The present draft does not seek to complete the so-far neglected implementation of the current law, but is proposing a completely new solution, and should be assessed as such. The way this solution has been designed suggests another interpretation: that an attempt is made in the new draft to effect the separation required by the House of Representatives, while in reality keeping the organization together.

CONCLUSIONS:

1. If separation has not been achieved because Articles 47 and 48 of the current law do not regulate the process adequately, then only these articles should be amended to make this possible.
2. In the new association of public institutions there are to be 3 Administrative Councils instead of the current 1 and 4 directors instead of the current 1. Also, some functions and services will have to be duplicated in the four organizations (even if the association is to provide common services for the three public institutions). This means more top managerial positions, more administrative staff, a more complicated process of cooperation and financial accounts between the different parts of the organization – raising costs, instead of reducing them.
3. The rationale for creating HRT Music Production is that as a matter of cultural policy the orchestras and bands now forming part of HRT should be maintained, despite the separation of HR from HTV. However, this move may be counterproductive. The draft law provides no funding for HRT Music Production other than what it can earn by music production services for HR and HTV, or any other partners. The shock of change for these orchestras and bands may be too great. So far, their costs were presumably budgeted for in the HRT financial plan; now, they will be forced to finance themselves on the open market, with highly uncertain results.
4. If separation of HR and HTV is carried through, and if the orchestras and bands remain as part of either HR or HTV, the other organization should have no difficulty in commissioning work from them in exactly the same way as if they were part of HRT Music Production.

Meeting OSCE commitments

The desire to meet OSCE commitments [2] should be welcome and encouraged. Since they concern primarily freedom and independence of the media, they would require changes in the institutional arrangements concerning HRT's relationships with the world of politics so as to eliminate or minimise the danger of political interference into HRT's operation or of pressure being exerted on editorial staff.

An assessment of the present arrangements and a summary of expectations as to how they should be changed in the light of European standards was provided in the present consultant's analysis of the Law on Croatian Radio-Television now in force [3].

It has to be noted that according to prevailing opinion there is less direct political interference into HRT operation today than in the past, and the current government is seen as exercising restraint in this regard. This is a welcome development, but the fact that many opportunities for that are created in the Law on Croatian Radio-Television, such interference may return at any moment.

Proposed changes in the composition and manner of appointment of the top authorities of HRT proposed in the draft do not reduce the danger of political interference, but are very likely to increase it.

The Director General is now appointed by the HRT Administrative Council. The draft proposes that he/she should be appointed directly by Parliament. This would restore the situation from before the adoption of the present law, such as it was, for example, in the 1996 Law on Croatian Radio-Television.

The draft also proposes three options as regards the composition and manner of appointment of the future HRT Broadcasting Council, including one calling for appointment of the Council by the Croatian Parliament. In addition, the previous Art. 45 (putting ministries under an obligation to supervise the legality of the HRT operation) has now been extended in Art. 75 with "supervision over the legality of work of HRT Broadcasting Council" to be conducted by the Government of the Republic of Croatia.

In the debate concerning the draft law, mention has been made of the fact that HRT now faces "second generation problems": civil society itself is politicised and its representatives on the HRT Council introduce politics into the organisation "through the back door". Representatives of civil society can hardly be expected to be free from political views. However, the pluralistic composition of HRT Council should ensure that any decisions taken by that body will have to be based on a middle-of-the-road compromise. No evidence has been provided to show that this has not been the case, however heated the arguments during the Council's debates, and however political the behaviour of HRT Council members may otherwise be.

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[2] See OSCE Human Dimension Commitments.A Reference Guide. ODHIR, Warsaw 2001; Freedom of Expression. Free Flow of Information. Freedom of the Media. CSCE/OSCE Main Provisions 1975-2001. The Representative on Freedom of the Media, OSCE, Vienna, 2002.

[3] Karol Jakubowicz, Analysis and Comments on Law on the Croatian Radio-Television (2001) and Law on Telecommunications (1999, as amended in 2001), Warsaw, 2001.

Election of Council members by Parliament is not the way to eliminate whatever shortcomings have arisen in the work of the present Council. The need to elect them by a two-thirds (or even three-quarters) majority will not change the fact that it will have a majority of members representing the ruling coalition, and so its membership will not be pluralistic. In any case, there are usually few differences in post-Communist countries between ruling and opposition parties on the question of maintaining political control of public service broadcasting.
Direct oversight of the Broadcasting Council by the Government would intensify the political pressure on the Council.

The Administrative Councils of the three public institutions (HR, HTV and HRT Music Production) would be appointed and dismissed directly by Parliament.

Articles 36 and 46 provide alternative options concerning the manner of appointment of HR and HTV Administrative Councils:

1. One member of the HR (HTV) Administrative Council shall be appointed from among the HR's (HTV's) employees and the other 4 members from among economic and legal experts, cultural workers and media experts. (Alternative: One member of the HR (HTV) Administrative Council shall be appointed from among the HR (HTV) staff, three members shall be appointed from among legal, economic and media, and one member shall be nominated by the HRT Governing Council.)
2. The member of the HR (HTV) Administrative Council from the HR's (HTV's) employees shall be nominated by the HR (HTV) workers' council, subject to the approval by the Croatian Parliament, and the other members by the competent Parliamentary body (Alternative: The Government of the Republic of Croatia).

A similar solution is proposed as concerns HRT Music Production (see Art. 56).

What all this means is that Croatian Parliament and Government would gain even more control over HRT than they do now. If one of the options proposed in Articles 36, 46 and 56 were chosen, then Parliament and Government would practically share the job of selecting and appointing members of Administrative Councils.

In short, the major changes proposed in the draft concern the new structure and organization of HRT and still greater involvement by public authorities in the running of HRT.

CONCLUSIONS:

4. In its present form, the draft law will not achieve the stated goal of meeting the OSCE commitments. In fact, it may be described as running counter to those commitments. If adopted as it is now, it will reduce, and not strengthen, HRT's independence.
5. In reality, the draft does not serve any of the official reasons for its development. Its adoption in a fast-track procedure would harm prospects for promoting the goal of developing true public service broadcasting in Croatia.
6. Greater political and administrative control over HRT may be the real reason for proposing the adoption of the new law.
7. Therefore it would be best if work on the present draft law could be stopped, all the more so that the text appears to be hastily written and contains many drafting and substantive mistakes and inconsistencies.

III. ANALYSIS AND COMMENTS ON THE DRAFT LAW ON CROATIAN RADIO-TELEVISION

The following comments are made to assist in developing a new draft Law on Croatian Radio-Television in the future. If, however, the present draft is submitted to Parliament, it is to be hoped that the remarks which follow will be considered. Their objective is to:

- Retain as much as is possible of the present organizational framework in order to avoid unnecessary change; and to
- bring Law on Croatian Radio-Television into closer conformity with European standards as regards the regulatory framework for public service broadcasting;
- Introduce precautions against any worst-case scenarios (as regards political interference, for example), which need not necessarily materialize, but should still be taken into account.

GENERAL COMMENTS

1.

The Law on Croatian Radio-Television was first adopted in 1990 and has since been amended or revised in 1991, 1992, 1993, 1996, 1998 and 2001. Since at least 1998, the Council of Europe, the OSCE and other international organizations have sought to provide expertise and share experience with the drafters and public authorities in Croatia in the area of broadcasting and telecommunications regulation. The successive versions of the law do not display many signs of interest in that expertise and experience.

That may be one of the reasons why successive amendments have proved inadequate and not fully effective, and the need for more changes was seen to arise.

Each of those amendments or changes in the law was probably followed by changes in the governing and management bodies of HRT. These were most likely succeeded by other personnel changes at lower levels.

Such a succession of events produces an air of impermanence in the organization, undermines the belief that the goal is to create true public service broadcasting and is highly destructive in terms of staff morale. It is true that public service broadcasting is not created by laws alone, but any expectations that journalists be impartial, professional and apolitical in the performance of their editorial duties must be based on true respect for the independence, impartiality and apolitical operation of the public service broadcaster.

2.

The Law on Croatian Radio-Television still applies solutions developed in the Communist period as part of the so-called "self-management system". That system – still clearly preserved in the Law on Institutions - was designed to create barriers to Communist party rule by creating a profusion of managerial positions and bodies with overlapping areas of competence and by avoiding concentration of power in the hands of party-appointed managers, so that the cooperation of many layers of management was necessary to take decisions and take action. That was ineffective then, and is a clear stumbling block for efficient management today. Moreover, it can be used as an excuse for maintaining a system of political nominations within public service broadcasting.

One example of the consequences of the application of this system is that HRT Director General may "suspend from execution the acts adopted by the HRT Broadcasting Council" (Art. 30), but in turn 2/3 of the members of HRT Council may initiate the recall of HRT Director General if "he/she fails to act in accordance with the laws and acts of HRT" (Art. 32). Such and other solutions can halt the work of HRT and create a stalemate destructive to the organization.

The legacy of this system should be removed from the Law on Croatian Radio-Television.

COMMENTS AND PROPOSALS ON THE STRUCTURE AND ORGANIZATION OF HRT

Legal Status and Organization of HRT

Art. 1 describes HRT as an "association of public institutions" and Art. 81 states that "all relations not regulated by this Law shall be subject to the provisions of the Law on Institutions".

This is an improvement on the current law (the draft derogates from the Law on Institutions and names it specifically as applicable to HRT), but it is not enough. The logic of the Law on Institutions is that of government ownership and far-reaching control over the public institution. State ownership e.g. of the shares of a public service broadcasting company is not unusual in European countries, but in this case the Law on Institutions creates a situation of potentially far-reaching control of, and interference into the operation of HRT.

It would be best if the legal status of HRT could be changed. Failing that, a new Law on Croatian Radio-Television should clearly state which provisions of the Law on Institutions do not apply to HRT. This should include, but not be limited to, Articles 8, 36, 38, 44, 54, 57, 64 and 71 of the Law on Institutions. Without this, the current attitude on the part of some representatives of the political establishment that "we own HRT, we control it" will not disappear.

Structure of HRT

As noted above, no real case has been made for the breaking up of HRT into separate public institutions. In different post-Communist countries, different solutions have been applied. In some countries, like Poland, public radio was indeed completely separated from public television, on the grounds that this may promote pluralism of political coverage and that two (or several) institutions are more difficult to control than one.

The solution chosen in the draft law theoretically implements the separation, but in reality keeps HR and HTV together within one association. Therefore the assumed political advantages of separation cannot be achieved. True separation is in any case made difficult by the fact that HR and HTV are located on the same premises and no plans to move one of them to a different location have been made.

Leaving that practical consideration aside, three options can be considered:

- Maintaining HRT as one broadcasting organization;
- Implementation of true separation, turning HR and HTV into separate institutions, each with a separate set of governing and managerial bodies;
- Creation of an association of public institutions as proposed in the draft law.

In the draft law, HRT is to have the Broadcasting Council and a Director General appointed by the Croatian Parliament by a 2/3 majority.

HR and HTV are to have:

- Administrative Councils (appointed by Parliament, with different options as regards the identity of members and the nominating authority);
- Directors (appointed by the HRT Governing Council upon the proposal of HRT Director General);
- Heads of Programmes and Chief Editors of News, both appointed by the HRT Broadcasting Council upon the proposal of the Director;

HRT Music Production is to have an Administrative Council (appointed by Parliament, again with different options as regards the identity of members and the nominating authority); and a Director, appointed by the HRT Governing Council.

None of this is directly required by the Law on Institutions. Chapter V "Structure and Bodies of an Institution" of that law allows each of these matters to be regulated differently in other laws. In addition, Art. 71 of the Law on Institutions says nothing about how an association of public institutions should be structured. Accordingly, drafters of the Law on Croatian Radio-Television had practically a free hand in deciding upon the organization of HRT, yet they chose solutions designed to increase political control over HRT.

Below, we will propose a basic structure for HRT as one institution (which can also be applied to HR and HTV if they were to be completely separated) and for HRT as an association of public institutions

HRT as one institution (structure also to be applied to HR and HTV as separate institutions)

Body or top managerial position	**Manner of appointment, powers**
HRT (HR/HTV) Broadcasting Council	Composition and manner of appointment as now, membership reduced to 21 persons, decision-making powers on strategic issues (see below)
HRT (HR/HTV) Supervisory Council	3 members appointed by parliament (2 by opposition parties, one by ruling party/coalition) – supervises management and finances of HRT (HR/HTV), reports any improprieties to Broadcasting Council
HRT (HR/HTV) Director General	Appointed by Broadcasting Council by public tender, manages the institution
Head of Programmes, Radio Head of Programmes, Television	Appointed by Broadcasting Council by public tender, after consultation with HRT (HR/HTV) Director General, sole responsibility for programming,

HRT as an association of public institutions

Body or top managerial position	**Manner of appointment, powers**
HRT Broadcasting Council	Composition and manner of appointment as now, membership reduced to 21 persons, decision-making powers on strategic issues (see below)
HRT Supervisory Council	3 members appointed by parliament (2 by opposition parties, one by ruling party/coalition) – supervises management and finances of HRT, reports any improprieties to Broadcasting Council
HRT Director General (if the position is retained; see below)	Appointed by Broadcasting Council by public tender, coordinates the work of HR, HTV, HRT Joint Services (see below)
Directors of HR, HTV, HRT Joint Services	Appointed by Broadcasting Council by public tender, after consultation with HRT Director General; manage their institutions
Head of Programmes, Radio Head of Programmes, Television	Appointed by Broadcasting Council by public tender, after consultation with, respectively, Director of HR and Director of HTV, sole responsibility for programming.

Particular elements of this structure are discussed below.

HRT Broadcasting Council

Concerning the HRT Broadcasting Council, no serious arguments are advanced as to the need for changing the present system. The HRT Broadcasting Council is now composed of 22 representatives of civil society organizations and 3 persons appointed by Speaker of the Croatian Parliament, the Prime Minister and the President of the Republic. Given the clear majority of direct representatives of civil society, it is a solution which deserves applause and commendation as equalling the best achievements in this area, and being more democratic than in many other countries. Croatia has joined those countries which set an example in this respect for others to follow, and this should be recognized.

Appointment of all members of the Broadcasting Council by Parliament (as in option 1 of Art. 23) would be a serious and undemocratic reversal. Option 2 reduces the number of members and changes the nominating organizations, but is not qualitatively different from the present solution. There is therefore no need to introduce it.

The present system as concerns the composition and manner of appointment of HRT Broadcasting Council should be retained. The number of its members could be reduced from 25 to 21.

HRT Broadcasting Council should have real decision-making powers on strategic issues, as provided for in Art. 36 of the Law on Institutions. It should also conduct public tenders for the posts of Directors and Heads of Programmes of HR and HTV, and Director of HRT Joint Services, and appoint them directly.

If the Broadcasting Council is to take strategic decisions, it must:

- Have access to all the documentation of HRT, HR, HTV, HRT Joint Services;
- And have a secretariat and a small staff (2-4 experts employed by HRT, but responsible only to the Council), capable of preparing the decisions of the Council on legal, financial, technical and e.g. investment issues, and of evaluating proposals made in this regard by HRT management.

As proposed above, it is the HRT Broadcasting Council which would appoint the HRT Director General, Directors of HR, HTV and HRT Joint Services, and Heads of Programmes. The draft law proposes that it should appoint the Directors upon the proposal of HRT Director General, and Heads of Programmes upon the proposal of the respective Director.

The decisive question here is who organizes the public tender for these positions and to what extent the results of the public tender are binding. In this proposal, it is assumed that the public tenders would be organized by the HRT Broadcasting Council itself. If so, there would be no room for the Director General or the Director to propose appointment of winners of these tenders, since the decision as to who suits the Council's requirements best would have to be taken by the Council itself.

However, the Council would have an obligation to consult the Director General on the appointment of Directors, and Directors on the appointment of Heads of Programmes. They should certainly have an opportunity to present their views concerning the candidates and their ability to work with them in case of appointment. Their advice would not be binding on the Council, but and if they made a strong enough case against a candidate, the Council would be foolish not to take it into consideration.

Structure of HRT as an association of public institutions

As already noted, no convincing case has been made for creating HRT Music Production. Thus, HRT should primarily be divided into HR and HTV, with the orchestras retained within the structure of one or the other public institution. However, HRT itself is to perform joint functions and operations (IT support, telecommunications, development and maintenance, international affairs, legal, personnel and general affairs, internal control and audit, finance and accounting, as well as "other functions transferred to the HRT by the member public institutions by written agreement). Structurally, it is not clear where these services will fit into the organization.

A separate division (but not as another public institution) – HRT Joint Services - should therefore be created in the organizational structure for them. This division should be run by a director, appointed by the Broadcasting Council. It should be a service to HR and HTV and not an administrative body running the whole association. For this reason, HR and HTV should have their own budgets and control over their own finances, with the Heads of Programmes in control of their programming budgets).

Thus, HRT would be composed of:

- Croatian Radio;
- Croatian Television;
- HRT Joint Services, as a division of the association.

HRT Supervisory Council to replace the proposed 3 Administrative Councils

The creation of 3 Administrative Councils is bound to complicate the operation of HRT. They should be replaced by one Supervisory Council (envisaged in Art. 51 of the Law on Institutions). Such a body would have no managerial functions, but only supervisory ones vis-à-vis all parts of HRT. It could be composed of 3 members appointed by the Croatian Parliament (two by opposition parties, one by a ruling party or coalition) and it would report any cases of mismanagement, inefficient use of resources, illegal actions etc. directly to the HRT Broadcasting Council. Thanks to this, Art. 75 of the draft law could be deleted.

One HRT Supervisory Council, reporting to the HRT Broadcasting Council, could oversee the operation of the whole HRT, simplifying the management structure.

HRT Director General

It is not clear what functions the HRT Director General is to perform in the proposed draft law. Art. 30 says he/she should "manage the HRT" and "represent and act on behalf" HRT. However, in Articles 48, 58 and 68, the directors of HR. HTV and HRT Music Production are described as "managing" and "representing and acting on behalf" of their respective public institutions.

According to Art. 30, the HRT Director General is to appoint his/her deputy (HRT Deputy Director General) from among the directors of HR, HTV or HRT Music Production. The duties of this Deputy Director General are to be defined in the HRT Statute.

However, the function of the HRT Director General appears to be largely superfluous, and that of his/her deputy even more so.

Two solutions in this regard can be considered:
1. Eliminate the position of the HRT Director General (and his/her deputy); or
2. Define the function of the HRT Director General as "representing and acting on behalf of HRT" and "coordinating the work of HR, HTV and HRT Joint Services" – but not as "managing HRT".
3. In the event of his/her absence (vacation, trip abroad, etc.), HRT Director General can authorize the director of HR or HTV to assume his/her functions pro tempore.

If the position of HRT Director General is retained, he/she should be appointed by HRT Broadcasting Council on the basis of a public tender (Art. 38 of the Law on Institutions lists appointment of the director of an institution by its governing council as the first and main option).

Chief Editors of News

It is not clear why the draft law proposes to create such positions, and what is meant by the provisions in Art. 42 and 52 that they should "autonomously run and organize news and current affairs programming" in HR and HTV. This would contribute to fragmenting management of programming within the two organizations, depriving the Head of Programmes of any influence over a key area of programming. Such solutions are applied in some broadcasting organizations, but one of the consequences of this provision could be to leave the Chief Editors exposed to direct external political influence and interference. This would weaken and not strengthen his/her position, and therefore weaken the independence of HR and HTV.

The positions of Chief Editors of News as defined in the draft law should be eliminated. Head of News should be appointed by, and responsible to, the Head of Programmes.

DETAILED COMMENTS ON PROVISIONS OF THE DRAFT LAW

Article 1, para. 2 [4]

It is factually correct to say that the Republic of Croatia is the founder of HRT. However, if HRT is to be truly independent, no founder's rights should be exercised (Article

[4] These comments concern the "improved" translation of the draft law which was provided to me while I was in Zagreb. The text which I had received beforehand did not include paragraph 2, stating that "The founder of the public institutions from pararaph 1 of this article is the Republic of Croatia".

73 provides, in addition, for "a body appointed by the founder" to perform some of the founder's functions"). Otherwise, public authorities will always be able to use these rights to claim control over HRT. This is why we recommend that the Law on Croatian Radio-Television should derogate from the Law on Institutions in every instance that law gives public authorities the ability to control or directly influence the public service broadcaster.

Article 3, para 1.

It should read:

The activity of the HRT consists of the activities of the public institutions of which it is composed in accordance with the present Law. Each of these institutions has its own budget and control over its finances.

Article 5, para 2.

Instead of saying "at least three radio networks on the national level", the law should specify "three networks on the national level" and lay down a procedure for launching new channels in addition to the three networks (agreement of the Broadcasting Council or perhaps licence to broadcast).

The article should also clearly specify the extent of programming activities of HR (i.e. what is meant by "radio networks on the regional level", how many of them are there and in what towns or areas they are located).

The public has a right to know what its licence fee money will be spent on. Moreover, over-expansion by the public broadcaster has two harmful effects: less money to perform its public service remit, and limitation of the growth of the private sector.

Article 7, para. 2

See remarks concerning Article 5, para. 2.

Articles 8 and 9

As noted above, the creation of HRT Music Production is questionable. Art. 68 states that it is to derive revenue from "participation in the production of HR and HTV programmes; production and sale of sound and image carriers; organization of concerts and other events; other activities defined by the statute; other sources in accordance with the law". All but the last one (which is undefined) concern revenue obtain by provision of services on the open market. This may result in financial difficulties and inability to finance the costs of operation.

Article 10, para 2.

This paragraph appropriately requires that HRT produce and broadcast programmes for national minorities. This principle could perhaps be developed on the basis of the 1992 European Charter for Regional or Minority Languages, and the 1995 COE Framework Convention for the Protection of National Minorities.

Article 15

This article is presumably meant to reflect Art. 10.1 of the European Convention on Transfrontier Television [5] and Art. 4 of the EU "Television Without Frontiers" directive (which is practically identical). However, it is written in such a way that implementation will be made very difficult. For example, does the phrase in Art. 15 "the major part of … programmes" refer to the number of programme items broadcast by HR and HTV, or (as in the Convention) to the proportion of total transmission time? Without an answer to this question, it is impossible to know whether HR and HTV are meeting this obligation. In any case, the Convention applies to television alone, so alignment with the Convention does not require imposing this obligation on Croatian Radio.

Moreover, the directive carefully defines "European works" in Art. 6, which is not the case here.

In addition, the phrase "in a ratio which does not disadvantage Croatian programmes" is open to a variety of different interpretations. It does not give broadcasters any legal certainty of knowing what is required of them.

Yet another difficulty will be created in the future by the term "domestic production". In the EU approach, member states may not discriminate in favour of domestic producers, as implied by this phrase. Maintenance of the domestic production quota will not be possible under EU rules, as they now stand, and will have to be replaced by a quota of works originally produced in the Croatian language.

Article 16, para 1.

This paragraph (which reads: "The HTV shall commission at least 10 per cent of the total television programme, with the exception of news and current events, sports programmes, games and advertising, from independent production companies, for which purpose it shall allocate at least 10 per cent of its annual production budget") is based on a misunderstanding of Art. 6 of the "Television without Frontiers" directive [6]. It leaves a choice between allocating 10% of air time (excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping) to European works created by independent producers, or spending at least 10% of their programming budget to commission such works. There is no need to apply both requirements, though both the convention and directive do say that states may introduce stricter or more detailed requirements for their domestic broadcasters.

[5] It reads: „Each transmitting Party shall ensure, where practicable and by appropriate means, that a broadcaster within its jurisdiction reserves for European works a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and tele-shopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria".

[6] It reads: "Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, **or alternately,** at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

Moreover, Article 16 fails to require that an adequate proportion of these works must be earmarked for recent works. If this requirement is not introduced, broadcaster will try to meet this quota by buying old and cheap programming.

Article 20

The introduction of an article on HRT independence is to be welcome, though, as argued above, the overall effect of the draft law may be to reduce that independence. Among other things, HRT will not be truly independent until it owns the assets needed for its operation (see Article 68).

Articles 22 and 23

As noted above, Proposal III as regards the composition and manner of appointment of the HRT Broadcasting Council should be retained, with the number of members potentially reduced to 21.

There is no reason for the Minister of Culture to have to "confirm by his decision that the nomination [of candidates for HRT Broadcasting Council] has been conducted in accordance with this Law". This formal function could be conducted by a person of public trust from outside the government, e.g. the President of the Supreme Court.

According to Article 23, "the HRT Governing Council shall be considered constituted when two-thirds of the total number of its members have been nominated". This is unobjectionable, but inconsistent with Article 28 para. 2 (which says that "The HRT Governing Council shall make valid decisions by the majority of votes of the total number of its members"). So the Council would be constituted, but could not take any decisions, or its decisions would not be legal. This inconsistency should be removed. In any case, the law should also set a deadline for the completion of nominations and of the composition of the Council, and regulate situations when the deadline has not been met.

Article 24

Several of the possible reasons for an early termination of a Council member's term of office should be reconsidered. The general principle should be that Council members are elected for the duration of the term of office and that once they have been elected they act independently. Early dismissal should happen only in exceptional circumstances.

- Recall of a member at his/her "own request" and "through resignation" amount to the same thing and there is no reason to list them separately.
- "The disappearance of the legal entity which nominated him/her" could be accepted as a reason for dismissal. Though the Council member should act independently, and not as an "emissary" of the organization which nominated him/her, dissolution of the organization itself could mean that his/her mandate is seriously weakened.
- "Recall of the person which nominated him/her" should not be a reason for dismissal. This can refer only to the members nominated by the Speaker of Parliament, Prime Minister and President of the Republic. Though nominated by them, Council members do not perform the function of their personal representatives, and so, for example, there is no reason to replace the person nominated by the Prime Minister, if he/she has had to resign.
- "If by his/her activity the member tries to influence the content of programmes" is not clear. It is the job of the Broadcasting Council to influence the content of programmes. According to Article 25, the Council is to "supervise the implementation of the programming principles and obligations stipulated by law and, in case of their violation,

inform in writing the director general of the HRT, the director of the public institution, the head of programme, or the chief editor of news and current affairs" and to "advise the HR and the HTV director and persons responsible for programme production on matters relating to the implementation of the principles and obligations stipulated by law". This clearly amounts to "influencing the contents of programmes". Therefore, Council members would be dismissed for performing the functions required of them by the law.

- "If the member acts contrary to the law and other regulations governing the operation of the HRT". This may be a reason for dismissal, but only if violation of the law is confirmed by a court sentence.
- "In other cases stipulated by law and the HRT Statute". This reason should be deleted. The issue of the Broadcasting Council's independence is too important for possible early dismissal of a Council member to be regulated anywhere else, but in the Law on Croatian Radio-Television. In any case, the HRT Statute is to be adopted by the Broadcasting Council itself, on the proposal of HRT Director General (Articles 25 and 65). It is doubtful if Council members would be willing to introduce still other reasons for their own early dismissal.

Article 25

This article gives the Broadcasting Council no decision-making powers, except for the appointment of HR and HTV Directors, heads of programmes and Chief Editors of News, as well as adoption of the HRT Statute. These powers are much reduced in comparison to the areas of competence given to the governing councils of public institutions in the Law on Institutions [7] and turn the Council largely into a consultative body, with the real power given to Administrative Councils. This is incorrect. As the highest body of HRT, charged with representing society and with running HRT on behalf of society, the Council should have decision-making powers on strategic matters, precisely in line with Art. 36 of the Law on Institutions, especially since there would be no Administrative Councils in the structure proposed above. The Broadcasting Council should take over their powers in strategic areas and the Director General and Directors in areas of everyday management.

Article 26

The intention behind the alternative proposal that "Half of the members shall be re-appointed every 2 years" is sound (staggered terms for Council members), but further thought should be given to it:

- For one thing, the odd number of Council members (whether 25 or 21) cannot be divided into two.
- For another, the system can only work if in the first instance some members are appointed for two years and others for four, so staggered terms can begin;
- Thirdly, the replacement of half the composition of the Council may be too big a shock; it would be better if the proportion of newcomers was smaller on each occasion.

Thus, further consideration of the details of this solution is required, and the article should regulate the whole process fully.

[7] Art 36 of the Law on Institutions reads: "The governing council passes programmes for the operation and development of the institution, supervises their implementation, decides about the financial plan and annual accounts […] adopts decisions and performs other tasks regulated by the law, the charter of foundation and the statute of the institution".

Article 28

Presumably, meetings of the Council are convened by the Chairperson. This should be stated clearly. Also, the law should provide for meetings of the Council to be convened at the request of a set number of members, e.g. 1/3 of its composition.

Article 30

The HRT Director General should not have the power "to block the implementation of any acts adopted by the HRT Broadcasting Council if he/she considers that they violate the law and shall inform about it the Government of the Republic of Croatia within 24 hours". He/she could go to court to obtain a court sentence declaring a decision of the Broadcasting Council illegal and therefore null and void. The government should not be given a chance to interfere directly into the affairs of HRT by serving as an arbitrator between the Broadcasting Council and the Director General.

Article 31

Unless it is a translator's mistake, every candidate for any position in HRT is required to have a "university degree in the social sciences or some other appropriate discipline". This should be changed to "university degree" or "higher education".

Article 32

The HRT director general should not be appointed or dismissed by the Croatian Parliament, but by the HRT Broadcasting Council.

Articles 33-60

This part of the draft is composed of three sets of articles regulating HR, HTV and HRT Music Production in practically identical ways (except that HRT Musical Production would not have a Head of Programmes and Chief Editor of News). These matters were dealt with above.

Article 65

The HRT Statute is to be "adopted by the HRT Broadcasting Council on the proposal of the HRT director general on the basis of the previously obtained opinion of the boards of directors of the public institutions". This is an improvement on the present law which calls for the Statute to be adopted by the Croatian House of Representatives.

Article 68

According to this article:

- "The assets contributed by the founders, acquired through the provision of services and the sale of products or from other sources constitute the property of the public institutions of the HRT", but
- "The founder of the HRT, the Republic of Croatia, is the sole owner of all the assets of the HRT public institutions".

This confirms that HRT has no property of its own. It can hardly be independent if everything it uses can, theoretically, be taken away by the State.

Article 69

The legal construction of the licence fee should not be "payment to HRT" but a licence fee for the use of a radio or television set.

It is not clear from this article what the licence fee is paid for: the possession of a radio and television set, or for each set separately. What happens if someone has only a radio, or a television set? Every home with at least a television set should pay the licence fee.

Division of licence fee revenue between HR and HTV should not be the job of the Director General but of the Broadcasting Council.

The decision on the division of the money should be taken earlier than by 31 December of the previous year (e.g. by September 30), since the managements of HR and HTV must have time to prepare the financial plan for the next year.

Article 74

The alternative solution proposed in this article ("Amend Article 72 in such a way as to make the liquidation of the institution or the Association of Institutions impossible, in which case take out Article 74") is correct and should be implemented.

Article 75

This article should be deleted. These functions should be performed by the Supervisory Council. Introduction of separate supervision over the whole of HRT (by line ministries) and over the Broadcasting Council (by the government as such) may be treated as an indication of the real reason why this draft law is being proposed. It is not compatible with the principle of the independence of a public service broadcasting organization.

Article 77

The provisions of this article appear inadequate for the purpose of conducting the structural transformation of HRT. This may again prevent their implementation.

Articles 78-80

The wholesale replacement of the Broadcasting Council and all other bodies and holders of top managerial positions could initiate another case of sweeping changes of personnel which have plagued HRT for many years, defeating any prospects for developing the institution into a responsible, apolitical, professional broadcasting organization.

Article 81

As noted above, the provision of this article ("All relations not regulated by this Law shall be subject to the provisions of the Law on Institutions") is an improvement on the current law, but it is not enough. The present law should clearly derogate from all articles of the Law on Institutions which provide for direct parliamentary or government control over HRT.

APPENDIX

Selected EU acquis communautaire in the area of audiovisual policy, telecommunications and e-commerce

Audiovisual

Council Directive **89/552/EEC** of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member states concerning the pursuit of television broadcasting activities (OJ L298, 17.10.1989, p.23);

Directive **97/36/EC** of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member states concerning the pursuit of television broadcasting activities (OJ L202, 30.07.1997, p.60);

Council Decision **89/337/EEC** of 27 April 1989 on high-definition television (OJ L142, 25.05.1989, p.1);

Council Decision **89/630/EEC** of 7 December 1989 on the common action to be taken by the Member States with respect to the adoption of a single world-wide high-definition television production standard by the Plenary Assembly of the International Radio Consultative Committee (CCIR) in 1990 (OJ L363, 13.12.1989, p. 30).

Council Resolution **90/707/EEC** of 28 June 1990 on the strengthening of Europe-wide co-operation on radio frequencies, in particular with regard to services with a pan-European dimension (OJ C166, 07.07.1990, p. 4);

Council Directive **92/38/EEC** of 11 May 1992 on the adoption of standards for satellite broadcasting of television signals (OJ L137, 20.05.1992, p. 17);

Council Resolution **93/803/EEC** of 22 July 1993 on the development of technology and standards in the field of advanced television services (OJ C209, 03.08.1993, p.1);

Council Decision **93/424/EEC** of 22 July 1993 on an action plan for the introduction of advanced television services in Europe (OJ L196, 05.08.1993, p. 48);

Council Directive **93/83/EEC** of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ L248, 06.10.1993, p. 15);

Council Resolution of 27 June 1994 on a framework for Community policy on digital video broadcasting (OJ C181, 02.07.1994, p. 3);

Commission Directive **94/46/EC** of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388 in particular with regard to satellite communications (OJ L268, 19.10.1994, p.15);

Directive **95/47/EC** of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ L281, 23.11.1995, p. 51);

Commission Directive **95/51/EC** of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalized telecommunications services (OJ L256, 26.11.1995, p. 12);

Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 5 October 1995 on the image of woman and men portrayed in advertising and the media (OJ C296, 10.11.1995, p.15);

Directive **97/55/EC** of the European Parliament and of the Council of 6 October 1997 amending the Council Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ L290, 23.10.1997, p. 18);

Council Decision **98/253/EC** of 30 March 1998 adopting a multiannual Community programme to stimulate the establishment of the Information Society in Europe (OJ L107, 07.04.1998, p. 10);

Directive **98/34/EC** of the European Parliament and of the Council of 22 June 1998, laying down a procedure for the provision of information in the field of technical standards and regulation (OJ L204, 21.07.1998, p. 37), as amended by the Directive **98/48/EC** of the European Parliament and of the Council of 20 July 1998 (OJ L217, 05.08.1998, p. 18);

Directive **98/84/EC** of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (OJ L320, 28.11.1998, p. 54);

Council Recommendation **98/560/EC** of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (OJ L270, 07.10.1998, p. 48);

Resolution **99/205/EC** of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999, concerning public service broadcasting (OJ C30, 05.02.1999, p. 1);

Council Decision **99/297/EC** of 26 April 1999 establishing a Community statistical information infrastructure relating to the industry and markets of audiovisual and related sectors (OJ L117, 05.05.1999, p. 39);

Commission Directive **99/64/EC** of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities (OJ L175, 10.07.1999, p. 17);

Council Decision **1999/784/EC** of 22 November 1999 concerning Community participation in the European Audiovisual Observatory (OJ L307, 02.12.1999, p. 61);

Communication from the Commission to the Council, the European Parliament, the Economic and social Committee and the Committee of the Regions of 14 December 1999 on the principles and guidelines for the Community's audiovisual policy in the digital age (COM (1999) 657 final);

Directive **2000/31/EC** of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of the information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) (OJ L178, 17.07.2000, p. 1);

Council Decision **2000/821/EC** of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus –Development, Distribution and promotion) (2001-2005) (OJ L336, 30.12.2000, p. 89);

Decision **163/2001/EC** of the European Parliament and of the Council of 19 January 2001, on the implementation of a training programme for professionals in the European audiovisual programme industry (MEDIA – Training) (2001-2005) (OJ L26, 27.01.2001, p. 1);

Council Resolution of 12 February 2001 on national aid to the film and audiovisual industries (OJ C73, 06.03.2001, p. 3);

Directive **2001/29/EC** of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain rules concerning copyright and rights related to copyright in the information society (OJ L167, 22.06.2001, p. 10);

Communication from the Commission of 17 October 2001 on the application of State aid rules to public service broadcasting (OJ C320, 15.11.2001, p. 5);
Communication from the Commission to the Council, the European Parliament, the Economic and social Committee and the Committee of the Regions of 26 September 2001 on certain legal aspects relating to cinematographic and other audiovisual works (COM(2001) 534 final);
Council Resolution of 21 January 2002 on the development of the audiovisual sector (OJ C32, 05.02.2002, p. 4-6);

Telecommunications

Directive **2002/19/EC** of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L108, 24.04.2002, p. 7);
Directive **2002/20/EC** of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L108, 24.04.2002, p. 21);
Directive **2002/21/EC** of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L108, 24.04.2002, p. 33);
Directive **2002/22/EC** of the European Parliament and of the Council of 7 March 2002 on universal service and user's rights relating to electronic communications networks and services (Universal Service Directive) (OJ L108,24.04.2002, p. 51).
1999/64/EC Amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single
operator are separate legal entities
1999/5/EC Radio equipment and telecommunications terminal equipment and the
mutual recognition of their conformity
1997/66/EC Personal data in telecoms
1997/33/EC Interconnection in Telecommunications with regard to ensuring universal service and interoperability
1996/2/EC Amending Directive 90/388/EEC with regard to mobile and personal communications
1995/47/EC Standards for the transmission of television signals
1994/46/EC Amending Directive 88/301/EEC and Directive 90/388/EEC with regard to satellite communications
1992/44/EEC Application of open network provision to leased lines
1991/287/EEC Frequency band for digital European cordless telecommunications
1990/544/EEC Frequency bands for land-based public radio paging
1990/388/EEC Competition in the markets for telecommunications services
1990/387/EEC Internal market for telecommunications services through the implementation of ONP
1987/372/EEC Public pan-European cellular digital land-based mobile communications in the Community

eCommerce

2000/31/EC eCommerce Directive
1999/93/EC Electronic Signature

1998/84/EC Legal Protection of Services
1998/34/EC Information Society Services
1997/7/EC Distance Contracts
1996/9/EC Legal protection of databases
1995/46/EC Protection of Personal Data
1993/98/EEC Protection of copyright
1993/22/EEC Investment Services
1993/13/EEC Unfair terms in consumer contracts
1992/100/EEC Rental and lending
1991/250/EEC Legal protection of computer programmes
1987/102/EEC Consumer Credit
1984/450/EEC Misleading and Comparative advertising
1977/388/EEC Turnover taxes and common system of VAT45

Copenhagen criteria

Under the Copenhagen criteria, the candidate country aspiring to EU membership must ensure:

- stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities (the political criteria);
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union (economic criteria);
- ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union. This criterion refers to the implementation of the Union's legislation, known as the acquis communautaire (the acquis criterion). This concerns not only the incorporation of the acquis into national legislation, but also its effective application through appropriate administrative and judicial structures (such criteria as administrative capacity, effective monitoring and sanctioning, fair treatment and non-discrimination, transparency and legal predictability apply also to the broadcasting sector; hence the importance of proper regulation and the existence of a well-functioning and independent regulatory body).

The first criterion (stability of institutions guaranteeing democracy, the rule of law, human rights and the respect for and protection of minorities) covers also the broadcasting sector and the media generally. Article 11 of the Charter of Fundamental Rights reads:

> Freedom of expression and information
> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
> 2. The freedom and pluralism of the media shall be respected.

As the European Union has no written acquis on the question of the democratic organization and operation of the media, it draws largely on the Council of Europe standards in this area.

As far as economic criteria are concerned, they have been specified in more detail. As far as a functioning market economy was concerned, they required that in the candidate countries:

- equilibrium between demand and supply is established by the free interplay of market forces;

- prices, as well as trade, are liberalised;
- significant barriers to market entry (establishment of new firms) and exit (bankruptcies) are absent;
- the legal system, including the regulation of property rights, is in place; laws and contracts can be enforced;
- macroeconomic stability has been achieved including adequate price stability and sustainable public finances and external accounts;
- broad consensus about the essentials of economic policy;
- the financial sector is sufficiently well-developed to channel savings towards productive investment.

As regards the capacity to withstand competitive pressure and market forces within the Union, the criteria concerned:

- the existence of a functioning market economy, with a sufficient degree of macroeconomic stability for economic agents to make decisions in a climate of stability and predictability;
- a sufficient amount, at an appropriate cost, of human and physical capital, including infrastructure (energy supply, telecommunication, transport, etc.), education and research, and future developments in this field;
- the extent to which government policy and legislation influence competitiveness through trade policy, competition policy, state aids, support for SMEs, etc.;
- the degree and the pace of trade integration a country achieves with the Union before enlargement. This applies both to the volume and the nature of goods already traded with member states;
- the proportion of small firms, partly because small firms tend to benefit more from improved market access, and partly because a dominance of large firms could indicate a greater reluctance to adjust.

Fulfilment of all these criteria served in a general way to create as favourable a political and economic environment for the operation of free and independent media as was possible under the circumstances of post-Communist transformation.

Chapter 20 of the screening process focussed on adoption of the EU acquis, i.e. alignment of the candidate countries' media legislation with the "Television Without Frontiers" Directive.

The "Television without Frontiers" directive (89/552/EEC), adopted on 3 October 1989 by the Council and amended on 30 June 1997 by the European Parliament and the Council Directive 97/36/EC, establishes the legal frame of reference for the free movement of television broadcasting services in the Union in order to promote the development of a European market in broadcasting and related activities, such as television advertising and the production of audiovisual programmes.

To this end it provides for the Community coordination of national legislation in the following areas :

- law applicable to television broadcasts, law applicable to television broadcasts and promoting an almost unrestricted freedom of transfrontier television, including jurisdiction criteria for transfrontier programme services;
- promoting the production and distribution of European works;
- access of the public to major (sports) events ;
- television advertising and sponsorship;
- protection of minors;
- right of reply.