



**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**

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Executive Summary

When analysing legislation for electronic media, the following issues are important:

- Adequate guarantees for freedom of expression
- Proper and clear regulation of any limitations to this, like prohibitions on incitement to violence, etc
- Programme standards and monitoring of these
- Advertising times and other rules for advertising and sponsorship
- How and on what grounds broadcasting licences are issued
- How the regulatory agency is composed and how it works
- The decision-making of the agency and appeals
- That the regulatory agency has sufficient powers
- The Public Service Broadcaster and whatever is special for it (tasks, role) – in the same or a special law
- Guarantees for a pluralistic media market with limits on concentrations
- Co-ordination is ensured with the telecommunications authority (frequencies and other issues)

The details of broadcasting legislation and regulatory systems vary between different countries, including between European Union (EU) Member States. There are certain generally accepted international principles and standards for broadcasting legislation, some of which are found in Council of Europe and EU documents. The draft Law on Electronic Media of the Republic of Croatia is based on such standards and largely meets the requirements of a modern broadcasting law of a democratic society governed by the rule of law. There are some issues that may need some further work or amendment. This primarily concerns the role of the regulatory agency. Some clarifications are also needed at various places in the law. Following general comments, detailed comments are made in an Article-by-Article commentary concerning where and why the law may need some improvement.

In summary, issues on which the draft law may need some amendment include:

- The terms used in the law should be defined more comprehensively in line with accepted international definitions
- When reference is made to other laws, these should be properly named and identified. Such references should not be made too frequently, if that may make the application of this law less clear.
- The prohibition of censorship could be made even more prominent in the law
- The right of reply should be stated in the law
- The law could make reference to access to information
- The provisions on national works should in some places be clearer
- The co-ordination of systems for implementing this law and other related laws must be in place and functioning
- The regulatory agency should be more independent
- Decision-making and powers of the regulatory agency should be set out in some more detail and the agency could have more extensive powers
- A smooth transition from the present regulatory system must be ensured

## **General Comments on broadcasting legislation**

In the EU system, broadcasting legislation is in the sphere of Member States with some common principles and standards at the EU level. There is a certain harmonisation but no unification between the Member States. The Council of Europe is active in media matters and much of the work of this body is seen also by the EU as a reflection of European standards in media legislation. The key concern for the EU is that the media market can function independently of the national borders and that certain standards are the same.

As for international standards, broadcasting and other media laws of different countries contain several common features, as the basic aim of the legislation is the same: to strike a balance between the different and sometimes apparently conflicting interests in the sphere of broadcasting. Broadcasting (most often) uses radio frequencies – a limited natural resource – so there must be some regulation to avoid chaos in the spectrum and to ensure that the resource can be used for the benefit of the people. Broadcasting is an important tool for freedom of expression and it is important that broadcasting can be used effectively for the furtherance of this right. Because of the great impact of broadcasting, it is more important in connection with this media than with e.g. the printed word that incitement to violence and hatred, slander and intrusion into privacy and personal integrity are controlled, which will mean limitations to the freedom of expression. Standards of civility and respect for ethnic, cultural and religious diversity and a prohibition on incitement to violence and hatred must be upheld in broadcasting. The freedom of expression through the electronic media is a freedom that should be exercised responsibly within certain limits.

Furthermore, with convergence of technologies and less of a distinction between different uses of spectrum (between telecommunications and broadcasting) regulatory systems for various radio frequency spectrum uses must be well co-ordinated. Also, in countries where a free media market is relatively recent, broadcasting legislation must also ensure that the conditions for pluralistic and free electronic media are created and maintained. New organs often have to be set up, to regulate the liberalised market. Such bodies may have different names and structures, but some common elements are seen. They should be independent professional bodies ruled by principles of equity, fairness, non-discrimination and transparency. As licensing decisions and decisions on sanctions against broadcasters concern civil rights and can have negative consequences for individuals there must be possibilities to appeal any negative decisions to an independent body. Self-regulation and self-control of media is often weak in transition countries, which entails a need for vigilance regarding the principle of freedom of expression within certain limits.

For the Republic of Croatia it is important to set up a functioning regulatory system with a proper legal basis that can meet requirements due to adherence to Council of Europe conventions like the Convention on Trans-frontier Television and due to the prospective EU membership. International obligations in the sphere of copyright and related rights must also be properly respected. The legislation should also reflect access to information and matters connected to that.

## **Media Law in the Republic of Croatia**

The draft law sets out in an introduction its constitutional basis as well as the situation, which forms a background to the proposed adoption of this new law. The electronic media is currently governed by certain provisions in the Law on Telecommunications and the Law on Public Information. The Public Service Broadcaster, Croatian Radio and Television, is governed by a special law. In light of the media situation in Croatia with quite a large number of electronic media stations (14 television, 133 radio), with the aim of Croatia to join the European Union (EU) and with its ratification of the Trans-frontier Television Convention, there is deemed to be a need for a special law on electronic media. The law should govern all issues related to electronic media in a comprehensive manner. However, what is called technical issues – such as frequency allocation and technical requirements – shall also in the future be governed by the Law on Telecommunications. This analysis only concerns the draft Law on Electronic Media. It is stated where other legislation is relevant and important, but other laws (like the Law on Telecommunications) are not analysed as such.

The introduction to the draft law mentions a large number of what is called European regulations and recommendations that have been taken into account in drafting the law. These include EC directives as well as Council of Europe recommendations. It is not made clear in the text what the different documents are or that they come from different organisations. Even if the media policy of the EU to a large extent relies on Council of Europe recommendations, for clarity a brief explanation it may still be added. The relevance is that when Croatia joins EU, secondary legislation such as EC directives become binding on Croatia and its subjects, whereas Council of Europe recommendations remain just recommendations for the state.

The incorporation of the stated documents appears to have been more or less comprehensively done, although many of the documents are open for interpretation and even the fact that they have been taken into account does thus not mean that the best possible solution has been found. The introduction to the law does mention the principle of freedom of the media as one guiding principle and the draft reflects this. In general, the draft law is acceptable and does attempt to achieve EU harmonisation and a modern, comprehensive legal framework for electronic media but more emphasis could be put on the independence and role of the regulatory body. The translation of the text is a bit unclear in some parts and may not be entirely consistent in its use of terminology. Such matters are only pointed out in this analysis if they are of particular importance, as the English translation will not have any legal force and is not per se the subject of this analysis. An introduction to general matters of the law is followed by an article-by-article commentary to the draft law. The version used for this work is dated 28 March 2003.

### General Provisions

The explanation of terms used in the law (Article 2) is quite brief and does not explain all terms. The explanations that do exist are not always very clear. As an example, the contents or aims of the law – as stipulated in Article 1 – mention who the law applies to (“legal and natural persons performing the activity of production and broadcasting of programme contents and programme services”) but broadcasting is not defined and in the definition of production different terminology is used. It is possible this is due to translation matters, but in any case *it would be recommended that the law is carefully analysed in the local language before the final draft is submitted to see that all terms used are defined in an understandable manner in Article 2.*

The second paragraph of Article 2 states that some terms are stipulated in a special law. This is unclear. In any case, the title and data of that special law should be given here, but it is better to repeat the definitions. These should be the same as they are in the special law referred to. *In all cases where the draft law refers to other laws, it should say which law it refers to.*

### General Principles

Also Article 3 – that sets out freedom of electronic media – refers to limitations of this law and a special law. It is presumed that this refers to the law on the PBS, but this should be clearly stated. Indeed, as restrictions to freedom of expression for electronic media should be as limited as possible, it is extra important in such a context that the limitations that do exist are clear and can be found easily.

The reference to special laws is found in many places. It is a general comment that such references should be more specific. The most readable way of doing it is to give the name of any laws referred to when they are referred to – this avoids any misunderstandings or anyone attempting for some reasons to refer to irrelevant laws. Otherwise, if it is always just one or a few laws that are intended, these can be named in a special article in the law, at the end or beginning. The current way of doing it remains a bit vague. It could also be interpreted as if there is a danger that this law will be changed by other laws, which presumably is not the intention. *Again it must be stressed that where the draft law refers to other laws, it should say which law it refers to.*

Broadcasting regulation must not include any elements of censorship or pre-emission controls. In order to check that there are no violations of provisions of broadcasting, including those restrictions on free speech as such rules may entail there can be a post-emission control. This principle is reflected in the draft Law, but as it is such a crucial principle it could be even more stressed than in the present version. *The prohibition on censorship (found in Article 14) could be - for pedagogical reasons - moved to Article 3 in order to make it more visible.*

Article 6 on the jurisdiction should be completely in line with the Trans-frontier Television Convention as this is what that Convention mainly deals with. This appears to be the case.

### Activity of Radio and Television

The conditions for performing broadcasting activities as set out in Article 10 are very important as they form the basis for who will be allowed to perform electronic media activities. Thus this article is important and must be clear, which is not really the case. Especially paragraph 3 is not clear, it is not clear which minister is referred to as the one who should seek consent from the minister of telecommunications, or what the rule book should be. The detailed conditions are normally set out in a licence. The law should give some information about what the licence will contain, but the licence itself will give the full details. Detailed conditions should be set by the regulatory authorities in the field (for the broadcasting/media as well as the telecommunications/frequency side) even if basic conditions should be set by the policy-maker: the government or a minister.

The restriction on any programme contents relating to a particular political party (Article 12, paragraph 2) may be hard to enforce, as it cannot be prevented to have political views presented in broadcasts. The meaning intended is understood, but it may be better to formulate this a bit more comprehensively or just make clear that it is the regulatory body that monitors this provision, so that it is not used flippantly by complainants. Other provisions on quality of programme content are well in line with international requirements. The second paragraph of Article 14, that prohibits censorship, is very important and may for that reason be placed more visibly – for pedagogical effect – as set out above. The important copyright obligations may also be strengthened.

The advertising limits (Article 19) are quite high and the limit for local broadcasts is higher than the normal European limit. The advertising and sponsorship provisions would also need better definitions earlier in the law. The requirement for private production (Article 24) is quite high, but this is a matter of choice and not against any rules.

The first paragraph of Article 22 on “entering the daily time of broadcast” is difficult to understand. This makes it a bit difficult to understand the article and the importance of paragraphs 1 and 2. The final paragraph (number 9) of Article 22 is too general as it does not contain any definition of which political parties it applies to. It is possible that the reference to electoral regulations and instructions is sufficient, but this presupposes that such regulations and instructions themselves are sufficient. This is an important provision for broadcasters, as they may end up with very burdensome requirements in election periods if the requirements are not very clear. Especially in countries where there may be many small parties entering elections, there must be a way for broadcasters to ensure that they are not completely overwhelmed by just political broadcasts.

The part of Croatian production and related matters generally follow rules that exist in many countries to protect national production. In the EU, rules on European production exist and these will become binding for Croatia when they join the EU. However, some clarifications are needed like what is meant by Croatian authors in Article 24 and if really every radio broadcast must have music – even radio stations that are not at all music station. The way Article 25 now reads it is an absolute requirement for all. The EU (Directive 89/552/EC) permits special rules to safeguard language and the proposed provisions appear in accordance with that.

The special provisions for student broadcasts in Article 37 appear quite unusual at least to this commentator. It is not clear what is meant by the College Student Council, if it is one special body or a

term for a kind of body. The article may be based on some national tradition and there is nothing wrong with it as such, but its content must be clear.

### Electronic Publications

The provisions on electronic publications are a bit difficult to read, some of which may have to do with translation. Some comments are made in the text. Especially the court protection in Article 43 is not clear, what it is that is special with this protection.

### Protection of Pluralism and Diversity of Electronic Media

The provisions to protect against concentrations and to promote pluralism are in line with normal practice and meet an important objective. However, they are difficult to read, as e.g. the definitions in Article 45 appear contradictory or repetitive and the relationship of Article 47 to Article 45 is also hard to see. Again, some of this may be due to translation with not least the concept “linked person” being a bit vague. It is also not easy to see what kind of situations Article 50 is aimed at. Presumably this is a ban on any company, which ownership may be disguised, but this raises questions to what extent the ownership must be transparent.

It is not clear that the ban on any one company to conduct both radio and television activities is motivated. Such a total ban may be too far-reaching. If there is a ban, it should be clear what types of relationships there can be between radio and television stations. Article 52 is difficult to read, even if the meaning can be deduced after careful reading. There is however a pedagogical purpose in legal texts being easy to read, so a different formulation may be considered.

The subscription fee for broadcasting mentioned in this law appears to relate only to car radios. Presumably the subscription for PBS is set out in that law. As not all cars include radios, the provision should either set out that it relates to cars with radios or there should be exceptions. This special tax for car owners appears a bit strange.

### The Council for Electronic Media

The regulatory agency for electronic media, the Council for Electronic Media, is a very important body, as it is through the work of this body that the good functioning of the law will be ensured. The law cannot and should not contain too much detail, as it has to be able to be adapted to the changes over time. With a strong and professional regulatory agency this does however not mean that application of the law will not be optimal. The body should represent different interests, be impartial and objective, which can best be achieved if it represents professional people.

The choice of words “public tender” (in English) for the selection of members is unfortunate, as it gives connotations to purchase or procurement. The idea appears to be that the public can propose candidates, which in itself is good. The problem may be that it is too cumbersome, which is why many countries instead have elected to have candidates proposed by organisations representing different interests: NGO:s, journalists’ organisations, academies of science, universities, etc. Among those excluded, there is no mention of family members of broadcasters, who should also be excluded (at least close family members, like spouses, parents and children). The exclusion for people convicted of criminal acts should be qualified to certain more serious criminal acts. The staged election as outlined in the alternative text for Article 59 is good as it allows to retain competence when only some members change at any one time. Quorum rules for the Council should be set out.

In many places a role for the minister is mentioned, where the regulatory agency – the Council – itself could sufficiently fulfil this role. The key are where the draft law should be adjusted is indeed in increasing the independent role of the regulatory authority.

Article 63 and others talk about “contracts on concession”. This appears to be similar to a licence and indeed perhaps refers to a normal licence just by another name. It is better to stick to the normal

terminology used. In Article 60 on renewals there are no time limits stated, presumably the periods would then be the same as for the initial licences, but this may be stated clearly. In Article 65 appeals to cancellation of a concession (licence) are ruled out but administrative disputes may be initiated. The distinction is presumably clear in national law. What is important to point out is that there must be an effective means of complaint for the individual broadcasters. This includes that it must be made to a body that is independent from the original decision-making body and that there are no obstacles to making complaints. This follows not least from Article 6 of the European Convention on Human Rights. If these considerations are sufficiently met by the administrative procedure referred to, this may be sufficient.

### Interim and Final Provisions

Article 72 states, which provisions do not apply to programmes for teleshopping and advertising, which makes sense. However, the law mentions very little of requirements for this type of programming. Article 73.2 is not very clear. In relation to Article 74 and the new agency to be set up under this law, the question arises if the members of the existing body may be members of the new one. It should also be stated that decisions of the existing body remain in force. Article 75 on what legal changes in other laws that this law entails must also be very clear. This law must ensure a smooth transition from the currently existing system.

## THE PROPOSAL OF THE LAW ON ELECTRONIC MEDIA

### I. GENERAL PROVISIONS

#### *Contents of the Law*

##### **Article 1**

This Law shall regulate the rights, obligations and responsibilities of legal and natural persons performing the activity of production and broadcasting of programme contents and programme services through electronic media, as well as the interest of the Republic of Croatia in the area of electronic media.

#### *Terminology*

##### **Article 2**

- (1) In the sense of this Law, particular terms shall have the following meanings:

**Electronic media:** television and radio programmes, and electronic publications.

**Electronic publications:** the programme contents transmitted by natural or legal persons through information-communication connections in the manner which makes them accessible to the general public regardless of their scope.

**A publisher of electronic media (hereinafter: a publisher):** shall be any radio and television concessionaire, Croatian Radio-television, and a natural or legal person who produces and/or publishes electronic publications.

*The way this definition is written, with a definition in the definition, is not optimal. The term defined also appears to be one that is not used so much in the law. The term "broadcaster" is used in many places in the law, but is not defined.*

**The activity of production and transmission of programme contents and programme services:** radio and television activity, and the broadcasting of electronic publications regardless of the technical characteristics of the media in which they are published.

**The activity of radio and television:** the initial wire or wireless transmission and/or publishing of contents of radio and television programmes intended for the public, also including satellite transmission, in a coded or code-free form. This term also comprises the forms of mutual mediation (or: exchange) in radio and television programme contents among particular broadcasters, with the aim of their communication to the public. The transmission does not include communication services providing particular information or other messages upon an individual request, such as copying at a distance (telecopying), electronic data bases (banks) and other similar services.

*These appear to be some forms of definitions of broadcasting. Unless it is purely translation confusion, these definitions should be checked and cleared up so they better reflect what terms are used in the law and need to be defined – in as clear a manner as possible.*

**Programme contents:** information of all kinds (news, opinions, information, messages and other information), and authors' works which are broadcast through electronic media for the purpose of providing information, satisfying cultural, educational and other needs, as well as public communications.

**Information-communication connections:** connections established with the assistance of telecommunication and other technical equipment, providing for the transmission, sending and/or reception of signs, signals, written text, images, speech and sounds or statements of any nature, among the users.

**The competent ministry:** the ministry performing administrative and professional tasks in the area of public information.

**Minister:** the minister of the competent ministry.

- (2) The terms: author, programme services, cable television, radio, concessionaire, television, television transmission, as well as other terms from the field of telecommunications, shall have the meaning stipulated by a special law.

*It is not ideal to have definitions in another law, it would be better to repeat them here – making sure that they are the same as in any other law where the terms may be used. In any case, if the law refers to definitions in another law, it must say which law. The definitions should as far as possible follow accepted international definitions if such exist. “Broadcasting” should be defined as transmission by any (technical) means in order to cover new technologies and be technology neutral. Generally for definitions, it is important that they fit with the terms actually used in the law and the meanings the terms then have. There may be some discrepancies due to the translation here but the main thing is of course that it fits in the original language and also that the list of terms in the original language is in a logical order.*

## **II. GENERAL PRINCIPLES**

### *Freedom of Expression*

#### **Article 3**

Freedom of expression and full programme freedom of electronic media shall be guaranteed, with the limitations stipulated by this and a special law.

*As this is a very important provision, setting out the very basis for the law, namely freedom of expression, any limitations must be strictly defined and not more encompassing than necessary. In this context it is particularly badly suited to make reference to a non-specified special law. This law should be clearly described, also in order to take away any suspicion that the freedom of expression as reflected in this law can easily be limited by other laws. The important provision in Article 14.2 on a ban of censorship could be moved here to make it more visible.*

### *Protection of the Croatian language*

#### **Article 4**

- (1) Broadcasters shall be obliged to broadcast programme contents in the Croatian language or with an adequate translation into the Croatian language.
- (2) Broadcasters shall also be obliged to promote creativity in the dialects of the Croatian language.

*The meaning of this is unclear.*

- (3) The use of the Croatian language shall not be obligatory:
  - if films and other audio and audiovisual works are broadcast in the original;
  - if music works are broadcast with the text which is partly or entirely written in a foreign language or script,
  - if broadcasts are partly or entirely intended for the learning of a foreign language and script.

*It is not clear if these are exceptions from having the broadcast in Croatian or also exceptions from having any translation at all.*

- (4) The use of the Croatian language shall not be obligatory in the broadcasts intended for informing members of national minorities.
- (5) Exceptionally from the provision of Paragraph 1 of this Article, a broadcaster 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 his concession.

### *The activity of broadcasting programme contents and programme services*

#### **Article 5**

The activity of broadcasting programme contents and programme services in compliance with this Law and special laws shall be performed by a broadcaster listed in the Register of Companies or another register in the Republic of Croatia, and if, along with the general conditions, his seat and editorial office are in the Republic of Croatia.

*What could the “another register” be? It would be normal to demand that broadcasters are registered in the company register, provided there is no special other register in Croatia that it is important to include, it may be better to delete that reference. The registration in a register of companies under any different form that national law provides, provides a certain security and is a legitimate prerequisite for giving a licence. In Article 10 there is no mention of any other register.*



## ***Jurisdiction of the Republic of Croatia***

### **Article 6**

- (1) Independently of the provision of Article 5 of this Law, it shall be assumed that a broadcaster of television programme is under the jurisdiction of the Republic of Croatia when the seat of either the broadcaster alone or of the editorial office alone is in the Republic of Croatia, and the other part is located in a member country of the European Union, or in a third country, on condition that programme contents are produced mainly through the work of persons employed or contracted in the Republic of Croatia.
- (2) When a significant part of a television programme is mainly produced through the work of personnel employed or contracted in the Republic of Croatia, and another, more significant, part of the personnel is employed or contracted in another member country of the European Union, it shall be assumed that the broadcaster of that programme is under the jurisdiction of the Republic of Croatia, if at least the seat of his broadcaster is located in the Republic of Croatia regardless of the seat of the editorial office.
- (3) When a significant part of television programme contents is produced through the work of persons employed or contracted in third countries, it shall be assumed that the broadcaster of that programme is under the jurisdiction of the Republic of Croatia if he began broadcasting the programme contents pursuant to the Croatian law, and if a strong business connection has been established between him and the Croatian economy.
- (4) If the provisions of the former Paragraphs of this Article cannot apply to a broadcaster of television programme and if the broadcaster of television programme does not belong under the jurisdiction of another member country of the European Union or a country which is a signatory of the European Convention of Trans-frontier Television, it shall be understood that the following broadcaster is under the jurisdiction of the Republic of Croatia:
  - who uses a concession granted by the competent body of the Republic of Croatia;
  - who does not use a concession as per previous Subparagraph, but uses satellite systems belonging to the Republic of Croatia;
  - who does not use either a concession or satellite systems as per previous two Subparagraphs, but uses satellite earth station installed in the Republic of Croatia.

*This text presumably is taken from the Trans-frontier Television Convention, Article 5 (as it should be) and it should be close to the formulations used there. The final words of point 3 are a bit unclear – what is the definition of a strong business connection?*

### **Article 7**

- (1) In compliance with this Law, a broadcaster shall independently form the programme basis of the media and shall be held accountable for the publishing of programme contents.
- (2) The activity of a broadcaster may include the production of programme contents.

## ***Freedom of broadcasting the contents of programmes from other countries***

### **Article 8**

The Republic of Croatia shall ensure the freedom of transmission and reception of programme contents from other countries in its area, and, in particular cases, it may limit the freedom of broadcasting of those contents only in compliance with international agreements and this Law.

*What is meant by “other countries in its area” and why is it relevant to mention any area? With modern technologies transmissions are not dependent only on geographical closeness. It is presumed the Article does not only refer to spill-over from neighbouring states but also other forms of legitimate broadcasting from abroad.*

## ***Interest of the Republic of Croatia***

### **Article 9**

The Republic of Croatia shall encourage the production and publishing of the programme contents important for:

- the exercise of rights to public information, and to be informed, of all citizens [*državljeni*] of the Republic of Croatia, members of Croatian national minorities and communities abroad, and the exercise of rights of national minorities in the Republic of Croatia;

- the exercise of human rights and political rights of citizens [*gradjani*] and the improvement of a law-based and social State and civil society;
- the preservation of the Croatian national and cultural identity;
  - the promotion of cultural creativity;
  - the culture of public dialogue;
  - the development of education, science and art;
  - the protection of nature, environment and human health.

### **III. ACTIVITY OF RADIO AND TELEVISION**

#### ***The conditions for performing the activity of radio and television***

##### **Article 10**

- (1) The activity of radio and television may be performed by a legal person listed in the Register of Companies in the Republic of Croatia, in compliance with this Law and a special regulation, who has obtained a concession and entered a contract on concession in compliance with this Law.
- (2) In order to perform activities as per Paragraph 1 of this Article, apart from the general and programme conditions stipulated by this Law, a broadcaster shall fulfil the following special:
  - technical conditions,
  - spatial conditions,
  - financial conditions,
  - personnel conditions.
- (3) The conditions as per Paragraph 2 of this Article and the procedure of establishing the conditions by a rule book, shall be stipulated by the Minister, with the previous consent of the minister competent for telecommunications.

*The different ministers mentioned here are not clearly explained, nor exactly what the duties are: to establish the conditions in the rulebook or to establish how the rulebook is to be made – presumably by the regulatory authority? Generally, this Article makes the procedure sound more complicated than it should be : A broadcaster must obtain a licence from the regulatory authority, conditions for which will be found in the law and the licence conditions.*

#### **THE PROGRAMME CONDITIONS FOR THE PERFORMANCE OF RADIO AND TELEVISION ACTIVITIES**

##### ***The programme basis***

##### **Article 11**

- (1) The programme basis shall contain a programme scheme which shall determine:
  - the kind of programme contents or their classification into particular groups;
  - the foreseen quantitative ratio among particular groups of contents;
  - the foreseen maximum scope of advertising contents;
  - the scope of production of private and Croatian audio and audiovisual works.
- (2) The broadcaster of television programme with a programme basis shall also decide on the ratio of the share of European audiovisual production and Croatian audiovisual works.
- (3) In order to change or supplement the programme basis, a broadcaster shall be obliged to obtain a previous opinion of the editorial staff.

*Quite a far-reaching provision. It is not clear if this gives a veto to the editorial staff or just the right to be heard but without the broadcaster being obliged to follow (fully or at all) the opinion given.*

- (4) In order to change or supplement the programme basis pertaining to more than 20% of the programme scheme, a broadcaster shall obtain a prior consent of the Council for Electronic Media. Along with the request for a prior consent, a broadcaster shall enclose an opinion per Paragraph 3 of this Article.
- (5) A programme basis shall be an integral part of an employment contract between a broadcaster and an editor or a journalist. Special rights of editors and journalists, arising due to changes or supplementation of the programme basis, shall be regulated by the contract.

##### ***Programme principles and obligations***

##### **Article 12**

- (1) The programme contents of a broadcaster performing radio and television activity shall, in particular:

- respect human dignity and basic rights of a man, and contribute to the respect of other people's opinions and convictions,
  - contribute to the free forming of opinions, versatile and objective information of listeners and viewers, as well as to their education and diversion,
  - promote Croatian cultural heritage and encourage listeners and viewers to participation in the cultural life,
  - promote international understanding and the sense of a public for justice, defend democratic freedoms, serve to the protection of environment, fight for equality of women and men and broadcast truth,
  - promote understanding for members of national minorities.
- (2) Programme contents may not, directly and unilaterally, serve to a particular political party, interests or worldview.

*This could be quite far-reaching if it excludes any programmes presenting political views.*

### **Article 13**

- (1) The programme contents of a broadcaster performing radio and television activity shall fulfil the following conditions:
- events shall be presented realistically, and different approaches and opinions shall be adequately 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 radio and television programme, a broadcaster shall be obliged to promote impartiality, respecting differences in opinions on political or economic issues or with regard to current public policies.

### **Article 14**

- (1) State bodies and their representatives, as well as labour unions and various interest groups shall not exert influence over a broadcaster with regard to the creation of radio and television programme.
- (2) None of the provisions of this Law may be interpreted as providing for the right of censorship or limitation of the right of freedom of speech or expression of thought.

*Given the fundamental importance of this provision, it could be placed for pedagogical reasons in a more visible place – see above - or at least as the first paragraph of this Article. The interpretation of “various interest groups” is not so clear.*

### **Article 15**

- (1) Programme contents endangering the defence, national security and constitutional system, shall not be allowed.
- (2) In programme contents, it shall not be allowed to:
- incite, spread and act in the manner conducive to raising national, racial or religious hate and intolerance, anti-Semitism and xenophobia, as well as incite discrimination or hostility against individuals or groups, due to their origin, colour, political conviction, global view, health condition, gender, sexual or other preferences or characteristics,
  - publish footages which offend human dignity, and especially which contain immoral and pornographic contents,
  - in any manner encourage, promote and glorify violence and crime, and encourage citizens [gradjani], especially children and youth, to use tobacco products, alcohol or drugs,
  - broadcast certain messages or influence viewers, or listeners, without them being aware of it, through the use of a technical means (e.g. by broadcasting images or sounds of very short duration), without the knowledge of viewers, or listeners.
- (3) Programme contents which are obviously harmful to the physical, mental or moral development of children and youth may not be scheduled at times when they will most likely be watching.

- (4) In the production and broadcasting of programme contents, a broadcaster shall respect copyrights and other relevant rights, for which reason he shall be obliged to obtain consent by the association authorised for the collective exercise of rights.

*In states where the free media market is still developing it is not unusual that there are quite frequent copyright infringements by broadcasters. Before there was an efficient system for monitoring such infringements a tradition may have developed under which it is not seen as a serious crime to show programmes or play music without having the appropriate rights. This may also have been due to the fact that it may have been difficult to get the proper rights. In a proper and internationally acceptable media market, such trends must be stopped and recognition of copyright and related rights be the accepted norm. Even if principles will be in separate legislation, the broadcast regulator must contribute to this. It is common that cinematographic works are mentioned separately, in relation to the time limits for broadcasting such works.*

*One important element of broadcasting regulation that appears to be missing from the law is the right of reply. Even if details may be set out in rules of the regulatory authority, the basic principle should be in the law. The right of reply is a very important right in broadcasting. Often it may be sufficient to avoid further negative consequences of a wrongful statement made in broadcasting if a rectification is made or if concerned persons have the right to have their reply broadcast. For this to be efficient, the reply must be broadcast in a timely and effective fashion, given the same prominence as the original statement. Some conditions can be put on the reply, as far as its design and duration are concerned. Although the right of reply is very important and should not be unduly restricted, at the same time the provisions providing for it must not be open to abuse. At least there should be a requirement that the statement against which the right of reply is exercised places the person, who has the right of reply, in an unfavourable light or is otherwise unjust or unfair.*

*Broadcasting standard details should be set out in secondary legislation made by the regulatory agency. It is important that standards for broadcasting are clear, so that broadcasters learn to act in accordance with these.*

#### **Article 16**

The broadcaster who performs radio and television activities shall have to keep records on the broadcast programme and keep the taped material of the entire broadcast programme content for at least 60 days from the day of broadcast, and in the case of objection or dispute, he shall be obliged to keep the taped material of the disputable content until the dispute ends.

#### **Advertising**

#### **Article 17**

- (1) Advertising and teleshop shall be indisputably identifiable and separated from other parts of the programme content through audio and audiovisual means.
- (2) Advertising shall be performed with financial or other kind of compensation or for the purpose of self-promotion. Free advertising shall have a special marking.
- (3) Teleshop shall be a direct offer which is broadcast to the public for the purpose of acquiring goods or services, including immovable property and rights and obligations, in exchange for money.
- (4) Advertising shall not be considered:
  - statements given by the broadcaster of the electronic media in relation to its programme contents and side products stemming from the programme;
  - free announcements about the performance of public works and services and charity activities;
  - free presentation of art works;
  - free broadcast of data on producers, organizers, sponsors or donors.

#### **Article 18**

- (1) The techniques of influencing the subconscious in advertising and teleshop shall not be permitted.

- (2) Concealed and fraudulent advertising and teleshop shall not be permitted. The ordering party and the broadcaster shall be responsible for this type of advertising and teleshop.
- (3) Fraudulent advertising shall be every type of advertising which in any manner deceits or probably deceives persons to whom it is addressed or who have received it, and which, based on its fraudulent nature, may influence their economic behaviour or which, for the mentioned reasons, insults or probably insults competition.
- (4) Concealed advertising shall be a verbal presentation or presentation by a photograph of goods, services, name, trade mark or activities of the producer of goods or services in the programme contents, when such presentation is intended for advertising and may mislead the public in the sense of their nature.
- (5) In case of concealed and fraudulent advertising it shall be considered that it was done on purpose, if it was done for financial or other kind of compensation.
- (6) Advertising and teleshop of weapons and ammunition, tobacco and tobacco products, medicine and medical procedures accessible only with a prescription, alcohol and alcohol beverages, shall not be permitted unless stipulated otherwise by a special law.

*These provisions must be co-ordinated with any advertising legislation.*

### **Article 19**

- (1) Duration of advertising shall not exceed 12 minutes in one hour of the programme and 15% of the entire daily duration of the programme, broadcast at the national or regional level, or 18 minutes in one hour of programme and 25% of the entire daily duration of the programme, broadcast at the local level.

*The limit for local broadcasting is higher than the European limits.*

- (2) Duration of advertising as per Paragraph 1 of this Article may be increased by 20% at the most to include promotional messages which directly offer sale, purchase or rent of products or provision of services (teleshop).

*There should be one definition of teleshop in the article on terminology used, now it is defined in many different places.*

- (3) Advertising and teleshop shall be inserted between the programmes providing that conditions from Paragraphs 4-7 of this Article are fulfilled; promotional and teleshop clips may also be inserted in the course of programme in a manner which does not damage the integrity and value of the programme and the holder of the ownership rights.
- (4) Advertising and teleshop clips shall be broadcast in the programmes consisting of autonomous parts, or in sport programmes or events and performances structured in a similar manner which are broadcast in intervals, between those parts or in the breaks between the programme which is being broadcast.
- (5) Broadcast of audiovisual works such as feature film or films made for television (excluding series, serials, entertainment programme and documentaries), providing that their anticipated duration is longer than 45 minutes, may be interrupted once per every complete block of 45 minutes. Further interruptions shall be permitted if the anticipated duration of films is at least 20 minutes longer than two or more complete blocks of 45 minutes.
- (6) If programmes, except for those mentioned in Paragraph 4 of this Article, are interrupted due to advertising and teleshop clips, a period of at least 20 minutes shall pass between each consecutive break for advertising or teleshop.
- (7) Advertising and teleshop shall not be inserted in any broadcast of religious services. News and current affairs programmes, documentaries, religious programmes and programmes for children, if they are shorter than 30 minutes, shall not be interrupted by promotional clips or clips for teleshop. If their duration is 30 minutes or longer, the provisions from previous the Paragraphs shall be applied.

*It is better if news are not interrupted at all, even if they should be more than 30 minutes.*

### **Sponsorship**

### **Article 20**

- (1) Sponsorship shall be each contribution made by a natural or legal person who does not participate in the broadcaster's activities or production of audiovisual works, for financing the



programme content with the aim of promoting name, trade mark, recognisability, activity or product of the sponsor.

- (2) Programme contents under sponsorship in the broadcast shall have to fulfil the following conditions:
  - the schedule and programme contents must not be under the influence of the sponsor in a manner which influences the responsibility and editorial independence of the broadcaster;
  - the programme contents have to be marked with the name and/or sign of the sponsor;
  - the programme contents must not stimulate sale, purchase or rent of a product or services of the sponsor or some other person.

*In accordance with EU requirements (Dir.97/36) tobacco companies should not be allowed to sponsor programmes and special rules apply for medical companies.*

#### **Article 21**

- (1) The programme contents shall not be under sponsorship of a person whose main activity is the production or sale of products or provision of services, the advertising of which is forbidden by a special law.
- (2) The sponsorship over news and current affair programmes shall not be permitted.
- (3) Political parties and coalition shall not be sponsors of the programme content except during the time of electoral promotion in compliance with a special regulation.

*It is important that there are clear rules for broadcasts in election times.*

#### **Time of broadcast**

#### **Article 22**

- (1) All programme contents broadcast via radio or television programme on a daily basis from 0:00 until 24:00 hours shall enter the daily time of broadcast, except when this Law stipulates otherwise.

*Unclear? What else could the law stipulate?*

- (2) The annual time of broadcast according to this Law shall comprise all programme contents published from 1 January until 31 December of a particular year, except for programme contents exempt from that by this Law.
- (3) The radio broadcaster at the national and regional level and the level of counties and the City of Zagreb shall broadcast daily at least 12 hours of programme, and the radio broadcaster at the lower level than the level of the county shall broadcast daily at least 6 hours of programme.
- (4) The television broadcaster at the national and regional level and the level of counties and the City of Zagreb shall broadcast daily at least 6 hours of programme, and the television broadcaster at the lower level than the level of the county shall broadcast daily at least 3 hours of programme.
- (5) Radio and television broadcasters may broadcast the same programme content at the same time providing that the scope of that joint programme does not exceed 5 hours per day, and that joint programme shall not enter the scope of programme as per Paragraph 4 of this Article. Broadcasters shall be obliged to regulate their relations with regard to the joint programme with a contract and inform on that the Council for Electronic Media.
- (6) The broadcaster who performs radio and television activities at the regional level shall dedicate at least 10% of the total weekly programme to the broadcast of news and information in the field of concession.
- (7) Radio and television broadcaster at the local level shall dedicate at least 20% of the total weekly programme to the broadcast of local news and information in the field of concession.
- (8) Radio and television broadcaster at the national and regional level shall broadcast news and current affairs programme in a duration of at least 30 minutes on a daily basis.
- (9) In the time of pre-electoral competition, the broadcaster shall enable all political parties a possibility of promotion under the equal conditions, in compliance with the electoral regulations and instructions of the competent body which supervises or conducts the elections.

*As said, there must be clear rules and definitions concerning the obligation in election-times. These may follow from special rules, etc, but it is important that there are rules so that the obligation for broadcasters is not too cumbersome. For example, it should be stipulated what amounts to such a political party that should have the right to representation.*

#### ***Private production***

##### **Article 23**

- (1) News and current affairs, cultural and artistic, music, sport and other shows and other originally produced programme contents the producer of which is the broadcaster or which were produced upon his order and for his account, shall be considered a private production.
- (2) If several broadcasters had a role in the production of a programme, a private production for each of them shall be considered a part proportional to the input.
- (3) Opening night and first re-run 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 24 of this Law. Croatian music according to this Law shall be the music by Croatian authors and it shall comprise vocal, vocal, and instrumental and instrumental music.

*The meaning in this context of “Croatian authors” is not completely clear. Are these authors of Croatian nationality (and/or citizenship?), authors who write in Croatian, who live in Croatia? It appears as if this is regardless of if the broadcaster is somehow involved in the production – it anyway counts as private production.*

- (5) Ads, including radio and television sale and paid information (video sites), shall not be considered programme content made in a private production.
- (6) Upon the proposal of the Council for Electronic Media, the Minister may stipulate more detailed measures for determining programme contents considered to be a private production by the Rule Book.

*Such measures could be stipulated by the Council itself.*

#### ***Portion of private production***

##### **Article 24**

- (1) The portion of private production shall amount to at least 20% of the daily time for broadcast of each television programme of television broadcaster out of which at least 60% shall be between 18 and 22 hours, unless this Law stipulates otherwise.
- (2) The portion of private production shall amount to at least 30% of the daily time for broadcast of each radio programme of radio broadcaster, unless this Law stipulates otherwise.
- (3) The re-run of a radio or television show shall be clearly marked. Only the first re-run of a show may be calculated into the portion as per Paragraphs 1 and 2 of this Article.

*The percentages are quite high, which is OK, a matter of choice. Minimum would be 10%.*

#### ***Portion of Croatian music in radio programme***

##### **Article 25**

- (1) Croatian music shall comprise at least 10% of the daily broadcast of each radio programme.  
*Some radio programmes may not have any music at all or very little. It would be too far-reaching to demand from them to have Croatian music in any case. The obligation however is currently phrased so that it is an obligation for all.*
- (2) Not more than 20% of the daily broadcast in which Croatian music is performed may be calculated into the portion as per Article 24, Paragraph 2 of this Law.

*This would appear to entail that only music stations are not allowed.*

## *Croatian audiovisual works*

### **Article 26**

- (1) Croatian audiovisual works according to this Law 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 as per 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 in the field of literature, science and art, such as films and dramas, cultural and artistic and entertaining series, documentary, educational and other audiovisual works.
- (3) Upon the proposal of the Council for Electronic Media, the Minister may stipulate more detailed measures for determining programme contents in the Rule Book, which are considered to be Croatian audiovisual works.

*Also this could be decided by the Council itself.*

## *Portion of Croatian audiovisual works*

### **Article 27**

- (1) The television programme broadcaster shall ensure the broadcast of more than 55% of featured, documentary and other programme content in the Croatian language within one year.
- (2) Ads and television sale as per Paragraph 1 of this Article shall not be included into the annual time.

## *European audiovisual works*

### **Article 28**

- (1) European audiovisual works in the sense of this Law shall be:
  - works originating from European Union member states
  - works originating from European member states of European Convention on Trans-frontier Television which fulfil the conditions stipulated by this Law,
  - works originating from third countries, which fulfil the conditions as per Paragraph 3 of this Article.
- (2) The provisions of Paragraph 1, Sub-paragraphs 2 and 3 of this Article shall pertain only to states in which audiovisual works of European Union member states are not subject to discriminatory measures.
- (3) The works as per Paragraph 1, Sub-paragraphs 1 and 2 of this Article shall be those works made predominantly by authors and workers with permanent residence in states as per Paragraph 1, Sub-paragraphs 1 and 2 of this Article, if they correspond to one of the following conditions:
  - if producers of those works are established or registered in one or more of the mentioned states; or
  - if an individual work was created under control of one or more producers from one or more of the mentioned states, or
  - if the contribution of co-producers from the mentioned states is prevailing in relation to the total price of co-production and the co-production is not controlled by one or more producers established outside of the mentioned states.
- (4) The works as per Paragraph 1, Sub-paragraph 3 of this Article shall be those works which were entirely created in a co-production of producers established and registered in one or several European Union member states, with the producers established and registered in one or several third European countries with which European Union signed agreements in audiovisual field, if those works were predominantly created by authors and workers with permanent residence in one or several European states.
- (5) Works which are not considered European works in the sense of Paragraph 1 of this Article, and were created within the bilateral co-production contracts signed between European Union member states and third countries, shall be considered European works if a major part of total expenses of the production is paid by the co-producers from the European Union, and the production is not supervised by one or several producers registered outside of European Union member states' area.



- (6) The works which are not considered European works in the sense of Paragraph 1 of this Article, and which were created predominantly by work of authors and workers with permanent residence in one or several European Union member states shall be considered European proportionally to the adequate contribution of co-producers from the European Union in total expenses of the production.

### ***Portion of European audiovisual works***

#### **Article 29**

- (1) The television programme broadcaster shall ensure that at least 50% of foreign programme comprises European audiovisual works.

*European rules demand a majority, 50% is not a majority.*

- (2) A broadcaster who does not achieve the range of portion of European audiovisual works from the previous Paragraph, shall increase the portion of these works each year proportionally to his range in the annual broadcast time in the previous year, whereby the minimum starting portion shall be 20% of the annual broadcast time, unless stipulated otherwise by this Law.

*The provision as such is in line with European requirements, but it is not very clear what would happen if the starting position is less than 20%.*

- (3) The time intended for the broadcast of news and current affairs programme, sport events, games, advertising, teletext and TV sale, shall not be calculated into the annual broadcast time from this Article.

### ***Audiovisual works of independent producers***

#### **Article 30**

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

- that he is registered for the performance 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 is not included into the organizational structure of the broadcaster;
- that the broadcaster of the television programme may have up to 25% of shares in capital or managerial or voter's rights in his property at the most;
- that each order of an individual broadcaster of the television programme represents half of his annual production at most.

- (2) An independent producer shall be a legal or natural person who is registered as a producer of audiovisual works, and has a seat in one of the third countries if European works comprise the major part of his audiovisual production in the last three years and along with that, fulfils the conditions as per Paragraph 1, Sub-paragraphs 2 and 3 of this Article.

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

### ***Portion of audiovisual works of independent producers***

#### **Article 31**

- (1) The television programme broadcaster shall ensure that the portion of audiovisual works of independent producers in the annual programme amounts to at least 10% of the time.

- (2) The broadcaster who does not achieve the portion of audiovisual works of independent producers as per Paragraph 1, shall increase the portion of those works each year proportionally to the range in the annual broadcast time from the previous year, as long as that portion does not achieve at least 10% of annual broadcast time, unless stipulated otherwise by this Law.

- (3) At least half of the works from this Article shall be produced in the last five years.

- (4) The news and current affairs programme, sport events, games, advertising, teletext and TV sale, shall not be included into the annual broadcast time.

### ***Broadcast of an important information***

#### **Article 32**

- (1) In case of war situation or immediate danger to 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 broadcaster shall, 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 peace and order.
- (2) The request as per Paragraph 1 of this Article shall be submitted in writing and needs to contain data which prove its authenticity and legal foundations.

*Although such an obligation should be limited, it can be a bit more generous than currently when the situations where such statements can be requested are limited only to very special circumstances.*

### ***Right to short information***

#### **Article 33**

- (1) Every broadcaster shall have the right, under the equal conditions, to short information about all significant shows and other events which are accessible to the public, except religious ceremony.
- (2) Short information according to this Article shall be considered the information lasting 1 and a half minute at the most which is presented within the news and current affairs programme.
- (3) The organizer of an important event may only ask the broadcaster for paid concession as a form of compensation, if this is anticipated, and a compensation for possible real expenses stemming from the execution of that obligation of the organizer.

*The meaning of anticipated compensation is not clear.*

- (4) The right to short information shall be executed in a manner which does not interrupt the course of events.
- (5) The right to short information may be limited or excluded if its execution would severely hurt the feelings of participants in the event or endanger public peace and order.
- (6) A broadcaster, who used the right to short information, shall enable the broadcaster who could not tape the event a single use of the tape, and shall have the right to ask compensation for that, proportional to his share in the actual costs as well as the mentioning of his name or the name of the company in the announcement.

### ***Right of the public to follow more significant events***

#### **Article 34**

- (1) The television programme broadcaster shall not, based on the received exclusive rights, broadcast an individual event significant for the public of the Republic of Croatia or other European Union member states or signatory states in the international agreement imposing obligations on the Republic of Croatia, in a manner which would prevent a significant part of the audience in the Republic of Croatia from following that event.
- (2) The broadcast as per Paragraph 1 of this Article shall be a direct broadcast of an event or postponed broadcast, entirely or partially, when this is needed for objective purposes or it is in the interest of the public.
- (3) It shall be contrary to this Law if the event as per Paragraph 1 of this Article, based on the received exclusive rights is broadcast by a broadcaster whose television programme may be followed by less than 60% of the population of the Republic of Croatia or an additional payment (pay TV), apart from the fee stipulated by a special law, is needed for the following of that programme.

*The special law should be defined.*

- (4) The Council for Electronic Media shall pass a list with the most significant events as per Paragraph 1 of this Article.

*One set of provisions lacking from this law is anything on access to information. It is possible this is adequately covered by other legislation.*

### *Networking of television and radio programmes*

#### **Article 35**

- (1) Broadcasters may create wider, regional or national programme networks, covering regional or wider areas under the following conditions:
  - that each of the networked broadcasters broadcast in the area for which they were issued radio concession at least two hours of private production daily;
  - that the joint private production of networked broadcasters is produced in the Croatian language, excluding the programme content from the previous Sub-paragraph, and that it amounts daily to at least 25% of the programme contents broadcast via the network;
  - that networked broadcasters create a joint programme basis and written act on the mode of performing the programme basis, and forward both documents to the Council for Electronic Media, for the acquisition of prior consent;
  - that networked broadcasters appoint a responsible editor of the joint programme with a special act, who will be responsible for the broadcast of programme contents in compliance with this law, and forward the act on the appointment to the Council for Electronic Media within 15 days prior to the beginning of broadcast of the joint programme.
- (2) A national network of programmes shall be a television or radio programme from this Article which is accessible to more than 60% of the population of the Republic of Croatia. A regional network of programmes shall be a television or radio programme from this Article which is accessible to more than 70% of the population in the region.
- (3) Regional or national network from this Article, in the sense of programme requirements and limitations from this Article, shall be considered a unique television or radio programme.

## **2. RADIO AND TELEVISION PROGRAMME OF SPECIAL SIGNIFICANCE**

### *Non-profit radio and television programmes*

#### **Article 36**

- (1) A non-profit radio or television programme shall be considered a programme which daily broadcasts at least 30% of its own production of news and current affairs, cultural, educational and entertaining contents.
- (2) Profit from activities in the previous Paragraph may be used by the broadcaster only for the improvement and development of activities.
- (3) The salaries of employees and compensations for members of managerial and supervisory bodies of the broadcaster, and other compensations (travel expenses, per diem, etc.), may not exceed the amount stipulated for public institutions financed from the state budget.
- (4) The status of a non-profit radio or television in compliance with this Law shall be determined by a decision of the Council for Electronic Media when granting or terminating concession.
- (5) The broadcaster of a non-profit radio or television programme may not broadcast promotional messages or teleshop.

#### **Alternative for Paragraph 5:**

- (5) The broadcaster of a non-profit radio or television programme may broadcast promotional messages up to 3 minutes per hour.

*This special definition and special provisions are only relevant if special rules apply for this kind of broadcasting, from this it is not very clear what such special rules are. As there are no rules for amateur radio, it is presumed this will be regulated only in the Telecommunications Law.*

### *Student radio and television programmes*

#### **Article 37**

- (1) The College Student Council may be a broadcaster of radio and/or television programme, if the programme contents are produced and broadcast by students primarily, and they are intended for the student population, and if the activity is performed as a non-profit radio or television programme of the college.

*The College Student Council should be defined. It is a bit unusual to have such rights especially for students only, but nothing wrong with it as such as long as it is clearly defined.*

- (2) Programme contents of a student radio or television shall be information of all kinds and original works which purpose is to inform and satisfy educational, scientific, professional, artistic, cultural and other needs of students and the wider public.
- (3) The Council for Electronic Media shall determine by a decision the status of a student radio or television in the course of granting or termination of concession, in compliance with this Law.

#### **IV. ELECTRONIC PUBLICATIONS**

##### *Electronic publications*

##### **Article 38**

- (1) The provisions of Articles 19, Articles 11-21, Articles 32 and 73 of this Law shall be adequately applied to electronic publications broadcast by legal persons.
- (2) The provisions of Articles 13, 6-9, Articles 12-21 and Article 73 of this Law, shall be adequately applied to electronic publications broadcast by natural persons.
- (3) The persons as per Paragraphs 1 and 2 of this Article shall submit the application for entry into the records of broadcasters of electronic publications, which is kept with the Council for Electronic Media, prior to the first broadcast of the electronic publication.

##### *Broadcast of programme contents of other electronic media*

##### **Article 39**

The broadcast of programme contents of other electronic media via information-communication connections without prior consent of the broadcaster whose programme contents are intended to be broadcast shall be prohibited.

##### *Advertising for the conclusion of a contract*

##### **Article 40**

A broadcaster shall be obliged to clearly indicate the intention to enter a contract in the course of broadcast of promotional contents via information-communication connections, which are intended for direct contractual relations with beneficiaries, as well as clearly warn of financial consequences ensuing for the other party in case of entering a contract.

##### *Protected services*

##### **Article 41**

The broadcast of information and audiovisual services based on individual request, which are accessible exclusively on the grounds of a contract or payment (pay TV, on-demand audio and video services, coded radio and television programmes, etc.) shall be considered a protected service.

##### **Article 42**

- (1) The production, import, distribution, sale, rent or possession of devices or means which enable free access to protected services, regardless of technical performance of the transmission of signal, shall be prohibited without prior permit of the service provider.
- (2) The instalment, maintenance or replacement of devices or means as per Paragraph 1 of this Article, without prior permit of the service provider, shall be prohibited.
- (3) Public broadcast of business communications which promote devices as per Paragraph 1 of this Article shall be prohibited.

##### **Article 43**

- (1) The broadcaster of protected services as per Article 41 of this Law shall be provided with court protection.

- (2) The broadcaster may exercise legal protection and receive damage compensation from the person who violated his rights according to the regulations on damage compensation.  
*It is not clear what special protection this Article is aimed at providing. Court protection sound like what everyone should have.*

## V PROTECTION OF PLURALISM AND DIVERSITY OF ELECTRONIC MEDIA

### *Publicity of ownership*

#### **Article 44**

- (1) By January 31 of each calendar year, broadcasters shall be obliged to forward to the competent ministry 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 possessors 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 competent ministry shall forward a written warning to a legal person which fails to perform the obligation as per Paragraph 1 of this Article, along with the explanation of possible sanctions for the non-fulfilment of the obligation.
- (3) A broadcaster shall be obliged to broadcast the data as per Paragraph 1 of this Article by way of an electronic media, as well as in the Official Gazette.

*It is important that the system for this is in place.*

### *Linked persons*

#### **Article 45**

- (1) Linked persons pursuant to this Law 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 a possibility to direct another person or influence them 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 or extramarital partner;
  - when a person, or persons, possesses 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 Law 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.

*The definitions in paragraph 1 and 2 of this Article and their relationship to one-another are a bit difficult to see. So is the relationship to Article 47. This may be to some extent due to translation matters.*

### *Restriction of concentration*

#### **Article 46**

- (1) Impermissible concentration in the area of media shall exist when:

- the broadcaster of an electronic media, who has concession at the state level, and a share exceeding 20% in the foundation capital of another broadcaster who has the same kind of concession;
- the broadcaster of an electronic media, who has concession at the state level, and shares exceeding 10% in founding capital of another broadcaster who publishes daily newspapers printed in more than 3,000 copies, and vice versa;
- the broadcaster of an electronic media, who has concession at the state level, and shares exceeding 10% in founding capital of a legal person who performs the activity of a newspaper agency, and vice versa;
- the broadcaster of an electronic media who has concession at the state level and simultaneously publishes daily newspapers printed in more than 3,000 copies;
- the broadcaster with a concession at the local or regional level of coverage and with shares exceeding 30% in founding capital of another such broadcaster with the concession at the local or regional level of coverage in the same area;
- the broadcaster who has a concession at the local or regional level of coverage and simultaneously publishes daily newspapers of local importance in the same or in the neighbouring area.

#### **Article 47**

It shall also be considered that impermissible concentration exists in the area of media when, in cases as per Article 46 of this Law, a natural person, who is the founder of the broadcaster who performs the activity of radio and/or television, or a founder, or persons related to him in straight line regardless of the degree of kinship, or a person who is his spouse, has a share in founding capital of another broadcaster who performs the activity of radio and/or television, the founder of the newspapers publisher of a daily newspaper or news agency, above the determined amount of founding capital.

*This definition may be too vague.*

#### **Article 48**

- (1) The Council for Electronic Media shall not grant a concession to the submitter of an offer or a person who applies to a public tender for a concession grant, if it has been determined that the granting of a concession would create impermissible concentration in the sense of this Law.
- (2) Each submitter of an offer or a person who applies to a public tender for a concession grant, shall be obliged to enclose a verified statement along with the offer or application, saying that impermissible concentration in the sense of this Law shall not be created by a possible concession grant.

#### **Article 49**

- (1) The broadcaster of an electronic media shall report in writing on any change in the ownership structure to the Council for Electronic Media and to the Agency for the Protection of Market Competition.
- (2) Should the Agency for the Protection of Market Competition 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 broadcaster to conform his ownership structure, within a certain deadline, in a manner which is not contrary to the provisions of this Law, and it shall inform the Council for Electronic Media about ownership conformity.
- (3) Should the broadcaster of an electronic media fail to comply with the order of the Agency for the Protection of Market Competition, the provisions of this Law stipulating the termination of validity of the concession prior to the expiration of the deadline for which it was granted shall be applied, and the decision on the cancellation of the concession shall be passed by the Council for Electronic Media.

*It is important to have a functioning system for the co-operation between the two bodies.*

#### **Article 50**

- (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 the procedure



of public collection of offers or in a public tender for a concession grant in compliance with this Law.

*Somewhat unclear provision, difficult to see exactly what it aims at. Presumably no general limit on foreign ownership is intended.*

- (2) Should it be subsequently determined that one of the founders of the broadcaster of an electronic media, to whom a concession was granted, is a foreign legal person as per Paragraph 1 of this Article, the provision of Article 49 of this Law shall apply.

*What in Article 49 shall apply? The duty to report?*

#### ***Incompatibility of performance of radio and television activities***

##### **Article 51**

- (1) A particular broadcaster may perform only radio or television activity.

*The motivation for this Article is not obvious.*

- (2) The provision of the previous Paragraph shall not apply if the broadcaster obtains the approval of the Council for Electronic Media on the basis of this Law, in the case that the broadcaster does not perform radio and television activity in the same area.

#### ***Incompatibility of performance of advertising activity and radio and television activities***

##### **Article 52**

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 broadcaster and/or founder of the broadcaster of a radio or television programme, nor can have more than 10% of the ownership of stocks or shares in the capital of the broadcaster of the radio or television programme.

#### ***Incompatibility of performance of telecommunications services and radio and television activities***

##### **Article 53**

An operator, who performs telecommunications services in compliance with a special law, may not be the broadcaster of a radio and/or television programme and may not transmit programme contents or advertisements.

#### ***Protection of competition***

##### **Article 54**

Regulations on the protection of market competition shall apply to broadcasters.

#### ***Shares of foreign persons***

##### **Article 55**

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, unless otherwise stipulated by this Law.

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

##### **Article 56**

- (1) The Fund for Promotion of Pluralism and Diversity of Electronic Media (hereinafter: the Fund) shall be established as a budget fund.
- (2) The sources of financial means for the Fund shall be as follows:
- state budget funds;
  - funds ensured through the provisions of this and a special law;
  - fines charged on the basis of this Law.

*The special law should be defined.*

### **Article 57**

- (1) The Fund's means shall stimulate the production and publishing of programme contents of electronic media at local and regional levels, which are of public interest, and which are particularly important for:
  - the exercise of citizens' [*gradjani*] right to public information,
  - national minorities in the Republic of Croatia,
  - promotion of cultural creativity,
  - development of education, science and arts.
- (2) The Minister shall stipulate the manner, procedure, conditions and criteria for the implementation of the annual public tender for the co-financing of programme contents from the Fund's means.
- (3) The decision on the co-financing of programmes from the Fund's means shall be passed by the Council for Electronic Media.

### **Article 58**

- (1) While registering a vehicle, each owner of a motor vehicle in the Republic of Croatia shall be obliged to pay a fee for the use of a radio receiver, which fee represents an income of the Fund. The amount of the fee shall be 0.5% of the average net monthly salary of employees in the Republic of Croatia, on the basis of statistical data for the previous year.  
*The choice of this way of taking a fee is a bit difficult to understand. Not all cars have radios, furthermore motor vehicle would include motorcycles which are even more likely not to have radios. If it only applies to vehicles with radio receivers, this must be made more clear.*
- (2) The provisions of the Law on the Procedure of Tax Collection shall apply to the calculation and payment of the fee as per Paragraph 1 of this Article, the forcible collection, interests on arrears and other procedural issues.

## **VI THE COUNCIL FOR ELECTRONIC MEDIA**

### **Article 59**

- (1) The Council for Electronic Media (hereinafter: the Council) shall be a legal person and it shall comprise nine members. Members of the Council shall be elected and relieved of duty by the Croatian Parliament. Members of the Council shall be elected to a five-year term. The election of members of the Council shall be conducted on the basis of public tender.  
*The choice of words "public tender" is unfortunate as it sounds like a commercial tender. This may be a translation problem. The problem with the selection process as such is that there would appear to be a risk that it is too cumbersome and takes a long time if anyone can select people – or otherwise that proposals from the general public are not given due consideration.*
- (2) The election procedure shall be initiated by the determination of criteria and public tender by the Committee for Information, Information Technology and the Media of the Croatian Parliament, which shall be published at least 90 days prior to the expiration of the term of the Council's members. The public tender shall invite institutions, associations and citizens [*gradjani*] to submit explained proposals on the candidates for members of the Council. The deadline for the submission of proposals may not be shorter than 15 days or longer than 30 days from the day of publication of the tender.
- (3) The Committee shall consider all submitted proposals on the candidates for members of the Council and forward the proposal of candidates who fulfil the conditions stipulated by this Law to the clubs of representatives for consent.
- (4) The deadline for the consent as per the previous Paragraph shall be 15 days from the day the proposal of candidates was submitted to the clubs of representatives.
- (5) If the clubs of representatives fail to reach an agreement with regard to the proposal of all candidates, the Committee shall determine the remaining number of candidates, taking into account equal representation of candidates proposed by the clubs of the parliamentary majority and the parliamentary minority, respectively.
- (6) The Croatian Parliament shall appoint members of the Council by way of voting on the proposal of the list of candidates compiled in such a manner.



- (7) Only citizens [*državljani*] 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.
- (8) 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.
- (9) State officials may not be members of the Council.
- (10) Broadcasters' employees may not be elected in the Council.

*The wording used in the alternative 4 and 5 is better.*

- (11) Members of the Council may not be persons who are employed with, or perform any other tasks in legal persons which perform the activity of electronic media, i.e. companies which perform the activity of broadcasting of an electronic media, members of their management or supervisory boards, or persons performing tasks which could lead to a conflict of interests.

*There should also be a limitation for close family members of such persons.*

- (12) A member of the Council may only be relieved of duty if:
  - that member does not attend sessions for a period longer than 6 months,
  - the conditions stipulated by the provisions of Paragraphs 9, 10 and 11 of this Article have been created,
  - that member submits a request for the relief of duty,
  - they have been effectively convicted for a committed criminal act.

*There should be a definition of what type of criminal act – not any petty criminal act should for all future disqualify a member.*

#### **Alternative:**

- (1) The Council shall be a legal person and it shall comprise nine members, appointed from the ranks of public educational, cultural, expert and religious figures.
- (2) Members of the Council shall be appointed by the Croatian Parliament upon the proposal of the Government of the Republic of Croatia for a five-year term, whereby they can be re-appointed. In the initial composition of the Council, three members shall be appointed for a three-year term, three members to a four-year term and three members to a five-year term. Members of the Council shall be citizens [*državljani*] of the Republic of Croatia with permanent residence in the Republic of Croatia, and they shall have professional knowledge and abilities in radio or television activities, or in publishing, cultural or similar activity.

*The staged approach with a change of only some members at any one time is a good idea and allows to retain competence.*

- (3) Members of the Council may not be owners, stock holders or possessors 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 Law, pertaining to radio and television.
- (4) A member of the Council may not be a state official, an official in the executive or judicial authority, or an official of a political party.
- (5) Members of the Council may 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 radio and television.
- (6) The following persons may not be appointed members of the Council or, if they have been appointed, they may be relieved of duty:
  - if they do not attend sessions for a period longer than 6 months,
  - if the conditions stipulated by the provisions of Paragraphs 4, 5 or 6 of this Article have been created,
  - if they have been effectively convicted for a committed criminal act.

*Methods must be set out to select members so that the risk of political or economic interference is minimised and no political or other group can dominate the body. The process of appointment*

*should be set out clearly in law. Members should serve in their individual capacity and exercise their functions in the public interest. The process for appointment should be open and democratic, allow for public participation and consultation. Only individuals who have relevant expertise and/or experience should be eligible. Membership should be representative of society. There should be rules on incompatibility, regarding persons with an economic interest in the sector, with political positions or in other positions that would be incompatible with the independent carrying out of their functions in the organ. The terms of appointment should be fixed and there should be guarantees against dismissal. Basically, any rules should be set out in law. This includes both the appointment of the body and its tasks and responsibilities. The funding should be provided in a way that protects the body from arbitrary interference and that guarantees sufficient funds to be able to operate.*

#### **Article 60**

- (1) The Council shall pass decisions by the majority of votes of all members of the Council.
- (2) The Council shall publish an annual report on its work and submit it to the Croatian Parliament.
- (3) Council's decisions on the grants and cancellation of concessions shall be published in the Official Gazette.
- (4) The competent ministry shall perform administrative, expert and technical tasks for the Council.
- (5) The funds for the work of the Council, including the compensation for the work of the members of the Council, shall be provided from the funds collected in the name of the compensation for concession.

*There should be quorum rules for the Council. As decisions must be passed by a majority of all members (5), this may be the quorum but it should say so. There should be a time limit when the report must be presented. As for point 4, that is not clear. The regulatory agency, the Council, should be independent although it will have a relationship with the ministry. The independence of it is however what should be stressed. Finally, the provision on funding is very brief. If the fees are not sufficient, the state budget must provide adequate funding. Furthermore, the fees collected should be for administrative costs and should not be excessive. This is set out by the EU in secondary legislation in the telecommunications field, applying to regulatory agencies (Dir. 2002/20, Authorisation Directive).*

#### **Scope of activities of the Council**

##### **Article 61**

The Council shall:

- conduct the procedure of granting a concession in compliance with this Law and a special regulation;
- pass a decision on the cancellation of concession in cases anticipated by this Law;
- keep records of broadcasters of electronic publications;
- grant the approval as per Article 51, Paragraph 2 of this Law;
- ensure supervision over the implementation of provisions on the programme principles and obligations determined by this and a special law;
- conduct the procedure of determining whether the provisions of this Law are respected or violated;
- submit report to the competent bodies;
- also perform other tasks stipulated by this and a special law.

*As stressed above there must not be any prior control of broadcasts, as this would amount to censorship, but there can and should be monitoring and action taken afterwards if broadcasting violates the standards set out in law. These standards should not be restrictive so that they act as a form of censorship, but the risk of this is reduced if the standards are clear and understandable. The regulatory agency monitoring the standards is extremely important in this context, as it is important that the rules are implemented properly, fairly and not too strictly. Only a professional, independent body (appointed in line with previous Articles) that carries out its task in the best possible manner can guarantee the proper functioning of the law.*

*It is crucial is that these objectives are translated into tasks and duties of the Co-ordinating Council as well as of broadcasters. The law will be complemented by rules of procedure and other documents of the regulatory agency. The Council shall not interfere in the activities of broadcasters or challenge their editorial independence but at the same time it must have the effective mechanisms needed to carry out its duties. To make this clear, maybe some more detail could be given in this law. Not least this concerns the monitoring and sanctions.*

*The right for inspection by the regulatory agency is also important as a tool to ensure proper adherence to the law. Inspection should however only be undertaken as a last instance when it is not possible to get sufficient information by other means. There should be clear rules for how inspections are carried out, inspectors must identify themselves and there must in general be guarantees against abuse of power. The possibility to obtain information and the requirement to keep recordings that should be inserted should normally be sufficient to provide information without the need for physical inspection.*

*As far as complaint by the public is concerned, the Council should set up a mechanism for such complaints to be made. This procedure does not have to be stated in the law, but it is important that it is created so that in practice people know how to make complaints. A complaint-driven monitoring process is to be preferred to one mainly based on monitoring by the authority. The Council should have the possibility to decide on sanctions for different violations of the law and the licence. This is an important instrument for the regulatory agency to make sure the law is properly implemented. There must be sufficient legal guarantees for the sanctions as well as possibilities of appeal.*

***The procedure of granting a concession for the performance of radio and television activity***

**Article 62**

- (1) The Council shall announce a public tender for the granting of a concession for the performance of radio and television activities on the technical basis which shall be determined according to a special regulation.
- (2) The content and procedure of the public tender as per Paragraph 1 of this Article shall be stipulated by the Minister.

***This presumes co-ordination with the frequency body, for available frequencies.***

- (3) An offer for the public tender as per Paragraph 1 of this Article shall contain evidence on the fulfilment of conditions stipulated by the tender, a programme basis in compliance with this Law, data on the ownership structure of a legal person submitting the offer, personal data on the company and its seat, 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.
- (4) The Council shall pass a decision on the grant of a concession after the conducted procedure of public tender as per Paragraph 1 of this Article and the conducted procedure of determining the existence of conditions for the grant of a concession.
- (5) A decision as per the previous Paragraph shall contain the following:
  - description of activities which will be performed,
  - level and area of concession,
  - deadline for conclusion of the contract on concession,
  - consequences for non-compliance with the deadline for conclusion of the contract on concession.

**Entering a contract on concession**

***It appears a better term in English would be Licence***

**Article 63**

- (1) The right to broadcast radio and television activities shall be obtained on the basis of a decision on the grant of a concession and the entered contract on concession.
- (2) The Council shall enter a contract on concession on the basis of the decision on the grant of a concession.
- (3) If the contract on concession is not entered within the deadline determined in the decision on the grant of a concession, the Council shall annul the decision on the granted concession, while the legal person shall not have the right to the compensation of damage.
- (4) The contract on concession shall contain, apart from the conditions important for the exercise of the concession, the programme basis and other conditions from the offer for the grant of a concession.

#### ***Area and duration of a concession***

##### **Article 64**

- (1) The area of a concession may be at the national, regional and local level.
- (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 10 years.  
*It may be good also to have a minimum time.*
- (4) A fee shall be paid for the concession.
- (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.

##### **Article 65**

- (1) The Council shall pass a decision on temporary or permanent cancellation of a concession of a broadcaster, who performs a radio and/or television activity, if it has determined:
  1. that the concession was obtained on the basis of incorrectly presented data of importance for the passing of a decision on the grant of a concession;
  2. that the broadcaster has not started to exercise the concession within the deadline determined by the contract on concession or he does not respect the technical conditions from the contract on concession for a period longer than 6 months since the beginning of the exercise of the concession, or if he stops exercising the concession for a period longer than 48 hours;
  3. that the broadcaster performs an activity, intentionally and repeatedly after the third warning by the Council or the competent ministry, contrary to the provisions of this Law and the regulations adopted on the basis of this Law or of the contract on concession;
  4. that the broadcaster no longer fulfils the conditions for the performance of activities as per Article 10 of this Law;
  5. that the broadcaster fails to adhere to a minimum of 70% of the programme basis, even after receiving a warning by the Council;
  6. that the broadcaster failed to pay the concession fee within a determined deadline, even after receiving a warning;
  7. that the broadcaster failed to forward information on the change of data as per Article 49, Paragraph 1 of this Law within a determined deadline, even after receiving a warning by the Council;
  8. that he failed to obtain the approval of the competent association for collective exercise of copyrights and other relevant rights within a determined deadline, even after receiving a warning by the Council;
  9. that the broadcaster publishes programme contents as per Article 66, Paragraph 1 of this Law despite a decision by the Council.

- (3) No appeal shall be allowed against a decision as per Paragraph 1 of this Article, but an administrative dispute may be initiated.

*As this concerns a right of individuals it is important that there is a system of appeals. This must consist of an independent body reviewing the case. If this requirement is met though the administrative dispute procedure, this may be sufficient. If not – the provision may have to be adjusted.*

- (3) A concession shall expire in the following cases:
1. upon expiration of the period for which it was granted;
  2. if the broadcaster renounces the concession;
  3. by the cessation of the legal person of a broadcaster;
  4. if the broadcaster was prohibited by an effective decision of the court to perform activities for which the concession was granted;
  5. by mutual termination of the contract on concession.
- (4) The contract on concession 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.

*Licences may be subject to terms and conditions, both general and specific. Conditions will be set out in the licence. These must be based on law. The conditions should be proportional and relevant. They must not be changed arbitrarily. The law should set out in clear even if in rather general terms the factors to be taken into account when determining whether or not to issue a licence. This is what the law should reflect.*

*Nothing is said about transfer of a licence. This requires approval of the regulatory authority and can be limited to certain specific situations. As the regulatory agency has the task of verifying that the applicant meets certain criteria, the licence issued is issued to one specific subject on the basis that this subject meets criteria, and the licence cannot consequently simply be handed over to another subject.*

#### **Article 66**

- (1) Exceptionally to the provision of Article 8 of this Law, the Council may temporarily restrict the freedom of transmission of programme contents from other countries, if the following conditions have been fulfilled:
- if the content of a television programme which is transmitted from another member state of the European Union, openly, seriously and severely violates the provisions of stipulated programme conditions and principles pertaining to the protection of minors from serious violation of their physical, mental and moral development, especially if the programme contents include pornography and violent behaviour;
  - if it has determined that the contents of a television programme probably violate physical, mental and moral development of minors, except in the case when it has been ensured, by the selection of time for their broadcast or by other technical measures, that minors in the broadcasting area cannot normally hear or see such programme contents;
  - if the programme entices hatred towards another race, sex, religion or ethnicity;
  - if the broadcaster acted at least twice in the sense of the above-mentioned Sub-paragraphs in the last 12 months;
  - if a member state of the European Union informed the broadcaster and the Commission of the European Union in writing about the determined violations as per this Article and about the measures it will undertake should such violations happen again;
  - if consultations with a member state of the European Union from which the transmission of programme is conducted and with the Commission of the European Union failed to contribute to the peaceful solution within 15 days from the day the information from the previous Sub-paragraph was received, and the stated violations have continued.

- (2) The Council shall cancel the concession from a broadcaster who broadcasts programme contents as per Paragraph 1 of this Article despite a decision by the Council.

*As paragraph 1 only talks about programmes from other countries, does this also apply to this paragraph?*

### ***Renewal of the concession***

#### **Article 67**

- (1) The Council may, at the request of the broadcaster, pass a decision on the renewal of the concession for the following period, without inviting a public tender, if the broadcaster performs an activity in compliance with the regulations and the contract on concession.
- (2) The broadcaster must submit a request for the renewal of the concession to the Council for Electronic Media at least 60 days prior to the expiration of duration of the concession.
- (3) A contract on concession shall be entered on the basis of a decision of the Council as per Paragraph 1 of this Article.

*What are the periods? Same as for original licence?*

## **VII SUPERVISION**

### **Article 68**

Administrative supervision over the performance of radio and television activities and the publishing of electronic publications shall be conducted by the competent ministry.

*The meaning of this must be clarified. The regulatory agency should be independent and perform supervision. The role of the Ministry should normally be that of a policy maker.*

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

### ***Prohibition of performance of activities***

#### **Article 69**

- (1) A broadcaster may not publish programme contents if he does not fulfil the conditions as per Article 5 of this Law.
- (2) The competent Ministry may prohibit the performance of activities of a broadcaster as per Paragraph 1 of this Article and seize his operation equipment, products and the material which was used for the performance of activities.

*See what has been said above about the role of the Council.*

## **IX OFFENCE PROVISIONS**

### **Article 70**

- (1) A fine of up to 100,000.00 HRK shall be imposed on a legal person for an offence, if it acts contrary to the provisions of:
  1. Article 5, or
  2. Article 11, Paragraph 4, or
  3. Article 12, Paragraph 2, or
  4. Article 13, Paragraph 1, Sub-paragraphs 1, 2 or 3, or Paragraph 2, or
  5. Article 15, Paragraph 2, Sub-paragraph 4, or
  6. Article 16, or
  7. Article 17, Paragraph 1, or
  8. Article 18, Paragraphs 1, 2 or 6, or
  9. Article 19, Paragraphs 1 or 2, or
  10. Article 20, Paragraph 2, Sub-paragraphs 1, 2 or 3, or
  11. Article 21, Paragraphs 1, 2, 3, 4 or 5, or
  12. Article 22, Paragraphs 3, 4, 6, 7 or 8, or
  13. Article 24, Paragraphs 1 or 2, or
  14. Article 25, Paragraphs 1 or 2, or
  15. Article 27, Paragraph 1, or
  16. Article 29, Paragraphs 1 or 2, or
  17. Article 31, Paragraphs 2 or 3, or
  18. Article 32, Paragraph 1, or



19. Article 34, Paragraph 1, or
  20. Article 35, Paragraph 1, Sub-paragraphs 1, 2 or 3, or
  21. Article 36, Paragraphs 1 or 5, or
  22. Article 44, Paragraph 2, or
  23. Article 49, Paragraph 1, or
  24. Article 63, Paragraph 5.
- (2) A responsible person in the legal person shall also be fined for an offence as per Paragraph 1 of this Article with a fine of up to 10,000.00 HRK.
- (3) If a natural person commits an offence as per Paragraph 1 of this Article, he/she shall be punished with a fine of up to 10,000.00 HRK.

#### **Article 71**

- (1) A fine of up to 80,000.00 HRK shall be imposed on a legal person for an offence, if it acts contrary to the provisions of:
1. Article 38, Paragraph 3, or
  2. Article 39, or
  3. Article 42, Paragraphs 1, 2 or 3, or
  4. Article 50, Paragraph 1, or
  5. Article 52.
- (2) A responsible person in the legal person shall also be fined for an offence as per Paragraph 1 of this Article with a fine of up to 8,000.00 HRK.
- (3) If a natural person commits an offence as per Paragraph 1 of this Article, he/she shall be fined with a fine of up to 8,000.00 HRK.

*It is important that the regulatory agency has sanctions at hand to ensure proper implementation of the law. It is normal that sanctions go from the more lenient, such as warnings, to the more encompassing like repeal of the licence. It is crucial that there is a clear proportionality of the sanction to the violation.*

### **X INTERIM AND FINAL PROVISIONS**

#### **Article 72**

The provisions of Articles 23, 24, 25, 26, 27, 28, 29, 30 and 33 of this Law shall not apply to television programmes specialized for teleshopping and advertising.

#### **Article 73**

- (1) Broadcasters of electronic media shall be obliged to conform their work, business operations and general acts to the provisions of this Law within 6 months from the day of coming into force of this Law.
- (2) Special regulations shall apply to the rights, obligations and responsibilities of broadcasters and journalists, the broadcasting of press releases and corrections and the issues of programme content which are not regulated by this Law.

*The meaning of this is not clear.*

#### **Article 74**

- (1) The Council for Radio and Television, established pursuant to a special law, shall continue with its activities pursuant to the provisions of this Law until the appointment of the Council for Electronic Media in compliance with this Law.
- (2) The mandate of members of the Council for Radio and Television shall cease on the day of appointment of the Council for Electronic Media.

*It should be stated if members may be members of the new body. Also it must be made very clear that decisions (and licences) of the previous body remain in force.*

#### **Article 75**

By the coming into force of this Law, the provisions of Chapter XII Radio and Television of the Law on Telecommunications ("Official Gazette", No. 76/99, 128/99, 68/01 and 109/01) shall

cease to be valid, except for the provisions on determination and publishing of frequency plans and the drafting of a technical basis on the part of the Croatian Institute for Telecommunications.

*It is important that it is very clear which provisions stay in force and how they related to one-another.*

#### **Article 76**

This Law shall come into force on the eighth day from the day of its publication in the “Official Gazette”.