

## **Act CLXXXV of 2010**

### **ON MEDIA SERVICES AND MASS MEDIA \***

Parliament, upon recognition of the interests of the community and the individual, with a view to the promotion of the integrity of society and with a view to fortifying the appropriate functioning of democracy and the national and cultural identity, upon respecting the Constitution, the constitutional principles, and the norms of international law and the European Union, by taking into consideration the circumstances ensuing from technological development, by preserving the freedom of expression and the press, by recognizing the prominent cultural, social and economic importance of media services and the importance of ensuring competition on the media market, has adopted the following Act on media services and mass media:

#### **PART I**

#### **GENERAL PROVISIONS**

##### **CHAPTER I**

##### **SCOPE OF THE ACT**

##### **Article 1**

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

(2) Under this Act the media content provider shall qualify as a media content provider established within the territory of the Republic of Hungary if:

a) the distribution of the media service provided by it is carried out on a frequency owned by the Republic of Hungary or the media product is accessible through an electronic communications identifier designated primarily for the users of the Republic of Hungary;

b) its place of central management is located within the territory of the Republic of Hungary and the editorial decisions concerning the media services and the media product are made within the territory of the Republic of Hungary;

c) of the place of central management or the place where the editorial decisions are made only one is located within the territory of the Republic of Hungary, but a

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\* *Parliament adopted the Act at its 20 December 2010 session.*

significant part of the workforce of the media content provider is employed within the territory of the Republic of Hungary;

d) the significant part of the workforce of the media content provider is employed within the territory of the Republic of Hungary and another country as well, but the place of central management is located within the territory of the Republic of Hungary; or

e) of the place of central management or the place where editorial decisions are made only one is located within the territory of Republic of Hungary, but the media content provider commenced its activities within the territory of the Republic of Hungary and has a genuine and continuous connection with the Hungarian economy.

(3) The Act shall also apply to media services provided by a media content provider which does not qualify as a media content provider established in Hungary based on paragraphs (1) and (2) and which does not qualify as a media content provider established in another Member State either, if it uses a satellite up-link situated within the territory of the Republic of Hungary, or it uses the satellite capacity appertaining to the Republic of Hungary.

(4) If, based on paragraphs (1) to (3) it cannot be established whether the media content provider falls within the jurisdiction of the Republic of Hungary or another Member State, the media content provider shall fall within the jurisdiction of the Member State in which it qualifies as established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.

(5) The Act shall apply to media services and media products which do not fall within paragraphs (1) to (4) but are aimed at the territory of the Republic of Hungary or are disseminated or published within the territory of the Republic of Hungary with the conditions stipulated in Articles 176 to 180.

(6) The Act shall apply to the media services and media products which are aimed at the territory of the Republic of Hungary or which are disseminated or published within the territory of the Republic of Hungary by a media content provider, which does not qualify as established in any Member State and to the media service or media product over which no Member State has jurisdiction.

(7) The Act shall apply to the media content provider providing media services or publishing media products falling within the scope of the Act in accordance with paragraphs (1) to (6).

## **Article 2**

(1) In certain instances stipulated herein, this Act shall apply to ancillary media services related to broadcasting services provided within the territory of the Republic of Hungary and to the provider of such services.

(2) In certain instances stipulated herein, this Act shall apply to

a) broadcasting carried out with an electronic communications device installed within the territory of the Republic of Hungary or transmitting to the territory of the Republic of Hungary;

b) the technical activities of the media service provider in connection with the broadcasting stipulated in point (a);

c) the activity of the provider of ancillary media services in connection with the broadcasting stipulated in point (a).

(3) In certain instances stipulated herein, this Act shall apply to natural or legal persons or other organizations with no legal personality and the executive officers of such persons or entities carrying out the activities or providing the services stipulated in paragraph (2) or carrying out any activity or providing any service related thereto.

(4) In certain instances stipulated herein, this Act shall apply to the intermediate service provider carrying out the transmission of the media service or the media product and the services of such provider.

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

## **CHAPTER II**

### **FUNDAMENTAL PRINCIPLES**

#### **Article 3**

Media services may be provided and media products may be published freely, information and opinions may be transmitted freely through the vehicles of mass media, and media services in Hungary and abroad intended for the general public may be accessed freely in the Republic of Hungary. The content of the media service and the media product may be determined freely, but the media service provider and the publisher of media products owes responsibility to comply with the provisions of this Act.

#### **Article 4**

The diversity of media services is of particularly important value. The protection of diversity extends to avoiding the formation of ownership monopolies and any undue

restriction of competition on the market. The provisions of this Act shall be interpreted in consideration of the protection of diversity.

### **Article 5**

The right to providing and receiving information of those living within the territory of the Republic of Hungary and the members of the Hungarian Nation and in connection with this, the development and strengthening of publicity in a democratic society are significant constitutional interests. The provisions of this Act shall be interpreted in consideration of the interests of democratic public opinion.

### **Article 6**

Public service broadcasting is an essential condition of the appropriate functioning of a democratic society. The interests of public services broadcasting shall be considered with particular emphasis in the course of the application of this Act.

### **Article 7**

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

(2) The broadcasters, media service providers, and providers of ancillary media services shall be obliged to operate and provide the electronic info-communication networks, electronic communications services, digital programmes and ancillary media services between each other, in accordance with a series of coordinated technical criteria forming a unified system for the establishment of the necessary connection, the provision of the service directly or with the incorporation of proper interfaces, network parts, elements, devices or services.

### **Article 8**

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

## **PART TWO**

### **GENERAL RULES FOR MEDIA SERVICES AND MEDIA PRODUCTS**

#### **CHAPTER I**

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

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

#### **Article 9**

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

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

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

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

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

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

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

(8) The Media Council of the National Media and Communications Authority (hereinafter: Media Council) shall issue recommendations on the most important conceptual aspects of its enforcement practice concerning the detailed principles governing the ratings in accordance with paragraphs (2) to (7), the signs to be used prior

to and in the course of broadcasting the various programmes and the method of communicating the rating if justified by public interest related to the protection of minors or by the uniform approach to the protection of minors.

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

(10) It shall not qualify as the violation of paragraphs (1) to (7) if the media service provider rates the programme into a higher category than that stipulated by paragraphs (2) to (6).

## **Article 10**

(1) In linear media services

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

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

(c) a programme classified into Category IV may only be aired between 9.00 p.m. and 5.00 a.m. using the proper rating;

(d) a programme classified into Category V may only be aired between 10.00 p.m. and 5.00 a.m. using the proper rating;

(e) a programme classified into Category VI may not be aired;

(f) a preview may not be aired at a time when the programme it introduces or presents may not be aired or at a time when upon the proper rating of such preview it may not be aired;

(g) the preview of a programme classified into Category III may not be aired during the interval of or immediately prior to or subsequent to a programme intended for viewers under the age of twelve;

(h) sports programmes, commercial communications and social advertisements may not be aired at a time when it is foreseeable that upon their proper rating based on its contents, they may not be aired.

(2) In linear media services

(a) a programme may only be aired in compliance with its rating, subject to the exceptions provided by this Act;

(b) the rating of the programme shall be communicated at the time the airing of the programme starts.

(3) In the case of a linear radio media service the rating does not have to be communicated provided that

(a) the programme falling within Categories II and III is aired between 9.00 p.m. and 5.00 a.m.;

(b) the programme falling within Categories IV and V is aired between 11.00 p.m. and 5.00 a.m.

(4) In linear audiovisual media services, at the time the specific programme is aired a sign corresponding to the rating of the programme must also be displayed in the form of a pictogram in one of the corners of the screen so that it is clearly visible throughout the entire course of the programme. In case of programmes falling into Category I it is not necessary to display the sign. In case of a linear radio media service it is not necessary to use a permanent sign.

(5) In case of linear audiovisual media services the continuous display in accordance with paragraph (4) of the sign corresponding to the rating of the programme may be disregarded provided that

a) the programme falling within Categories II and III is aired between 9.00 p.m. and 5.00 a.m.;

b) the programme classified into Category IV is aired between 10.00 p.m. and 5.00 a.m.; or

c) the programme classified into Category V is aired between 11.00 p.m. and 5.00 a.m.

In this case the sign corresponding to the classification of the programme shall be displayed when starting the programme, and at the time the programme continues following the intervals (commercials) of the programme.

(6) Stipulations in points c) to f) and h) of paragraph (1) and in paragraphs (2) and (4) shall not be applicable if the media service holds the programme in an encrypted form and decryption may only be executed by the application of a code, which the media service provider only makes accessible to subscribers over the age of eighteen, or which uses another effective technical solution to prevent viewers or listeners under the age of

eighteen from accessing the media service. If necessary, the Media Council shall issue recommendations in respect of effective technical solutions subsequent to holding a public hearing.

(7) The rating of each and every programme in accordance with Article 9 shall be displayed in a conspicuous manner in the media product or the website or the teletext of the media service provider (provided it has any of these) providing information about the programmes of the media service provider.

### **Article 11**

(1) The provisions in paragraphs (6) to (7) of Article 9 shall be applicable to on-demand media services.

(2) Pursuant to paragraph (2) of Article 19 of Act CIV of 2010 on the fundamental rules of the freedom of the press and media contents (hereinafter: Press and Media Act), the media service provider of on demand media services shall use an effective technical solution to prevent minors from accessing its programmes falling within categories V and VI.

(3) If necessary, the Media Council shall issue recommendations in respect of effective technical solutions in accordance with paragraph (2) subsequent to holding a public hearing.

### **Information Provision Activities**

#### **Article 12**

(1) The information provision activities of media services shall comply with the obligation set forth under Article 13 of the Press and Media Act.

(2) Subject to the nature of the programme the balanced nature of the communication shall be ensured within the given programme or in a series of programmes in the case of programmes appearing regularly.

(3) Save for the explanation of the news, employees of the media service provider appearing regularly in the programmes offering news and political information as presenters, newsmen or correspondents may not add any opinion or evaluative explanation to the political news appearing in the programme aired by any media service provider.

(4) Any opinion or evaluative explanation added to the news shall be made in a form distinguishing it from the news, indicating its nature as such and identifying its author.

## **Parliament Broadcasts**

### **Article 13**

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

(2) The output sign of the closed circuit system shall be made accessible to all media service providers. The costs of accessing the system shall be borne by the media service provider.

(3) The provisions in paragraphs (1) and (2) are without prejudice to the right of any media service provider to broadcast or record a programme from the designated area in the Parliament building.

(4) A copy of the recorded output signal accessible to any person shall be deposited with the Library of Parliament and the National Széchényi Library (Országos Széchényi Könyvtár). The Library of Parliament shall ensure that the recorded copy may be viewed and that any person may make a freely usable copy against payment of the required fee. A copy shall also be deposited with archives of the Media Service Funding and Asset Management Fund (hereinafter: Fund).

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

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(2) The output sign of the closed circuit system must be made accessible to each and every media service provider. The media service provider shall be responsible for the costs of accessing the system.

(3) The provisions in paragraphs (1) and (2) are without prejudice to the right of the media service provider to broadcast or record a programme from the designated area in the Parliament building.

(4) A copy of the recorded output signal accessible to anyone shall be deposited with the Library of Parliament and the National Széchényi Library (Országos Széchényi Könyvtár). The Library of Parliament shall ensure that the recorded copy may be viewed and that anyone may make a freely usable copy in return of a payment. A copy shall also be deposited with archives of the Media Service Funding and Asset Management Fund (hereinafter: Fund).

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

### **Providing a Warning on Offensiveness**

#### **Article 14**

The viewers or listeners shall be given a forewarning prior to broadcasting any image or sound effects that may potentially infringe a person's religion, faith related or other philosophical convictions or which are violent or otherwise disturbing.

### **Managing crisis situations in the provision of media services**

#### **Article 15**

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

### **Exclusive broadcasting rights**

#### **Article 16**

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

(2) The Media Council shall designate for the purposes of the audiovisual media service providers defined in paragraph (1), the events of considerable importance to society in an administrative resolution subsequent to a public hearing. In this resolution the Media Council shall also establish whether the events of considerable importance to society should be broadcast live or subsequently. In the course of adopting the resolution it should also be given consideration that a wide range of viewers should show interest in the event classified as one of considerable importance, and that the event should be a world- or Europe-wide event, or one with Hungarian significance, which, save for events exclusively of Hungarian significance, is aired in a significant number of European countries.

(3) The Media Council shall, in the form of a decree, inform the audiovisual media service providers on the initiation of the administrative proceedings referred to in paragraph (2). The notice shall only contain the subject and the short description of the case. The Media Council shall issue the notice through public notification. Only the clients participating in the proceedings may exercise their rights as clients in such administrative proceedings.

(4) The Media Council shall issue its administrative resolution defined in paragraph (2) through public notification.

(5) The Media Council may amend its administrative resolution under paragraph (2) in accordance with the discretionary criteria defined in paragraph (2). The provisions of paragraph (4) shall apply to the notification of the amended resolution.

(6) In the course of the judicial review of the resolutions defined in paragraphs (2) and (5) filing the statement of claim shall not have a suspensive effect on the enforcement of the resolution and the court cannot suspend the enforcement of the resolution challenged by the statement of claim. The resolution shall be enforced immediately irrespective of the filing of the statement of claim.

(7) Paragraph (1) and paragraph (1) of Article 18 shall not be applicable to the notification of the first resolution issued under paragraph (2) and the notification of its subsequent amendment.

## **Article 17**

(1) The exclusive broadcasting right shall not be exercised so as to deprive a substantial part of the audience in a Member State from following events, via an audiovisual media service, regarded to be of considerable importance to such audience and appearing on a list compiled and published in advance by the Member State concerned.

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

#### 18. §

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

(2) Any media service provider who acquired exclusive rights for the audiovisual broadcasting of an event that has been designated in accordance with the applicable international regulations as being of considerable importance to society by any State being a party to the Protocol on the amendment of the European Convention on Transfrontier Television signed in Strasbourg on 5 May 1989, promulgated by Act XLIX of 1998, shall be required to make a contract proposal – subject to reasonable terms and conditions and in exchange for consideration appropriate under the prevailing market conditions – to a major foreign provider of audiovisual media services, who falls within the jurisdiction of that State, complies with the requirements defined by that State, and is accessible without a subscription fee by at least eighty percent of the citizens of that State by taking any and all broadcasting techniques into consideration, when approached by such a provider concerning the broadcast of the said event.

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

(4) The parties concerned shall agree on the detailed terms and conditions of the contracts defined under paragraphs (1) to (3).

(5) In the cases specified under paragraphs (1) to (3) the parties concerned shall be subject to an obligation to contract. In the event the parties fail to reach an agreement or fail to agree on the fees within fifteen days subsequent to an offer having been made, the offer or the media service provider with the exclusive broadcasting rights may initiate the dispute resolution proceeding stipulated in Articles 172 to 174. The Media Council shall resolve over such dispute within fifteen days. The time available for resolving the dispute may be extended by fifteen days where justified.

(6) The records of the Media Council shall be applicable as to the accessibility of the media services for the purposes of Articles 16 and 18.

### **Short news reports**

#### **Article 19**

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

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

(3) In the cases specified under paragraph (1) the parties concerned shall be subject to an obligation to contract. The contract shall be entered into upon reasonable terms and conditions. The consideration in exchange for the right of access may not exceed the costs arising directly as a result of providing access. In the event the parties fail to reach an agreement within fifteen days subsequent to an offer having been made, any of the parties may initiate the dispute resolution proceeding stipulated in Articles 172 to 174. The Media Council shall resolve over such dispute within fifteen days. The time available for resolving over the dispute may be extended by fifteen days where justified.

(4) The audiovisual media service provider, which obtained a right of access may freely select the parts of the programme it intends to use for the purposes of the brief news report.

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

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

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

## **Programme quotas**

### **Article 20**

(1) The media service provider

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

b) shall devote over ten percent of its annual programme time of linear audiovisual media services to broadcasting European works, and at least eight percent of its programme time to broadcasting Hungarian works which were made upon its assignment by producers independent from the media service provider or were purchased from such producers within five years of their production;

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

(3) Public media service providers shall devote

(a) over sixty percent of their annual programme time of linear audiovisual media services to broadcasting European works;

(b) over half of their annual programme time of linear audiovisual media services to broadcasting Hungarian works;

(c) over one-third of their annual programme time of linear audiovisual media services for works which were made upon their assignment by producers independent of

the public media service provider or that were purchased from such producers within five years of their production;

(d) over one-quarter of their annual programme time of linear audiovisual media services for works which made upon their assignment by Hungarian producers independent of the public media service provider or that were purchased from such producers within five years of their production.

### **Article 21**

(1) In linear radio media services at least thirty-five percent of the programme time dedicated to broadcasting pieces of music shall be devoted to broadcasting Hungarian pieces of music.

(2) At least twenty-five percent of the Hungarian pieces of music to be broadcasted in linear radio media services shall be from pieces of music released within five years or produced within five years.

### **Article 22**

(1) The rules stipulated in Articles 20 and 21 shall not apply to

(a) media services exclusively for advertising purposes and media services for broadcasting teleshopping;

(b) media services exclusively promoting the media service provider or another media service of the media service provider;

(c) the media service which broadcasts its service exclusively in a language different from that of the Member States of the European Union; where programmes are broadcasted in this language or languages most of the time, the rules shall not be applicable to the given part of programme time;

(d) the local media service with the exception of community media service;

(e) to the media service which is exclusively broadcasted in countries outside of the European Union.

(2) The media service provider may, upon its request addressed to the Media Council, also attain the ratios defined in Article 20 and 21 gradually, in a manner stipulated in an administrative contract with the Media Council. Such an exemption in an administrative contract may only be authorized for a maximum of three calendar years upon the condition that the media service provider must gradually increase the ratio of broadcasted Hungarian and European works and works produced by an independent producer until it reaches the prescribed ratios.

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

(4) Save for the case stipulated in paragraph (3), no general exception may be granted from abiding by the rules concerning programme quotas.

(5) The ratios defined in administrative contracts entered into on the basis of Articles 20 and 21 and paragraph (2) and (3) shall also prevail in the course of the programme time of media services between 5.00 a.m. and 12.00 p.m.

(6) Media service providers providing more than one service shall attain the ratios defined in the administrative contracts entered into on the basis of Articles 20 and 21 and paragraph (2) and (3) on average in the course of the consolidated programme time of all of their media services.

(7) Programme time devoted to news programmes, sports programmes, games, commercials, teleshopping, political advertisements, public service announcements, sponsor communications, social advertisements and the teletext shall not be considered in the course of determining the total transmission time under Article 20 and 21.

(8) The media service provider shall provide data by the 31<sup>st</sup> of May each year to the Media Council for the verification of compliance with the provisions concerning programme quotas. The reasoned request for exceptions for the upcoming year in accordance with paragraphs (2) and (3) shall be lodged with the Media Council by the 30<sup>th</sup> of September each year at the latest. In the case of a new media service, the request may be lodged at the same time when the registration procedure is initiated.

## **Commercial communications**

### **Article 23**

The provisions stipulated in paragraphs (1) to (7) of Article 20 of the Press and Media Act shall also be applied to commercial communications broadcasted in media services.

### **Article 24**

(1) The commercial communication broadcasted in the media service

(a) may not infringe upon human dignity;

(b) may not contain and may not support discrimination on grounds of gender, racial or ethnic origin, nationality, religion or philosophical conviction, physical or mental disability, age or sexual orientation;

(c) may not directly invite minors to purchase or rent a certain product or to use a service;

(d) may not directly call on minors to persuade their parents or others to purchase the advertised goods or to use the advertised services;

(e) may not exploit on the special trust minors towards their parents, teachers or other persons or the inexperience of and credulity of minors;

(f) may not unreasonably show minors in dangerous situations;

(g) may not express religious, conscientious or philosophical convictions except for commercial communications broadcasted in thematic media services concerning a religious topic;

(h) may not infringe upon the dignity of a national symbol or a religious conviction.

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

(a) may not be aimed specifically at minors;

(b) may not show minors consuming alcohol;

(c) shall not encourage immoderate consumption of such beverages;

(d) shall not depict immoderate alcohol consumption in a positive light and refraining from alcohol consumption in a negative light;

(e) shall not show exceptional physical performance or the driving of vehicles as a result of the consumption of alcoholic beverages;

(f) may not create the impression that the consumption of alcoholic beverages contributes to social or sexual success;

(g) may not claim that the consumption of alcoholic beverages has stimulating, sedative or any other positive health effects or that alcoholic beverages are a means of resolving personal conflicts;

(h) may not create the impression that immoderate alcohol consumption may be avoided by consuming beverages with low alcohol content or that high alcohol content is a positive attribute of the beverage.

### **Article 25**

The person who orders the publication of the commercial communication and the person who has an interest in such publication shall not exert editorial influence over the media service except for the date of publication.

### **Sponsorship media services and programmes**

#### **Article 26**

(1) Provisions of paragraphs (8) to (10) of Article 20 of the Press and Media Act shall be applicable to the sponsorship of media services and programmes.

(2) In the case of a sponsored media service or programme the identification of the sponsor pursuant to paragraph (8) of Article 20 of the Press and Media Act may take place by reference to the name or the trademark of the sponsor or another enterprise designated by it, or by the publication or use of a symbol of the sponsor or another enterprise designated by it, or by reference to its product, activity or service or the publication or use of the distinguishing sign or logo of the aforesaid.

(3) The publication under paragraph (2) may take place simultaneously with the programme, prior to the programme and subsequent to the end of the programme in a manner not infringing upon the nature and content of the sponsored programme.

#### **Article 27**

(1) The following entities shall not be entitled to sponsor a media service or a programme:

- a) parties or political movements;
- b) undertakings engaged in the manufacturing of tobacco products.

(2) In addition to the provisions of point (b) of paragraph (1), the undertaking, which, as its core business, manufactures products that may not be advertised pursuant to the provisions of this Act or under any other provisions of law or which provides services related to such a product may not sponsor a media service or a programme by the display or promotion of such products or services.

(3) The prohibition stipulated in paragraph (7) of Article 20 of the Press and Media Act shall not apply to the sponsorship tied to the publication of the name and trademark of an undertaking in connection with a drug or a therapeutic method, or

sponsorship tied to the promotion of medications, therapeutic products or methods, which may be used without a medical prescription. Programmes sponsored by an undertaking engaged in the manufacture or distribution of drugs, therapeutic products or the supply of therapeutic methods may not promote drugs, therapeutic products or therapeutic methods accessible upon medical prescriptions only.

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

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

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

## **Article 28**

(1) The following may not be sponsored in an audiovisual media service:

- (a) news programmes and political information programmes;
- (b) programmes reporting on the official events of national holidays.

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

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

## **Article 29**

Paragraphs (8) to (10) of Article 20 of the Press and Media Act shall not apply to thematic media services exclusively specialising in the ordering of goods or services.

## **Product display in programmes**

### **Article 30**

(1) Save for the exceptions provided in paragraph (2), product display in media services shall be prohibited.

(2) Product display in programmes shall be allowed

(a) in the case of a cinematographic works intended for showing in movie theatres; cinematographic works or film series intended for showing in media services; sports programmes and entertainment programmes;

(b) in the case of programmes other than the ones stipulated in point (a), provided that the manufacturer or distributor of the product concerned, or the provider or agent of the service concerned does not provide the producer of the given programme with any financial reward either directly or indirectly with the exception of making available a product or service free of charge for the purpose displaying the product.

(3) No product display shall take place

(a) in a news programme and political information programme;

(b) with the exception of the instance stipulated in point (b) of paragraph (2) in a programme specifically for minors under the age of fourteen;

(c) in a programme reporting on the official events of national holidays

(d) in a programme of religious or ecclesiastic content.

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

(a) tobacco products, cigarettes or other products originating from undertakings, the primary activity of which is manufacturing or selling cigarettes or tobacco products;

(b) products that may not be advertised on the basis of this Act or other legislation;

(c) pharmaceutical products, therapeutic products or methods, which may only be used upon medical prescriptions.

### **Article 31**

(1) Programmes containing product displays shall comply with the following requirements:

(a) their content – and in the case of a linear media service its sequence of programmes – may not be influenced so as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not call upon the purchase or rent of a product or the use of a service;

(c) they shall not give undue prominence to the product so displayed, which does not otherwise stem from the content of the programme.

(2) Viewers must receive unequivocal information on the fact that a product is being displayed. At the beginning and at the end of the programme including the product display and when the programme resumes after an advertising break, attention must be drawn to the product display in an optical or acoustic form.

(3) The obligation stipulated in paragraphs (1) and (2) shall not apply to those programmes which were not produced or ordered by the media service provider or another media service provider or program producing company operating under the controlling share of its owner.

(4) The Media Council may issue guidelines concerning the compliance of the product display and the calling of attention thereon to the conditions stipulated in this Act subsequent to holding a public hearing if necessary.

### **Political advertisements, Public Service Announcements, social advertisements**

#### **Article 32**

(1) The person or entity ordering political advertisements, public service announcements, social advertisements, and the person or entity who has an interest vested in the publication of such advertisements or announcements shall not exercise editorial influence over the media service.

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

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

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

(3) During election campaign periods political advertisements may only be published in accordance with the provisions of Acts concerning the election of members of Parliament, members of the European Parliament, representatives of local and county

governments, mayors and the election of minority local governments. Outside of election campaign periods, political advertisements may only be published in connection with referendums already ordered. The media service provider shall not be responsible for the content of political advertisements. If the request for the publication of the political advertisement complies with the provisions of the Act on election procedure, the media service provider must publish the advertisement without discretion.

(4) The person or entity ordering the publication of the political advertisement, public service announcement and social advertisement shall unequivocally be identified in the course of publication.

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

(6) The public or community media service provider or the media service provider with significant powers of influence shall publish the public service announcement of the professional disaster management agency if it provides information on the potential occurrence of danger to safety of life or property, on the alleviation of the consequences of an event that has already occurred or on the tasks to be carried out. The publication shall take place in the media service of the media service provider which has the highest audience share per year on average and as defined by the media service provider, with the exception of the instance stipulated in paragraph 6 of Article 36. The obligation of publishing shall also apply to the media service provider of the local media service operating in the coverage area where the events are taking place.

(7) The duration of a public service announcement may not exceed one minute. This restriction shall not apply to public service announcements under Article 15 and paragraph 6.

(8) Upon the request of the media service provider the Media Council shall decide by an administrative resolution whether the announcement in respect of which the request is lodged qualifies as a public service announcement, a social advertisement or a political advertisement. The Media Council shall issue its resolution within fifteen days after having received the request, against the payment of an administrative service fee.

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

### **Advertising and teleshopping in linear media service**

### **Article 33**

(1) The method of distinction of advertisements and teleshopping from other media content in linear media services

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

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

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

(2) In linear media service the advertisement or teleshopping broadcasted by interrupting the programme - taking natural breaks, the duration and nature of the programme into consideration - may not unnecessarily infringe upon the coherence of the programme or infringe upon the rights or legitimate interests of the holder of the copyrights and the related rights to the programme

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

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

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

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

(d) has religious or ecclesiastic content, save for cinematographic works,

may not be interrupted with advertisements or teleshopping.

(4) The average volume or the volume which may be perceived by the viewer or the listener of advertisements or teleshopping broadcast in a linear media service, and the acoustic notice indicating the broadcasting of advertisements or teleshopping may not be louder than the volume of neighbouring programmes.

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

(6) Virtual or split screen advertisements cannot be aired in a programme broadcast in a linear audiovisual media service, which

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

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

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

(d) has religious or ecclesiastic content;

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

(7) Split screen advertisements may only be aired in a linear audiovisual media service well separated from the programme visually, in a clearly recognizable manner, on half of the screen at most, indicating the nature of the advertisement on the screen in a well visible manner.

#### **Article 34**

(1) Advertisements, with the exception of split screen advertisements and virtual advertisements in sports programmes and other programmes which feature natural breaks broadcasted in a linear media service may only be aired during such breaks.

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

#### **Article 35**

(1) The duration of advertisements broadcast in linear media services may not exceed twelve minutes within any 60-minutes period from the hour to the hour, including split screen advertisements, virtual advertisements, teletext with advertisements and the promotion of the programmes of other media services subject to the exception provided for in point (e) of paragraph (2).

(2) The time restriction defined in paragraph (1) shall not apply to

(a) teleshopping windows;

(b) political advertisements;

(c) public service announcements;

(d) social advertisements;

(e) previews on the programmes of the media service or the programme of another media service operating under the controlling share of the given media service provider or its owner;

(f) sponsor announcements as defined in paragraph (2) of Article 26;

(g) product displays;

(h) teletext, if broadcast in local media service;

(i) virtual advertisements, which appear in programs which were not produced or ordered by the media service provider or another media service provider or program producer undertaking operating under the controlling share of the given media service provider or its owner.

(j) media service providers solely broadcasting advertisements and teleshopping;

(k) linear media service providers solely engaged in the promotion of the media service provider or another service of the media service provider;

(l) announcements solely for the purpose of advertising the media service itself or he products complementing the programmes broadcast in the media service.

(3) The transmission time used for broadcasting teleshopping windows may not exceed three hours each calendar day, not including the transmission time of the thematic media service broadcasting teleshopping windows.

## **Advertisements and Public Service announcements in public and community media service**

### **Article 36**

(1) The duration of the advertisements and teleshopping broadcasted in the linear media service of the public media service provider may not exceed eight minutes within any 60-minutes period from the hour to the hour. The duration of the advertisements and teleshopping broadcast in the linear media service of the community media service provider may not exceed six minutes within any 60-minutes period from the hour to the hour.

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

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

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

(5) Split screen advertisements and virtual advertisements may only be aired in public and community media services in conjunction with the broadcast of sports programmes.

(6) The public media service provider shall be obliged to reserve two minutes of the programme time for the broadcasting of public service announcements from every two hours (from the hour to the hour) of the entire annual duration of its media service which has the highest audience share per year on average. This provision shall not apply to the period from the hour to the hour when a programme longer than two hours, which by its nature may not be interrupted, is broadcast. In absence of a request for the broadcast of a public service announcement this period may also be used for other programmes. The public media service provider shall be obliged to broadcast the public service announcement under paragraph (6) of Article 32 by interrupting its programme if justified on the basis of the decision of the disaster management agency and such decision was communicated to the media service provider in due time. The obligation stipulated in this paragraph shall also apply to the provider of the community media service.

## **Publication obligation**

### **Article 37**

(1) The media service provider shall make available to the public at all times

(a) its name or business name;

(b) its address or registered seat or mailing address;

(c) its electronic mailing address;

(d) its telephone number;

(e) the name and address of the regulatory or supervisory authorities that have jurisdiction to carry out a proceeding against it upon violation of rules concerning media governance;

(f) the name and address of the professional self-regulatory bodies authorized by it to proceed against it.

(2) The media service provider shall be obliged to publish the data defined in paragraph (1) on its website and teletext page concerning its media services provided it has any such website or teletext page. In the case of on-demand media service these data shall also be published at the access point of the media service. Moreover, the media service provider shall also be obliged to ensure that interested parties may receive information on the data defined in points (a) to (c) and (e) to (f) over the telephone as well.

### **The public interest obligations of media service providers with significant powers of influence**

#### **Article 38**

(1) Linear audiovisual media service providers with significant powers of influence (hereinafter: SPI) shall be obliged to broadcast a news programme or general information programme of at least fifteen minutes in duration on each and every business day between 7 a.m. and 8:30 a.m., and a news programme of at least twenty minutes in duration on each and every business day between 6 p.m. and 9 p.m. without an interruption. SPI linear radio media service providers shall be obliged to broadcast a separate news programme or general information programme of at least fifteen minutes in duration on each and every business day between 6:30 a.m. and 8:30 a.m. without an interruption. News content or reports taken over from other media service providers, or news content or reports of a criminal nature, which do not provide information to the democratic public shall not be longer in duration on a yearly average than twenty percent of the duration of the news programme.

(2) The SPI linear media service provider shall be obliged to meet the obligation stipulated in paragraph (1) hereof and paragraph (6) of Article 32 in its media service with the highest annual average audience share.

(3) The SPI linear media service provider shall be obliged to ensure in the course of any and all of its media services broadcast digitally, that at least one quarter of the cinematographic works and film series originally produced in a language other than Hungarian broadcast between 7 p.m. and 11 p.m. shall be available in their original language, with Hungarian subtitles, including programmes starting before 11 p.m. but finishing later.

## **Programmes accessible to people with a hearing disability**

### **Article 39**

(1) The provider of audiovisual media service shall strive to gradually make its programmes accessible to those with a hearing disability as well.

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

a) public service announcement, news programmes and political information programmes;

b) cinematographic works and programmes produced for persons with a hearing disability

are also accessible with a Hungarian subtitle (for example through teletext) or with sign language interpretation for

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

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

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

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

(be) fully from 2015.

c) Without infringing upon the coherence of the programme, the media service provider shall be obliged to provide subtitles or sign language interpretation throughout the entire duration of a programme started with subtitles or with sign language interpretation.

## **Rules concerning ancillary media services**

### **Article 40**

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

## **CHAPTER II**

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

## General Provisions

### Article 41

(1) Linear media service subject to this Act provided by a media service provider with a registered office (domicile) on the territory of the Republic of Hungary shall commence subsequent to application for registration and administrative authorisation by the National Media and Infocommunications Authority (hereinafter referred to as the Authority), with the exception of state-owned analogue linear media services using limited resources that shall be provided subject to winning a tender announced and managed by the Media Council and entering into an agreement therefor.

(2) On-demand and ancillary media services subject to this Act provided by a media service provider with a registered office (domicile) on the territory of the Republic of Hungary shall be registered with the Authority. The said shall also be applicable to a media product published by a publisher with a registered office (domicile) on the territory of the Republic of Hungary.

(3) Any natural person, legal or unincorporated entity shall have the right to initiate said registration pursuant to those set forth in this Act.

(4) The Authority shall keep an administrative register of

- a) linear audiovisual media services,
- b) linear radio media services,
- c) audiovisual media services, the providers of which acquired the rights therefor via tender,
- d) radio media services, the providers of which won the rights therefor via tender,
- e) on-demand audiovisual media services,
- f) on-demand radio media services,
- g) ancillary media services,
- h) print media products,
- i) online media products and news portals.

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

(6) The data recorded in administrative registers established pursuant to Paragraph (4) – the name, contact information of media service providers, media product founders and publishers, as well as the names and titles of said media services and products – shall be in the public domain and accessible on the National Media and Infocommunications Authority (hereinafter referred to as the Authority) website. For the purposes of monitoring media services and media product publishing, the Authority shall oversee the natural person identification data of natural person media service providers and media product founders and publishers until such data are deleted from the administrative register.

(7) Linear media service provision rights are not transferable.

## **The Right to Provide Linear Media Services Subject to Application for Registration**

### **Article 42**

(1) Application to register a linear media service shall be initiated by the future media service provider thereof. An applicant intending to provide said linear media service by using a non state-owned limited analogue resource shall notify the Authority of the following at least forty-five days prior to commencing said media service provision:

- a) particulars of the applicant:
  - aa) name,
  - ab) address (domicile), designation of site (sites) where the media service is provided,
  - ac) contact information (telephone number and email address),
  - ad) name and contact information (telephone number and email address) of its chief executive officer, representative, and of the person appointed to liaise with the Authority,
  - ae) company registration and Court of Registration number;
- b) the applicant's effective deed of foundation and, further, notarised specimen signature, or a specimen signature countersigned by an attorney-at-law if the applicant is not a natural person;
- c) basic particulars of planned media service:
  - ca) type (radio or audiovisual),
  - cb) profile (general or specialised),
  - cc) character (commercial, public service),
  - cd) permanent designation,
  - ce) name, address (domicile), contact information (telephone number and email address) of electronic telecommunications service provider likely to distribute it,
  - cf) planned number of subscribers,

cg) type of electronic telecommunications network planned for distribution,

ch) name of communities affected by distribution,

ci) media service transmission time, transmission time programming and planned transmission time structure,

cj) daily, weekly, monthly minimum transmission time intended for public service programming and for programming on local community affairs, facilitating local everyday life,

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

cl) planned daily minimum transmission time in the service of the needs of national, ethnic and other minorities,

cm) planned ancillary media services,

cn) the media service signal, or the emblem of an audiovisual media service,

co) coverage area expansion, or, in the event of networking, the fact thereof;

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

e) data on the size of the applicant's – or any other person's with a controlling share in the applicant's business enterprise - direct or indirect ownership stake in any business enterprise providing media services, or applying for media service provision rights, on the territory of the Republic of Hungary;

f) planned date of launching the media service.

(2) The applicant shall represent and warrant that in the event the registration application is granted, no grounds for its statutory exclusion shall arise therefrom.

(3) Linear media service provision shall only commence after completion of registration. The Authority shall issue an official resolution to enter the linear media service into the administrative register within forty-five days. Said decision shall set forth the media service provision fee payable for each linear media service.

(4) In the event that the Authority fails to issue said registration decision within forty-five days, the application therefor shall be deemed as having been granted, with the proviso that the rights holder is informed within fifteen days therefrom of the fact of registration and the sum of the media service provision fee.

(5) The Authority shall, during the registration procedure, examine whether pursuant to this Act the Republic of Hungary wields jurisdiction over the media service with the pending registration application.

(6) The Authority shall deny the application for registering a linear media service in the event that

- a) a conflict of interest set forth in Article 43 exists vis-à-vis the applicant,
- b) the applicant or any of its owners have overdue fees from previous media service activities,
- c) this would be in violation of the provisions set forth in Article 68 related to the prevention of media market concentration,
- d) the application for registration failed to provide, even after notice to rectify deficiency, the requisite data set forth in Paragraph (1),
- e) the designation of the media service with a pending registration application is identical with – or is confusingly similar to – the designation of a linear media service registered earlier with valid records at the time said application was submitted, or
- f) the applicant failed to pay the administrative service fee.

(7) The Authority shall cancel the linear media service provision from the register in the event that

- a) denial of the application for registration is justified,
- b) the media service provider requested deletion from the register,
- c) the media service provider has failed to settle said overdue fee payment within thirty days from the Authority's written notice therefor,
- d) the holder of the right to provide a media service fails to commence said service within six months from the date of registration thereof, or suspends an ongoing service for more than six months, except in the event that the media service provider adequately justifies such deficiency,
- e) a binding decision by a court of law has decreed cessation of trade mark infringement perpetrated through the media service's name and barred the infringer from further violation of the law, or
- f) the Media Council has, in consequence of the media service provider's repeated severe violation of the law, decreed said legal sanction with due consideration of those set forth in Articles 185-187.

(8) The provisions of Paragraphs (1)-(7) shall also apply to linear media service provision via satellite involving the use of satellites not subject to Government control.

(9) The media service provider of a linear media service shall report any changes in their data on record with the Authority within fifteen days therefrom.

(10) Failure to report said data changes in a timely manner or failure to report at all may incur a fine levied by the Authority pursuant to Article 187 (3) ba) or bb).

(11) Media service providers' network connectivity and coverage area expansion shall be subject to Media Council permission in the form of an official resolution issued in accordance with the provisions set forth in Article 64 of this Act.

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

### **Article 43**

(1) A person eligible for linear media service provision shall be subject to the appropriate application of regulations set forth in Article 118 (1) a)-c,) with respect to the Authority's president, its deputy president, director general and deputy director general.

(2) The following persons shall not be entitled to provide media services:

a) judges and public prosecutors;

b) public administration bodies, executive officers of the National Bank of Hungary, the Hungarian Competition Authority, the Hungarian State Holding Company (MNV Zrt.), and the State Audit Office of Hungary, auditors of the State Audit Office of Hungary and members of the Hungarian Competition Authority;

c) the Authority's president, deputy president, director general, deputy director general, and any person in the Authority's employment;

d) a close relative of persons subject to Article 118 (1) a)-b) and b)-c).

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

a) political parties or business enterprises established by political parties;

b) state and public administration bodies, except when legislation applicable in the event of an extraordinary or emergency situation provides otherwise;

c) a business enterprise in which the Hungarian state has a controlling share;

d) a business enterprise in which any of those listed in Paragraph (1)-(2) hold a direct or indirect ownership stake, or have acquired the right to influence its decisions pursuant to a separate agreement or by other means; or a person, an organisation otherwise subject to acquisition restrictions.

(4) A business enterprise shall not be entitled to provide local linear media service in a coverage area of which at least twenty percent falls within the limits of local government jurisdiction, if any local government representative or employee, the mayor, deputy mayor, the mayor of Budapest, the deputy mayor of Budapest, or any close relative thereof holds an office in the Board of Directors, management or the Supervisory Board of such an entity, or in the Board of Trustees of a Foundation or a Public Foundation.

## **Media Service Provision Fee**

### **Article 44**

(1) The person or entity entitled to provide a linear media service upon approval of its registration application shall pay a media service provision fee specified and levied by the Authority.

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

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

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

(5) With respect to media service provision subject to authority or programme provision agreement, the media service provision fee shall be the sum total of the basic media service provision fee applicable to the given media service provision rights and the fee instalment amount offered by the bidder winning the tender procedure. The Media Council shall determine the basic media service provision fee in the Call for Tenders.

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

(7) The media service provision fee payable on media services provided subsequent to registration by the Authority shall be proportionate to the given media

service provision's coverage area. At the same time, it shall give due consideration to the purchasing power indicator of a given area's population, as well as to the market share attained by media service provider groups classifiable by coverage region, media service provision type, mode of distribution or other significant criteria.

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

(9) Non-profit media service provision shall be exempt from payment of the media service provision fee.

(10) In the event of coverage area expansion media service provision fees established for each individual coverage area shall be added up and be payable jointly.

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

### **Article 45**

(1) Application to register an on-demand media service shall be initiated by the future media service provider thereof. The applicant shall notify the Authority of the following in its application to register an on-demand media service:

- a) particulars of the applicant:
  - aa) name,
  - ab) address (domicile), designation of site (sites) where the media service is provided,
  - ac) contact information (telephone number and email address),
  - ad) name and contact information (telephone number and email address) of its chief executive officer, representative, and of the person appointed to liaise with the Authority,
  - ae) company registration number or Court of Registration number.
- b) basic particulars of the planned media service:
  - ba) type (radio or audiovisual)
  - bb) designation
  - bc) profile (general or specialised)
- c) the planned date of launching the media service.

(2) The following shall not be entitled to provide on-demand media services: the National Media and Infocommunications Authority's president, deputy president, director general, deputy director general, the chairperson of the board of trustees of the Public

Foundation for Public Service Media and the chairperson or member of the Public Service Council, the director general of the Broadcast Support and Property Management Fund, the president, deputy president or member of the National Council for Telecommunications and Information Technology (NHIT), the director general of the public service media service provider, the chairperson or member of the Supervisory Committee thereof, members of the Media Council, and persons in the employment of any of the aforesaid organisations. The applicant shall represent and warrant that no conflict of interest under the Act exists vis-à-vis him/her/it, and would not arise subsequent to the registration of the said media service.

(3) The Authority shall issue an official resolution to enter the on-demand media service into the administrative registry within thirty days. In the event that the Authority fails to issue said resolution within thirty days, the application for registration shall be deemed as having been granted.

(4) The Authority shall only deny the application to register an on-demand media service in the event that

a) a conflict of interest exists vis-à-vis the applicant,

b) the application for registration failed to provide, even after notice to rectify deficiency, the requisite data set forth in Paragraph (1),

c) the designation of the media service with a pending registration application is identical with – or is confusingly similar to - the designation of a linear media service registered earlier, with valid records at the time said application was submitted, or

d) the applicant failed to pay the administrative service fee.

(5) The Authority shall cancel the on-demand media service provision from the register in the event that

a) denial of the application for registration would be justified,

b) the media service provider requested deletion from the register,

c) the holder of the right to provide a media service fails to commence said service provision within a year from the date of registration thereof, or suspends an ongoing service for over a year, or

d) binding decision by court of law has decreed the cessation of trade mark infringement perpetrated through via the media service provider's name and barred the infringer from further violation of the law.

(6) The media service provider of on-demand media service shall report any changes in its data on record/on file to the Authority within fifteen days therefrom.

(7) In the event of a change in the media service provider's person or the data of the media service set forth in point d), Paragraph (1), the media service provider originally submitting the application for registration shall initiate modification of the data on record. Procedure therefor shall be subject to the appropriate application of Paragraph (1)-(4).

## **The registration of media products**

### **Article 46.**

(1) Application to register a media product shall be initiated by its future publisher. In the event that the founder and publisher of a media product are different persons or business enterprises, they shall incorporate their responsibilities and rights vis-à-vis said media product in an agreement.

(2) An applicant shall notify the Authority of the following in its application to register a media product:

a) particulars of the applicant:

- aa) name,
- ab) address (domicile and site),
- ac) contact information (telephone number and email address),
- ad) name and contact information (telephone number and email address)

of its representative, and of the person designated to liaise with the Authority,

- ae) Court of Registration number, and company registration number,

b) the title of the media product with a pending application for registration and the international identifier assigned to it by the National Library, or a document certifying that said media product does not need to be assigned such an identifier,

c) in the event that founder and publisher are different persons or business enterprises, the particulars of both pursuant to point a).

(3) The following shall not be entitled to found and publish a media product: the National Media and Infocommunications Authority's president, deputy chairperson, director general, deputy director general, the chairperson of the Board of Trustees of the Public Foundation for Public Service Media and the chairperson or member of the Public Service Council, the director general of the Broadcast Support and Property Management Fund, the chairperson, deputy chairperson or member of the National Council for Telecommunications and Information Technology (NHIT), herein not including the founding or publishing of media products aspiring to publish academic accomplishments or to disseminate scientific knowledge. The applicant shall represent and warrant that in the event the registration application is granted, no statutory exclusion with respect to him/her/it exists or shall arise therefrom.

(4) The Authority shall issue an official resolution to enter the media product in the administrative register within fifteen days. In the event that the Authority fails to issue said resolution within fifteen days, the application for registration shall be deemed as having been granted.

(5) The Authority shall only deny the application to register a media product in the event that

- a) a conflict of interest exists vis-à-vis the applicant,
- b) the application for registration failed to provide, even after notice to rectify deficiency, the requisite data set forth in Paragraph (1),
- c) the name of the media product with a pending registration application is identical with – or is confusingly similar to - the name of a media product registered earlier with valid records at the time said application was submitted, or
- d) the applicant failed to pay the administrative service fee

(6) The Authority shall cancel the media product from the register in the event that

- a) denial of the application for registration would be justified,
- b) the founder or the publisher requested deletion from the register, with the founder's approval in the event the founder and publisher are different business enterprises.
- c) the holder of the right to publish a media product fails to commence said publication within two years from the date of registration thereof, or suspends ongoing publication for over two years, or
- d) a binding decision by court of law has decreed cessation of trade mark infringement perpetrated through the title of the media product and barred the infringer from further violation of law.

(7) The publisher and founder of a media product shall report any changes in their data on record with the Authority within fifteen days therefrom.

(8) In the event of a change in the publisher's person, the publisher on record shall initiate modification of said data. In the absence thereof, the founder, too, may initiate said data modification. Procedure therefor shall be subject to appropriate application of Paragraph (1)-(5).

(9) Media products and – unless legislation provides otherwise – other publications shall display key editorial and publication data (masthead). The masthead shall display the following information:

a) publisher's name, domicile, and the name of the person in charge of publishing,

b) the name of the duplicating organisation, and, further, the name of the person responsible for duplicating,

c) the place of duplication and the order number,

d) the name of the person in charge of editing,

(10) An international identifier of printed media products (ISSN), other international marks, and the price of the publication shall be set and displayed pursuant to separate legislation.

(11) Legislation may also prescribe an abbreviated masthead, the obligation of displaying exceptional data, or other specific rules.

(12) A free legal deposit copy of printed media products and other publications shall be provided to bodies designated by separate specific legislation for academic and administrative purposes. The legal deposit copy shall remain in the ownership of the body entitled therefor. Detailed rules for making legal deposits are subject to a government decree.

(13) A free legal deposit copy of printed media products and other publications shall be placed at the disposal of bodies designated by separate specific legislation for the preservation of cultural assets, national bibliographical accounting, and public library provision. The legal deposit copy shall remain in the ownership of the body entitled therefor.

(14) A legal deposit copy for preservation purposes shall only be removed from the public collection record in the event that it was destroyed or has become irreparably damaged.

## **The Registration of Ancillary Media Services**

### **Article 47**

The registration of ancillary media services shall be subject to the regulations applicable to the registration of on-demand media service provision.

## **CHAPTER III**

### **THE RIGHT TO PROVIDE LINEAR MEDIA SERVICE PROVISION VIA TENDER**

#### **General regulations**

### **Article 48**

(1) State-owned analogue linear media services using limited resources shall be provided – unless provided otherwise by this Act – subject to winning a tender announced and managed by the Media Council and entering into an agreement therefor.

(2) Procedures with respect to winning the right to provide state-owned linear media services using limited resources via tender (hereinafter referred to as tender procedure) shall be subject to the Act on Public Administration Authority Procedure (hereinafter referred to as the Act on the general rules of administrative proceedings and services), with the departures set forth in this Act.

(3) The Media Council shall - with the departures set forth in this Act – be in charge of managing the tender procedure.

(4) For a specific time period, but for a maximum of three years the Media Council shall be entitled to authorise, without a tender procedure, a business enterprise to provide media services to carry out public duties. With respect to the said right to provide such media service the Media Council shall, in its official resolution, provide this entitlement to the first applicant submitting a request for said eligibility, provided said media service provider complies with the necessary requirements to fulfil these public duties In the application of this Paragraph the following shall be deemed as public duties:

a) media service provision in the event of and in relation to a state of emergency promulgated pursuant to the Constitution, a natural catastrophe affecting a sizeable portion of the country, or an industrial disaster, or

b) serving a community's special educational, cultural, information needs, or needs associated with a specific event affecting the given community.

(5) State-owned analogue linear media service provision rights using limited resources shall, in the case of radio, be valid for a maximum of seven years, audiovisual media service provision rights for a maximum of ten years. Upon expiration the said may be renewed one time for a maximum of five years without a tender procedure upon the media service provider's request, with the proviso that audiovisual media service provision agreements shall expire on the date set forth in Paragraph (1), Article 38 of Act LXXIV. of 2007 on the Regulations Governing Broadcasting and the Digital Transition (hereinafter referred to as Dtv.). Requests for renewal shall be submitted to the Media Council fourteen months prior to expiration. In the event of failure to comply with said deadline the renewal shall be denied.

(6) The Media Council shall, in the absence of a request pursuant to Paragraph (5), or in the event that renewal is not justified, publish a public tender announcement ten months prior to expiration of the media service provision rights.

(7) Said rights shall not be renewed in the event that the rights holder

a) repeatedly or severely violated the provisions set forth in this Act, or

b) at the time of submitting the request, or when said request is being deliberated, applicant is in arrears with the media service provision fee.

(8) The Media Council shall determine the principles of the tender procedure with respect to small community media service provision possibilities with a view to the appropriate application of the provisions of Chapter III and the unique characteristics deriving from the nature of media service provision possibilities. The Media Council shall publish the said on its website.

(9) Upon the Media Council's request, the Authority shall compile the list of media service provision possibilities.

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

#### **Article 49.**

(1) The Media Council shall, with a view to preparing tender procedures for media service provision, request the Authority to draw up frequency plans.

(2) In the request pursuant to Paragraph (1) the Media Council shall establish the conceptual criteria required for drawing up a broadcast frequency plan, specifically:

a) the objective of frequency use,

b) the preferences to be applied in frequency planning,

c) the frequency planning timeline.

(3) The frequency plan developed shall contain:

a) the broadcasting transmitters' nominal sites, and other technical requirements of deployment,

b) the likely coverage area of the transmitters,

c) the frequency band pursuant to International Radio Regulation marks.

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

(5) The Authority shall make public the frequency plan for at least fifteen days prior to Media Council approval. The Authority shall issue an announcement on said publication and its location via public notice and on the Media Council's website at least one week prior to the starting date thereof. During the period of publishing the frequency

plans, and within five days thereafter, any person may submit a written comment – addressed to the Media Council – with respect to the frequency plans.

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

(7) The frequency plans and the conceptual criteria of planning are public, and are available for inspection at the Authority.

(8) With a view to planning for media service provision possibilities the Authority may, in exchange for a fee and upon the request of clients, release data, provided the Media Council approves the planning of media service provision possibilities in advance with respect to the coverage area specified in the request and with due consideration for media market and media policy criteria. Media service provision possibilities thus planned shall henceforth be subject to the tender procedure provisions of this Act.

## **The Draft Tender Notice**

### **Article 50**

(1) The Media Council shall, with the intent of preparing a tender notice, compile a draft tender notice on tender conditions. The Media Council shall publish said draft tender notice, with its justification, via public notice and on its website.

(2) Between the twentieth – the earliest – and the thirtieth – the latest – day from having the draft tender notice issued, the Authority shall hold a public hearing (hereinafter referred to as hearing).

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

(4) At the hearing, anyone can comment on the draft tender notice verbally or in writing; within five days therefrom, anyone may address a question or submit a comment to the Authority in writing.

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

(6) The Media Council shall decide on the finalisation of the draft tender notice within forty-five days from the hearing, in consideration of the comments received and recommendations made at the public hearing.

## **The Tender Procedure**

### **Article 51.**

(1) The tender procedure shall – with the exceptions specified in this Act – commence *ex officio*, as from the publication of the tender notice.

(2) The administrative deadline for the tender procedure shall be eighty-five days. Said deadline shall not include – beyond those set forth in the Act on the general rules of administrative proceedings and services – the time period from the day the tender notice is published to the submission of bids. In justified cases, the deadline may be extended on one occasion, for a maximum of twenty days.

## **Invitation to Tender**

### **Article 52**

(1) The Media Council shall announce invitations to tender for the use for profit of media service provision possibilities.

(2) The invitation to tender shall include:

a) the data of the media service provision possibility as per Article 49 (3),

b) the objective of the invitation to tender,

c) the fundamental rules governing the rules of procedure,

d) the application fee and payment method thereof,

e) the minimum amount of the media service provision fee (basic media service provision fee), below which media service provision rights cannot be awarded, with the exception of the provision of community media services,

f) the form and deadline for submitting tenders,

g) the required contents of tenders,

h) the evaluation criteria and the aspects to be taken into consideration for evaluation, the categories for evaluating tenders, the quantified evaluation framework allocated to specific evaluation categories, as well as the rules of evaluation serving as the basis of the Media Council's decision on the winning tenderer.

i) the start date of the provision of the media services,

j) the term of the provision of the media services,

k) formal requirements for the tenders,

l) the formal and validity criteria of the tenders,

m) other criteria as per the Media Council's decision.

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

a) commitment to a binding offer and the term thereof regarding the submitted tenders,

b) the predefined ratio of public service programmes,

c) the ratio of programmes on subjects related to public life or facilitating local daily events,

d) predefined extent of service to national and ethnic minorities and other minority needs,

e) the obligation to provide news services,

f) application criteria for networking and expanding the coverage area,

g) criteria for the provision of ancillary and value-added media services.

(4) The Media Council shall publish the invitation to tender via an announcement and on its website.

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

a) at least sixty days are available for the submission of tenders for the provision of national media services,

b) at least forty days are available for the submission of tenders for the provision of regional media services,

c) at least thirty days are available for the submission of tenders for the provision of local media services.

### **Amendment and Recall of the Invitation to Tender**

#### **Article 53**

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

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

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

(4) In the event of the amendment of the invitation to tender, the Media Council shall extend the deadline for the submission of tenders, ensuring that the deadlines defined in Article 52 (5) remain available from the date of the publication of the invitation to tender.

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

## **The Tender Fee**

### **Article 54**

Tenderers in the invitation to tender shall pay a tender fee. The tender fee is five percent of the published minimum media service provision fee. Eighty percent of the tender fee shall be offset against the media service provision fee.

## **The Tenderer**

### **Article 55**

(1) Companies that

a) have no customs or social security contributions overdue for longer than 60 days or overdue taxes registered by the central tax authority, or any overdue payment obligation to separate state funds, except if the creditor has agreed to the payment of the debt at a later date,

b) are not under liquidation, bankruptcy or other termination proceedings, and

c) in regard to which no final public administration ruling has established a gross breach of obligations stemming from a broadcasting or an official contract undertaken on the basis of a previous tender procedure closed no later than five years, and the broadcasting or official contract of which has not been terminated

may take part in the tender procedure.

(2) Any company with a controlling stake in the bidding company or under the control of the bidding company shall also comply with the criteria laid down in Paragraph (1) a)-c).

(3) Only parties that comply fully with the provisions on conflict of interest defined under this Act are allowed to participate in the tender procedure.

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

(5) Companies which hold a controlling stake in each other, or in which the other company holds a controlling stake, or in which the same third party holds a controlling stake shall not be allowed to participate in the tender procedure simultaneously.

## The Tender

### Article 56

The tender shall contain:

- a) the particulars of the tenderer:
  - aa) name,
  - ab) seat,
  - ac) company registration number or court of registry registration number ,
  - ad) contact details (telephone number and e-mail address),
  - ae) name and contact details of its executive officers and representatives (telephone numbers, postal and e-mail address), as well as the specimen signature certified by a notary public or countersigned by an attorney,
  
- b) the tenderer's effective deed of foundation,
  
- c) the tenderer's declaration on the stake, either direct or indirect, it holds or the stake held by it in another company providing media services in the territory of the Republic of Hungary or applying for media service provision rights in Hungary,
  
- d) the basic particulars of the planned media service provision:
  - da) type (general or thematic),
  - db) coverage area,
  - dc) the proposed free-to-air broadcasting facility,
  - de) nature (commercial, public),
  - df) the air time and schedule of the service,
  - dg) the proposed ancillary and value-added services,
  - dh) permanent name and signal of the media service,
  - di) expansion of the coverage area and, in the case of networking, the fact of such,
  - dj) the planned programme structure,
  - dk) the minimum daily, weekly and monthly transmission time devoted to public service programmes and programmes related to local public life, facilitating local, daily issues,
  - dl) the minimum transmission time devoted to regular news broadcasting,
  - dm) the minimum daily air time devoted to the needs of national, ethnic or other minorities,
  
- e) with the exception of community media service provision, the bid for the media service provision fee,
  
- f) the media service provider's business and financial plan,

g) a bank certificate verifying the availability of the amount needed to cover the media service provider's operation for at least the first three months, excluding advertising revenue, on a separate current account held by the media service provider,

h) the tenderer's declaration on not being subject to any one of the grounds for exclusion under this Act, and that the acceptance of another pending tender of the tenderer will not create grounds for exclusion,

i) any other data, documents or declarations defined in the invitation to tender.

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

### **Article 57**

(1) The Media Council shall examine whether the tenderer complies with the applicable formal and substantive requirements.

(2) Tenders shall be deemed as invalid in terms of form if

a) the tenderer fails to comply with the personal or participation criteria set forth in Article 55, or the conflict of interest requirements under this Act,

b) the tender was not submitted by the deadline, at the place, in the number of copies or in the form or method defined in the invitation to tender,

c) the tender fee was not paid on time,

d) the tender does not comply with the formal requirements defined in the invitation to tender,

e) does not, or does not adequately include the data listed in Article 56 a), da), db), de), e)

(3) Remedying deficiencies pertaining to formal validity requirements shall only be allowed for the items under Article 56 b), c), dc), df)-dn), f)-j).

(4) Remedying deficiencies shall be carried out within fifteen days of delivery. If the tenderer adequately rectifies deficiencies within the deadline set forth in the invitation, the tender shall be deemed as correct and complete from the start. The deadline defined for remedying deficiencies is limited; no request for certification may be

submitted after its expiry. In regard to those elements of the tender that are subject to evaluation pursuant to the invitation to tender no remedy is allowed.

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

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

### **Article 58**

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

(2) In the case of tenders that are formally invalid pursuant to Article 57 (2), the Media Council shall reject the registration of the tenderer in the tender register by way of final decision. The final decision rejecting the registration terminates the tenderer's client status in the procedure. The tenderer may request the Regional Court of Budapest to review the final decision rejecting the registration in the tender register on grounds of a breach of law within eight days of the communication of the final decision. The court shall, on the basis of hearing the parties if necessary, issue a ruling in an out-of-court proceeding within fifteen days. No appeal can be lodged against the Regional Court of Budapest's ruling. If a request is submitted for out-of-court proceedings, the Media Council shall suspend the tender procedure until a final court ruling is made. No independent remedy against the Media Council's final decision to suspend the tender procedure can be obtained.

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

## **Substantive Validity of Tenders**

### **Article 59**

(1) When checking for the substantive validity of the tenders, the Media Council shall evaluate and examine the tender of the registered tenderer both as a whole and in respect of each tender component.

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

(3) Tenders shall be deemed substantively invalid if

a) they contain – among the undertakings forming part of the evaluation criteria – incomprehensible, contradicting or clearly unfeasible commitments and conditions that impede the evaluation of the tender,

b) in the Media Council’s assessment, they contain undertakings that are unfeasible, excessive or insufficient or highly disproportionate, or they contain such clearly irrational or unfounded undertakings or conditions that contradict the facts and data available to the Media Council, and thus render evaluation in accordance with the set of criteria defined in the invitation to tender impossible,

c) due to their unfounded nature, the tenders are unsuitable for achieving or implementing the objectives defined in the invitation to tender, or

d) they do not comply with the substantive requirements defined in the invitation to tender.

(4) The Media Council shall not establish substantive invalidity in a separate final decision; it shall instead establish the tender’s substantive invalidity in the decision concluding the tender procedure.

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

## **Evaluation of Tenders**

### **Article 60**

(1) Tenders shall be evaluated on the basis of the principles and aspects defined in the invitation to tender. Evaluation criteria shall be based on quantitative or other assessable factors, and be in line with the subject of the tender or the material terms of the official contract. The aspects may not result in the multiple evaluation of the substantive elements of the tender.

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

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

(4) Tenders may not be evaluated in a way that differs from what is set out in the invitation to tender.

## **Termination of the Tender Procedure**

### **Article 61**

(1) The Media Council may terminate the tender procedure through a final decision if

a) no tenders are submitted for the invitation to tender,

b) the tender procedure loses its original justification due to a circumstance or condition arising in the course of the implementation of the tender procedure, thus in particular if the national or international business environment changes substantially following the invitation to tender, or if the economic, legal, frequency management or media service provision market circumstances or conditions prevailing at the time of the publication of the invitation to tender change materially,

c) in the Media Council's assessment, the media policy aspects or the fundamental principles or objectives defined under this Act or in the invitation to tender cannot be ensured by implementing the tender procedure, or

d) based on the tenders submitted or the information available, the Media Council establishes that none of the tenders submitted satisfies the objectives or basic principles laid down in this Act, or that declaring any one of the tenderers the winning tenderer would jeopardise the responsible, proper and effective management of frequencies constituting state property.

(2) The Media Council shall communicate its decision as per Paragraph (1) to the tenderers within five days, and publish it at the same place and in the same manner as the invitation to tenders.

## **Result of the Tender Procedure, Announcement of the Result and Publicity of Tenders**

### **Article 62**

(1) The Media Council shall establish through an authority decision

a) the success or otherwise of the tender procedure,

b) the winner of the tender procedure in the case of a successful procedure.

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

(3) Only tenderers which consistently comply with the participation requirements laid down in this Act and in the invitation to tender from the date of the submission of the tender may be pronounced winners.

(4) The Media Council shall communicate its decision as per Paragraph (1) to the tenderers listed in the tender register within five days, and publish it at the same place and in the same manner as the invitation to tenders.

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

(6) The Regional Court of Budapest shall assess the petition for a court review in a board comprising three members within thirty days from the expiry of the deadline defined for the submission of the petition. No appeal may be lodged against, or retrial or review requested of the Regional Court of Budapest's decision.

(7) The Media Council may not disclose the data contained in the tenders to third parties before the conclusion of the agreement.

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

## **The Official Contract**

### **Article 63**

(1) Parallel to the decision announcing the winning tenderer as per Article 62 (1) b), the Media Council shall, *ex officio*, launch an authority procedure for the purpose of

concluding an official contract with the winner of the tender procedure. The administrative deadline of such authority procedure shall be forty-five days.

(2) If the winning tenderer does not participate in the authority procedure under Paragraph (1), or the winning tenderer hinders the conclusion of the official contract, the official contract may not be concluded beyond the administrative deadline defined in Paragraph (1); in such cases, the Media Council shall terminate the procedure on the forty-fifth day from the start date of the procedure. No request for certification may be lodged in the procedure.

(3) In the case of tenders for the provision of local media services, if only one tenderer complies with the legal and/or tender criteria, the Media Council shall conclude the official contract.

(4) If a procedure of the Regional Court of Budapest as per Article 62 (5) has been initiated, the official contract may not be concluded before the final ruling of the Regional Court of Budapest. The duration of the Regional Court of Budapest's review procedure shall not count toward the administrative deadline of the authority procedure.

(5) The Media Council may, pursuant to Article 187, impose fines if the winning tenderer withdraws its tender or fails to conclude the official contract.

(6) The Media Council may, while stipulating a fine, also oblige the winning bidder to bear or pay all costs arising from the withdrawal of the tender or from hindering the conclusion of the official contract.

(7) The official contract shall lay down the criteria for the production, safekeeping, availability and disclosure of the information required for establishing the fulfilment or otherwise of the media service provider's obligations.

(8) If the media service is not provided by the deadline specified in the official contract – due to reasons within the bidder's reasonable control – the Media Council may, in addition to the legal consequences set out in the official contract, terminate the official contract with immediate effect.

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

(10) If the media service provider falls behind or defaults on the payment of any portion of the media service provision fee, the Media Council may, in addition to the legal consequences set out in the official contract, terminate the official contract with a fifteen-day notice period.

(11) The consequences of breach of agreement and the conditions resulting in the suspension of the service for a period of at most thirty days shall be set forth in the official contract.

(12) The media service provider may and shall broadcast the programme for the duration, during the transmission time and according to the schedule undertaken in its tender using its own unique identifying signal, in line with the programme structure undertaken, on the network maintained by it, using its own equipment and instruments or using a broadcasting service provision service. No telecommunications service provision permit is required for the media service provider's broadcasting or distribution activity using own equipment; this, however, does not affect the obligations to acquire other permits laid down in legislation.

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

## **Networking, Expansion of the Coverage Area, Amendment of the Agreement**

### **Article 64**

(1) The Media Council shall decide on networking based on the joint request of those connecting to the network in an authority procedure. If the request is granted, the Media Council shall amend the official contracts of the media service providers.

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

(3) Networking shall not be allowed if

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

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

c) as a result of networking, either the media service provider or any one of the media service providers fails to would not comply with the conditions laid down in Article 71,

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

e) as a result of networking, the media service provider diverges from its original undertakings made in the tender.

(4) The Media Council shall decide in an administrative procedure initiated in response to a request for coverage area expansion. If the request is granted, the Media Council shall amend the official contracts of the media service providers.

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

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

a) if the media service provider is in arrears on the media service provision fee due to the Media Council,

b) if, as a result of coverage area expansion, the media service provider fails to comply with the conditions laid down in Article 71.

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

(8) If the media service provider's coverage area increases from local to regional or from regional to national as a result of an increase in the population reached with broadcasting equipment, networking, or coverage area expansion, the Media Council shall amend the official contract on condition that the media service provider satisfies the requirements applicable to the media service defined under this Act.

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

## **Temporary Media Service Provision**

### **Article 65**

(1) At request, the Media Council may – taking into consideration media market and media policy aspects – conclude provisional official contracts for a period of at most thirty days

a) for the use of local media service provision facilities the frequency plan of which has been published by the Media Council as per Article 49 (5), but for which it has not yet concluded an official contract, or

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

(2) Applications shall include:

a) the name and address of domicile of the applicant,

b) the effective deed of foundation of the applicant company,

c) the planned transmission time in a breakdown by day, week or month,

d) the programme plan,

e) the start and end date of the proposed temporary media service provision,

f) the media service provider's declaration on the start date of the media service provision in the case of applications as per Paragraph (1) b).

(3) Applications shall be evaluated within ten days of submission. If the application does not meet the conditions set out in Paragraph (2), the Media Council shall call on the applicant to remedy deficiencies. Five days shall be available from the date of delivery to applicants for remedying deficiencies. The deadline set for remedying deficiencies is limited; if it is not met, the Media Council shall reject the application. The Media Council shall reject the application without examining its merits if at least thirty days have not elapsed between the submission of the application and the start date of the proposed temporary media service provision.

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

(5) A provisional official contract may be concluded

a) once a year with the same company,

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

(6) The media service provider authorised to provide temporary media services shall not network with other media service providers, nor may it initiate the expansion of its coverage area.

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

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

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

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

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

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

## **CHAPTER IV**

### **COMMUNITY MEDIA SERVICE PROVISION**

#### **Article 66**

(1) Linear community media services are intended to serve or satisfy the special needs for information and accessing cultural programmes of

a) certain social, national, or ethnic minority, cultural or religious communities or groups, or

b) residents of a given settlement, region or coverage area, or

c) in the majority of their transmission time programmes aimed at achieving the objectives of public service media service provision set in Article 83.

(2) The provider of the community media service shall define in its media service provision regulations

a) the objective of its activity,

b) the cultural areas and subjects which it has undertaken to present,

c) the objectives of the public service media service provision which it has undertaken to serve,

d) the community or communities (social groups or residents of specific geographic areas) that it intends to serve,

e) if it serves the needs of a specific community as per Paragraph (1) a)-b), the indication of such community and the minimum proportion of the programmes aimed at such community expressed as a percentage of the total transmission time.

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

(4) Linear community media service provision shall

a) provide regular information about social or local community news, and perform other newscasting,

b) broadcast cultural programmes,

c) strive to take into consideration the needs of those with hearing impairment in the case of audiovisual media service provision,

d) in the case of audiovisual media service provision, operate in line with the requirements of Article 20 pertaining to Hungarian and European programme quotas, excluding the programme quotas applicable to independent programme makers,

e) have at least four hours of daily transmission time, including teletext time, allocated to it,

f) broadcast at least four hours weekly of programmes aired for the first time (not reruns) prepared and edited in the same calendar year,

g) broadcast programmes serving public service objectives set in Article 83 in over two-thirds of its transmission time, including the news programme, political programme and cultural programme aimed at the community served, as well as other similar programmes not primarily aimed at the community in question,

h) in the case of radio service provision, allocate at least fifty percent of its transmission time committed to programmes presenting musical works to the presentation of Hungarian musical works.

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

(6) Following recognition as per Paragraph (5), the Media Council shall, *ex officio*, examine the operation of the media service provider in depth, over a period of at least seven days, at least every two years – and following the first year in the case of new services –, in the interest of which the media service provider shall disclose detailed data regarding the broadcast programmes and the contents of the media service. If, in to the Media Council's assessment, the media service provision reviewed does not meet the criteria of the linear community media service provision, the Media Council shall, through a resolution passed by it, revoke recognition as community media service provision.

## CHAPTER V

### PREVENTING MARKET CONCENTRATION AND MEDIA SERVICE PROVIDERS WITH SUBSTANTIAL MARKET INFLUENCE

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

### **Article 67**

The market concentration of media service providers providing linear media services may be limited within the framework of this Act in order for the diversity of the media market to be maintained and in order for the formation of information monopolies to be prevented.

### **Article 68**

(1) Linear audiovisual media service providers with an average annual audience share of at least thirty-five percent, linear radio media service providers, and linear audiovisual and linear radio media service providers with a joint average annual audience share of at least forty percent, any owner of media service providers and any person or company with a controlling stake in the media service provider's owner

a) may not launch new media services, may not acquire shares in companies providing media services, and

b) shall take measures in order to increase the diversity of the media market by modifying the media service provision's programme structure, by increasing the proportion of Hungarian works and programmes prepared by independent programme makers, or in any other way.

(2) In the case presented in Paragraph (1) a), if the media service provider affected by the rule restricting media market concentration wishes to acquire a share in a company providing media services, the Media Council shall reject the authority permit in a procedure as per Article 171.

(3) In the case presented in Paragraph (1) b), in order to determine the measures aimed at increasing diversity, the Media Council may conclude an official contract – for a term of at least one year – with the media service provider at the media service provider's request, in which the Media Council shall be entitled to assess the acceptance or otherwise of the obligations proposed by the media service provider. Such applications may be submitted within thirty days from the communication/publication of the Media Council's authority resolution as per Article 70 (7). If the official contract – due to failure to reach an understanding – is not concluded within three months from the publication of the authority resolution specified in Article 70 (7), the Media Council shall terminate the procedure in a final decision.

(4) In the absence of the conclusion of an official contract specified in Paragraph

(3), the media service provider shall submit its application for the approval of its measures aimed at increasing media market diversity within six months of the publication of the Media Council's authority resolution specified in Article 70 (7). In its procedure aimed at the approval of the application, the Media Council shall assess whether the announced measures are suitable for decreasing the former information monopoly and for increasing media market diversity and pluralism. In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine.

(5) If the application complies with the conditions set out in Paragraph (4), the Media Council shall approve it in its resolution.

(6) In case of doubt, it is the media service provider's responsibility to prove that the proposed measures comply with the conditions set out in Paragraph (4).

(7) If the Media Council does not approve the proposed measures, it shall issue a resolution identifying the causes of non-compliance from the perspective of the principles set out in Paragraph (4).

(8) In the case presented in Paragraph (7), the media service provider shall submit a new plan for proposed measures by the deadline set by the Media Council, however, within thirty days at most, taking into account the aspects set forth in Paragraph (7) of the Media Council's resolution. In the event of the late fulfilment of such obligation, the Media Council shall impose a procedural fine. If the measures specified in the new application also fail to satisfy the criteria set out in Paragraph (4), the Media Council may, in accordance with Articles 185-187, employ the legal consequences.

(9) The Media Council shall monitor the performance of the measures approved through its resolution in the context of general authority supervision.

(10) The average annual audience share jointly reached on the linear audiovisual and linear radio market shall, for the purposes of Paragraph (1), be determined by adding the individual average annual shares, expressed as a percentage, on the linear audiovisual and linear radio markets.

### **Definition of Media Service Providers with Substantial Influence**

#### **Article 69**

(1) Media service providers with substantial influence are linear audiovisual media service providers and linear radio media service providers with an average annual audience share of at least fifteen percent, with the proviso that the average annual audience share of at least one media service reaches three percent.

(2) The Media Council shall regularly monitor the fulfilment of the obligations prescribed for media service providers with substantial influence in Article 32 and Articles 38-39.

(3) The Authority may conclude an agreement with an external contractor for measuring the average annual audience share defined in Article 68 and Paragraph (1). The contracting party shall be selected in an open tender procedure. When preparing the agreement and determining the tender result, the Authority shall cooperate with the media service providers. The agreement shall include the method for measuring audience shares, the professional criteria thereof, and the procedure for auditing the findings.

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

### **Rules of Procedures Aimed at Preventing Media Market Concentration and Defining Media Service Providers with Substantial Influence**

#### **Article 70**

(1) In order to conduct procedures aimed at the prevention of media market concentration and at determining media service providers with substantial influence, the Media Council shall examine market facts and circumstances relevant for the assessment of the level of concentration (hereinafter referred to as relevant) – in particular the media service provider’s average annual audience share for the previous calendar year – in an administrative proceeding as per the Act on the general rules of administrative proceedings and services, with the exceptions set out in Paragraphs (2)-(12).

(2) In order to clarify the relevant facts and circumstances, the Media Council may require media service providers to disclose data in its administrative verification proceedings by way of a final decision. No independent legal remedy may be claimed against the final decision; the final decision may be contested in the legal remedy following the administrative verification brought against the material decision made in the procedure aimed at the prevention of media market concentration and at determining media service providers with substantial influence. The final decision may be challenged in a legal remedy procedure brought against the decision of substance made in a procedure that follows the authority supervision and is aimed at the prevention of media market concentration and at determining media service providers with substantial influence.

(3) In the event of failure to perform or an inadequate performance of data disclosure, the Media Council may – pursuant to Article 175 (8) – impose a procedural fine. Over and above the fine, in the event of failure to perform or an inadequate performance of data disclosure, the Media Council may – and, in the case of repeated breaches of law, shall – also impose a fine ranging from fifty thousand forints to three million forints on the media service provider’s officer/office-holder or registered representative as per Article 45 (1) ad) found in breach of the law.

(4) The following shall be taken into account when determining audience share,

or added to the audience share

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

b) the audience share of the linear media service provider operating in the territory of the Republic of Hungary besides the influential share of the affected media service provider, and

c) the audience share of any owner of the media service provider, or the owner of the owner thereof, operating in the territory of the Republic of Hungary besides the influential share of the affected media service provider.

(5) If, based on the administrative verification procedure, the Media Council decides that there is a circumstance providing grounds for conducting a procedure aimed at the prevention of media market concentration and at determining media service providers with substantial influence, then, notwithstanding the relevant provision of the Act on the general rules of administrative proceedings and services, it shall only decide on the launch of the procedure in a final decision.

(6) If, based on the administrative verification procedure, the Media Council establishes that neither the media service provider affected by the rule on the restriction of media market concentration identified in a resolution under Paragraph 7 made earlier, nor the group of media service providers with substantial influence identified in its resolution as per Paragraph (7) or in the official contract as per Paragraph (10) has changed, then no procedure shall be launched.

(7) In the procedure aimed at the prevention of media market concentration and at determining media service providers with substantial influence, the Media Council shall identify the media service provider affected by the rule restricting media market concentration as per Article 68 or the media service providers with substantial influence as per Article 69 in an authority resolution, and shall decide on the termination of such status determined in its earlier resolution.

(8) In its resolution made in the context of a procedure aimed at determining media service providers with substantial influence, the Media Council shall also define the exact contents of the obligations imposed, pursuant to Article 32 and Articles 38-39, on the media service providers with substantial influence, taking into account the assessment criteria defined therein.

(9) The provisions of Article 163 shall, as appropriate, be applied to the review of the resolution made in the context of the procedure aimed at determining media service providers with substantial influence with the proviso that the client or other participant in the procedure may request the review of the Media Council's final resolution on grounds of violation of the law from the Regional Court of Budapest by filing an action against the Media Council's resolution. The Regional Court of Budapest shall assess the claim in

a court proceeding within thirty days.

(10) In the procedure aimed at determining media service providers with substantial influence, rather than issuing a resolution, the Media Council may also conclude an official contract with the media service provider in order to identify media service providers with substantial influence and to define the exact contents of the obligations imposed, pursuant to Article 32 and Articles 38-39, on the media service providers with substantial influence. In such cases, the parties may diverge from the assessment criteria for determining the obligations specified in Article 32 and Articles 38-39 in that media service providers with substantial influence may not be exempted, even in the official contract, from their obligations set out therein.

(11) The Media Council shall conduct its procedure aimed at determining media service providers with substantial influence – with the derogation set out in Paragraph (6) – by 30 September of each year. When determining media service providers with substantial influence, their average audience share of the previous calendar year shall be taken into account. Media service providers with substantial influence shall fulfil their obligations from 1 January of the year following the Media Council’s decision. The Media Council’s resolution made in the context of the procedure aimed at the prevention of media market concentration and at determining media service providers with substantial influence and the concluded official contract shall remain in force until the next resolution or concluded official contract on the same subject conducted in the following year enters into force.

(12) For the purposes of Paragraph (1)-(11), sales revenue shall mean the net sales revenue achieved by the procedure’s participant through media service provision activities in the course of the previous business year.

**Rules Governing Media Service Providers of Analogue Linear Radio Media Services Acquiring Media Service Provision Rights based on an Official Contract or Broadcasting Agreement**

**Article 71**

(1) Those authorised for analogue linear radio media service provision based on an official contract or broadcasting agreement shall have the right to simultaneously provide

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

(2) With the exception of thematic analogue linear radio media services, providers authorised to provide national analogue linear radio media services and owners with a controlling share therein shall not acquire controlling shares in other media service providers or in companies performing broadcasting.

(3) The same company may only acquire a controlling share in organisations authorised to provide analogue linear radio media services in keeping with the restrictions set out in Paragraph (1).

(4) The media service provider's own rights and the rights of the companies in which it holds a controlling share shall be taken into account jointly for the purposes of Paragraphs (1) and (3).

(5) Regional or local analogue linear radio media service providers or their owners shall not, with the exceptions set out in Paragraph (5), acquire controlling shares in other companies providing regional or local media service falling within their coverage area.

(6) The restriction set out in Paragraph (5) shall not be applied if

a) the coverage area of the two media service providers overlaps up to twenty percent at most, or

b) unused transmission time remains after the evaluation of the tender and an agreement is concluded in a manner that a new tender is announced/published, parallel to the invitation of a new tender, for the unused transmission time with the media service provider defined in Paragraph (5), with the proviso that the transmission time thus acquired by it differs up to eighty percent from its existing transmission time, and none of the transmission times exceeds four hours.

(7) Concentrations of companies under the Act on the prohibition of unfair and restrictive market practices shall not be permitted if such were prejudicial to this Act.

## **CHAPTER VI**

### **PROTECTION OF DIVERSITY IN BROADCASTING**

#### **Diversity in Broadcasting**

##### **Article 72**

(1) The number of media services providers in which the same company holds a controlling share shall not exceed one quarter of the audiovisual media services or half the radio media services broadcast on a given transmission system.

(2) The number of media services the providers of which also perform programme distribution activities or in which the same broadcasting company has an ownership share shall not exceed one quarter of the audiovisual media services or half the radio media services broadcast on a given transmission system.

(3) The ratios defined in Paragraphs (1)-(2) shall also apply to the programme packages with the highest number of subscribers at the end of the previous calendar year in the given transmission system offered to viewers or listeners by the broadcasting company

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

### **The Transmission Obligation**

#### **Article 73**

(1) In order to preserve, protect and develop of Hungarian, national or ethnic minority and European culture, preserve national or ethnic minority languages, satisfy the information needs of citizens and facilitate participation in democratic public affairs and preserve diversity, the broadcaster defined in Paragraphs (2)-(3) shall have the obligations set out in Articles 74-75 (hereinafter referred to as must carry obligation).

(2) Broadcasters of radio and audiovisual media services using the transmission system or network to the public shall have a must carry obligation.

(3) Transmission systems or networks used for the programme distribution of radio and audiovisual media services to the public include, in particular, cable television networks, satellite and terrestrial (except analogue audiovisual broadcasting) programme distribution networks, as well as transmission systems allowing the transmission of media services through Internet Protocol if the nature and conditions of the service are identical to those of programme distribution, or if it substitutes programme distribution otherwise implemented.

(4) The must carry obligation shall also extend to service providers distributing programmes on other transmission systems or networks if a wide range of subscribers and users use this transmission system or network as the main instrument for receiving radio and audiovisual media services. The Media Council shall monitor such transmission systems or networks regularly – but at least every three years –, and perform their analysis in the context of such monitoring. If, in the course of the authority procedures launched as a result of such monitoring, the Media Council establishes that a must carry obligation must be prescribed for the transmission system or the network under review, it shall, in its resolution, establish such must carry obligation applicable to all service providers and operators distributing programmes on the transmission system or network.

(5) The must carry obligation shall not apply to radio media services in the programme distribution network or transmission system primarily serving the

broadcasting of audiovisual media services to the public.

(6) If the broadcaster simultaneously provides programme distribution on several transmission systems and programme distribution networks, the must carry obligation as per Paragraphs (1)-(4) shall apply to it individually for each transmission system and programme distribution network.

(7) A broadcaster shall qualify as influential from a media market perspective (hereinafter referred to as influential broadcaster) if

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

b) in case of publicly accessible programme distribution available free of charge, the coverage area of the broadcaster extends to over one-third of the population of the Republic of Hungary,

and the sales revenue arising from programme distribution or related services – with the exception of analogue transmission – on the territory of the Republic of Hungary of the broadcaster or any company holding a controlling share in it or its owner, or other companies operating besides the controlling share of the broadcaster or its owner exceeds one billion forints annually.

(8) In case of doubt, the influential broadcaster shall prove that the conditions set out in Paragraph (7) are not met with regard to it.

#### **Article 74**

(1) The broadcaster shall transmit a total of four linear audiovisual media services and three linear radio media services of the public service media service providers free of charge, with the exception of distribution implemented by way of transmission. The broadcaster shall not request an additional fee from subscribers in excess of the costs of access related to ensuring such access to media services. The public service media service provider shall not claim consideration from the broadcaster for the distribution of such media services.

(2) The Media Council shall verify the satisfaction of the obligation defined under Paragraph (1) *ex officio* or at request.

(3) The broadcaster shall transmit public service media services falling under the scope of the must carry obligation as a basic service in a manner that such services – with the exception of analogue distribution networks – may also be used as separate subscription services by subscribers. The broadcaster shall not request an additional fee for the use of such subscriber service packages from subscribers in excess of the costs of access related to ensuring such access to such media services. In case of analogue

distribution networks, all public service media service provision falling under the scope of the must carry obligation shall be made accessible to subscribers in all programme packages.

(4) The public service media service provider shall provide the media services distributed using transmission as per Paragraph (1) free of charge to subscribers.

(5) The Bureau shall monitor the satisfaction of the provisions set out in Paragraphs (3)-(4) *ex officio* or at request.

## **Article 75**

(1) The broadcaster shall – up to ten percent of its total capacity, but pertaining to three media services at most – be subject to a contracting obligation regarding the technically and economically founded contractual offer for the provision of regional or local audiovisual community media services by media service providers.

(2) The broadcaster shall – in respect of no more than two further media services – be subject to a contracting obligation regarding the technically and economically founded contractual offer for the provision of local audiovisual community media services by media service providers, with the proviso that the coverage area of the media service provider falls within the given broadcaster's coverage area based on the Media Council's register or in the separate service provision area as per Paragraph (4), and it provides such media services specifically for the given area's population. Pursuant to Paragraphs (1)-(2), regarding the local media services falling under must carry obligation, satellite broadcasters shall not be subject to must carry obligation.

(3) Over and above the media services falling under the must carry obligation defined in Paragraphs (1)-(2), the Media Council may – *ex officio* or at the media service provider's request – define in an authority resolution at most one other linear community or public service media service – serving the media policy objectives laid down in this Act – for each of the two additional media service providers for which the broadcaster shall have a contracting obligation regarding the technically and economically founded contractual offer. When issuing its resolution, the Media Council shall assess the extent to which the decision contributes to the diversity of the media market and of information, to achievement of the public service objectives set out in this Act and to the preservation and development of culture. Broadcasters shall not have the legal status of a client in such authority procedures.

(4) If the transmission system of the broadcaster as per Paragraphs (1)-(3) comprises service to several areas that can be technically distinguished from each other, the obligations as per Paragraphs (1)-(3) shall be applicable to the broadcaster separately for each technically distinguishable area.

(5) For the purposes of Paragraphs (1)-(2), the media service provider shall be

considered as being entitled to the must carry obligation in respect of those/such media services provided by it

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

b) which, pursuant to the Media Council's resolution, qualify as a community media service as per the criteria set in Article 66.

(6) For the purposes of Paragraphs (1)-(4), the broadcaster's information channels or the media services the provider of which, or the owner of the provider of which the broadcaster or its owner holds a controlling share in shall not be taken into account.

(7) The influential broadcaster shall have a contracting obligation for three more linear community audiovisual media services in addition to those listed under Paragraphs (1)-(3) in respect of the technically and economically founded contractual offer for the provision of audiovisual community media services.

(8) If, in the course of fulfilling its must carry obligation, the broadcaster is only obliged to transmit one authorised media service, however, several authorised media service providers simultaneously also require transmission, the broadcaster shall, in an unbiased manner, assess the authorised media service providers' contractual offers based on objective criteria, in the context of a public and transparent procedure.

(9) Offers may be rejected on objective technical grounds if the service provision requirement formulated therein jeopardises the safety of operation or the unity of the network.

(10) Offers may be rejected on objective economic grounds if the fees set therein diverge from costs (including the usual profit) to an extent that any agreement is rendered impossible.

(11) In the event of doubt, the broadcaster shall be responsible for proving that transmission is either economically or technically unfounded.

(12) The Media Council shall, in a final decision, notify the affected media service providers about the launch of the authority procedure as per Paragraph (3). Notifications shall only contain the subject-matter of the case and a brief description/summary thereof. The Media Council shall publish notifications by way of public notices. Only clients participating in the procedure shall be entitled to exercise client rights. The Media Council shall communicate its final authority decision made in the procedure by way of public notices.

(13) Taking into account the assessment criteria set out in Paragraph (3), the Media Council may amend its authority decision as per Paragraph (3) if such is warranted by a substantial change in circumstances. The provisions of Paragraph (12) shall apply to the communication of the amended decision.

(14) The submission of a claim in the context of the judicial review of the authority decision specified in Paragraphs (3) and (13) shall not have a suspensory effect on the enforcement of the decision, and the court shall not suspend the enforcement of the authority decision contested by the claim. The decision shall be immediately enforced, irrespective of the submission of a claim.

### **Article 76**

The media service provider shall be entitled to initiate the legal dispute procedure as per Articles 172-174 if

a) any of the agreements as per Article 75 (1)-(3) and (7) is not concluded within thirty days of the offer, or

b) the broadcaster violates the authorised media service provider's programme distribution right or legitimate interest set forth in legislation or agreement.

### **Article 77**

(1) The broadcaster shall send all agreements and amendments thereto concluded with media service providers in the context of its must carry obligation defined in its Chapter – within thirty days from their conclusion or amendment – to the Authority, and shall notify the Authority of the termination of such agreements within thirty days of termination.

(2) The broadcasters and media service providers under the must carry obligation regulated in this Chapter shall disclose data upon the Authority's request.

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

### **Article 78**

(1) Media service providers with substantial influence in which or in the owner of which the broadcaster or the owner thereof holds a controlling share (hereinafter jointly referred to as media service provider under obligation for the purposes of Articles 78-81) shall be subject to the obligation defined in Paragraph (2) for all linear media services.

(2) The media service provider under obligation shall, regarding the broadcaster's fair and reasonable contractual offers, have a contracting obligation in respect of all its linear media services. The media service provider under obligation shall be subject to a separate contracting obligation for each linear media service.

(3) The media service provider under obligation shall not make the conclusion of any agreement pertaining to any of its media services conditional upon the conclusion of other agreements on media services, or the purchase of other services or products (prohibition on tying), and shall not include any condition not strictly necessary for the distribution of the media service as a material substantive element of such agreement.

(4) The media service provider under obligation and the broadcaster shall formulate the agreement and the contractual terms and conditions – in particular, but not solely the fee – in line with the principle of equal treatment, setting an accessible price level and in keeping with the principles of technological neutrality and economies of scale. In the context of this, the media service provider under obligation shall not differentiate unfoundedly between the contractual offers of broadcasters. Parties shall be authorised to amend the pricing elements of the agreement once annually, from the date of conclusion.

(5) For the purposes of this Act, behaviour in breach of the principle of equal treatment shall be, in particular, if the media service provider under obligation

a) subjects programme distribution to technical conditions that the majority of programme distributors cannot meet, or

b) when determining the fee payable by the broadcaster, pricing terms – including the discount granted on volume – are set in a manner that only a select number of broadcaster may access the more advantageous terms.

(6) The offer may be rejected if performance of the undertaking contained therein is not feasible based on technical or economic factors, and the parties cannot come to an agreement regarding such terms in the procedure aimed at concluding an agreement.

(7) In case of doubt, the media service provider under obligation shall substantiate the refusal of the offer.

## **Article 79**

(1) In order to ensure the proper and transparent satisfaction of the contracting obligation set out in Article 78 (2), the media service provider under obligation shall determine general contractual framework conditions for the distribution of media services, and publish such conditions on its website.

(2) The media service provider under obligation shall determine its general contractual framework conditions as per Paragraph (1) in line with the requirements of rationality, ensuring that they are legitimate, transparent and can be subject to verification. Conditions contrary to any of these shall not be applied.

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

a) the contractual framework conditions regarding the programme fee payable to the media service provider under obligation, thus, in particular, the fundamental principles, method, period of application, method and place of payment of the pricing policy of the media service provider under obligation,

b) the procedure applicable to conclusion of the agreement, the method and terms for using the service, and the technical, economic or other restrictions thereof,

c) cases and conditions for the amendment or termination of the agreement,

d) cases of suspension of the service,

e) breach of agreement and the legal consequences thereof.

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

(5) The Bureau shall check the fulfilment of the obligations set forth in Paragraph (1)-(4).

### **Article 80**

(1) The broadcaster shall be entitled to initiate the legal dispute procedure as per Article 172-174 if

a) the agreement as per Article 78 (2) was not concluded within thirty days of the offer, or

b) the media service provider under obligation has violated the authorised broadcaster's right or legitimate interest defined in legislation or an agreement affecting broadcasting.

(2) If the amount of the fee payable by the broadcaster is contested, the media service provider under obligation shall be responsible for proving the legality of the pricing and the proceedings in line with the obligation for equal treatment.

### **Article 81**

(1) The media service provider under obligation shall send all agreements and amendments thereto concluded with broadcasters – within thirty days of their conclusion or amendment – to the Bureau in the context of the obligation defined in Article 78, and shall notify the Bureau of the termination of such agreements within thirty days of

termination.

(2) The media service providers and broadcasters under obligation of the obligation defined in Articles 78-79 shall disclose data at the Authority's request.

## **PART THREE**

### **PUBLIC SERVICE BROADCASTING**

#### **CHAPTER I**

#### **BASIC PRINCIPLES AND OBJECTIVES OF PUBLIC SERVICE BROADCASTING**

##### **Basic Principles of Public Service Broadcasting**

##### **Article 82**

Public service broadcasting is characterised by the following:

- a) its operations are independent both from the state and from economic agents, and the managers of public service broadcasters and those involved in the performance of their operations have professional autonomy – within the applicable legislative framework,
- b) its system ensures accountability and the existence of social control,
- c) its operations are financed primarily from the joint voluntary contributions of those living in the Republic of Hungary, with public funding,
- d) its operations cannot be primarily focused on profit-making.

## **The Objectives of Public Service Broadcasting**

### **Article 83**

(1) The objectives of public service broadcasting include the following:

a) the provision of overall media services in the social and cultural sense, that is aiming to address as many social strata and culturally distinct groups and individuals as possible,

b) to foster and enrich national, communal and European identity, culture and the Hungarian language,

c) promote and strengthen national cohesion and social integration, and respect the institution of marriage and the value of family,

d) provide information on and hold up constitutional rights, the fundamental values of the constitutional order and the rules of democratic social order,

e) satisfy the media related needs of national and ethnic minorities, religious communities and other communities, present their culture, foster the mother tongues of national and ethnic minorities,

f) satisfy the special needs for media services of underprivileged groups who are at a great disadvantage due to their age, physical, mental or psychological state or social circumstances, as well as people living with a disability,

g) serve the cultural needs of Hungarians living abroad, promote their national self-identity and keeping alive of their mother tongue, foster their spiritual relations with their mother country,

h) broadcast programmes serving the physical, spiritual and moral development and widening the knowledge horizon of minors, also educational and general knowledge programmes serving child protection purposes,

i) discharge educational and general knowledge dissemination tasks, present the latest scientific discoveries,

j) disseminate information promoting healthy lifestyles, the protection of the environment, nature and landscape conservation, public security and transport security,

k) broadcast programmes about social, economic and cultural life in Hungary, as well as of various areas within the Carpathian Basin,

l) Present Hungary and Hungarian culture to Europe and to the world, as well as the culture of national and ethnic minorities living in Hungary,

m) provide unbiased, accurate, thorough, objective and responsible news service and reporting,

n) present side-by-side individual conflicting opinions, conduct debates about public affairs, contribute to the freedom of opinion based on the reporting of reliable information,

o) broadcast a rich palette of diverse programmes representing different value systems, present high quality entertainment as well as programmes generating widespread interest,

p) present high quality programme-making across every segment of the programme stream, with reasonable and justified involvement in media market competition.

(2) Public service broadcasting strives to:

a) ensure media industry innovation, the continuous improvement of professional standards and the use of high ethical standards in media services,

b) boldly use new technologies and broadcasting methods, play a pivotal role in discovering new digital and online media services and put them to use in the public interest,

c) promote the acquisition of knowledge and skills needed for media literacy and further develop the former through public service programmes and other activities outside the scope of media services,

d) support Hungarian film art and present new Hungarian cinematographic creations,

e) serve public interest through activities other than media services, such as book publishing or active involvement in theatre events, among other things.

(3) Public service broadcasters shall contribute to the long-term preservation of the cultural values and historical documents that might come into their possession in the course of performing their activities, whether by way of archiving or professionally collecting and looking after the former.

## **CHAPTER II**

### **THE PUBLIC FOUNDATION**

## **General Rules**

### **Article 84**

(1) Parliament shall establish the Public Service Foundation (hereinafter referred to as Public Foundation) with a view to providing for public service media and new service broadcasting and the protection of their independence. The Public Foundation is owned by *Magyar Televízió* Non-Profit Private Company Limited by Shares, *Duna Televízió* Non-Profit Private Company Limited by Shares, *Magyar Rádió* Non-Profit Private Company Limited by Shares, and *Magyar Távirati Iroda* Non-Profit Private Company Limited by Shares (hereafter jointly: public service broadcasters).

(2) The initial capital of the Public Foundation shall be established by Parliament in a parliamentary resolution.

(3) Parliament shall adopt and may amend the Public Foundation's deed of foundation subject to a two-thirds majority of the MPs in attendance. The issues of the operation and organisational structure of the Public Foundation not regulated in this Act or the deed of foundation shall be outlined in the Public Foundation's Organisational and Operational Regulations.

(4) In the absence of any provisions of this Act to the contrary, the general rules governing public foundations shall apply to the above-specified Public Foundation.

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

### **Article 85**

(1) The managing organisation of the Public Foundation is the Board of Trustees.

(2) The tasks and scope of activities of the Board of Trustees shall be outlined in the Public Foundation's deed of foundation, in line with this Act.

(3) The Board of Trustees shall – within the framework of this Act and the Public Foundation's deed of foundation – define and adopt its own procedural rules, as well as the Public Foundation's Organisational and Operational Regulations. These procedural rules outline the rules governing the substitution of the chairperson of the Board of Trustees.

(4) The operations of the Board of Trustees shall be supported by the Board of Trustees bureau (hereinafter referred to as Bureau). The administrative, case management and procedural responsibilities of the Board of Trustees shall be fulfilled by the Bureau. The Board of Trustees as well as Board of Trustee members are entitled to get expert assistance via the bureau. The terms and conditions of using experts as well as the operating conditions of the Bureau shall be set out in the Public Foundation's Organisational and Operational Regulations.

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

### **Article 86**

(1) Parliament shall elect six members to the Board of Trustees by voting for each member individually, subject to a two-thirds majority of the MPs in attendance.

(2) One half of the members who may be elected by the Parliament to the Board of Trustees shall be nominated by the governing faction and the other half by the opposition factions. Both the governing faction and the opposition factions shall come to a mutual agreement about the candidates who may be nominated by the governing/opposition sides respectively.

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

(4) In the event of any faction's failure to make a nomination, another (the other) faction(s) of the given side may exercise the nomination right of the side in question.

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

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

(7) The Board of Trustees shall be deemed to have come to existence when all its members have been elected and its chairperson as well as one other member has been delegated by the Media Council. Each Board of Trustees member shall be inaugurated by making an oath before the speaker of Parliament in accordance with Annex 2.

(8) The formation of the Board of Trustees shall not be prevented by the failure of either the governing or the opposition faction to make a nomination, or in the event that not all nominees obtain the necessary majority – or if Paragraph (5) applies then the new nominee does not get the necessary majority. In this case the Board of Trustees comes into existence with the election of at least three members.

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

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

### **Article 87**

(1) If the mandate of an elected member ends before the expiry date of the period defined in Article 86 (10), then a new member shall be nominated and elected in accordance with Paragraphs (2)-(7).

(2) If the nomination of a new member takes place still within the same Parliamentary cycle when other Board of Trustee members are elected, or if the governing faction and the opposition factions remain unchanged following Parliamentary elections held after the Parliamentary cycle in question, then nomination shall be governed by the provisions of Article 86 Paragraphs (2)-(4), with the proviso that the right of nomination shall be vested with that – whether governing or opposition – side, based on whose nomination the previous member – now to be substituted – had been elected and whose mandate was subsequently terminated.

(3) If the nomination of a new member takes place after the Parliamentary cycle during which other Board of Trustee members were elected, then – provided that there is a change to the governing faction and/or the opposition factions following the Parliamentary elections held after the end of the Parliamentary cycle in question, – then a nomination committee (to which all Parliamentary factions delegate one member respectively) shall propose a candidate by unanimous vote within fifteen days of having the nomination committee established.

(4) Should the nomination committee fail to nominate a member within the deadline defined in Paragraph (3), then the nomination committee may suggest a nominee within the subsequent eight days if it obtained at least two-thirds of the votes. In the course of this, the number of votes to which individual members of the nomination committee are entitled shall be a function of the size of the Parliamentary faction nominating them at the time of voting.

(5) In the course of the nomination procedure as defined in Paragraphs (3)-(4) above, the nomination committee must take into consideration any changes taking place either on the side of the governing and the opposition faction, for instance changes in the affiliation of a Parliamentary faction, the establishment of a new faction or the termination of an existing faction.

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

(7) After a successful nomination, Parliament shall elect the new Board of Trustees member with a two-thirds majority of the MPs in attendance for the rest of the term of the already operational, elected Board of Trustees. Upon his or her inauguration every new member of the Board of Trustees shall make an oath before the chairperson of Parliament as set out in Annex 2.

(8) In case of early termination of the mandate of the chairperson of the Board of Trustees or a Board of Trustee member delegated by the Media Council, the Media Council shall within fifteen days delegate a new chairperson/member for the rest of the term of the Board of Trustees.

### **Article 88**

(1) Conflict of interest rules stated in Article 118 (1)-(2) of the Act as pertaining to the chairperson and members of the Board of Trustees, the chairperson and vice chairperson, director general and deputy director general of the Authority, as well as the rules stated in Article 118, Paragraph (3) shall be applicable as appropriate.

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

(3) The Chairperson and members of the Board of Trustees may not establish a working relationship with any public media service provider within 12 months from the end of their mandate.

(4) If the Chairperson of the Board of Trustees or any of its members fail to meet their verification obligation despite being asked to do so as defined in Article 89, Paragraph (4) of the Act due to their own fault, or if any conflict of interest arises in respect of a member of the Board of Trustees or its chairperson, and the conflict of interest is not eliminated within thirty days of the emergence of the cause of the conflict of interest or the date of the meeting establishing the conflict of interest, the plenary meeting of the Board of Trustees shall adopt a resolution terminating the Board membership of the Board of Trustees chairperson or member in question. The chairperson or member of the Board of Trustees shall be stripped of their vested powers as of the date of the adoption of the resolution establishing a conflict of interest.

(5) If placed under guardianship affecting legal capacity, the mandate of the chairperson or any member of the Board of Trustees thus affected shall be terminated by way of dismissal.

(6) Membership shall be terminated by way of expulsion if

a) the chairperson or member of the Board of Trustees is unable to fulfil his or her vested responsibilities for more than six consecutive months for reasons within his or her control, or

b) if as a result of criminal proceedings instituted against any member or chairperson of the Board of Trustees the chairperson or member is pronounced guilty by the court's final verdict delivering a term of imprisonment, or barring him or her from exercising his or her occupation aligned with the activities of the Board of Trustees or from participation in public affairs.

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

## Article 89

(1) Termination of the mandate of the chairperson or member of the Board of Trustees due to conflict of interest, dismissal or expulsion shall be established and announced by the plenary meeting of the Board of Trustees.

(2) In the decision-making process of the plenary meeting of the Board of Trustees concerning any conflict of interest, dismissal or expulsion, the chairperson or member so affected may not take part in the voting process, and the unanimous resolution of those entitled to vote is required to resolve such matters. If a unanimous decision is not reached on the subject matter in the case of a repeated voting procedure concerning the issues mentioned above, the chairperson of the Board of Trustees shall propose to transfer the case to Parliament to make the decision. In this case, Parliament shall adopt a decision on the conflict of interest, dismissal or expulsion with a two-thirds majority of the MPs in attendance.

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

(4) If any information comes to light to suggest that any of the legal consequences defined in Article 88, Paragraph (6), point (b) are applicable to any member of the Board of Trustees, then the chairperson of the Board of Trustees shall call upon the affected Board of Trustees member in writing - by designating a deadline and by setting out the legal consequences of failure to comply - to verify having a clean criminal record and not being banned from exercising an occupation aligned with the activities of the Board of Trustees or from participating in public affairs.

(5) The chairperson of the Board of Trustees shall be in charge of handling the personal data of Board of Trustees members - as may have come to his or her knowledge pursuant to Paragraph (4) - until the end of the Board member's mandate.

(6) The provisions of Paragraphs (4)-(5) shall apply also to the chairperson of the Board of Trustees, with the exception that the chairperson of the Board of Trustees shall fulfil to the Board of Trustees his or her verification obligation defined in Paragraph (4), whereas the right defined in Paragraph (5) shall be vested with the Board of Trustees. The chairperson of the Board of Trustees shall not be involved in exercising the powers of the Board of Trustees as defined in this Paragraph.

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

### **Article 90**

(1) The Board of Trustees has the following powers:

a) supervise fulfilment of public media service objectives through the activities of public service broadcasters,

b) if in its opinion the behaviour of a public media service provider seriously violates or threatens the attainment of public media service objectives, then it may propose to the Media Council to start proceedings,

c) safeguard the independence of public service broadcasters,

d) establish and amend the deed of foundation of a public media service provider, and publish it in the Magyar Közlöny (Official Gazette),

e) elect the general manager of a public media service provider, and determine the terms and conditions of his or her work contract as well as remuneration,

f) terminate the employment of the general manager of a public media service provider,

g) elect the joint supervisory board chairperson and members of a public media service provider, and also recall the same,

h) appoint the auditor of a public media service provider, or terminate the mandate of the former. The responsibilities, powers and scope of authority of the auditor are regulated by the Board of Trustees in the deed of foundation of the public media service provider within the framework of the Act on Business Associations and the Accounting Act,

i) approve the annual financial management plan of the Public Foundation and adopt its balance sheet,

j) in relation to public service broadcasters, exercise the powers of the general meeting based on the Act on Business Associations, with the exceptions defined by this Act,

k) as the trustee of the Public Foundation, dispose of the Public Foundation's assets,

l) increase or lower the equity capital of the public media service provider, as regulated by the Public Foundation's deed of foundation,

m) approve the principles and key accounts of the public media service provider's annual financial management and financial plans,

n) approve the public media service provider's balance sheet and profit and loss statement,

o) control the funding and financial management of the public media service provider in terms of compliance with applicable EU standards,

p) grant prior authorization for negotiating contracts of more than three hundred million forints which public service broadcasters may wish to conclude,

q) grant prior approval for borrowing arrangements of public service broadcasters and contracts of more than one hundred million forints to be concluded by the former, as well as for the amendment or termination of any contracts thus concluded,

r) discharge other responsibilities as may be defined hereunder.

(2) When applying sections (p)-(q) of Paragraph (1), the value of all services to be paid for by the public media service provider within the same calendar year under various contracts with the same contracting partner – regardless of their content – shall be aggregated.

## **Article 91**

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

a) to change the basic scope of activities of public service broadcasters,

b) to terminate, merge, de-merge or transform public service broadcasters into another organisational form,

c) to withdraw assets from a public media service provider,

d) to define the programme structure of public service broadcasters – beyond adopting their content provision plan -, or to determine the content of their programmes, services or broadcasts,

e) to give the general manager of a public media service provider instructions in respect of the employer's rights conferred upon him or her,

f) to adopt a decision in any matter that is conferred under the competence of another organisation or the general manager of the public media service provider by this Act.

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

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

#### **Article 92**

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

(2) Members of the Board of Trustees – including the Chairperson of the Board of Trustees – shall have equal voting rights. In the event of the parity of votes, the vote of the chairperson shall be decisive.

(3) The Board of Trustees has quorum when more than half of its members are present.

(4) The Board of Trustees shall adopt its resolutions by a simple majority of the votes of its members and the chairperson, unless the Act stipulates otherwise.

(5) The Chairperson of the Board of Trustees the agenda of the meeting and shall also preside over the meeting. Any member may make a proposal as to the items on the agenda in writing, in advance, and the meeting shall decide whether or not to accept them.

### **Remuneration of the chairperson and members of the Board of Trustees**

#### **Article 93**

The chairperson of the Board of Trustees is entitled to sixty percent of the basic remuneration of state secretaries, whereas members of the Board of Trustees are entitled to forty percent of the basic remuneration of state secretaries, plus expenses up to maximum fifty percent of said remuneration. More detailed rules pertaining to the calculation of the reimbursement of expenses are set forth in the Public Foundation's Organisational and Operational Regulations.

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

### **Article 94**

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

- a) financial contribution from the Fund to finance operations,
- b) the proceeds from the assets of the Public Foundation,
- c) the proceeds from the disposal of assets managed by the Public Foundation,
- d) other receipts serving the purposes of foundations (subsidies and target subsidies from the central budget, payments made to the foundation).

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

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

(3) The Public Foundation may not engage in any profit generating business operations, may not found another business undertaking and may not acquire shares in other existing business undertakings, and is not entitled to establish foundations.

(4) The financial management of the Public Foundation shall be controlled by the State Audit Office.

## **CHAPTER III**

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

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

### **Article 95**

(1) The Public Service Code (hereinafter referred to as the Code) contains – in accordance with this Act – the basic principles governing public service broadcasters and

fine-tunes the public service objectives defined in this Act. The Code can contain either general content or content relating to individual public service broadcasters. Fundamentally, the Code is meant to provide guidance to public service broadcasters regarding the proper operating principles to be adopted by public service broadcasting companies within the framework of the Act.

(2) The Code will first be adopted by the Media Council with the consent of the Board of Trustees any with a view to the opinion of the general directors of public service broadcasters.

(3) The Code may be amended by the Public Service Board – following its first approval in accordance with Paragraph (2) – with the Board of Trustees’ consent. Apart from the Public Service Board, an amendment may be requested also by the Board of Trustees and general directors of public service broadcasters.

(4) The Institute for Media Studies operating under the aegis of the Media Council shall provide professional advice in relation to the drafting and amendment of the Code as may be required.

(5) Enforcement of the rules set out by the Code shall be monitored by the Public Service Board.

## **Article 96**

The Code can regulate the following, among other things:

a) the means and method of attaining statutory objectives defined for public service broadcasting,

b) the basic principles ensuring independence from political parties and political organisations,

c) the principles regarding the presentation of news and political programmes on current issues and disputed matters in a broader perspective and in an objective and unbiased manner, and the presentation of the diversity of opinions and views,

d) the criteria for fostering culture in the native language,

e) the principles and manner of presenting the culture and life of national and ethnic minorities living in Hungary,

f) the principles of presenting cultural, scientific, ideological and religious diversity,

g) the principles of performing tasks with regard to the protection of minors,

h) the principles relating to ethical norms governing the broadcasting of commercial announcements, advertising and the sponsorship of programmes,

i) the principles of the broadcasting announcements in the public interest,

j) the principles relating to the extent and guarantees of the editorial independence and responsibility of programme makers employed by public service broadcasters, and the guarantees of their participation in the definition of principles with respect to making and editing of programmes,

k) the principles of keeping members of the Hungarian nation living abroad adequately informed on the one hand, and providing adequate information about them on the other hand,

l) the principles of formulating basic ethical rules applying to staff members – pointing beyond the scope of this Act –, with special regard to those employed in news and political programmes.

## **The Public Service Board**

### **Article 97**

(1) The Public Service Board is composed of fourteen members, its chairperson is elected by its own members from their midst, it adopts its decisions with a simple majority of votes, unless the Act stipulates otherwise. In the event of the parity of votes, the vote of the chairperson shall be decisive.

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

(3) Public Service Board members must be delegated at least thirty days prior to the end date of the previous member's mandate.

(4) The Public Foundation's bureau shall fulfil the secretarial responsibilities of the Public Service Board.

(5) The Public Service Board's chairperson is entitled to forty percent of the basic remuneration of state secretaries, and its members are entitled to twenty-five percent of the basic remuneration of state secretaries. Additionally, the chairperson and members are entitled to the reimbursement of their travel expenses.

(6) The Public Service Board guarantees social control over public service broadcasters.

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

(8) Once every year - always by February 28 in relation to the previous calendar year – the general directors of a public service broadcaster draft a report on whether or not – in their own assessment – the media service provider under their management has fulfilled the requirements outlined in this Act regarding the objectives and basic principles of public service broadcasting.

(9) The Public Service Board discusses this report and adopts it with a simple majority of votes.

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

(11) The Board of Trustees must put on its agenda and debate within eight days any proposal for the termination of the general manager's employment. To the Board of Trustees meeting must be invited the general director and the chairperson of the Public Service Board.

(12) The Board of Trustees shall adopt its decision regarding the proposal to terminate employment with a simple majority of the votes of attending members. The resolution thus adopted needs to be accompanied with a justification.

(13) If despite the proposal the Board of Trustees does not terminate the general director's employment, then in three months time the Public Service Board must once again put on its agenda a new hearing of the general manager.

(14) If the general manager's employment was terminated for his or her failure to implement the objectives and principles of public service, then for ten years he cannot be re-nominated for the general managerial position of a public service broadcaster.

## **CHAPTER IV**

### **PUBLIC SERVICE BROADCASTERS**

#### **General Rules**

##### **Article 98**

(1) Public service broadcasters are responsible for implementing the objectives of public service broadcastings as defined in Article 83. Public service broadcasters shall fulfil their responsibility by joint effort - by coordinating their actions as much as possible – while retaining their autonomy.

(2) Any deviations outlined in this Act for public service broadcasters shall be subject to the provisions of the Act on Business Associations on companies limited by shares as appropriate, including common rules applicable to companies.

(3) All public service broadcasters hold one non-marketable share each.

#### **Presentation of national and ethnic minorities in public service broadcasting provision**

##### **Article 99**

(1) All national and ethnic minorities recognised by the Republic of Hungary are entitled to foster their culture and mother tongue, and to be regularly informed in their mother tongue by way of specific programmes aired by public service media.

(2) The responsibility defined in Paragraph (1) shall be fulfilled by public service broadcasters via nationwide or – in view of the specific geographic location of national or ethnic minorities – via local media services by airing programmes answering the needs of the national or ethnic minorities in question, or via audiovisual media services using subtitling or broadcasting in multiple languages, as required.

(3) The national self-government bodies of national and ethnic minorities, or failing this their national organisations, shall make their independent decision concerning the principles of allocation of the transmission time made available to them by public service broadcasters. The public service broadcaster shall abide by these principles, which may not affect the contents and editorial principles of the programme.

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

##### **Article 100**

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

(2) The Fund may not dispose of, transfer or encumber public service media assets in any way, either in full or in part. This prohibition does not however prevent the utilisation of copyright and usage rights established on specific components of public service media assets.

(3) The Fund shall be responsible for the storage, safekeeping and utilisation of public service media assets, as well as physical data carriers containing works and other outputs subject to copyright law, acquired by public service broadcasters and the Fund but not classified as part of public service media assets (hereafter jointly: the Archive). The Archive is classified as a public collection with a nationwide catchment area.

(4) Detailed archiving rules as well as detailed rules of preserving, maintaining and using the Archive shall be defined by the Fund's chairperson by way of a regulation, subject to the agreement of the Media Council.

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

(6) The Fund shall execute an asset management agreement with public service broadcasters for the utilisation of public service media assets. This agreement confers on public service broadcasters the right to use free of charge any public service media asset in their management, including the right of broadcasting publicly to audiences under the aegis of public service broadcastings.

(7) Copyrighted works and other intellectual property found in the Archive but falling outside the scope of media assets shall be used by public service broadcasters within the framework of the Copyright Act as well as the terms and conditions of agreements concluded with copyright owners and holders of neighbouring rights. The Fund may transfer to public service broadcasters works classified as public service media assets – where such public service broadcasters do not need to obtain separate authorisation and do not have to pay any fees for the privilege of doing so - for the purposes of transmission to a public audience, together with copyrighted works and other intellectual property falling outside the scope of public service media assets, but in respect of which the Fund does have the right of usage.

(8) If it cannot be decided whether certain copyrighted work held in the Archive falls within the scope of public service media assets, and if it is aired in the public service media, then the beneficiary of the copyright or neighbouring right resulting from the broadcast may prohibit any future use of the work in question. In case of usage that has already occurred, the performer – owner of the foregoing rights – is entitled to adequate remuneration from the media service provider. In case of dispute, the amount of the remuneration shall be determined by the courts.

(9) Possible owners of copyrights associated with works forming part of public service media assets – other than the Fund – shall also be entitled to adequate remuneration. In case of legal dispute, the amount of the remuneration shall be determined by the court.

(10) Unless there is any other agreement to the contrary or unless the asset management agreement referred to in Paragraph (6) contains a provision to the contrary, the acquisition of any usage rights by public service broadcasters over public service media asset components in their management and the free of charge transfer of certain public service media asset components between various public service broadcasters shall be exempted from the provisions of Article 30, Paragraphs (3) and (4) of Act LXXVI of 1999 on copyrights.

## **Distinct Tasks of the National News Agency**

### **Article 101**

(1) The Hungarian Telegraphic Agency, a non-profit private company limited by shares, as the national news agency, shall discharge the following public service responsibilities in addition to being responsible for the attainment of the objectives defined in Article 83:

a) publish news items, news reports, photographs, data carriers, background materials, graphic images and documentary information about events of general interest, taking place in either Hungary or abroad,

b) provide access to all news items and news reports, knowledge of which is necessary for empowering the general public to adequately represent the rights and interests of the community and the individual alike,

c) play a role in forwarding to the printed and online media any statements serving general interest, whether such statement is made by a government organisation, another organisation or a natural person,

d) regularly and objectively report the actions of parliamentary and non-parliamentary parties, leading civil organisations, the Government, public administration entities, municipalities, courts and prosecution offices, and publish official statements related to the above,

e) regularly and objectively present to foreign viewers major events taking place in Hungary as well as main processes taking place in the country ,

f) regularly and objectively publish reports on the lives of ethnic Hungarians living outside the borders of the Republic of Hungary, and provide a news service to the former,

g) regularly and objectively report on the life of national and ethnic minorities living in Hungary,

h) at time of elections, provide information as outlined in a separate Act,

i) in a state of national crisis or state of emergency discharges duties outlined in a separate Act,

j) ensures the long-term preservation and protection of cultural values and original documents of historical importance that might come into their possession in the course of performing their activities,

k) take part in the work of international news agency organisations.

(2) To foster the fulfilment of the public service responsibilities of a national news agency, it shall operate a network of correspondents

- a) covering all counties of Hungary as well as the Hungarian capital,
- b) covering all areas within the Carpathian Basin with an ethnic Hungarian population,
- c) a network of overseas correspondents as the country's international relations and interests may require.

(3) In case of a national crisis, state of emergency or state of danger, or if the territory of Hungary is subject to unexpected attack by foreign armed groups, furthermore in the event of having to defend the territorial integrity of the country with the Hungarian and allied anti-aircraft and stand-by air forces, Parliament, the National Defense Council, the President of the Republic and the Government, and/or persons and entities defined by law may – to the necessary extent as the situation warrants – may order the national news agency to provide information in accordance with Article 32, Paragraph (6).

(4) The national news agency shall produce news programmes within its exclusive right for other public service broadcasters, it also operates an integrated news hub for public service broadcasters, side-by-side with other online press products and downloadable media services.

## **Electing the General Directors of Public service broadcasters**

### **Article 102**

(1) Public service broadcasters are headed by a general director, they do not have a Board of Directors. The general director shall – within the scope of this Act – exercise all those powers, which the Act on Business Associations confers upon the Board of Directors of a company limited by shares. A work contract must be executed with the general director, and his or her remuneration must be defined as a fixed monthly sum payable by the public service broadcaster under his or her management.

(2) The Board of Trustees is vested with employer's rights in relation to the general directors of public service broadcasters, which includes the appointment of general directors and the termination of their employment. General directors are nominated and appointed in the following step-by-step order:

- a) the chairperson of the Media Council proposes two general directors to the Media Council in relation to each public service broadcaster,

- b) if the Media Council approves of these candidates, then it shall submit the nominations to the Board of Trustees, asking it to select one of the candidates,

c) if the Media Council does not approve of either of the candidates proposed by the chairperson of the Media Council, then the chairperson of the Media Council shall propose a new candidate. The Media Council may nominate a candidate to the Board of Trustees only if it had already approved two candidates,

d) the Media Council may also propose certain substantive elements to be included in the general director's work contract,

e) during the first round of voting, members of the Board of Trustees – including its chairperson – shall come to a decision concerning the appointment of the general director with a two-thirds majority of votes,

f) if the Board of Trustees fails to make a selection with a two-thirds majority of votes from the two candidates nominated by the Media Council within thirty days from the date when they were nominated, then a new nomination procedure must be carried out,

g) in the course of the new nomination, two new candidates must be proposed per public service broadcaster,

h) during the vote taking place after a new nomination, all members of the Board of Trustees – including its chairperson – shall come to a decision concerning the appointment of the general director with a simple majority of votes.

(3) The Board of Trustees shall come to a decision concerning the appointment of the general director and the terms and conditions of his or her work contract – drawn up with a view to the Media Council's proposal – by taking a vote. The general director's work contract shall be made for an indefinite period. Should the elected general director refuse to accept the conditions outlined in the draft work contract as proposed by the Board of Trustees, then the Board of Trustees shall take a repeat vote about the work contract with amended terms and conditions. If no agreement can be reached about the terms and conditions of the work contract, then a new general director must be elected.

(4) The general director's employment may be terminated

a) upon his or her dismissal,

b) as per his or her work contract,

c) upon his or her death,

d) in the event regulated by Article 97 (10)-(12), provided that the Board of Trustees decides on termination based on the Public Service Board's proposal.

(5) The general director's employment shall be terminated by dismissal, if

- a) he is placed under guardianship affecting his or her legal capacity,
- b) if, as a result of criminal proceedings instituted against him or her, he is pronounced guilty by the court's final verdict delivering a term of imprisonment,
- c) he is unable to fulfil his or her vested responsibilities for three consecutive months for reasons beyond his or her control,
- d) he is in breach of conflict of interest rules, and fails to eliminate such conflict of interest within thirty days of having its established,
- e) he has been banned by the court from exercising his or her occupation or from participation in public affairs.

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

(7) A general director may appoint two deputy general directors. The Board of Trustees shall approve the terms and conditions of the work contracts of deputy general directors.

### Article 103

(1) Persons eligible for the position of general director of a public service broadcaster include Hungarian citizens with a clean criminal record and higher education diploma, as well as at least five years of relevant work experience.

(2) Relevant work experience may include previous experience in programme-making, broadcasting, information dissemination, furthermore related technical, legal, managerial, business administration, economic, cultural, scientific and opinion polling.

(3) Those who at any time during the two years before the date of election held the post of President of the Republic, Prime Minister, a member of the Government, state secretary, state secretary responsible for public administration, deputy state secretary, MP, mayor of Budapest, deputy mayor of Budapest, mayor, deputy mayor, political party official nationwide or as part of a territorial unit are not eligible for appointment as general director of a public service broadcaster.

(4) The process to be applied for the verification of the clean criminal record of a general director of a public service broadcaster and applicable legal consequences shall be governed by the Labour Code.

### **Conflict of interest rules applicable to the executives of public service broadcasters**

## Article 104

(1) Throughout the term of their employment, the general director and senior officials of a public service broadcaster shall be subject to the conflict of interest rules defined by Article 118, Paragraph (1), points (a)-(c) and (f) as being applicable to the Authority's chairperson, vice president, director general, deputy director general, as well as exclusion causes outlined in Article 118, Paragraph (3), as the case may be.

(2) Apart from the conflict of interest rules outlined in Paragraph (1), the general director and senior official of the public service broadcaster, or their direct relations must not hold an ownership stake in, and cannot be senior officials or supervisory board members of companies which have any business dealings with the public service broadcaster headed by the general director or employing him or her as a senior official. If this rule is breached by a direct relation of the public service broadcaster's general director or senior official, then this being the case shall be deemed as a conflict of interest cause in respect of such general director or senior official, and shall lead to the appropriate legal consequences.

(3) Throughout the term of their employment, the general director and senior officials of a public service broadcaster must not be engaged in any revenue generating occupation, with the exception of scientific, teaching, literary, artistic and other copyright occupations, and shall not be entitled to receive any remuneration from the public service broadcaster under their leadership under the foregoing legal titles either.

(4) The general director of a public service broadcaster shall – prior to entering into work contract – represent in writing that he or she is not subject to any conflict of interest cause.

(5) The general director or senior official of a public service broadcaster cannot enter into agreement on behalf of the public service broadcaster in which he or she or a direct relation of his or her or a company features as the other party, in which he or she or his or her direct relation holds an indirect or direct ownership stake, or some other valuable right and interest, or personal stake. Contracts within the sphere of interest of staff members subject to the foregoing restriction may not be concluded by any other staff member of the public service broadcaster either.

## Article 105

(1) The general director shall direct the operations of the public service broadcaster in accordance with this Act, other laws and regulations, the deed of foundation of the Public Foundation and the public service broadcaster and the resolutions of the Board of Trustees.

More particularly, he or she shall:

- a) decide the programme schedule,
- b) establish the Organisational and Operational Regulations,
- c) ensure that the Public Service Code is respected,
- d) draw up and submit to the Board of Trustees for approval the annual financial management plan, and ensure that it is implemented,
- e) drawn up the balance sheet and P&L statement, and submit both to the Board of Trustees for approval,
- f) in line with Article 90, Paragraph (1), points (p)-(q), put forward proposals for the authorisation of contracts or needing prior approval,
- g) exercise employer's rights in relation to staff members of the public service broadcaster, including the employment of the deputy general directors,
- h) have any other proposals prepared as may be required by this Act, the deed of foundation of the Public Foundation or a resolution of the Board of Trustees,
- i) ensure – in collaboration with the Fund – that those engaged in or contributing to the public service broadcaster's activities receive regular further training in the media profession,
- j) have a seat on the Public Service Fiscal Council,
- k) exercise all those rights - with the deviations outlined in this Act – that are classified by the Act on Business Associations as a competence of the Board of Directors of companies limited by shares.

(2) The general director of a public service broadcaster shall receive no remuneration from the Public Service Public Foundation under any legal title, other than the allowances outlined in his or her work contract.

## **The Supervisory Board of Public Service Broadcasters**

### **Article 106**

(1) A joint Supervisory Board monitors how public service broadcasters are managed (hereinafter referred to as Board). The Board is entitled to request reports or information from the general directors and staff members of public service broadcasters, and to inspect the books, bank account, documents and teller of public service broadcasters at any time, or to hire experts to carry out such an inspection at the cost of the public service broadcasters.

(2) the Board comprises its chairperson and four members.

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

(4) The Board of Trustees determines the remuneration of the Board's chairperson and its members.

(5) The Board defines its own operating rules, and the Board of Trustees approves its order of procedure.

(6) The Board is responsible for inspecting all reports to be submitted to the Board of Trustees relating to the fiscal type matters of public service broadcasters and belonging to the scope of competence of the general meeting of the Board of Trustees.

(7) The internal audit organisations of public service broadcasters report to the Board.

(8) Otherwise, the organisational structure and operations of the Board is governed by the Act on Business Associations, and the provisions of the deed of foundation as well as the Organisational and Operational Regulations of the Public Foundation.

## **The auditor of public service broadcasters**

### **Article 107**

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

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

## **Funding and financial management of public service broadcasters**

### **Article 108**

(1) The Fund supports the functioning of public service broadcasters from its resources defined in Article 136, Paragraph (3), supports and is directly involved in the production, ordering and purchasing of their programmes, also their information provision and other activities.

(2) The Public Service Fiscal Council (hereinafter referred to as Council) determines how the funding made available pursuant to Paragraph (1) is to be distributed between public service broadcasters.

(3) The Council is composed of seven members as follows:

a) the general directors of public service broadcasters,

b) general directors of the Fund,

c) two members delegated by the chairperson of the State Audit Office on an ad-hoc basis from among the senior officials of the State Audit Office.

(4) The Council decides by September 30 every year how funds available for the programmes and public service responsibilities of public service broadcasters in the following as defined in Paragraph (1) are to be distributed. Its decision shall be made with a view to the public service objectives outlined in this Act and the Code, and to the distinct tasks of individual public service broadcasters. The Council adopts its decisions with a simple majority of votes, and publishes its decisions on the Fund's internet website. In particularly justified cases the Council may subsequently amend its decision with a two-thirds majority of votes. An amendment request may be lodged by the Fund's general director.

(5) The Council may be convened by the Fund's general director – who is also the Council's chairperson – by June 30 of every year at the latest. The Council determines its own operating rules and procedural rules within the framework of this Act.

(6) The Fund shall – acting on behalf and in the interests of public service broadcasters – conclude agreements for the distribution of the linear media services of public service broadcasters from its own budget.

(7) The general director of public service broadcasters shall report back to the Board of Trustees concerning the activities of the media service provider under his or her management, and this includes approval of the balance sheet and the profit&loss statement respectively. The general director's report must be submitted to the Board of Trustees together with the opinion of the Supervisory Board of public service broadcasters.

(8) Public service broadcasters may engage in profit generating business activities, if it serves to promote their public service objectives. Any profits generated may be used exclusively to finance the provision of public service broadcastings or to develop the former.

(9) Public service broadcasters cannot have an ownership stake in other media service providers and cannot set up foundations.

(10) The public service broadcaster shall keep a separate register for its contracts. This register must include the latest information allowing the due and proper identification of contracting parties, as well of the services to be performed by each of the contracting parties and consideration thereof.

(11) Neither public service broadcaster nor the Fund are liable to pay company profit tax, and enjoy individually granted exemption from the payment of duties.

(12) Procurements taking place directly between the Fund and a public service broadcaster are not covered by the application scope of the Public Procurements Act.

(13) Pursuant to the guidelines set forth by Parliamentary Resolution no. 109/2010. (X. 28.), the Media Council is responsible for determining the detailed rules governing the utilisation of transferred assets and the management of such assets, so for example under what terms and conditions individual assets, valuables and instruments can be used by public service broadcasters in connection with discharging their public service responsibilities.

(14) The financial management of public service broadcasters is supervised by the State Audit Office.

## **PART FOUR**

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

#### **CHAPTER I**

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

## **General Provisions**

### **Article 109**

(1) The National Media and Infocommunications Authority (hereinafter: the Authority) is an autonomous administrative agency solely subject to Hungarian law.

(2) The Authority contributes to implementing the Government's policy - regulated by laws - in the area of frequency management and telecommunications. The Authority may be instructed to assume functions under statutes issued by virtue of authorisation granted by law.

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

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

(5) In relation to the telecommunications industry, the Authority is responsible for ensuring – particularly in line with the objectives and basic principles of the Electronic Communications Act – the smooth and effective functioning and development of the telecommunications market, for safeguarding the interests of the players of the telecommunication sector as well of users, for fostering the development and maintenance of fair and efficient competition within the electronic communications sector, and for monitoring the legal compliance of the behaviour of telecommunication entities as well as individuals.

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

(7) The telecommunications regulatory powers of the Authority cannot be curbed in any way.

(8) The Government's public administration function pertaining to non-civilian frequency management shall be provided for by the Public Administration Frequency Management Authority (hereafter: KFGH).

(9) Within the organisational structure of the Bureau and reporting to the director general, KFGH shall be regarded an organisational unit with its own jurisdiction.

## **Article 110**

For purposes of the telecommunications industry and subject to separate legislation, the Authority shall:

a) make representations regarding legislative and modification requests and proposals falling within its jurisdiction,

b) assess and continuously analyse the functioning of the telecommunications and related information technology markets,

c) continuously evaluate the status of the telecommunications market and prepare comparative analyses,

d) conduct market analysis,

e) proceed in connection with the fulfilment and/or breach of certain obligations imposed on service providers affected,

f) take action in connection with any breaches of telecommunications rules, as well as in proceedings launched in relation to legal disputes that may arise from the conclusion of contracts,

g) provide for regulatory tasks as outlined in other legislations in respect of electronic communications and postal services,

h) within the scope of financial management, the Authority shall exercise – in accordance with this Act and other statutes – the state ownership rights pertaining to radio frequencies and identifiers, and oversee the utilisation of radio frequencies and identifiers for civilian purposes,

i) provide for regulatory and non-regulatory tasks defined by other legislations

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

### **Article 111**

(1) The President shall

a) perform the management of the National Media and Infocommunications Authority,

b) from the scope of powers defined in Article 110, perform the functions conferred upon the President by separate legislation,

c) submit the Authority's annual draft budget and annual budget report in accordance with Article 134,

d) propose amendments to legislation concerning telecommunications and media services,

e) make decisions about the classification of data handled in the course of performing the Authority's activities, in line with the provisions of the Act on the protection of classified information.

(2) The President's further responsibilities are as follows:

a) convene and chair meetings of the Media Council,  
aa) with consultative powers until elected by Parliament as President of the Media Council,

ab) with voting powers after elected as President of the Media Council,

b) provide for preparing the meetings of the Media Council,

c) appoint Vice Presidents and exercise pertaining employer's rights including dismissal and recalling,

d) appoint the Bureau's director general and exercise pertaining employer's rights including dismissal and recalling,

e) appoint, dismiss or recall deputy director generals upon the director general's proposal,

f) appoint, dismiss or recall the Media and Telecommunications Commissioner and exercise pertaining employer's rights,

g) adopt the Authority's Organisational and Operating Rules,

h) represent the Authority, particularly when dealing and consulting with the European Commission and with regulatory authorities from Member States,

i) publish, by February 28 of every year, the Authority's annual work schedule and key figures of its draft budget, and by June 30 the annual assessment of the Authority's financial management for the previous year,

j) outline, on a yearly basis, tasks to be carried out in connection with industry-specific preparatory works,

k) notify the minister responsible for electronic communications of any circumstances that may jeopardise the safety of telecommunications and propose actions as deemed appropriate,

l) liaise with international organisations on behalf of and whenever mandated by the Hungarian Government,

m) sign an annual agreement of cooperation on behalf of the Authority with consumer protection and competition authorities,

n) act as a second-instance telecommunications authority in relation to the Bureau's regulatory affairs as defined by law,

o) appoint, dismiss or recall KFGH's director, upon the director general's proposal.

(3) The President is appointed by the Prime Minister for a term of nine years.

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

(5) Following the end of the period defined in paragraph (3) the President may be re-elected.

(6) The President may not be instructed with respect to his/her actions and decisions associated with his/her fulfilment of duties and exercise of powers. The President may not instruct the Bureau to take a discretionary decision in respect of the Bureau's regulatory affairs defined by law.

## **Article 112**

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

(2) The President may be substituted by the Vice President in circumstances defined in the Organisational and Operating Rules. The President may delegate his/her second-instance regulatory decision-making powers to the competent Vice President, under an appropriately worded authorisation. When acting within his/her delegated scope of authority, the Vice President may not be instructed while making second-instance regulatory decision. Other tasks of the Vice President shall be defined by the Organisational and Operating Rules.

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

(4) Rules applicable to public servants shall govern the social security status of the President and the Vice President. The term of their mandate shall be treated as time spent in public service and service time leading to a pension.

(5) The President shall – immediately upon being appointed – present an official certificate in verification of a clean criminal record and being free to exercise occupations aligned with the scope of his/her activities. Should the President fail to fulfil this verification obligation for reasons attributable to him/her, the legal consequences of conflict of interest shall apply.

(6) The Prime Minister shall be responsible for handling the President's personal data as may have come to his/her knowledge pursuant to paragraph (5) until the end of the President's mandate, and may call upon the President at any time to verify the data as outlined in paragraph (5).

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

### 113. Article

(1) The President's mandate shall terminate upon

- a) expiry of his/her mandate,
- b) resignation,
- c) the decease of the President,
- d) dismissal by the Prime Minister in accordance with paragraph (2).

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

a) (s)he fails to eliminate the conflict of interest within thirty days of the date of appointment and/or the establishment of the cause of the conflict of interest as outlined in Article 118, paragraph (1),

b) as a result of criminal proceedings instituted against the President, the President is pronounced guilty by the court's final verdict delivering a term of imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as President or from participation in public affairs,

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

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

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

(4) The Vice President's mandate shall terminate upon

- a) resignation,
- b) the decease of the Vice President,
- c) dismissal by the President pursuant to paragraph (5),
- d) recall by the President pursuant to paragraph (6).

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

a) (s)he fails to eliminate the conflict of interest as outlined in 118. Article, paragraph (1) within thirty days of the date of his/her appointment and/or the establishment of the cause of the conflict of interest,

b) if, as a result of criminal proceedings instituted against the Vice President, the Vice President is pronounced guilty by the court's final verdict delivering a term of imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as Vice President or from participation in public affairs.

(6) the President may terminate the Vice President's mandate also by a recall. Justification for the recall is not mandatory.

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

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

a) may not be engaged in any form of employment or other work engagement with a company,

b) may not pursue regular business dealings in the capacity of company executive or company owner with a company, and

c) may not acquire an ownership stake in a company,

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

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

### **Article 114**

(1) The Bureau shall be led by a director general appointed by the President for an indefinite period.

(2) From the powers defined in Article 110, the Bureau shall exercise functions that are conferred upon the Bureau by separate legislation, furthermore it shall fulfil its tasks as may be conferred upon it by laws or the President within the scope of this Act and other legislation.

(3) The President, the Vice Presidents, the Media Council and members of the Media Council shall be assisted by the Bureau in professional matters as deemed appropriate for the performance of their duties.

(4) KFGH shall be headed by a director - appointed by the President for an indefinite period based on the director general's proposal - in relation to whom the employer's rights shall be exercised by the director general, with the exception of appointment, dismissal and recalling. Provisions under Article 117 pertaining to the deputy director general shall be applied also to the conditions of appointment, dismissal and recalling of KFGH's director.

(5) KFGH shall have jurisdiction in matters of non-civilian frequency management as defined in separate legislation.

**The director general and deputy director general of the  
National Media and Infocommunications Authority**

**Article 115**

(1) The director general shall be appointed by the President.

(2) The provisions of Article 111, paragraph (4) shall be applied to the appointment of the director general, as appropriate.

(3) The director general shall be entitled to the basic remuneration and allowances of state secretaries.

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

(5) The director general's mandate shall terminate upon

a) resignation,

b) the decease of the director general,

c) dismissal by the President in accordance with paragraph (6),

d) recall by the President in accordance with paragraph (7).

(6) The President shall dismiss the director general, if

a) (s)he fails to eliminate the conflict of interest within thirty days of the date of appointment and/or the establishment of the cause of the conflict of interest as outlined in Article 118, paragraph (1),

b) as a result of criminal proceedings instituted against the director general, the director general is pronounced guilty by the court's final verdict delivering a term of imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as director general or from participation in public affairs .

(7) The President may terminate the director general's mandate also by a recall. Justification for the recall is not mandatory.

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

a) may not be engaged in any form of employment or other work engagement with a company,

b) may not pursue regular business dealings in the capacity of company executive or company owner with a company, and

c) may not acquire an ownership stake in a company,

the rights or rightful interests of which were affected by his/her decisions while serving as director general.

(9) If the director general's mandate is terminated pursuant to paragraph (5), items (a) or (b), (s)he shall be eligible to severance pay equalling two months' remuneration at the time of termination. If the director general has been in office for less than three years, then the prohibition outlined in paragraph (8) shall prevail for six months beyond the termination date of the director general's mandate, and in this case the director general shall be eligible to severance pay in the amount of one month's remuneration.

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

## Article 116

Responsibilities of the director general shall include the following:

a) provide organisational and professional leadership of the Bureau, with the exception of organisational units reporting directly to the President, and act as the President's deputy in respect of the Bureau's management,

b) from the scope of authorities defined in Article 110, exercise those powers that are conferred upon the director general by separate legislation,

c) ensure the efficient operations of the Authority's organisation,

d) make proposals to the President for the appointment, dismissal and recalling of deputy director generals, exercise employer's rights in relation to deputies and Bureau staffmembers, with the exception of organisational units reporting directly to the President,

e) ensure the publication of information defined in this Act,

f) attend meetings of the Media Council by invitation from the Media Council's chairman, with consultative powers,

g) ensure that the President, the Vice Presidents, the Media Council and members of the Media Council are assisted by the Bureau in professional matters as appropriate for the fulfilment of their duties, to the extent and in the manner as defined by the President (in respect of the Media Council and its members in the capacity of Media Council chairman),

h) within the scope of this Act, fulfil the duties and exercise the rights conferred upon him/her under law or by the President - as the President of the Authority and as the chairman of the Media Council.

#### Article 117

(1) Upon the director general's proposal, the President may appoint deputy director generals. The number of deputy director generals and the scope of their responsibilities shall be defined in the Authority's Organisational and Operating Rules.

(2) Eligible for the position of deputy director general are persons entitled to vote in parliamentary elections and having a clean criminal record, who are not banned from exercising an occupation aligned with the President's activities, possess a higher education degree and at least three years of work experience in programme distribution, media services, regulatory supervision of the media, electronic communications, or economics, social science, law, technology or management with a focus on the regulatory supervision of telecommunication (including membership of management bodies), or work experience in administration.

(3) The deputy director general is entitled to the basic remuneration and allowances of state secretaries.

(4) The provisions of Article 115, paragraphs (5)-(10) pertaining to the director general shall be applied also to the deputy director general.

## **Conflict of Interest Rules**

### **Article 118**

(1) Persons not eligible for the position of President, Vice President, director general and deputy director general include:

a) the President of the Republic of Hungary, the Prime Minister, members of the Government, state secretaries, the state secretary responsible for public administration, deputy state secretaries, the mayor of Budapest, the deputy mayor of Budapest, mayors, deputy mayors, chairmen of county-level general assemblies and their deputies, members of Parliament, members of the European Parliament,

b) the chairman and members of the Board of Trustees of the Public Foundation for Public Service Media; the chairman and members of the Public Service Board; the general director and deputy general director of the Fund; the chairman, deputy chairman or members of the National Council for Communication and Information Technology; the general directors of public service media providers and the chairman and members of the supervisory board thereof; members of the Media Council; the Media Council's chairman with the exception of the Authority's President; and persons engaged in any work arrangement with any of the foregoing organisations,

c) local or county-level municipal representatives, government officials, officials of the national or territorial units of political parties, and persons engaged in any form of employment with political parties,

d) senior officials, management board members, supervisory board members of telecommunications and media service providers, broadcasters, advertising agencies, press publishing and newspaper distribution companies,

e) persons engaged in any form of employment or other work arrangement with a telecommunications or media service provider, broadcaster, programme distributor, advertising agency, press publishing and newspaper distribution company,

f) persons with a direct or indirect ownership stake in a telecommunications company, media service provider, broadcaster, programme distributor, press publishing company, advertising agency or newspaper distribution company,

g) direct and indirect owners of companies – in case of public corporations, with an ownership stake of more than five percent –, and persons engaged in any form of employment with the former, where the company in question is affiliated with the organisations defined in item (d) under an agency of service agreement,

h) the direct relations of persons subject to items (a)-(b) and (d).

(2) For the purposes of paragraph (1), item (e), other work engagements entailing scientific work, the publication of scientific results and the dissemination of scientific information do not give rise to conflict of interest.

(3) The President, the Vice President, the director general and deputy director general may not be engaged in party politics or make representations on behalf of political parties.

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

### **Article 119**

(1) By May 31 of every year, the Authority shall submit a report to Parliament to give account of its activities for the previous year. In this report it shall:

- a) evaluate the operations and development of the electronic communications market,
- b) evaluate decisions adopted in protection of the interests of electronic communication players and users, as well as measures taken to foster the development and maintenance of fair and effective competition within the electronic communications sector,
- c) provide information on monitoring the legal compliance of entities and individuals engaged in electronic communications, and
- d) evaluate the outcomes of its management of state-owned limited resources.

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

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

### **Article 120**

(1) The National Council for Communication and Information Technology (hereafter: NHIT) is a counseling and advisory body to the Government on matters of information technology and telecommunications

(2) The NHIT has five members. The chairman and deputy chairman of NHIT are appointed and may be dismissed by the Prime Minister.

(3) All members of NHIT – including its chairman and deputy chairman – shall have at least five years of prior experience in the field of telecommunications or information technology.

(4) Of all NHIT members

- a) two members are delegated by the Media Council, and

b) one member is delegated by the Hungarian Academy of Sciences.

(5) NHIT is only subject to Hungarian law and its members may not be instructed with respect to the fulfilment of their official duties.

(6) NHIT's chairman and deputy chairman as well as members shall have a mandate for four years.

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

(8) Government officials and public servants too are eligible for the position of NHIT's chairman, deputy chairman or member.

(9) The chairman of NHIT is entitled to sixty-five percent of the basic remuneration of state secretaries, the deputy chairman of NHIT is entitled to sixty percent of the basic remuneration of state secretaries, whereas NHIT members are entitled to fifty-five percent of the basic remuneration of state secretaries starting from the date of their appointment to the termination of their mandate, in addition to which the chairman, deputy chairman and members are entitled to a reimbursement of expenses.

#### Article 121

(1) NHIT is responsible for providing its opinion to the Government on matters of information technology, telecommunications and the media, including in particular

a) the program for building an information society and strategic decisions adopted in connection with the promotion of information culture and information society,

b) setting directions for research and development,

c) decisions targeting social attitudes and the propagation of culture, furthermore

d) developing the regulatory framework of the telecommunications market, fostering equal opportunities for market players,

e) ensuring the harmonisation of non-civilian (government) and civilian frequency management,

f) Hungary's position to be represented at international radio communication conferences, and

g) strategic proposals for regulating the information society's infrastructure, and decisions concerning the program for building an information society.

(2) NHIT shall provide its opinion on the following:

a) the general principles of frequency utilisation, draft government and ministerial decrees on the national allocation of frequency bands,

b) changes concerning the distribution of the radio frequency spectrum into civilian and non-civilian categories, as well as any dispute that may arise between ministers affected in frequency utilisation,

c) proposals, case-by-case decisions and draft legislations on the subject of telecommunication and information technology, upon request from the Government, the Prime Minister or the minister responsible for electronic communications,

d) strategic proposals for regulating the information society's infrastructure, and the program for building an information society.

(3) The President of NHIT may invite and delegate consultative powers to representatives of stakeholders having a vested interest in the utilisation of relevant frequency bands and related services.

(4) NHIT has quorum when more than half of its members are present, at least its chairman or deputy chairman is also attending. NHIT shall adopt its resolutions – with the exception of decisions regarding conflict of interest – with a simple majority vote. In the event of parity of votes, the vote of the President shall prevail.

(5) NHIT shall establish its own rules of operation.

(6) Funds needed to finance the operations of NHIT shall be disbursed from the Authority's budget. These funds cannot be reallocated for any other purpose.

(7) NHIT's financial operations shall be audited by the State Audit Office. On the fulfilment of its duties, NHIT shall report to the relevant Committee of Parliament on an annual basis.

## Article 122

(1) NHIT's Bureau (hereinafter: Bureau) is a subdivision of the Authority, the chief executive of which is entitled to use the title of director of the Bureau.

(2) The Bureau shall perform tasks related to the operations of NHIT, and provide for the administrative functions required in relation thereto.

(3) The Bureau's Regulation of Tasks and Jurisdiction shall be approved by the Authority's President, with the consent NHIT's President.

(4) Administrative functions of the Bureau shall be overseen by the director of the Bureau, in accordance with NHIT's resolutions and the instructions of NHIT's President.

(5) The responsibilities of the Bureau include the drafting of negotiating and decision-preparatory documents used by NHIT to substantiate its opinions to be tabled to the government and the Prime Minister pursuant to Article 121, paragraphs (1)-(2).

(6) NHIT's President directly controls the Bureau's activities carried out in relation to the drafting of negotiating and decision-preparatory documents associated with the tasks defined in Article 121, paragraphs (1)-(2).

(7) Of employer's rights pertaining to the director of the Bureau, the right of appointment and terminating the employment of public officials shall be exercised by the Authority's President based on the proposal of NHIT's President: In all other cases, employer's rights shall be exercised by NHIT's President.

## **CHAPTER II**

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

#### **Legal Status and Organisation of the Media Council**

##### **Article 123**

(1) The Media Council is an independent body of the Authority reporting to Parliament and possessing the status of a legal person. The Media Council is the legal successor of the National Radio and Television Commission.

(2) The Media Council and its members are solely subject to Hungarian law may not be instructed with respect to the fulfilment of their official duties.

(3) The Media Council is seated in Budapest.

(4) The Bureau is the central administrative unit of the Media Council.

(5) On the basis of a mandate given via the Bureau, the Media Council and its members may employ external experts as well.

#### **Electing the Media Council**

##### **Article 124**

(1) The President and four members of the Media Council are elected by Parliament – with a two-third majority of the votes of MPs attending – for a term of nine years by simultaneous electronic voting.

(2) Eligible for the position of President or member of the Media Council are persons entitled to vote in parliamentary elections and having a clean criminal record, who are not banned from exercising an occupation aligned with the activities in question, possess a higher education degree and at least three years of work experience in programme distribution, media services, regulatory supervision of the media, electronic communications, or in economics, social science, law, technology or management with a focus on the regulatory supervision of telecommunication (including membership of management bodies), or work experience in administration.

(3) Media Council members shall be nominated

a) no sooner than sixty and no later than thirty days before the expiry date of the mandate of current members,

b) with the exception of cases outlined in item (a), within thirty days from receipt of knowledge of the termination of a mandate,

by the unanimous vote of an ad-hoc committee to which each parliamentary faction delegates one representative (hereinafter: nominating committee).

(4) In each voting round, members of the nominating committee shall be entitled to a number of votes in function of the headcount of the parliamentary faction making the nomination.

(5) The parliamentary resolution instituting the nominating committee stipulates how long parliamentary factions have to nominate members to the nominating committee. The nomination process may be started even if a certain faction fails to nominate a member to the committee within the deadline set by the parliamentary resolution.

(6) If, in the scenario outlined in paragraph (3), item (a), the nominating committee fails to nominate four members within the stated deadline, the nominating committee may propose a candidate in the second round of nomination with at least a two-third majority of votes.

(7) If, in the scenario outlined in paragraph (3), item (a), the nominating committee fails to nominate four members within eight days even in the second nomination round, its mandate shall be terminated and a new nominating committee shall be set up.

(8) If, in the scenario outlined in paragraph (3), item (b), the nominating committee fails to nominate a member within the deadline stated therein, the nominating committee may propose a candidate with at least a two-third majority of votes.

(9) If, in the scenario outlined in paragraph (3), item (b), the nominating committee fails to nominate four members within eight days even in the second nomination round, its mandate shall be terminated and a new nominating committee shall be set up.

#### Article 125

(1) The President of the Authority, who is appointed by the Prime Minister, shall become a candidate for the presidency of the Media Council by virtue and from the moment of appointment.

(2) The President and members of the Media Council shall take office upon being elected, or upon the termination of their predecessor's mandate, provided they are elected prior to the termination of the mandate of their predecessor.

(3) If the mandate of the President of the Authority is terminated, it shall automatically result in the termination of his/her mandate as President of the Media Council as well. In this case the new President of the Authority, who is appointed by the Prime Minister, shall become a candidate for the presidency of the Media Council by virtue and from the moment of appointment. The President's election shall be decided upon by two-thirds of the MPs attending.

(4) Even if Parliament does not elect the President of the Authority as President of the Media Council, still the President of the Authority shall convene meetings of the Media Council, which (s)he shall attend with consultative powers and with a right to chair those meetings but without being involved in the decision-making process. The power of the President of the Authority to convene and chair meetings shall prevail from the moment of his/her appointment by the Prime Minister and until elected as President of the Media Council with full powers.

(5) The members and President of the Media Council may be re-elected, provided their mandates have been terminated for reasons other than conflict of interest, dismissal or expulsion.

(6) The mandate of any new member shall be for the period remaining from the mandate of previously elected members of the Media Council.

(7) The duration of the mandate of the President of the Media Council is linked to the duration of the mandate of the President of the Authority.

#### Article 126

(1) Once elected, members of the Media Council shall promptly verify to the President of the Media Council, by presenting an official certificate, that they have a clean criminal record and are not barred from exercising an occupation aligned with their activities as members of the Media Council.

(2) The President of the Media Council shall safeguard the personal data of Media Council members - as may have come to his/her knowledge pursuant to paragraph (1) - until the end of their respective mandates and may call upon members at any time to verify the data as outlined in paragraph (1).

(3) Provisions of paragraphs (1)-(2) shall apply to the President of the Media Council, with the difference that the President of the Media Council is bound to verification obligations defined in paragraph (1) to the Media Council, whereas the right defined in paragraph (2) shall be vested with the Media Council. The President of the Media Council shall not be involved in exercising the powers of the Media Council as defined in this paragraph.

## **Conflict of Interest Rules**

### **Article 127**

(1) The conflict of interest rules defined in Article 118, paragraph (1) with respect to the President and members of the Media Council, the President and Vice President of the Authority, and the director general and deputy director general, as well as the expulsion causes outlined in Article 118, paragraph (3) shall prevail as appropriate.

(2) With respect to members of the Media Council, the following occupations shall not be deemed to be constituting a conflict of interest: work engagements entered into with publishers or founders of press materials for the performance of scientific activities, the publication of scientific results and the dissemination of scientific information, and other work engagements entered into with the foregoing.

## **The duties of Media Council members**

### **Article 128**

(1) Members of the Media Council must maintain the confidentiality of any and all classified information and business secrets coming to their knowledge in connection with the fulfilment of their duties.

(2) Members of the Media Council shall be sworn into office before the Chairman of Parliament and in accordance with Annex 3.

(3) Members of the Media Council shall declare their assets in accordance with the rules applicable to MPs, in the first instance within thirty days upon being elected. Their asset declarations shall be handled, registered and controlled in accordance with rules pertaining to the handling, registration and control of the asset declarations of MPs.

## **Terminating the mandate of Media Council members**

### **Article 129**

(1) The mandate of Media Council members shall be terminated upon

- a) the expiry of the Media Council's term of mandate,
- b) their resignation,
- c) the uncovering of a conflict of interest,
- d) their dismissal,
- e) their expulsion,
- f) the member's death.

(2) The mandate of the President or a member of the Media Council shall be terminated due to conflict of interest whenever such affair is substantiated against said President or member, if such President or member refuses or fails to fulfil his/her obligations concerning asset declaration, or his/her asset declaration contains misrepresentations of important information or facts, or if (s)he fails to meet his/her verification obligation under Article 126, paragraph (1) for reasons attributable to him/herself.

(3) If a conflict of interest cause is established against the President or member of the Media Council, and if the conflict of interest cause is not eliminated within thirty days of the conflict of interest taking effect or the date of the meeting establishing the conflict of interest, the plenary meeting of the Media Council shall establish, by way of a resolution, the termination of the Media Council membership of the President or member. Once the resolution establishing the conflict of interest is adopted, the President or member of the Media Council may no longer be allowed to exercise their vested powers.

(4) Termination of the mandate of the Media Council member shall be established and announced by the President of the Media Council in case of paragraph (1), items (b) and (f), and by the plenary meeting of the Media Council in case of paragraph (1), items (c), (d) and (e). Termination of the mandate of the President of the Media Council shall be established and announced by the plenary meeting of the Media Council.

(5) The mandate shall be terminated by dismissal if the President or member of the Media Council is placed under guardianship affecting his/her capacity.

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

a) the President or member of the Media Council fails to meet his/her vested responsibilities for more than six consecutive months for reasons attributable to him/her,

b) as a result of criminal proceedings instituted against the President or member of the Media Council, the President or member is pronounced guilty by the court's final verdict delivering a term of imprisonment, or barring him/her from exercising an occupation aligned with his/her activities as President or Media Council member.

(7) When, during a meeting of the Media Council, a decision concerning a conflict of interest, dismissal or expulsion is made, the President or member so affected may not take part in the voting process, and the unanimous resolution of those entitled to vote is required to resolve such matters. If unanimous decision is not reached on the subject matter in the case of a repeated voting procedure concerning the issues mentioned above, the President of the Media Council shall propose to forward the case to Parliament to decide as appropriate. In this case, Parliament shall adopt a decision on the conflict of interest, dismissal or expulsion with a two-thirds majority of MPs attending.

(8) As far as the President of the Media Council is concerned, in proceedings outlined in paragraphs (3), (6) and (7), the President's powers shall be exercised by the member who is designated as such in the procedural rules.

(9) For one year after the termination of their mandate, the President or member of the Media Council

a) may not be engaged in any form of employment or other work engagement with a company,

b) may not pursue regular business dealings in the capacity of company executive or company owner with a company, and

c) may not acquire an ownership stake in a company,

the rights or rightful interests of which were affected by his/her decisions while serving as President / member of the Media Council.

(10) If terminated pursuant to paragraph (1), items (a) or (b), the President or member of the Media Council shall be eligible to severance pay equivalent to two months' remuneration at the time of termination. If the President or member has been in office for less than three years, the prohibition outlined in paragraph (9) shall prevail for six months starting with the termination of the mandate, and in this case the President or member shall be entitled to severance pay totalling one month's remuneration.

### **Remuneration of the members of the Media Council**

### Article 130

(1) The President of the Media Council shall be entitled to sixty percent of the basic remuneration of ministers plus expenses.

(2) Members of the Media Council shall be entitled to seventy-five percent of the basic remuneration of state secretaries plus expenses.

## Operations of the Media Council

### Article 131

(1) The Media Council shall set its own rules of procedure, to be published in the Magyar Közlöny (Official Gazette).

(2) If the President of the Media Council is unable to attend a meeting of the Media Council due to being held up elsewhere, the duties of President shall be attended to by members of the Media Council taking turns as defined in the procedural rules. The member substituting the President at any given time may take part in the voting.

## Responsibilities of the Media Council

### Article 132

In accordance with Articles 181-182 the Media Council shall:

a) oversee and guarantee the freedom of press under this Act and the General Rules on Media Content (Smtv.),

b) ensure the bidding process for broadcasting titles made available for media services and using state-owned limited resources , and evaluate tender bids,

c) perform the supervisory tasks and controls prescribed by this Act,

d) operate a programming watchdog and analysis service,

e) express its opinion regarding draft legislation on the media and telecommunications,

f) monitor, at regular intervals, whether regulatory agreements it has concluded are being duly performed,

g) elaborate official positions and proposals with respect to the theoretical aspects of developing the Hungarian system of media services,

h) initiate proceedings with respect to consumer protection and the prohibition of unfair market practices,

i) prepare a report to the European Commission on the fulfilment of obligations with regard to programme quotas,

j) initiate amendments to this Act as may be necessary vis-a-vis the minister responsible for audiovisual policy,

k) undertake a pioneering role in developing media literacy and deliberate media use in Hungary and, as part of this endeavour, coordinate the activities of other administrative players in the area of media literacy, as well as assist the government with drafting its upcoming interim report to the European Union on the subject matter,

l) attends to other responsibilities as defined by this Act and by other legislation empowered by this Act.

### **The report of the Media Council**

#### **Article 133**

(1) By May 31 of every year, the Media Council shall submit a report to Parliament to give account of its activities for the previous year. In this report it has to evaluate:

a) the current status of the freedom of speech, opinion and the press, as well as the freedom of information,

b) changes in the ownership status of media service providers and broadcasters,

c) the status quo of frequency management serving to satisfy existing needs for media services,

d) the economic situation and changes in the financial conditions of media services.

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

## **Financial management of the Authority and the Media Council**

### **Article 134**

(1) The Authority manages its finances in accordance with statutory regulations pertaining to the financial management of budgetary entities, as appropriate. It covers costs incurred in connection with the fulfilment of its duties partly from its own revenues, and partly from central budget funding. The Authority's accounts are managed by the Hungarian State Treasury. Every year, the Authority may set aside a reserve from its own revenues defined in paragraph (4) – with the exception of fines – up to twenty-five percent of its effective revenue for the subject year. The reserve thus generated may be used in subsequent years to finance the Authority's operations and the fulfilment of its duties but may not be appropriated for any other purpose.

(2) The Authority's integrated budget shall be approved by Parliament in the form of a separate law in accordance with the provisions of this Act, relying on resources specified in paragraph (4) and Article, 136 paragraph (3). The same Act also regulates the modes of utilisation for actual residual amounts, if any, that may have been generated within the Authority's budget for the previous year, – excluding reserves referred to in paragraph (1) and residual amounts upon which a commitment had been established by 31 December of the same fiscal year when they were generated. Residual amounts earmarked by way of a commitment by 31 December of the same fiscal year when they were generated may be used in accordance with the terms set out in the legal deed serving as the basis for the commitment. The president has authority to make reallocations between target expenditures stated in the already approved integrated budget, with the provision that the Media Council's authorisation must be obtained for reallocations affecting its own budget. Within the Authority's integrated budget, the Media Council enjoys financial independence as described in Article 135.

(3) Parliament's budgetary committee shall submit to Parliament the bill comprising the Authority's integrated budget by October 31 of the previous year – based on the president's proposal to be delivered by September 15, which includes the draft budget of the Media Council as approved by the Media Council. The Authority and the Media Council shall operate on the basis of their previously approved budget until approval of their new budget.

(4) The Authority's own revenue comprises frequency charges, fees received for the booking and use of identifiers as well as for authority procedures: It also includes surveillance fees, which must be spent on ensuring the Authority's efficient operations representing high professional standards. Statements indicating the inflow and utilisation of own revenue, and the utilisation of central budget funding are published on the Authority's website every year.

(5) The precise amount of frequency charges and fees payable for the booking and use of identifiers shall be regulated by a government decree. Portions of frequency

charges set aside by the Authority neither for operating purposes under the Act defined in paragraph (2), nor for the generation of reserves as outlined in paragraph (1) shall be paid into the Fund as instructed by the President. The President shall designate in his/her instructions for what public purpose and how the amount paid into the Fund in accordance with this paragraph may be used. Any amount transferred pursuant to this paragraph may be used by the Fund strictly as instructed by the President, i.e. for the purpose designated by him/her. The director general of the Fund may, in the course of utilising such amounts, ask the President to amend the ordained purpose of usage and/or utilisation rules, whenever deemed necessary in the interest of the public. The President may reject the request made by the Fund's director general or, alternatively, approve it in its entirety or in part, or he may designate a new purpose serving the public interest and/or new utilisation rules. If the amount transferred is used by the Fund in violation of the President's instructions, the funds concerned shall be returned to the Authority in due course and upon notice by the President. The Authority shall generate reserves from such refunded amounts, which can then be used to subsidise the Fund by designating a new purpose in the public interest, based on the President's decision or, alternatively, the President may use such amounts - partly or in their entirety - directly for a public purpose linked to telecommunications and related markets, or for improving the living standards of consumers. The Authority shall complete such payments - excluding subsidies financed from reserves - by March 31 of the year following the subject year. Parts of frequency charges earmarked by the President by 31 December of the subject year for payment into the Fund, and the reserves generated in accordance with this paragraph - also in view of the provisions of paragraphs (2) and (12) - shall not be deemed as effective residual amounts.

(6) Electronic communication service providers have to pay a fee to cover the costs incurred in connection with the performance of the Authority's telecommunications regulatory function, whereas postal service providers have to pay a surveillance fee to cover the cost of surveillance activities with respect to postal services. This fee shall be defined as maximum 0.35 percent of net sales revenue generated by the electronic communications services of the electronic communication service provider in the course of the previous business year, and maximum 0.2 percent of net sales revenues generated by the postal services of the postal service provider in the course of the previous business year, or - in the absence of sales revenue figures for the previous year - a pro-rated part of sales revenue for the subject year projected for the entire year. The precise amount of the surveillance fee shall be defined every year by the government in a decree within the limitations permitted by law.

(7) The surveillance fee is payable to the Authority on a quarterly basis, always by the end of every quarter.

(8) If the Authority's regulatory revenues as defined by this Act exceed the amount of costs incurred in any budgetary year in connection with the performance of its statutory responsibilities, any surplus amount that may remain shall be credited, once the Authority's annual report has been adopted, in the form of regulatory fees payable the year following the subject year after, in proportion of regulatory fees paid during the

subject year and up to their aggregate amount.

(9) The Authority shall use the entire amount of penalty fees collected in the previous year from players of the telecommunications and media market for developing the decision-making culture of informed consumers in the area of telecommunication and the media, and so particularly for supporting academic and training programmes belonging to the sphere of telecommunication and media law, anti-trust and consumer protection policy, training professionals specialising in telecommunication and media law as well as consumer protection policy, and disseminating information in order to increase awareness of telecommunication and media policy and consumer decision-making. Any amount earmarked for this purpose but not used in any subject year shall be rolled over to the following year, and may be spent on developing the decision-making culture of informed consumers.

(10) Parliament shall make its decision about implementing the particular Act referenced in paragraph (2) by adopting the bill of final accounts as proposed in accordance with the procedure outlined in paragraph (2), including the annex referenced in Article 136, paragraph (15). The deadline for the submission of this Final Accounts Act is 31 May of every year.

(11) The financial management of the Authority and the Media Council is monitored by the State Audit Office.

(12) For the purposes of paragraph (2), any legal statement made in accordance with the internal directives of the Authority and/or the Fund shall be considered a commitment, giving rise to a payment obligation to be financed from the integrated budget in accordance with separate legislation as specified in paragraph (2).

### Article 135

(1) The Media Council manages its finances as a budgetary entity in accordance with statutory regulations pertaining to the financial management of budgetary entities. Its accounts are managed by the Hungarian State Treasury.

(2) Parliament approves the Media Council's budget as part of the Authority's integrated budget, i.e. isolated therein, to be financed from the Fund's resources defined in Article 136, paragraph (3) of this Act, more specifically from that part of it which is earmarked for covering the Media Council's operating costs pursuant to the Act governing the Authority's budget. The Media Council may re-allocate sums between target expenditure headings within its already approved budget.

## **Media Service Promotion and Asset Management Fund**

### Article 136

(1) This Fund is an isolated asset management and monetary fund responsible for promoting the structural transformation of public media services, the Public Foundation for Public Service Media, community media services and public media service providers, the production and production support of public service programmes, supporting contemporary music and motion pictures intended to open at movie theatres, fostering the careful management and expansion of the Archive and of other properties, as well as promoting and implementing other activities related to the foregoing.

(2) Assets held by the Fund may be used strictly for the statutorily defined purposes.

(3) The Fund's revenue streams, such as media service fees, tender fees, default penalty and compensation levied for the breach of programme distribution contracts, fines, public service contributions, surplus frequency fee amounts transferred by the Authority to the Fund pursuant to Article 134, paragraph (5), support received from media service providers specialising in linear audiovisual media services based on paragraph (9), target subsidies from the central government budget, proceeds from the disposal of assets and from commercial activities, interest received and voluntary payments received.

(4) Every year the Hungarian State pays a public service contribution based on the number of households using equipment suitable for receiving linear audiovisual media services. The amount of this public service contribution is defined by Annex 4 of this Act. Public service contribution is paid by the State in twelve equal instalments, always in advance by the 3rd day of every month, by transfer to the Fund's bank account.

(5) Acting on behalf of the Hungarian State, the minister responsible for audiovisual policy may enter into agreement with the Fund for a maximum term of seven years for payment of the public service contribution, without needing separate authorisation from Parliament to do so as prescribed by the Public Finance Act.

(6) The Fund is a legal entity, operated by the Media Council.

(7) The Fund must have a bank account with the Hungarian State Treasury.

(8) Major influential media service providers specialising in linear audiovisual media services shall use 2.5 percent of their annual advertising revenues on supporting new Hungarian films. This obligation may be satisfied either by paying the relevant amount to the Fund in cash, or by allocating cash to a new film to be designated in an agreement to be executed by and between the Fund and the media service provider. The media service provider may use any amount thus paid up or contributed to reduce its company profit tax base.

(9) Voluntary payments made into the Fund shall qualify as a commitment undertaken in the public interest. When the voluntary payment into the Fund is made

pursuant to a commitment undertaken in a regulatory agreement made with the Authority or the Media Council or an agreement made with the Media and Telecommunications Commissioner, then the utilisation of such voluntary payment shall be governed by the terms and conditions of said agreements.

(10) The Fund's support and subsidy policy, annual plan and annual report are approved by the Media Council. The Media Council's prior consent must be obtained before the Fund's revenue streams and book assets can be used for any purpose not stated in the Fund's support and subsidy policy and/or annual plan, and for undertaking commitments not stated in the Fund's support and subsidy policy and/or annual plan but to be financed from the foregoing, or for making payments that are outside the Fund's scope of financing and exceed the threshold amount defined by the Media Council.

(11) The full range of employer's rights vis-a-vis the Fund's general director – including his appointment, determining his salary and allowances, and termination of his employment by the employer – shall be exercised by the president of the Media Council.

(12) The general director shall make a proposal to the president of the Media Council for the appointment of the Fund's deputy general directors as well as for termination of their employment, who will then make the decision about the appointment, wage and allowances, and termination by the employer. Otherwise the general director shall exercise employer's rights in relation to deputy general managers.

(13) The conflict of interest rules defined in Article 118, paragraphs (1)-(2) as pertaining to general director and deputy general director of the Fund, the President and vice president, as well as director general and deputy director general of the Authority, and expulsion rules defined in Article 118, paragraph (3) shall be applicable as appropriate.

(14) The chairman and four members of the Fund's Supervisory Board are appointed and recalled by the president of the Media Council. Their remuneration is established by the president of the Media Council.

(15) The Fund's annual budget is approved by Parliament – as an annex to the particular Act referenced in Article 134, paragraph (2).

(16) The detailed rules of managing the Fund are defined by the Media Council and shall be published on the website of the ministry overseen by the minister responsible for audiovisual policy on the one hand, as on the Authority's website on the other hand.

(17) The exercising – by the Fund – of ownership rights and obligations with respect to assets transferred to the Fund under parliamentary resolution 109/2010. (X. 28.) or acquired by the Fund under a different legal title, the disposal of assets acquired under other legal titles, and the managing of assets is outside the scope of the Act on state-owned assets.

(18) The Fund is personally exempt from the payment of duties and is not subject to VAT or local tax.

#### Article 137

- (1) Support for public service programmes and for community media service providers shall be provided for by way of open tendering.
- (2) The general conditions of tender elaborated by the Fund are approved by the Media Council.
- (3) The Fund prepares and publishes its call for proposals based on already approved general conditions of tender. The manner of evaluating tender bids shall be regulated among the general conditions of tender.
- (4) The Fund shall provide for the further training of individuals engaged in producing public service media content, with a view to fostering attainment of the objectives of public media service as defined in Article 83 and more particularly within that in order to promote the creation of quality media content. The Fund shall be entitled to make the necessary training arrangement within the scope of its commercial activity.

#### **Institute of Media Sciences at the Media Council**

#### Article 138.

- (1) The Institute of Media Sciences at the Media Council (hereafter: the Institute) is an independent entity within the Authority, which is partly responsible for assisting the operations of the Media Council, and is partly responsible for pursuing scientific activity. The head and members of the Institute are all public servants of the Authority.
- (2) Work at the Institute is overseen by the Media Council.
- (3) The Institute's responsibilities include the following:
  - a) support the operations of the Media Council by way of performing research and analysis,
  - b) conduct social science research with a focus on the media,
  - c) publish materials for professionals,
  - d) organise conferences for professionals,
  - e) perform other responsibilities defined for the Institute by the Media Council.

(4) The Institute may also engage the services of external experts.

### **CHAPTER III**

#### **THE COMMISSIONER FOR MEDIA AND COMMUNICATIONS**

##### **General rules**

##### **Article 139**

(1) An integral part of the Authority is the Commissioner for Media and Communications (hereinafter: the Commissioner) acting on its behalf. The Commissioner contributes to the promotion of rights and equitable interests of users, subscribers, viewers, listeners, consumers resorting to electronic news services or media services as well as the readers of printed press materials in electronic communications, media services and media products. The Commissioner shall act in matters vested with him under this Act.

(2) The Commissioner shall be appointed and recalled by the President, who shall also exercise the employer's powers over him. The Commissioner is a civil servant in the position of a Head of Division. In performing its duties hereunder, the Commissioner may not be given instructions; he shall report to the President and/or the Media Council as defined in Article 143.

(3) The provisions of Article 111 (4) shall apply *mutatis mutandis* to the Commissioner.

(4) The Commissioner is assisted in performing its duties by the Office of the Commissioner for Media and Communications (hereinafter: the Commissioner's Office), with the civil servants thereof being appointed and recalled by the President; the employer's powers over these civil servants shall be vested with the Commissioner, excepting the powers to appoint and recall employees.

(5) The operation, organisational structure, internal and external relations of the Commissioner's Office is defined in the Organizational and Operational Rules of the Authority and the rules of procedure of the Commissioner's Office. The rules of procedure of the Commissioner's Office are prepared by the Commissioner and are approved by the President.

(6) The budget of the Commissioner's Office shall be established separately within the budget of the Authority.

##### **Article 140**

(1) On detecting a conduct in rendering a media service, media product and electronic news service that does not constitute a breach of a provision on electronic communications services and falls outside the scope of competence of the Media Council, the President and the Authority but is or may be suitable for causing a harm to interests to the equitable interests of users, subscribers, viewers, listeners, consumers resorting to media services and media products and electronic communications services,

(a) the person affected by the harm to interests or is exposed to the direct danger of such harm to interests, or

(b) the civil association engaged in the protection of consumer rights, when the harm to interests affects or may affect a large number of consumers,

shall have the right to resort to the Commissioner's Office with its complaint.

(2) Requests and notifications received by the President, the Office or the Media Council that meet the conditions laid down in paragraph (1) in terms of content, containing all the data required under Article 141 (5) shall be transferred by the President, the Office or the Media Council within five business days to the Commissioner, and the Commissioner shall adjudge such requests and notifications as complaints received by him. This fact as well as the fact of transfer shall be communicated to the requesting party and the reporter concurrently with the transfer. The Commissioner — in the absence of such complaint — may take measures *ex officio* when becoming aware of an harm to interests as defined in paragraph (1) (b) from other sources.

## **Proceedings by the Commissioner**

### **Article 141**

(1) The proceedings of the Commissioner shall not be deemed as an official procedure, moreover, the Commissioner shall not have the right to exercise the powers vested with authorities and may not pass a resolution in an official matter in its merits. Complaints as defined in Article 140 (1) shall not be deemed as an official matter. The Commissioner shall proceed in the course of its proceedings related to complaints as defined in Article 140 (1) in accordance with the provisions of Articles 140-141. In the course of its proceedings in investigating the complaint, the Commissioner shall suitably apply the provisions of the Act on the General Rules of Administrative Proceedings and Services on official audits in matters not regulated herein. The Commissioner shall complete its proceedings within the deadline laid down in Article 151.

(2) The following periods shall not be taken into account for the purposes of the deadline specified in paragraph (1):

(a) the period of time necessary to remedy deficiencies in documentation as defined in paragraph (5);

(b) the period of time required to submit the relevant data as defined in Article 142 (1);

(c) the period of time necessary for the procedure as defined in Article 142 (2);

(d) the period of time necessary to make representations as defined in Article 142 (4); and

(e) the period of time from the notification as in Article 142 (8) up to such time when the service provider or the publisher makes representations, formulates its opinion and notifies the Commissioner of the measures taken.

(3) The Commissioner shall examine the complaint and when it obviously proves unfounded or when the harm to interests therein described or the direct risks thereof is of minor importance or when the case falls outside the scope of competence of the Commissioner, he shall notify the complainant accordingly within 15 days. In his notification, the Commissioner shall inform the complainant of his rights and obligations under the legislation on electronic communications and/or media services or under the subscription contract, as well as the course of action and means of remedy available for such complainant. When the matter described in the complaint falls within the scope of official competence of the Office, the President, the Media Council or another entity, the Commissioner shall transfer the case to the entity having official competence in the matter, and shall concurrently notify the complainant thereof.

(4) The complainant shall have the right to request restricted data handling concerning his personal identification data and address. The Commissioner — with a view to ensuring the right of access to the file — shall make an extract of the complaint with due heed to prevent that the identity of the complainant may be established. The Commissioner will handle the personal data of the complainant revealed to the Commissioner in the course of the procedure for a period of one year after the procedure on the complaint is completed, for the purposes of investigating the complaint. This fact shall be communicated to the complainant.

(5) The complaint shall contain the name, address or mailing address of the complainant, the particulars of the actual or impending harm to interests that call for action by the Commissioner, as well as the action or conduct that may give rise to harm to interests or a direct risk thereof as well as the description of other facts that suggest or substantiate that the conditions laid down in Article 140 (1) are fulfilled. In case of complaints defective in some respects — when the facts known to the Commissioner suggest that a considerable harm to interests may have occurred — the Commissioner shall call the complainant to remedy deficiencies in documentation within a specific deadline. In case of complaints defective in other respects or when the complainant fails to remedy or improperly remedies deficiencies, the application may not be deemed as a complaint, and therefore the Commissioner shall not commence the proceedings.

## Article 142

(1) The Commissioner — with a view to investigating the complaint or the harm to interests as defined in Article 140 (1) (b) he may have learned from other sources — shall have the right to request data, information or representations related to the harm to interests from any media or communications service provider or publisher of a printed press material and may suitably apply the measures defined in the Act on the General Rules of Administrative Proceedings and Services on official audits and on establishing the facts of the case. The particular media and/or communications service provider shall furnish the Commissioner with the requested data, information or representation within 15 days even if the particular data are deemed trade secrets. The Commissioner shall keep trade secrets revealed to him as confidential and handle them at the request of the data supplier as a document with restricted access.

(2) In the event that the particular media or communications service provider or publisher of a printed press material fails to furnish the Commissioner with the requested data within the specified deadline, the Commissioner shall resort to the Office. At the initiative of the Commissioner, the Office shall oblige the particular media or communications service provider or publisher to furnish the data related to the harm to interests as specified by the Commissioner in accordance with paragraph (1). An appropriate deadline shall be set for the provision of the particular data. The service provider or publisher thus obliged shall have the right to resort to the Metropolitan Court of Justice to have the resolution reviewed, within eight days of the date of notification. The Court will pass a decision on the case in a non-contentious procedure within eight days. In the event that the service provider fails to, or improperly or falsely furnish the Office with the requested data, the Office will have the right to apply the legal consequences defined in Article 175 (8). The Office shall pass the received data to the Commissioner.

(3) In the course of its proceedings, the Commissioner will conduct verbal or written consultations with the communications or media service provider on the harm to interests (conciliation procedure). The Commissioner will involve the complainant in the conciliation procedure — to the extent deemed expedient and so requested by the complainant — and, if the matter concerns a large number of consumers, he may also involve the representative of the civil association engaged in the protection of consumer interests.

(4) In the conciliation procedure the Commissioner will furnish the communications or media service provider or the publisher of the media product with the description of the harm to interests with the request to provide a statement with their response within a specific deadline.

(5) In justified cases, the Commissioner — on the basis of the written statement or response of the communications or media service provider or the publisher of the media

product — will call the representative of the particular service provider and/or — if needed — the complainant or the representative of the civil association engaged in the protection of consumer interests to attend a personal consultation.

(6) In the event that the Commissioner and the communications or media service provide, the publisher of the media product or the broadcaster fail to reach an agreement to remedy the harm to interests or eliminate the direct risk thereof, the Commissioner shall take a record of the results of the conciliation procedure and proceed as defined in paragraphs (8)—(9). If the conciliation procedure results in an agreement then the Commissioner and the particular service provider shall incorporate the agreement in writing, which the Commissioner will send to the complainant or when the particular matter affects a large number of consumers, the Commissioner shall post the agreement on his website. The parties shall provide for the manner of remedying the harm to interests in the agreement.

(7) The agreement is a concordant and voluntary representation by the parties concluded between the Commissioner and the particular service provider under which the users, subscribers, consumers, viewers, listeners or readers resorting to the particular media, electronic news service or media product will acquire contractual rights. No obligations of the users, subscribers, consumers, viewers, listeners or readers may be established by or arising from the agreement. The provisions of the agreement shall constitute part of the legal relationship of the particular users, subscribers, consumers, viewers, listeners or readers with the particular service provider whereby the provisions of the agreement will be applicable in individual cases and the particular users, subscribers, consumers, viewers, listeners or readers may make a reference to these provisions in individual cases and the Authority will have the right to verify compliance with the provisions of the agreement in the course of an official audit. The Authority shall take into account the extent of cooperation on the part of the service provider having entered an agreement as defined in this paragraph also in other official cases involving the service provider.

(8) Should the conciliation procedure fail to result in an agreement, the Commissioner may request (hereinafter: request) from the senior officer of the communications or media service provider or the publisher of the media product that the harm to interests or the direct risk of harm to interests be eliminated or remedied. The service provider shall inform the Commissioner about its statement, its position concerning the request and the measures taken within fifteen days of the date of the request.

(9) The Commissioner shall draft a report on the results of the request, and duly inform the President thereof. In addition to the particulars of the harm to interests, the Commissioner in its report shall describe the conduct of the service provider in detail as to how it handled the current or impending harm to interests, and, in particular its willingness to cooperate in remedying the harm to interests and enhancing consumer well-being. The Commissioner shall publish his report when it covers issues that affect or may affect a large number of consumers or may issue a recommendation or

information for the consumers with a view to avoiding further injuries from being sustained.

### **The Commissioner's report**

#### **Article 143**

The Commissioner shall prepare a quarterly report on his findings revealed in its proceedings, the results of his requests and recommendations as well as on his reports and recommendations — on cases involving communications service providers and broadcasters — for the President and — on cases involving media service providers and publishers of media products — for the Media Council.

### **CHAPTER IV**

#### **PROVISIONS ON THE PROCEDURES BY THE MEDIA COUNCIL AND THE OFFICE OF THE NATIONAL MEDIA AND COMMUNICATIONS AUTHORITY**

##### **Application of the general rules on Administrative Proceedings**

#### **Article 144**

(1) The Media Council and the Office (hereinafter for the purposes of this Chapter: the Authority) shall act in accordance with the provisions of the Act on the General Rules of Administrative Proceedings and Services with due heed to the deviations set forth herein.

(2) The Members and the President of the Media Council shall have votes of identical value, that is, each person shall have one vote.

(3) The Media Council shall be deemed to have quorum when a simple majority of the Members — including the President of the Media Council — are present at the particular meeting.

(4) The resolutions of the Media Council shall be passed with the simple majority of the votes of the Members and the President of the Media Council, excepting the case defined in Article 129 (7).

### **The notifier**

#### **Article 145**

(1) Anyone not deemed to be a client for the purposes of the subject of the notification or otherwise under the law (hereinafter: notifier) may lodge a report addressed to the Authority in matters falling within the scope of responsibilities and

competence of the Authority defined hereunder, claiming infringement of the Rule concerning media governance.

(2) The report shall contain the data of the notifier, the circumstances providing the grounds for involvement of the Authority in its proceedings and the action or conduct that suggests infringement of the provisions of media administration and the facts providing the grounds for the notification.

(3) The Authority shall have the right to initiate proceedings *ex officio* on the basis of the notification at its sole discretion. In the event that the Authority does not initiate proceedings on the basis of the notification, it shall duly notify the notifier accordingly without having to specify the reasons therefor.

(4) The legal relations arising under the official proceedings initiated on the basis of the notification shall not include the notifier as subject and such notifier will not have the right of legal remedy against the resolution of the Authority passed in the official proceedings initiated *ex officio* on the basis of the notification.

(5) The notifier may request restricted data handling concerning its data in accordance with Article 153 (2).

(6) In the event that the notification — based on its content — is deemed as an application and the notifier is deemed as a client, the Authority shall inform the notifier about these facts and his rights concerning the initiation of official proceedings, while taking no other procedural measures.

## **Legal succession**

### **Article 146**

(1) The client having acquired rights under a final resolution may be replaced by its legal successor.

(2) The client bound by an obligation under a final resolution may be replaced by its legal successor to the extent allowed by law. A legal successor may voluntarily fulfil an obligation established under a final resolution, within a delivery deadline to be extended upon its request maximum on one occasion in justified cases. The Authority and the legal successor may also incorporate this agreement in an official contract.

(3) In case of an obligation established under a final resolution, a third party to whom the original (legal predecessor) client bound by obligation assigns the terms of its operations under a contract may also be deemed as a legal successor to such client.

(4) In the event that the legal succession arose in the course of the official proceedings and legal succession is based on a statutory legislation, the Authority will

establish the fact of legal succession in its order. No separate appeal shall lie against that order.

(5) When the legal succession arose in the course of the official proceedings and legal succession is based on a contract, the Authority will establish the fact of legal succession necessary for exercising its scope of official powers in its order. No separate appeal shall lie against that order.

## **Confidentiality**

### **Article 147**

(1) Persons currently or formerly employed by the Authority as civil servants or in other relationship intended for the performance of work shall keep confidential any personal data, restricted data and trade secrets they may have learnt in relation to the operation and actions of the Authority as well as any other data, fact or circumstance that the Authority is not obliged to make accessible for the public — excepting those that are to be disclosed to other entities under relevant legislation, during the term of their employment and after the termination thereof.

(2) The persons listed in paragraph (1) may not unlawfully disclose, utilize or make known to any third party any data, fact or circumstance they may have learnt in the course of their operations.

## **Electronic contacts**

### **Article 148**

The Authority may set as a requirement to maintain contacts in proceeding within its scope of competence and procedures defined under this Act via electronic means.

## **Commencement of proceedings**

### **Article 149**

(1) The Authority may initiate proceedings in matters falling within its competence, except when the proceedings may be initiated only on application under this Act.

(2) When the Authority becomes aware of a breach of law beyond the scope of the particular official matter that is however closely or indirectly related to such matter, it may *ex officio* extend its proceedings to that particular matter, before passing its official decision. The parties involved shall be notified of the fact that the proceedings were extended to the particular matter *ex officio* in accordance with the relevant provisions of

the Act on the General Rules of Administrative Proceedings and Services. On the extension of the proceedings *ex officio*, the statutory period of the proceedings shall be extended by the period of time applicable to the particular proceedings.

(3) The proceedings of the Authority shall be subject to an administrative procedural service fee as defined in separate legislation.

### **Assessment of competence and powers**

#### **Article 150**

In the absence of competence or powers — without assessment or transfer by an Authority with competence and powers — the Authority shall have the right to reject the application and/or discontinue the proceedings without examination thereof to its merits.

### **Statutory period of the proceedings**

#### **Article 151**

(1) The statutory period of proceedings conducted by the Authority shall be forty days unless otherwise provided for in this Act.

(2) The period may be extended in justified cases on one occasion, by thirty days at the most.

### **Applications**

#### **Article 152**

The Client shall submit its application via the appropriate official form — and in case of electronic contacts, via an electronic form — in the notification procedures defined in Articles 42–47.

### **Access to documents for inspection, secrets protected by law**

#### **Article 153**

(1) Persons participating in case management and employed by the Authority as civil servants or engaged in other relationship intended for the performance of work with such Authority shall have unlimited powers to familiarize themselves with secrets protected by law.

(2) The client and other participants involved in the proceedings may designate the range of data they deem necessary to be treated as restricted data, with due heed to the protection of the secrets protected under the law, in particular trade secrets or other equitable interests as well as any significant media policy considerations, excepting data that are public for general public interests and data that may not be rated as restricted data under the law as defined in relevant legislation. In this case the client and/or other participants involved in the proceedings shall also prepare a document version that does not contain the data defined above.

(3) Data defined in paragraph (2) are handled by the Authority separately, within the document folder as restricted data. The Authority shall ensure that restricted data should not be accessible by unauthorised persons in the course of the procedural acts.

(4) The restricted data may be disclosed to the officer, the keeper of Minutes, the heads of the Authority, the member of the Media Council, the competent public prosecutor and in case of judicial review, the acting judge only.

(5) To the extent so required to perform their duties in relation to the subject of the official matter, other public administrative authorities or government entities may also have access to restricted data — as determined by the Authority — provided that such entities ensure the level of protection for the data thus transferred they had at the disclosing Authority.

(6) With a view to ensuring the right to access documents for inspection, the Authority shall prepare an extract on the document generated in the course of the proceedings — that complies with statutory requirement as to form and content — whereby no conclusions may be made as to the data defined in paragraph (2).

(7) To the extent so justified for proper law enforcement, as well as enforcement of rights and ensuring that clients may properly exercise their rights, the Authority may request that the client and other participants involved in the proceedings opt out of restricted data management as defined in paragraph (2).

(8) Should the client or other actor in the proceedings reject to lift the restrictions defined in paragraph (2), the Authority - to the extent so required for law enforcement or the enforcement of rights vested with clients - may order in its ruling that restricted data management be lifted. This order may be challenged by the client or other actors in the proceedings by submitting an appeal to the Metropolitan Court of Justice with a staying effect; the Court will decide in the matter with priority in non-contentious proceedings within eight days. No further appeal shall lie against the order the Metropolitan Court of Justice.

## **Exclusions**

### **Article 154**

(1) No person may participate in case management in its merits in addition to those specified in the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services on exclusions, who had a legal relationship with the client as defined in item (a) and/or with an enterprise with a controlling share in the client or with an enterprise operating under the client's controlling share within one year of the commencement of the proceedings or whose relative

(a) is in employment relationship or other legal or membership relationship intended for the performance of work with the client, or is a senior officer thereof;

(b) has a shareholding in the client;

(c) is in employment relationship or other legal or membership relationship intended for the performance of work with the a private individual, legal person or association without a legal personality, or is a senior officer of, or has a shareholding in the above that is in regular business relations with the client;

(d) is in relationship intended for the performance of work with an organisation that acts as a supervisory or subordinate entity to the client and/or which provided any support or exclusive licence for the client, excluding legal relationship intended for the performance of work with the Foundation or the Authority.

(2) The acting officer of the Office shall forthwith report to the General Director any grounds for exclusion in his case. The acting officer of the Office shall be held accountable for his failure to or delay in, making a notification in disciplinary proceedings under financial liability. The decision on the exclusion of a particular officer of the Office shall be made by the General Director and — if need be — he shall designate the officer acting on behalf of the Office.

(3) The General Director shall forthwith report to the President any grounds for exclusion on his part. The General Director shall be held accountable for his failure to or delay in, making the notification in disciplinary proceedings under financial liability. The decision on the exclusion of the General Director shall be made by the President. When there are grounds for the exclusion for the General Director, the President in making its decision shall assess whether the general Director may proceed in the particular case under the condition that he shall notify the President of his decision or the President will select one of deputy general directors to act within the scope of competence.

(4) When a client submits obviously unsubstantiated report on the grounds for exclusion, he may be subjected to a procedural fine in the amount laid down in Article 156 under the order on rejecting exclusion.

(5) The decision on the exclusion of a Media Council Member shall be made by the Media Council. The Member thus excluded may not participate in the handling of the case in its merits. When any ground for exclusion renders the Media Council non-

quorate, the Media Council will proceed with the involvement of the excluded Members in accordance with the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services, irrespective of their grounds for exclusion, with such Members having a right to vote.

(6) When there are grounds for exclusion in the case of the President, the deputy President shall proceed in the handling of the case in its merits.

### **Establishing the facts of the case**

#### **Article 155**

(1) In establishing the facts of the case, the Authority shall apply the provisions of the Act on the General Rules of Administrative Proceedings and Services on establishing the facts of the case and on official audits, with due heed to the deviations laid down in paragraphs (2)—(8).

(2) The Authority shall have the right to inspect, examine and make duplicates and extracts on any and all data media containing data, document and deeds — even if containing secrets protected by law — related to the media service provision, publication of a media product or broadcasting.

(3) The Authority may oblige the client, other actors in the proceedings, the agents and employees of such parties and persons in other legal relationships with the client and other actors in the proceedings to furnish data, data in a comparable format defined by the Authority and other information either verbally or in writing.

(4) In particularly justified cases, the Authority shall have the right to oblige other persons or organisations other than the client and other actors in the proceedings to furnish data or means of evidence with a view to establishing the facts of the case. The order as in this paragraph may be challenged by the persons obliged to furnish data or means of evidence by submitting an appeal to the Metropolitan Court of Justice, having suspensive effect; the Court will decide in the matter with priority in non-contentious proceedings within eight days. No further appeal shall lie against the order the Metropolitan Court of Justice.

(5) When deemed necessary for establishing the facts of the case, the Authority shall have the right to oblige the client to make representations or furnish data, with concurrent warning on the legal consequences applicable in case of failure or improper fulfilment of this obligation as defined in Article 156.

(6) With a view to establishing the facts of the case, the Authority — concurrently with setting a deadline for fulfilment and giving a warning on the legal consequences applicable in case of failure of fulfilment — shall have the right to oblige the client to remedy deficiencies in documentation.

(7) A witness may be heard on the trade secret of the client even if he was not granted exemption from the obligation of confidentiality from the client.

(8) In particularly justified cases, the Authority shall have the right to resort to the deeds, data, documents and other means of evidence generated in the course of particular proceedings also for the purposes of another proceedings, when necessary for reducing the procedural burden on clients or for proper and effective law enforcement.

## **Procedural fine**

### **Article 156**

(1) In case of hindrance on the proceedings, the Authority shall have the right to impose procedural fine on the client, other actors in the proceedings or other persons obliged to cooperate with a view to establishing the facts of the case when these parties act in a manner intended for or resulting in, the prolongation of the proceedings or preventing the actual facts of the case from being established.

(2) The procedural fine may be imposed in the amount between HUF 25,000 at the minimum, with the exceptions laid down in paragraph (3), and HUF 25,000,000 at the maximum.

(3) The amount of the procedural fine on natural person clients shall be HUF 10,000 at the minimum and HUF 1,000,000 at the maximum.

(4) In addition to the provisions of paragraphs (1)–(3), the Authority shall have the right — and in case of repeated offence, shall be obliged — to impose a procedural fine on the senior officer of a breaching entity in case of hindering the proceedings or in case of failure or improper fulfilment of the obligation to furnish data, in the amount of HUF 50,000 at the minimum and HUF 3,000,000 at the maximum.

(5) When setting the amount of the procedural fine, the Authority shall take into account the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions.

## **Public hearing**

### **Article 157**

(1) When so required under this Act or to the extent it deems necessary and justified to perform its duties, the Authority — with a view to familiarizing itself with legislation on, the measures to enforce, media administration and with the experts' positions and opinions on the preparation and implementation of law enforcement procedures — shall hold a public hearing with the involvement of media service providers, entities providing ancillary media services, publishers of media products,

broadcasters, intermediary service providers, self-regulatory professional organisations, civil associations and others.

(2) Unless otherwise provided for hereunder, the Authority shall publish the date, time, place and subject of the public hearing thirty days before the scheduled date thereof.

(3) The Authority shall publish the preparatory documents related to the subject of the public hearing — excepting trade secrets — at least ten days before the scheduled date of the hearing.

#### **Article 158**

(1) The Authority shall post the documents received by it in an electronic format in relation to the public hearing on its website eight days before the scheduled date of the public hearing.

(2) The Authority shall prepare a summary or a record on the public hearing containing comments and proposals given and voiced at the hearing, excepting data classified by the commenter or proposer as trade secret. The Authority shall publish the summary within thirty days of the date of the hearing.

#### **Consultations with stakeholders in significant matters**

#### **Article 159**

(1) To the extent it deems necessary, the Media Council may initiate consultations with stakeholders in matters falling within its scope of competence (hereinafter referred to as: consultations). In so doing, Media Council - at least fifteen days before passing its official ruling the - shall publish the draft resolution and preparatory documents necessary for the consultations, excepting data subject to restricted data handling within the proceedings.

(2) Within eight days of publication of the draft official resolution as defined in paragraph (1), anyone will have the right to submit his position, proposal and other comments they may have concerning the draft resolution in writing (hereinafter: contribution). The Media Council shall not be bound by the contributions so received, which serve for information purposes only, with no obligation on the part of the Media Council to take them into account for the purposes of passing its official resolution.

(3) The Media Council shall not be under obligation to justify the necessity to hold consultations or when consultations are held to justify the reasons why contributions were taken or not taken into account.

(4) Stakeholders having submitted contribution as defined in paragraph (2) will not become a party to the procedural relationship in the subject matter of the consultations subject to the official resolution by virtue of the fact of submitting

contribution. Stakeholders shall not have the right to legal redress within the context of its contributions, even in relation to the portions of the official decision pertaining to the contributions.

## **Official contract**

### **Article 160**

(1) In cases defined herein, the Authority shall have the right to conclude a contract with a client in accordance with the provisions of the Act on the General Rules of Administrative Proceedings and Services and with due heed to the deviations herein contained.

(2) Under the contract concluded with the Authority, the client may assume obligations that are beyond the scope of competence of the Authority and compliance therewith on the part of the client could not be prescribed otherwise under an official decision. In this case, under the official contract the client agrees that in case of non-compliance on his part with the provisions of the contract the entire contract shall be regarded as an enforceable official decision with final force.

(3) The official contract may be concluded with effect irrespective of the approval of third parties, whose rights and lawful interests are affected by the contract, regarding the contractual terms and conditions that could be imposed on the contractual party by way of the official decision under the law.

(4) The statutory period for conclusion of the official matter under an official contract as defined in Article 151 shall apply with due heed to the deviations herein contained.

### **Article 161**

(1) The Authority shall check compliance with the provisions of the official contract in the course of an official audit. When under the official audit the Authority established infringement of the official contract by the client, it shall assess — on the basis of the facts revealed in the audit, the gravity of the breach of contract, effective enforcement of rights, the social, economic and legal environment and the relevant media administration principles and objectives as well as effective enforcement of public interest underlying the contract — whether to resort to the enforcement proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services or institute official proceedings to apply the legal consequences hereunder, in the case involving violation of the decision.

(2) When the Authority resorts to enforcement proceedings, the client may seek revision of the enforcement order — by claiming infringement of law — at an administrative court within fifteen days of notification of the order. The court will pass its resolution — based on the hearing of the parties, if need be — in non-contentious proceedings within fifteen days. The submission of the application for non-contentious proceedings shall have a staying effect on the enforcement of the order. No appeal shall lie against the order the Metropolitan Court of Justice.

(3) When the Authority — under paragraph (1) — initiates proceedings to apply legal consequences hereunder, no separate appeal shall lie against the institution of the proceedings.

(4) In the official proceedings initiated on account of breach of contract by the client, the Authority may apply the legal consequences defined in Article 187 and in the official contract.

(5) In case of material or repeated breach of contract by the client, the Authority — unless otherwise provided for in the official contract — shall have the right to terminate the contract with immediate effect.

(6) As regards amendment of the official contract, a court action shall not affect the fulfilment and enforcement of said agreement and shall not have a staying effect on the fulfilment and enforcement of said agreement.

## **Notices**

### **Article 162**

(1) The Authority shall comply with the provisions of the Act on the General Rules of Administrative Proceedings and Services on public disclosure by notification posted through its website.

(2) The Authority shall publish its resolutions and the relevant court orders through its website, with due heed to the protection of personal data and restricted data handled in the proceedings.

(3) When the law allows notification by way of notices, the notice shall be made public by displaying the notice on the billboard of the Authority and by posting such notice on the website of the Authority.

## **Legal remedies**

### **Article 163**

(1) No appeal shall lie against the official decision of the Media Council passed in its capacity as Authority of the first instance. The official decision of the Media Council may be challenged at court by the client — and as regards the provisions expressly applicable to him —, the witness, the official witness, the expert, the interpreter, the owner of the object for inspection, the representative of the client and the official mediator by claiming infringement of the law, at the administrative court within thirty days upon announcement of the official decision, by lodging a petition against the Media Council.

(2) The court proceedings instituted under a petition for the revision of the Media Council's decision shall be subject to the provisions of the Act on the Code of Civil Procedure on lawsuits in public administration, with due heed to the deviations herein contained.

(3) The submission of the petition shall not have a staying effect on the execution of the decision, the court may be requested to suspend the execution of the challenged decision.

(4) The Media Council shall forward the petition — together with the documents and representations of the case — to the court within fifteen days of receipt thereof.

(5) The petition for non-contentious proceedings against the challengeable decisions of the Media Council under separate appeal shall be submitted within fifteen days of the notification of the order.

(6) No judicial review proceedings may be instituted on the official decisions of the Media Council.

#### **Article 164**

(1) The court proceedings shall be conducted with priority.

(2) The judicial review proceedings shall fall within the exclusive competence of the Metropolitan Court of Justice.

(3) The court shall have the powers to alter the decision passed by the Media Council.

#### **Article 165**

(1) The client shall have the right to appeal against the official decision of the Authority passed hereunder at the Media Council, with the exception of decisions against which no appeal lies under the Act on the General Rules of Administrative Proceedings and Services or under this Act.

(2) The decision of the Office may be challenged under an appeal by the client having been party to the proceedings of the first instance.

(3) The decision of the Media Council of the second instance may be challenged at court by the client, — and as regards the provisions expressly applicable to him — the witness, the official witness, the expert, the interpreter, the owner of the object for inspection, the representative of the client and the official mediator by claiming infringement of the law, at the administrative court within thirty days upon announcement of the official decision, by lodging a petition.

(4) The submission of the petition shall not have a staying effect on the execution of the decision, the court may be requested to suspend the execution of the challenged decision.

(5) The petition for non-contentious proceedings against the challengeable resolutions of the Office under separate appeal shall be submitted within fifteen days of the notification of the order.

(6) The judicial review proceedings shall fall within the exclusive competence of the Metropolitan Court of Justice.

#### **Specific proceedings of the Authority**

## **Article 166**

In conducting its proceedings defined in Articles 68–70 and 167–181, the Authority shall apply the provisions of the Act on the General Rules of Administrative Proceedings and Services or this Act with due heed to the deviations for the various types of proceedings.

### **General official supervision**

#### **Article 167**

(1) At request or *ex officio*, the Authority — within the context of its scope of responsibilities and competence — shall have the right to supervise within an official audit or official proceedings the enforcement and observance of the provisions laid down in this Act and the Press and Media Act as well as fulfilment of the terms and conditions set forth in its official decisions and in the official contract.

(2) Should the Authority establish infringement of the provisions laid down in its official decision as revealed in supervising compliance with its official decision, it shall assess — on the basis of all circumstances of the case, the facts revealed in the audit, the gravity of the breach of contract, effective enforcement of rights — whether to resort to the enforcement proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services or institute official proceedings to apply the legal consequences hereunder, in the case involving violation of the decision.

(3) The Authority shall have the right to apply the legal consequences defined in Chapter V in cases of infringements revealed in the course of general official supervision.

### **Market surveillance**

#### **Article 168**

(1) The Media Council — within its scope of competence — with a view to protecting the smooth, fruitful and diverse operation of the media market and protecting the interests of those engaged in broadcasting and media service provision, publishers of media products, viewers, listeners, readers, subscribers and users as well as preserving the diversity of the national culture and opinions, promoting fair and effective market competition, familiarization with market trends and the comprehensive assessment, analysis and official supervision of media policy considerations and other purposes herein defined — shall perform market surveillance activities.

(2) The specific market surveillance procedure may cover a number of official powers and case types — under the Press and Media Act and this Act — within a comprehensive official procedure.

(3) The Media Council — in performing its duties defined in paragraph (1) — shall prepare an annual market surveillance plan with due heed to the findings of market surveillance activities by 1 December of the year preceding the subject year and shall publish the same on its website within fifteen days thereof. The Media Council shall ensure that its market surveillance plans are in accordance with one another. The plans may be reviewed on the basis of its findings made in the first six months at the end of that half, and the Media Council shall have the right to modify these plans accordingly. The Media Council shall post its modified market surveillance plan on its website within fifteen days of its modification.

(4) The market surveillance procedure shall be instituted *ex officio*.

(5) The statutory period of a market surveillance procedure shall be sixty days. The period may be extended in justified cases on one occasion, by forty five days at the most.

(6) In its comprehensive and consolidated official decision, the Media Council — as the purpose and as a result of the market surveillance procedure — shall

(a) assess compliance of services and activities subject to the procedure with applicable legislation. In so doing, the Media Council shall take note of events constituting infringement, make an assessment of these instances both on an individual and aggregate basis and shall determine the legal consequences by suitably applying the provisions of Chapter V. In its market surveillance decision, the Media Council may impose obligations and define the terms of their fulfilment, when no infringement has occurred.

(b) determine the directions, methods, criteria for development and reshaping (if any) state intervention with a view to preventing infringement of legislation, voluntary compliance with the law and smooth flow of market trends and any conclusions that may arise in media policy.

(7) The Media Council shall prepare an annual report on the fulfilment of the objectives in its market surveillance plans, the results and findings of its market surveillance operations and its proposals on amendment of legislation that may arise from market surveillance decisions. The Media Council shall post its report on its website within fifteen days of its approval.

(8) The Media Council shall have the right to conduct market surveillance operations *ex officio* beyond the scope of the market surveillance plan.

## **Sectoral inquiries in the media market**

### **Article 169**

(1) The Media Council — with a view to assessing compliance with the provisions of this Act and revealing whether official powers hereunder should be applied, when the price changes or other market conditions suggest that competition in the media service market is being distorted or is restricted, in order to gather information on market trends — shall institute an official audit by its order.

(2) This procedure of the Market Council shall be without prejudice to the competence of the Hungarian Competition Authority to conduct a sectoral inquiry under the Act on the prohibition of unfair and restrictive market practices.

(3) The Media Council shall notify the media service providers of the commencement of the official audit, which is to cover the subject of the case and a brief description thereof, in deviation from the relevant provisions of the Act on the General Rules of Administrative Proceedings and Services. The explanatory section of the order shall describe the market conditions that gave rise to the sectoral inquiry. The order shall be displayed on the billboard of the Authority and posted on the website of the Authority. The ruling on the institution of the procedure shall be deemed duly served on the fifteenth day from the display of the notice on billboard of the Authority.

(4) The amount of the procedural fine that may be imposed in a sectoral inquiry — taking into account the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions — shall equal 0.5 % of the breaching entity, or, in the absence of revenues or reporting on revenues, shall be between HUF 50,000 at the minimum and HUF 50,000,000 at the maximum. In addition, in case of failure or improper delivery of information, the Media Council shall have the right — and in case of repeated infringement, shall be obliged — to impose a fine on the senior officer of the breaching media service provider in the amount between HUF 50,000 and HUF 3,000,000.

### **Article 170**

(1) When the Media Council — on the basis of the findings of the official audit — established that the market trends under review may cause distortions or restrictions in competition in the market for media services and in its opinion these circumstances may not be remedied by exercising the powers available hereunder, it may initiate that the Hungarian Competition Authority commence competition surveillance proceedings in the matter.

(2) The Hungarian Competition Authority will not commence the competition surveillance proceedings initiated by the Media Council as defined in paragraph (1) when there is a sectoral inquiry underway in the same subject and for the same period or, when

the Competition Authority had completed a sectoral inquiry in the same subject for the same period beforehand. The Hungarian Competition Authority shall notify the Media Council of this fact.

(3) When there are no grounds for, or due to absence of competence it is impossible to initiate competition surveillance proceedings or when the market distortion may not be remedied within the scope of competence of the Media Council or the Office, the legislative body will be duly notified accordingly.

### **Proceedings of the Media Council as administrative authority**

#### **Article 170**

(1) The Hungarian Competition Authority shall obtain the position statement of the Media Council for the approval of concentration of enterprises under Article 24 of the Act LVII of 1996 (hereinafter: the Competition Act) on the Prohibition of Unfair and Restrictive Market Practices, such enterprises or the affiliates of two groups of companies as defined in Article 15 of the Competition Act bearing editorial responsibility and the primary objective of which is to distribute media content to the general public via an electronic communications network or a printed media product.

(2) The Media Council — excepting the case defined in Article 68 (2) — shall not have the right to reject granting an official licence, when the level of merger between independent opinion sources after the merger will ensure the right for diversity of information within the particular market segment for the media content service.

(3) The official requirement or condition imposed by the Media Council may be applied in a resolution in the merits of a case in accordance with Article 30 (3) of the Competition Act.

(4) The official position statement of the Media Council shall bind the Hungarian Competition Authority, however, this fact does not prevent the Hungarian Competition Authority from

(a) prohibiting a merger from concluded that is already officially approved by the Media Council irrespective of any condition the Media Council may set, or

(b) imposing a condition or an obligation as defined in Article 30 (3) of the Competition Act that the Media Council failed to set.

(5) The statutory period for the official procedure of the Media Council as a competent authority shall be twenty days, which may be extended on one occasion by another twenty days. The statutory period of the competition surveillance procedure shall not include the period available for the official procedure of the Media Council as

administrative authority. Failure by the Media Council to issue its position statement shall be deemed an approval on its part.

(6) The amount of the administrative service fee payable to the Media Council for its procedure as administrative authority shall equal HUF 2,000,000, which is payable to the Competition Office together with the procedural fee as defined in Article 62 (1) of the Competition Act, except when the applicant had submitted a request for a preliminary approval as defined in paragraph (7).

(7) At the request of the applicant defined in Article 68 of the Competition Act, the Media Council shall issue a preliminary official approval as an administrative authority on payment of the administrative service fee defined in paragraph (6). The applicant shall have the opportunity to request a preliminary official approval from the competent authority by the date of submitting a request for approval of merger or by the end of the period defined in Article 28 (2) of the Competition Act, and this approval shall be valid for a period of six months from the date of issue, provided that facts of the case, the market or the regulatory environment material for the purposes of the official approval remained unchanged since the date of the position statement issued by the administrative authority. The preliminary official approval issued by the Media Council as administrative authority or the request for approval shall be attached to the form set forth in Article 68 (2) of the Competition Act. When a specific requirement or condition laid down in the preliminary official approval issued by the Media Council as administrative authority contradicts an obligation or condition deemed necessary by the Hungarian Competition Authority in part or in full, the government entities involved shall proceed as described in Article 45 (2) of the Act on the General Rules of Administrative Proceedings and Services.

## **Settlement of legal disputes**

### **Article 172**

(1) In case of infringement of the rights or lawful interests of a media service provider, an entity engaged in providing ancillary media services, a publisher of media products or a broadcaster by another media service provider or programme broadcaster defined in an agreement concluded under the Rule concerning media governance or in Rule concerning media governance and in cases defined hereunder, the affected party may resort to the Media Council to conduct proceedings to resolve the legal dispute (hereinafter: proceedings to resolve a legal dispute).

(2) The application for conducting proceedings to resolve a legal dispute shall describe — in addition to the requisites defined in the provisions of the Act on the General Rules of Administrative Proceedings and Services on applications — the facts and circumstances serving as grounds for claims under paragraph (1), references to the legislative and contractual provisions that provide the grounds for the application and a statement on its rights and lawful interests.

(3) When the applicant requests the Media Council to conclude an agreement or establish the particulars of its provisions, he shall expressly and clearly define the particulars of contractual provisions he wishes to have concluded or established, in a clear-cut text.

(4) The application may also include a motion for probation and the applicant shall include its statement as to whether he requests that a court hearing be held.

(5) When the application for proceedings to resolve a legal dispute does not or improperly have the requisites laid down in paragraph (2), the Media Council shall request the applicant to remedy deficiencies in documentation with a deadline of eight days at the most. Should the applicant fail to, or improperly remedy the deficiencies within the specific deadline, the Media Council shall reject the application within fifteen days without assessment of the case in its merits.

(6) When the application for proceedings to resolve a legal dispute does not or improperly have the requisites laid down in paragraph (3), the Media Council shall request the applicant to remedy deficiencies in documentation with a deadline of five days. Should the applicant fail to, or improperly remedy the deficiencies within the specific deadline, the Media Council shall not adopt a decision in the context of concluding an agreement or establishing the particulars of its provisions and as regards the infringement it shall adopt its decision in reliance on the data at its disposal or terminates the proceedings altogether.

(7) The Media Council shall send the application — provided that it does not reject the same without assessing the case in its merits — to the adverse party and shall request such party to submit its position and the evidence at its disposal within a period of ten days at the most and to concurrently send the same to the adverse party.

(8) In the course of its proceedings, the Media Council shall seek to establish an agreement between the parties.

### Article 173

(1) The Media Council shall hold a hearing at the request of any of the parties, which may be attended by the parties and other stakeholders in person or by their proxies, may put forth their positions and comments and submit their pieces of evidence by the end of the hearing. The hearing shall be held with the public excluded.

(2) Absence of persons duly summoned to and notified of, the hearing shall not prevent the hearing from being held and the case from being concluded. In justified cases, persons summoned to and notified of, the hearing may seek exemption from attending the hearing; in which case the Media Council shall have the right to postpone the hearing.

(3) Absence from the hearing without exemption may not be subsequently justified. However, when the Media Council deems it necessary to hear the testimony of a person that failed to attend the hearing, the hearing may be postponed to a later date.

(4) Unless otherwise provided hereunder, the applicant shall provide reliable evidence to substantiate the facts and describe the legal grounds of his claims set forth in the application.

(5) The Media Council may oblige the adverse party to furnish data and/or put forth statements on his part.

(6) The Media Council shall have the right to issue an injunction in the particular case at request or *ex officio* when it is apparent that the breach of law and in particular its core principles will or is likely to result in a grave and otherwise unavoidable infringement of rights or interests; with due heed to the fact that the disadvantages that may arise from issuing the injunction should not exceed the advantages that may be achieved under the interim injunction.

(7) As an interim injunction, the Media Council may order that the activity at issue be discontinued, may set the conditions for the activity and may also set obligations.

(8) The interim injunction shall be in place by the conclusion of the proceedings with a final force. The Media Council shall have the right to modify or cancel the interim injunction at request or *ex officio*.

(9) The interim injunction order issued by the Media Council may be challenged by the client before the Metropolitan Court of Justice. The Court will pass its ruling in the case in non-contentious proceedings within fifteen days. No appeal shall lie against the order the Metropolitan Court of Justice. The submission of the petition shall not suspend the execution of the ruling.

(10) The Media Council will not issue a separate ruling on rejecting an application for an interim injunction; the grounds for rejection shall be set forth in the resolution concluding the procedure for the settlement of a legal dispute in its merits.

#### **Article 174**

(1) In a procedure for the settlement of a legal dispute, the Media Council shall have the right to conclude, modify and establish the terms and conditions of the agreement when there is an obligation to conclude an agreement under the Rule concerning media governance and the parties fail to agree on the terms and conditions thereof, at an application in accordance with Article 173 (3).

(2) When a procedure for the settlement of a legal dispute may be instituted also in relation to the consideration for the broadcasting and the media service under this Act, the Media Council may prohibit the applicability of the consideration and shall have the right to set the amount of the rightful price under this Act and may oblige the media service provider or the broadcaster to apply such rightful price.

#### **Providing data**

#### **Article 175**

(1) The Authority may request that media service providers, publishers of media products, entities providing ancillary media services and broadcasters furnish any and all data that are indispensable for the Authority to perform the duties falling within its scope of competence hereunder, exceptionally also in cases when such data are deemed as data protected by law. No appeal shall lie against this request; the request may be challenged in a petition for remedy against the official decision issued in cases defined in paragraph (2).

(2) When the party obliged to furnish data fails to meet, or improperly meets the request as in paragraph (1), the Authority shall have the right to oblige the party to furnish the data specified in the request under its official decision.

(3) The Authority shall have the right to oblige enterprises under the scope of this Act to furnish data on a temporary or continuous basis, under its official decision.

(4) The Authority shall have the right to oblige enterprises under the scope of this Act to furnish data from an audit system installed on-site, attached to an administrative register or embedded in process, under its official decision.

(5) No appeal shall lie against the decision of the Office as defined in paragraph (2)–(4). The client may seek revision of the resolution — by claiming infringement of law — at an administrative court within fifteen days of notification of the official decision. The court will pass its decision — based on the hearing of the parties, if need be — in non-contentious proceedings within fifteen days. The submission of the application

for non-contentious proceedings shall have a staying effect on the enforcement of the decision. No appeal shall lie against the order the Metropolitan Court of Justice.

(6) The client may seek revision of the decision of the Media Council as defined in paragraphs (2)–(4) — by claiming infringement of law — at an administrative court within fifteen days of notification of the official decision. The court will pass its decision — based on the hearing of the parties, if need be — in non-contentious proceedings within fifteen days. The submission of the application for non-contentious proceedings shall have a staying effect on the enforcement of the decision. No appeal shall lie against the order the Metropolitan Court of Justice.

(7) Legal remedy against decisions as defined in paragraphs (2)–(4) may be lodged by a client that constitute a party in the official proceedings.

(8) When the party obliged to furnish data fails to meet or improperly meets the obligations to furnish data as defined in paragraphs (2)–(4), the Authority shall impose a fine — taking into account the net sales revenue generated by the breaching entity in the previous year and the fact whether the offence was committed on one or more occasions — in the amount between HUF 50,000 at the minimum and HUF 50,000,000 at the maximum. An appeal may lie against this decision as defined in Articles 163–165.

(9) In determining the amount of the fine, the Authority shall assess and compare all circumstances of the case, the sales revenue of the breaching entity, the gravity of the disadvantages and the consequences arising from the party’s failure to furnish data.

(10) An appropriate period of time shall be allowed for the party to furnish the requested data, even in case of a request defined in paragraph (1).

(11) In furnishing the data as defined in paragraphs (1) – (4), the data provider shall be responsible for ensuring that the data are appropriate, current, authentic, accurate, verifiable and proper.

(12) The media service provider shall retain the authentic documentation on its programmes, including the full recording of output signals in the media service provision, for a period of sixty days from the date of broadcast or in case of on-demand media service, from the last date of accessibility of content and shall furnish the Authority with such materials at its request free of charge. In case of a procedure instituted or a legal dispute arising in relation to a media service the documentation shall be retained for a period of one year from the conclusion of the proceedings with a final force.

## **Proceedings against a media content provider resident in another Member State**

### **Article 176**

(1) When the linear audiovisual media service of a media service provider residing in another Member State is intended for use in the territory of the Republic of Hungary, the Media Council shall have the right to apply the legal consequences as defined in Article 187(3)(b)–(d) against the media service provider under its resolution for the period of the infringement or up to 180 days at the most when the following conditions are met:

(a) the media service clearly and materially violates Article 17, 19(1) or 19(4) of the Press and Media Act or Article 9 or 10(1)–(3) of this Act,

(b) the media service violated the provisions set forth in paragraph (a) on at least two occasions within the twelve months prior to the resolution to be issued by the Media Council under this paragraph on the limitation of broadcast;

(c) the Republic of Hungary at the initiative of the Media Council notified the particular media service provider and the European Community of the instances of infringement as defined in item (a) and the measures the Media Council intends to take in case of repeated infringement; and

(d) no agreement is made between the Republic of Hungary and the Member State in which the media service provider is resident — on the basis of the consultations made with the European Commission within fifteen days from the notification defined in item (c) and the infringement described in item (a) still exists or is committed repeatedly.

(2) The Media Council shall send the decision defined in paragraph (1) to the European Commission concurrently with the announcement thereof.

(3) When the European Commission obliges the Media Council to withdraw the decision passed under paragraph (1) in a decision passed within two months of the notification defined in paragraph (2), it shall proceed as provided for in the decision of the European Commission.

### **Article 177**

(1) When the on-demand audiovisual media service of a media service provider residing in another Member State is intended for use, is broadcast or published in the territory of the Republic of Hungary, the Media Council shall have the right to apply the legal consequences as defined in Article 187(3)(b)–(d) against the media service provider under its decision for the period of the infringement or up to 180 days at the most when the following conditions are met:

(a) the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors;

(b) the measures are taken against a media service provider of an on-demand media service that violates or presents a serious risk on any of the interests defined in item (a); and

(c) the measure is proportionate to the interests to be protected.

(2) Prior to the institution of the proceedings intended for formulating the resolution defined in paragraph (1), the Media Council shall request that the Member State in which the media service provider rendering on-demand media services as defined in paragraph (1) has its residence take appropriate measures. When the Member State fails to take, or improperly takes the measure within the reasonable time set forth in the request lodged by the Media Council, the Media Council shall send the draft version of the decision defined in paragraph (1) to the European Commission and the particular Member State. When the European Commission obliges the Media Council to withdraw the draft decision, it shall proceed as provided for in the decision of the European Commission.

(3) In cases of exceptional urgency, and with a view to protecting viewers' interests, the Media Council shall have the right to make a temporary decision defined in paragraph (1). The temporary decision shall be executable with immediate effect. The Media Council shall send the temporary decision to the European Commission and the particular Member State concurrently with the announcement thereof. The Media Council shall resolve as to whether to uphold or withdraw the temporary decision as provided for in the decision of the European Commission.

### **Article 178**

(1) When the radio media service or press media of a media content provider residing in another Member State is intended for use, is broadcast or published in the territory of the Republic of Hungary, the Media Council shall have the right to apply the legal consequences as defined in Article 187(3)(b)–(d) against the media service provider under its decision for the period of the infringement or up to 180 days at the most when the following conditions are met:

(a) the measures are necessary for the protection of public order, the prevention, investigation and prosecution of criminal acts, necessary on account of infringement of the prohibition of inciting hatred against communities, for the protection of minors, public health, public security, national security and consumers and investors;

(b) the measures are taken against a media content provider of radio media service or press media that violates or presents a serious risk on any of the interests defined in item (a); and

(c) the measure is proportionate to the interests to be protected.

(2) Prior to the institution of the proceedings intended for formulating the decision defined in paragraph (1), the Media Council shall request that the Member State in which the media service provider rendering radio media services or publisher of a media product as defined in paragraph (1) has its residence take appropriate measures. The Media Council may institute the proceedings defined in paragraph (1) provided that the Member State fails to, or improperly take the measure within the reasonable time set forth in the request lodged by the Media Council.

(3) In cases of exceptional urgency, and with a view to protecting listeners' and readers' interests, the Media Council shall have the right to make an interim decision defined in paragraph (1). The temporary decision shall be executable with immediate effect. The Media Council — concurrently with its announcement — shall send the temporary decision to the Member State in which the media service provider rendering radio media services or publisher of a media product as defined in paragraph (1) has its residence and shall request that such Member State take appropriate measures. When the Member State takes the measures within the reasonable time set forth in the request, the Media Council shall resolve on the withdrawal of the temporary decision; while in case of failure, or improper delivery of the measures, it shall resolve on upholding the temporary decision.

### **Article 179**

(1) This Act and Articles 13–20 of the Press and Media Act shall be applicable to the linear audiovisual media service of the media service provider residing in another Member State in accordance with the provisions of paragraph (2)–(5) hereof, on condition that the media service provider residing in another Member State intends the particular linear audiovisual media service for use in the territory of the Republic of Hungary in its entirety or to a large extent and the media service provider established residence outside the territory of the Republic of Hungary with a view to avoiding the applicability of more stringent rules thereon under this Act and the Press and Media Act.

(2) In its assessment as to whether the conditions defined in paragraph (1) are met, the Media Council shall examine — among others — in which of the Member States the major sources of the revenues of the media service provider residing in another Member State are to be found for the purposes of its linear audiovisual media service, which primary language is used in the media service, in which of the Member States the majority of sites covered in the broadcasts are located and which Member State's audience the programmes in the media services are addressed to.

(3) When the conditions defined in paragraph (1) are met, the Media Council — on infringement of the provisions of this Act and the Press and Media Act — shall seek measures to be taken by the Member State in which the media service provider rendering the media service defined in paragraph (1) has its residence.

(4) The Media Council may apply the legal consequences as defined in Article 187 (3) (b)–(d) against the media service provider defined in paragraph (1) under its

decision when it established that the Member State with jurisdiction over the particular media provider as defined in paragraph (3) failed to take, or improperly took measures within two months.

(5) The Media Council shall send the draft decision defined in paragraph (4) to the European Commission prior to the announcement thereof. When the European Commission obliges the Media Council to withdraw the draft decision, it shall proceed as provided for in the decision of the European Commission.

### **Article 180**

(1) This Act and Articles 13–20 of the Press and Media Act shall be applicable to the radio media service of the media content provider residing in another Member State in accordance with the provisions of paragraphs (2)–(3) hereof, on condition that the media content provider residing in another Member State intends the particular radio media service for use in the territory of the Republic of Hungary in its entirety or to a large extent and the media content provider established residence outside the territory of the Republic of Hungary with a view to avoiding the applicability of more stringent rules thereon under this Act and the Press and Media Act.

(2) In its assessment as to whether the conditions defined in paragraph (1) are met, the Media Council shall examine — among others — in which of the Member States the major sources of the revenues of the media content provider residing in another Member State are to be found for the purposes of its radio media service, which primary language is used in the media service or media product, in which of the Member States the majority of sites covered in the broadcasts and reporting are located and which Member State’s audience the programmes and media content in the media services or media product are addressed to.

(3) When the conditions defined in paragraph (1) are met, the Media Council — on infringement of the provisions of this Act or the Press and Media Act — shall seek measures to be taken by the Member State in which the media service provider rendering the media service or the publisher of the media product defined in paragraph (1) has its residence.

(4) The Media Council may apply the legal consequences as defined in Article 187(3)(b)–(c) against the media service provider defined in paragraph (1) under its decision when it established that the Member State with jurisdiction over the particular media provider as defined in paragraph (3) failed to take, or improperly took measures within two months.

### **Proceedings in case of infringement of the obligation of balanced communication**

### **Article 181**

(1) In case of infringement of the obligation of balanced communication defined in Article 13 (2) of the Press and Media Act and Article 12 (2) of this Act, the holder of the viewpoint that was not expressed or any viewer or listener (hereinafter for the purposes of paragraphs (2)–(6): applicant) may request that official proceedings are instituted. The powers to assess a request concerning the media services rendered by media service providers and public service broadcasters with significant powers of influence shall be with the Media Council while in case of other media services with the Office. The Authority shall not have the right to institute proceedings in case of infringement of the obligation of balanced communication.

(2) Prior to requesting an official procedure defined in paragraph (1), the applicant shall resort to the media service provider with its objection. The applicant — within 72 hours from the broadcast of the challenged coverage or, in case of re-broadcast of the particular piece of programme, from the date of the last broadcast — shall have the right to request in writing that the media service provider broadcast the viewpoint required for a balanced coverage properly, under circumstances similar to the challenged broadcast. The applicant may not exercise his right of challenge if another representative of the same viewpoint has already been given a chance to present the viewpoint not presented earlier, or if the applicant has been given this opportunity but has failed to take advantage thereof.

(3) The media service provider shall decide on the acceptance or refusal of the objection within forty-eight hours of the receipt thereof. The decision shall be communicated to the applicant in writing without delay. The applicant — within 48 hours of communicating the decision — shall have the right to request the Authority that an official procedure be instituted, or, when the decision is not communicated, within ten days of the broadcast of the challenged or objected communication, together with the exact name of the challenged programme and the particular media service provider. A request for instituting a procedure by the Authority may also be made if the media service provider fails to comply with the contents of the objection in spite of its statement of acceptance. In this case, the request for instituting a procedure by the Authority shall be submitted to the Authority within forty-eight hours of the expiry of the deadline set for complying with the objection. Unless otherwise provided for in this Act, the statutory period for proceedings conducted by the Authority shall be fifteen days, which may be extended in justified cases on one occasion, by eight days at the most.

(4) At the request of the Authority, the media service provider shall furnish the Authority with the recording of the challenged programme without delay.

(5) Should the Authority establish that the media service provider violated the obligation of balanced communication, the media service provider shall broadcast or publish the decision passed by the Authority or the notice defined in the decision without any comment thereon — as provided for in the decision of the Authority — in the manner and at the time specified by the Authority or shall provide an opportunity for the applicant to make his viewpoint known. In addition to the foregoing, no legal consequences as defined in Articles 186–187 may be applied against the breaching entity.

(6) The procedure defined in paragraphs (1)–(5) shall be exempt from dues and charges, and the applicant may not be obliged to pay administrative service fee either. As regards legal remedy against the decision passed in the proceedings, the provisions of Articles 163–165 shall be suitably applied with the provision that the client or other actors in the proceedings may seek revision of the final decision of the Media Council by lodging a petition against the Media Council before the Metropolitan Court of Appeal (Budapest), by claiming infringement of the law, within fifteen days. The Regional Court of Budapest shall adjudge the petition in litigious proceedings within thirty days.

## **The scope of responsibilities and competence of the Authority**

### **Article 182**

Acting in its capacity as an Authority, the Media Council — in accordance with Article 132

- (a) shall perform official supervision over official contracts concluded thereby;
- (b) shall perform official supervision regarding the following statutory provisions herein defined:
  - (ba) standards on the protection of children and minors;
  - (bb) standards on the broadcast of events of high significance;
  - (bc) rules on broadcast of parliamentary sessions;
  - (bd) provisions on media services concerning extraordinary situations;
  - (be) requirements on programme quotas;
  - (bf) requirements defined in Articles 23–25 on commercial communications;
  - (bg) provisions on product display;
  - (bh) provisions on political advertisements, public service announcements and social advertisements (excepting the provisions of Article 32 (7));
  - (bi) requirements on advertisements and teleshopping as defined in Article 33;
  - (bj) “must-carry” rules applicable to broadcasters;
  - (bk) obligations related to the offering of media services;
  - (bl) provisions on the diversity of broadcasting;
  - (bm) rules on the performance of tasks in public service broadcasting;
- (c) shall supervise compliance with requirements set forth in Articles 13–20;
- (d) shall exercise the powers as a competent authority in relation to infringements committed by media content providers residing in another Member State;
- (e) shall adopt an official decision on the rating of a programme, at the request of a media service provider;

(f) shall conclude an official contract with the media service provider on exemption from the requirements on programme quotas;

g) shall determine the amount of the basic media service provision fee;

(h) shall perform the tasks in tendering media service provision right for radio frequencies and perform tasks within the scope of its public duties related to media service provision right;

(i) shall proceed in official matters related to the renewal of provision right for analogue and linear media services;

(j) shall proceed in official matters related to official contracts;

(k) shall perform the tasks related to the networking of media service providers and extension of coverage area;

(l) shall exercise the powers on the classification of media service provision as community media service provision;

(m) shall identify the media service providers with significant powers of influence and defines the obligations to be met by media service providers with significant powers of influence;

(n) shall act in the context of fulfilment of obligations defined for media service providers with significant powers of influence, excluding obligations defined in Article 39;

(o) shall perform the official tasks related to control over market concentrations;

(p) shall conduct a sectoral inquiry in the media market;

(q) shall conduct market surveillance proceedings;

(r) shall act in legal disputes defined in this Act;

(s) shall perform the tasks related to official contracts on temporary media service provision;

(t) shall perform its tasks as a specialized authority in cases defined hereunder and the Act on the Prohibition of Unfair and Restrictive Market Practices;

(u) shall proceed in relation to complaints on imbalanced communication that may arise in media services provided by media service providers with significant powers

of influence and by public service broadcasters (under article 13 (2) of the Press and Media Act and Article 12 of this Act);

(v) shall define events with high importance for the society under its official decision;

(y) shall perform its tasks in its capacity as an authority related to the actions and decisions of self-regulatory bodies;

(z) shall exercise other powers vested with it as an authority as defined in legislation.

### **Article 183**

(1) Acting beyond its capacity as an authority, the Media Council — in accordance with Article 132

(a) shall elaborate the recommendations on classifications of media content for the protection of minors;

(b) shall elaborate the recommendations on requirements for the effective technical solution to enable access to media content for viewers or listeners over eighteen years of age only;

(c) may publish its recommendations on ensuring compliance of product display and the relevant call with the provisions of this Act;

(d) shall provide information on the observance of the constitutional principle of the freedom of the press and the reasons and circumstances of exemptions granted to media service providers to the Parliament;

(e) shall decide on the reallocation of budgetary appropriations of expenditures;

(f) shall define and publish its rules of procedure;

(g) shall provide its opinion on bills on frequency management and communications;

(h) shall prepare position statements and recommendations in certain media policy issues;

(i) shall formulate the concept of frequency management with effect on media service provision;

(j) shall prepare an annual report for the Parliament on the operation of the Media Council and the Office;

(k) shall manage the Fund, accept the subsidy policy, annual plan and report of the Fund, define and publish the detailed rules on the management of the Fund and approve the general tender conditions elaborated by the Fund;

(l) shall prepare a report for the European Commission on certain requirements concerning programme structure;

(m) shall elaborate the rules concerning the utilization of assets handed over to the Public Foundation for Public Service and asset management;

(n) shall cooperate with the media authorities of other Member States;

(o) shall supervise the operation of the Institute for Media Sciences;

(p) shall perform tasks beyond the scope of competence of the relevant authorities related to the actions of self-regulatory bodies;

(q) shall perform other tasks — beyond the scope of competence of the relevant authorities — defined in legislation.

(2) The Media Council shall be responsible for implementing regulation 2006/2004/EC of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws in relation to intra-Community infringements of the laws of the Member States transposing Articles 19–26 of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services. In so doing, the Media Council shall proceed in the context of mutual assistance in accordance with Commission Directive 2007/76/EC.

#### **Article 184**

(1) The Office, within its powers as competent authority, shall

(a) maintain the administrative registers defined in this Act;

(b) determine the amount of the media service provision fee payable by media service providers having acquired the right for media service provision through registration;

(c) supervise observance of the following provisions of this Act:

(ca) the provisions of Article 32 (7) on political advertisements, public service announcements and social advertisement;

(cb) regulations on advertisements published in public and community media service and public service announcements (Article 36);

(cc) regulations on programmes made accessible to people with a hearing disability (Article 39);

(cd) regulations on changes in the ownership structure and other data of media service providers, publishers of media products and ancillary media service providers, the relevant reporting and the publication of certain data (Articles 37, 41–42 and 45–47);

(ce) regulations on the ownership structure of the linear media service providers and ownership concentration of companies (Article 43);

(cf) provisions on media content with violence and suitable to raise disturbance and regulations on the protection of religious convictions (Article 14);

(cg) certain provisions on advertisement and teleshopping (Articles 34–35);

(ch) regulations on the sponsorship of media services and programmes (Articles 26–29);

d) perform the tasks related to the discontinuation and termination of media service provision right in the event of failure to commence service provision;

e) act in the settlement of complaints regarding the obligation of balanced coverage, excepting cases defined in Article 182 (u) (Article 13 (2) of the Press and Media Act and Article 12 hereof);

f) check observance of obligations on the forwarding of public service broadcasting (Article 74);

g) check observance of the provisions on general contractual framework within the context of offering media services (Article 79);

h) exercise other powers vested with it as defined in legislation.

(2) The Agency, beyond its powers as competent authority, shall

a) perform the preparatory tasks in cases falling within the scope of responsibilities and competence of the Media Council;

b) perform the preparatory tasks in tendering media service provision rights and hold public hearing;

c) perform market analysis, assessment and other inquiry activities by the programme monitoring and analysis service;

d) shall perform other tasks — beyond the scope of competence of competent authorities — defined in legislation.

## **CHAPTER V**

### **LEGAL CONSEQUENCES APPLICABLE IN CASE OF INFRINGEMENT**

#### **Article 185**

(1) The Media Council or the Agency shall have the right to apply the legal consequence on parties infringing regulations on media administration in accordance with the provisions of Articles 186-189.

(2) In applying the legal consequence, the Media Council and the Agency — under the principle of equal treatment — shall act in line with the principles of progressivity and proportionality; shall apply the legal consequence proportionately in line with the gravity and rate of re-occurrence of the infringement, taking into account all circumstances of the case and the purpose of the legal consequence.

#### **Article 186**

(1) When the infringement is of minor significance and no re-occurrence is established, the Media Council or the Agency — on noting and warning on the fact of the infringement — may request that the infringer discontinue its unlawful conduct, refrain from infringement in the future and act in a law-abiding manner and may also set the conditions thereof, within a deadline of 30 days at the most.

(2) In the context of the request defined in paragraph (1), the considerations defined in Article 187 (2) shall not be applicable.

(3) When — considering all the circumstances of the case — the request may not be applicable or would prove inefficient to ensure compliance with the obligation to discontinue the infringement, the Media Council or the Agency — without stating the reasons for dispensing with making a request — shall prohibit the unlawful conduct and/or may set obligations to ensure observance of the provisions of this Act and may apply legal consequences.

#### **Article 187**

(1) In case of repeated infringement, the Media Council and the Agency shall have the right to impose a fine on the senior officer of the infringing entity in an amount not exceeding HUF 2,000,000, in line with the gravity, nature of the infringement and the circumstances of the particular case.

(2) The Media Council and the Agency shall impose the legal consequence — depending on the nature of the infringement — taking into account the gravity of the infringement, whether it was committed on one or more occasions or on an ad-hoc or

continuous basis, its duration, the pecuniary benefits earned as a result of the infringement, the harm to interests caused by the infringement, the number of persons aggrieved or jeopardized by the harm to interests, the damage caused by the infringement and the impact of the infringement on the market and other considerations that may be taken into account in the particular case.

(3) The Media Council and the Agency — with due heed to paragraph (7) — shall have the right to impose the following legal consequences:

a) it may exclude the infringer from the opportunity to participate in the tenders put out by the Fund for a definite period of time;

b) it may impose a fine on the infringer in line with the following limits:

ba) in case of infringement by a JBE media service provider and the media service provider under the regulations on the limitation of media market concentration, the fine shall be of an amount not exceeding HUF 200,000,000;

bb) in case of infringement by a media service provider falling beyond the scope of item (ba), the fine shall be of an amount not exceeding HUF 50,000,000;

bc) in case of a newspaper of nationwide distribution, the fine shall be of an amount not exceeding HUF 25,000,000;

bd) in case of a weekly periodical of nationwide distribution, the fine shall be of an amount not exceeding HUF 10,000,000;

be) in case of other newspaper or weekly newspaper or periodical, the fine shall be of an amount not exceeding HUF 5,000,000;

bf) in case of an online media product, the fine shall be of an amount not exceeding HUF 25,000,000;

bg) in case of a broadcaster, the fine shall be an amount not exceeding HUF 5,000,000;

bh) in case of an intermediary service provider, the fine shall be of an amount not exceeding HUF 3,000,000;

c) the infringer may be obliged to publish a notice or the resolution on the opening page of its website, in a media product or a designated programme in the manner and for the period of time specified in the resolution;

d) it may suspend the exercise of the media service provision right for a specific period of time;

da) the period of suspension may last from fifteen minutes up to twenty four hours;

db) the period of suspension in case of grave infringement may last from one hour up to forty eight hours;

dc) the period of suspension in case of repeated and grave infringement may last from three hours up to one week;

e) it may delete the media service from the registry as defined in Article 41 (4) in which the infringement was committed and may terminate the official contract on the media service provision right with immediate effect on repeated grave infringement by the infringer. The media service deleted from the registry may not be made accessible for the public once it was deleted.

(4) For the purposes of paragraphs (1)-(3), the infringement shall be deemed committed on several occasions when the infringer committed the unlawful conduct as established in the administrative resolution on the same legal basis and in breach of the same provisions of legislation, in the same subject.

(5) The legal consequences defined in paragraph (3) may also be imposed jointly.

(6) Media service provider of a linear media services may be subjected to the legal consequences defined in paragraph (3) (a)-(e), while providers of on-demand or ancillary media service to the legal consequences defined in paragraph (3) (a)-(d) and publishers of media products to the legal consequences defined in paragraph (3) (b)-(c).

(7) The powers to apply legal consequence defined in paragraph (3) (e) shall be with the Media Council.

(8) The Media Council shall have the right to apply the liquidated damages defined in the contract and other legal consequences on media service providers with which administrative agreement is concluded only by way of an administrative procedure.

### **Responsibility of the broadcasters and intermediary service providers for the broadcasting of media services and media products**

#### **Article 188**

(1) The broadcaster and the intermediary service provider shall be responsible for the broadcasting of media services and media products in accordance with the provisions of paragraph (2)-(4) and Article 189.

(2) The broadcaster may be obliged to suspend or terminate the broadcasting of media services in accordance with Article 189.

(3) The intermediary service provider may be obliged to suspend the broadcasting of media services and online media products in accordance with Article 189.

(4) The broadcaster shall not be responsible for the content of the programme of the media service provider resident in a state party to the Agreement on the European Economic Area and European Convention on Transborder Television and in its supplementary Protocol signed in Strasbourg on 5 May 1989 and promulgated by Act 49 of 1998. The broadcaster, however, may be obliged to suspend the broadcasting of the media service under Article 189, taking into account of the provisions of Articles 176–180.

### **Article 189**

(1) When the Media Council resorts to the legal consequence against the media service provider defined in Article 187 (3) (e), the broadcaster shall — on the basis of the request issued by the Media Council after the resolution took effect — terminate the broadcasting of the media service covered in the resolution as defined in the request.

(2) When — in case of repeated infringement — the Media Council or the Agency applies a legal consequence defined in Article 187 (3) (b)-(d) against the media service provider and the media service provider fails to fulfil the terms of the final and executable resolution specifying also legal consequences at the request of the Media Council or the Agency, the broadcaster — on the basis of the request issued by the Media Council following the entry into force of the resolution and the expiry of the delivery deadline — shall suspend the broadcasting of the media service covered in the resolution as defined in the request.

(2) When — in case of on-demand or ancillary media service — the Media Council or the Agency applies a legal consequence defined in Article 187 (3) (b)-(d) against a media service provider and the media service provider fails to fulfil the terms of the final and executable resolution specifying also legal consequences at the request of the Media Council or the Agency, the intermediary service provider — on the basis of the request issued by the Media Council following the entry into force of the resolution and the expiry of the delivery deadline — shall suspend the broadcasting of the media service or ancillary media service covered in the resolution as defined in the request.

(4) When — in case of an online media product — the Media Council or the Agency applies a legal consequence defined in Article 187 (3) (b)-(c) against the publisher of the media product and the publisher fails to fulfil the terms of the final and executable resolution specifying also legal consequences at the request of the Media Council or the Agency, the broadcaster — on the basis of the request issued by the Media Council following the entry into force of the resolution and the expiry of the delivery deadline — shall suspend the broadcasting of the media product covered in the resolution as defined in the request.

(5) The request defined in paragraph (1)–(4) shall contain an appropriate deadline to be met by the broadcaster and/or the intermediary service provider.

(6) When the broadcaster and/or the intermediary service provider fails to fulfil the provisions of the request defined in paragraph (1)–(4), the Media Council or the Agency shall institute *ex officio* administrative proceedings against the broadcaster or the intermediary service provider and shall have the right to apply the legal consequences defined in Article 187 (3) (bg) or (bh).

## **CHAPTER VI**

### **CO-REGULATION IN MEDIA ADMINISTRATION**

#### **General rules**

##### **Article 190**

(1) With a view to effective achievement of the objectives and principles set forth herein and the Press and Media Act, facilitating voluntary observance of law and achieving a more flexible system for law enforcement on media administration, the Media Council shall cooperate with the professional self-regulatory bodies of and alternative dispute resolution forums of media service providers, ancillary service providers, publishers of media products, broadcasters and intermediary service providers (hereinafter for the purposes of this chapter: self-regulatory bodies).

(2) In the context of the cooperation defined in paragraph (1), the Media Council shall have the right to conclude a public administration agreement with the self-regulatory body of good standing on cooperation for the administration of cases specified below falling within the administrative competence of the Council together with such self-regulatory as defined in this Chapter and joint performance of tasks — related to media administration and media policy — not falling within the scope of administrative competence under the law but nevertheless compliant with the provisions of this Act.

##### **Article 191**

(1) Under the public administrative agreement defined in Article 195 (hereinafter: public administrative agreement), the Media Council shall have the right to authorise the self-regulatory body to perform self-management tasks beyond the scope of administrative powers in relation to its registered members and media service providers, broadcasters, intermediary service providers or publishers of media products agreed to be bound by the terms of the Code of Conduct as defined in Article 194 (hereinafter jointly referred to as: undertakings under the scope of the Code) in official cases specifically defined in Article 192 (2) within the powers vested with it under the agreement, prior to specific exercise of powers of the competent authority.

(2) The authorisation granted under paragraph (1) shall not grant public administrative and executive powers on the self-regulatory body and the self-regulatory body shall not be deemed as a public administrative authority or an entity on the public administration system under this authorisation.

(3) The authorisation granted under the public administrative agreement shall not prejudice the powers of the Media Council under this Act, the Media Council shall have the right to act in administrative cases irrespective of this authorisation with due heed to the deviations set forth in this Chapter.

## **Article 192**

(1) The Media Council shall conclude a public administration agreement with a self-regulatory body that meet the conditions set forth on Article 190 (2) and whose registered scope of activities covers or directly affects the administrative cases for which authorisations were granted and that maintains a precise and verifiable registry of the undertakings under the scope of the Code.

(2) In the public administration agreement, the Media Council shall have the right to grant authorisations to self-regulatory bodies to manage the following types of administrative cases beyond the scope of administrative powers in relation to the undertakings under the scope of the Code:

a) exercise supervision over compliance with Articles 14–20 of the Press and Media Act or any of those provisions in relation to media products ;

b) exercise supervision regarding compliance with Articles 14–20 of the Press and Media Act or any of those provisions in relation to online media products ;

c) exercise supervision regarding compliance with Articles 13–20 of the Press and Media Act or any of those provisions in relation to on-demand media services;

d) exercise supervision regarding compliance with Part Two, Chapter I of this Act or any of those provisions in relation to on-demand media services.

(3) The authorisations granted to the self-regulatory body by the Media Council for the administrative case type defined in paragraph (2) shall cover:

a) administering cases related to undertakings under the scope of the Code (including the procedure on applications and complaints on the activities of the members);

b) settlement of disagreements and legal disputes between undertakings under the scope of the Code within the scope of the authorisation;

c) supervision of the operation and conduct of undertakings under the scope of the Code in relation to the authorisation.

### **Article 193**

(1) Under the public administrative agreement, the Media Council and the self-regulatory body may agree on joint performance of tasks, and implementing principles of activity and service development, programmes of public concern closely linked to media administration and media policy not regulated in legislation and any other objective related to media.

(2) The detailed rules on the tasks of self-regulatory bodies — under an authorisation in a public administration agreement — defined in this chapter are laid down in the public administration agreement.

(3) The Agency shall have the right to provide financing for the self-regulatory body to perform its tasks hereunder defined; the self-regulatory body shall give an account thereof to the Agency each year by 31 May on an item-by-item basis.

### **Article 194**

(1) The public administrative agreement concluded by the self-regulatory body and the Media Council shall include a Professional code of conduct as a substantive part thereof defining the self-management performance of tasks (hereinafter referred to as: the Code of Conduct).

(2) The Code of Conduct shall be prepared by the self-regulatory body in the course of the public administrative agreement conclusion and shall be sent to the Media Council for consultation purposes. The Media Council shall examine the Code of Conduct as to whether it complies with relevant legislation. The public administrative agreement shall be deemed concluded with effect on condition that the Media Council and the self-regulatory body come to an agreement concerning the Code of Conduct.

(3) The Code of Conduct shall specify in detail — within the context of the authorisations granted in accordance with Article 192 — the provisions on proceedings and guarantees related to the self-management tasks to be performed by the self-regulatory body, the relevant rights and obligations of the members, the relationship between the members and the self-regulatory body — within the context of the authorisation — and the types, interrelation and the legal impacts of decisions, within the discretion of the self-regulatory body.

(4) In addition to the provisions of paragraph (2), the substantive part of the Code of Conduct shall describe the rules, conditions and requirements concerning the activities, services and conduct within the context of the authorisation.

### **Article 195**

(1) The relationship between the Media Council and the self-regulatory body under this Chapter shall be regulated by the Parties in detail in the public administration agreement.

(2) The Media Council shall have discretionary powers in relation to the conclusion of the public administrative agreement.

(3) The public administration agreement may be concluded in writing only.

(4) The Media Council — on conclusion of the public administration agreement — shall have the right to inspect the registry maintained on the undertakings under the scope of the Code and may request that the self-regulatory body furnish data from the registry so that it may perform its tasks defined in this Chapter concerning the self-regulatory body.

(5) In respect of public administration agreement, the general provisions of the Civil Code of the Republic of Hungary shall apply, with due heed to the deviations herein contained.

#### **Article 196**

(1) The Media Council shall have the right to terminate the public administration agreement with immediate effect, in the event that the self-regulatory body:

a) commits a grave or repeated breach of the provisions of the public administration agreement, or

b) performs its tasks defined in the public administration agreement in deviation from the agreement terms or the terms of the Code of Conduct.

(2) The public administration agreement concluded for an indefinite period of time may be terminated by any of the parties with a thirty day notice.

#### **Proceedings of the self-regulatory body**

#### **Article 197**

(1) The self-regulatory body shall act in administrative cases subject to the authorisations granted thereto in relation to its members as an entity performing the tasks within its own scope of competence and not as tasks under the powers of authorities, as provided for in this Chapter and the public administration agreement. In so doing, its involvement shall have priority over and supplement the activities of the Media Council acting in its administrative scope of competence (hereinafter referred to as self-regulatory procedure).

(2) The Media Council shall have the right to act in relation to the members of the self-regulatory body in administrative case types defined in the public administration agreement when in its opinion the action of the self-regulatory body does not comply with relevant legislation or the provisions of the public administration agreement concluded by the parties.

(3) The self-regulatory procedure on the part of the self-regulatory body shall have priority over the administrative procedure of the Media Council.

(4) The self-regulatory body shall be responsible for elaborating, accepting and enforcing an internal regulation of procedure regarding its members that is capable of ensuring proper and effective performance of tasks defined in this Chapter and the appropriate observance of the rules contained in this Chapter. When due to failure to fulfil the provisions set forth above, the self-regulatory body is unable to properly perform its tasks defined in this Chapter and the public administration agreement concluded with the Media Council, the Media Council shall have the right to terminate the public administration agreement.

### **Article 198**

(1) The self-regulatory body shall act at an application requesting its self-regulatory procedure. Irrespective of the foregoing, the self-regulatory body shall also have the right to institute proceedings in cases falling within its scope of competence at its own initiative.

(2) The statutory period for the self-regulatory procedure by a self-regulatory body shall be thirty days, which may be extended by fifteen days with due heed to the complexity of the case and the difficulties that may arise in revealing the facts of the case. A shorter period may also be provided for under the public administration agreement.

(3) When the Media Council receives an application in the subject falling within self-regulatory procedure, it shall forward the application to the self-regulatory body, considering the membership of the self-regulatory body and other associations subject to the Code of Conduct. When the case does not fall within the competence of the self-regulatory body or the undertaking included in the application is not subject to the Code of Conduct, the self-regulatory body shall forthwith return the application to the Media Council. When the self-regulatory body institutes its proceedings on the basis of the application forwarded by the Media Council, it shall refund to the applicant any dues and fees paid thereto concurrently with the initiation of the proceedings of the Media Council.

(4) In the case defined in paragraph (2), the application for the initiation of the proceedings of the Media Council shall not be deemed as an application giving rise to the obligation to institute proceedings as defined in the Act on the General Rules of Administrative Proceedings and Services, except when the application is returned by the self-regulatory body to the Media Council. In such cases, the administrative proceedings

of the Media Council shall be commenced on the day that the application was returned by the self-regulatory body to the Media Council.

(5) When the self-regulatory body receives an application that falls beyond the scope of its competence but is related to the powers of the Media Council, the self-regulatory body shall forthwith inform the applicant about the relevant powers of the Media Council, the opportunities to initiate proceeding and the rules thereof.

### **Article 199**

(1) The self-regulatory body shall assess the application in light of this Chapter, the public administration agreement concluded with the Media Council and in particular the Code of Conduct constituting an integral part thereof and shall pass its decision in the case. The decision of the self-regulatory body has a binding force on the undertakings subject to the Code of Conduct and may set forth obligations. When the decision sets forth obligations, the self-regulatory body shall set an appropriate deadline to allow compliance therewith. The self-regulatory body shall inform the Media Council of the decision containing obligations within ten days of the expiry of the delivery deadline. The Media Council shall review the decisions containing obligations sent by the self-regulatory body. When the revision of the self-regulatory body's decision is requested by the applicant or the party obliged under the decision, the Media Council shall review such decision within thirty days.

(2) When the Media Council established that the decision of the self-regulatory body does not comply with the provisions of the public administration agreement concluded with the self-regulatory body and in particular the provisions of the Code of Conduct, or when in its judgement the decision contradicts applicable legislation or when it established the self-regulatory body is unable to have its decision observed, it will institute an administrative procedure in the case covered by the application. The Media Council shall not be bound by the procedure and decision of the self-regulatory body.

### **Article 200**

(1) The tasks and activities falling beyond the scope of the powers of the Media Council but covered by public administration agreement concluded with the self-regulatory body shall be performed properly and effectively by the self-regulatory body within its scope of competence, in line with practice formulated thereby. The Media Council shall cooperate with the self-regulatory body on a continuous basis, providing support and incentive for performing its tasks.

(2) The parties shall notify one another in the context of performing non-administrative tasks defined in paragraph (1) and other experience in conducting their procedures on a continuous basis. The self-regulatory body shall perform these tasks in accordance with the public administration agreement concluded with the Media Council and the Code of Conduct constituting an integral part thereof. To the extent possible, the Media Council shall take into account the experience earned in performing these tasks in

exercising its administrative powers, performing market analysis, assessment and in particular drafting legislation.

**Supervision over the activities of the self-regulatory body provided for in this  
Chapter**

**Article 201**

(1) The Media Council shall exercise supervision over the activities of the self-regulatory body under the public administration agreement. In so doing, the Media Council shall have the right to check fulfilment of the provisions of the public administration agreement concluded with the Media Council on the part of the self-regulatory body on a continuous basis and their delivery in accordance with the agreement. In the context of supervision, the Media Council shall have the right to familiarise itself with all the activities performed by the self-regulatory body under the public administration agreement, and to this end, the self-regulatory body may be obliged to furnish data.

(2) To the extent deemed necessary, the Media Council shall subject the procedures and decisions of the self-regulatory body defined in Articles 197-200 to comprehensive audit. In so doing, the Media Council shall assess the decisions of the self-regulatory body — in terms of their compliance with the provisions of the public administration agreement and the Code of Conduct constituting an integral part thereof on an individual and aggregate basis.

(3) When — in the context of the supervision — the Media Council established that the self-regulatory body failed to act or acted improperly in cases subject to the authorisations granted under the public administration agreement, in particular

a) the self-regulatory body conducted the proceedings defined in Articles 197-200 in deviation from the provisions of the Code of Conduct;

b) it assesses the applications in deviation from the provisions of the Code of Conduct;

c) it passes its decisions in deviation from the provisions of the Code of Conduct,  
or

d) it fails to check compliance with or observance of its decisions and/or fails to take measures to ensure that the provisions of its decisions are fulfilled,

then the Media Council shall request that the self-regulatory body acts in accordance with the provisions of the public administration agreement, allowing an appropriate deadline.

(4) When the self-regulatory body fails to fulfil the request defined in paragraph (3) within the specified deadline, the Media Council shall have the right to terminate the public administration agreement with immediate effect or with a period of notice defined in the contract.

(5) When — on the basis of the audit — the Media Council established that the proceedings and decision of the self-regulatory body contradict relevant legislation or the provisions of the public administration agreement or the Code of Conduct that constitutes an integral part thereof, the Media Council — concurrently with establishing the fact of infringement — shall institute administrative proceedings in the subject covered by the decision

## **Article 202**

The self-regulatory body shall prepare a report to the Media Council on its activities and tasks performed under the public administration agreement on a continuous basis or at least annually, while on its proceedings, content, subjects, types, content and observance of its decisions in the context of its self-regulatory procedure at least every six months in writing. The Media Council shall assess the report under its resolution.

## **PART FIVE**

### **INTERPRETATION**

#### **Section 203**

1. *Audiovisual media service* shall mean media services offering programmes which contain moving images with or without sound.

2. *Transmission system* shall mean the system of technical processes, electronic broadcasting and other instruments for the analogue or digital distribution of television or radio broadcast signals, which are connected to the transmission medium used for the distribution of broadcasts, particularly to the air and radio frequency, the vacuum, the coax cable, the stranded twin wire cable, or the fibre optic cable.

3. *Controlling share* shall mean:

a) a direct and indirect share in a company, which in aggregate provides control in excess of twenty-five percent over the company's assets or voting rights; the direct and indirect shareholding of close relatives shall be applied together;

b) any situation which creates significant influence over the company on the basis of a contract, the deed of foundation (charter) or preferred stock, through the appointment (removal) of the members of decision-making or supervisory bodies, or in any other way.

4. *Surreptitious commercial communication* shall mean any commercial communication, the publication of which misleads the audience about its nature.

5. *Documentary* shall mean a film of non-fictional nature, the aim of which is to document reality. For example films on nature, films of scientific or educational nature, historical documentaries, biographical, films and report films qualify as documentaries.

6. *Electronic news service* shall mean a service generally provided in return of a consideration for someone else, which is entirely or predominantly composed of the transmission and - where applicable - the diversion of signals through an electronic communications network. It shall not include services of providing content transmitted through the electronic communications networks and electronic news services or services concerning editorial control over such content. It shall also not include services in connection with the information society defined in other laws, which do not predominantly concern the transmission of signals through the electronic communications networks.

7. *Electronic news service provider* shall mean the operator of an electronic communications network, or a natural or legal person, or a business entity with no legal personality engaged in the provision of electronic news services.

8. *Subscriber* shall mean a natural or legal person, or a business entity or another organization with no legal personality, who or which is in a contractual relationship with the provider of publicly accessible media services or electronic news service provider concerning the use of such services.

9. *European work* shall mean:

- a) a Hungarian work,
- b) any work originating from any European state, and which was created by authors and other contributors who are domiciled in one or more European states, provided that it complies with one of the following three conditions:
  - ba) it is created by one or more producers established in one or more of those States;
  - bb) production of the works is supervised and in fact controlled by one or more producers established in one or more of those States; or
  - bc) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States;
- c) any work which is produced under the co-production of the producers of any European state and a state outside Europe, provided that the contribution of co-producers from the European states to the total co-production costs is preponderant, and production is not controlled by one or more producers who are established in a country other than a Member State; or

d) any programme, which is produced under an agreement made between any Member State of the European Union and a non-member state for the production of audiovisual works.

10. *User* shall mean a natural or legal person, or a business entity or another organization with no legal personality, who or which uses or requests the electronic news services or media services.

11. *Cinematographic works* shall mean cinematographic works as defined in the Copyright Act, excluding, amongst others, news and political information programmes, programme magazines on current affairs and services, sport programmes or programmes containing broadcasts on other events, game shows and contests and commercial communications. Cinematographic works are particularly feature films, films made for television, television series, animation films and documentaries.

12. *Independent programme maker* shall mean a production company, in which neither the media service provider concerned nor the owner with a controlling stake in the media service provider concerned has a direct or indirect holding; and neither any director or executive employee of the media service provider nor any of their close relatives have any employment relationship with or ownership share in such a production company.

13. *Networking* shall mean the interconnection of two or more media service providers providing linear media services or the interconnection of two or more linear media services for the simultaneous or virtually simultaneous broadcasting of the same programme or broadcast.

14. *Network media service provider* shall mean any media service provider providing linear media services whose broadcast or programme is disseminated by way of providing media services in a network.

15. *Local provision of media services* shall mean the provision of media services covering an area or a city whose population is, respectively, less than one hundred thousand or five hundred thousand on an annual average.

16. *Professional disaster management agency* shall mean a law enforcement agency participating in carrying out disaster management, also executing administrative duties.

17. *News programme* shall mean a programme which devotes at least ninety percent of its duration to cover the contemporary events of Hungarian or international public affairs, not including traffic news, weather reports and sports.

18. *Services in connection with information society* shall mean the services defined as such in the Act on certain questions on services in connection with the information society.

19. *Game* shall mean a programme in which members of the audience or participants in the game answer questions or solve problems in accordance with certain rules, generally for the purpose of winning a prize put up by the media service provider or a third party. Talent search programmes and telephone or interactive games qualifying as teleshopping or teleshopping windows shall not qualify as games.

20. *Commercial communication* shall mean the media content the aim of which is the direct or indirect promotion of the goods, services or image of a natural or legal person, or a business entity with no legal personality carrying out a business activity. Such contents accompany or appear in media content in return of a payment or a similar consideration or for the purpose of self-promotion. Forms of commercial communication shall include amongst others advertisements, the display of the name, the trademark, the image or the product of the sponsor, teleshopping and product display.

21. *Teletext* shall mean any text, still image, motion picture, sound or computer graphics displayed before the beginning or after the end of, or in the course of an interruption of the linear audiovisual media service, or programmes, which contains any kind of information and is not part of the programme and does not qualify as a self-contained programme.

22. *Publication* shall mean:

a) any book in a printed or an electronic format, on a disk, on a cassette or any other physical medium; online or downloadable book;

b) any press product in a printed or an electronic format; online or downloadable periodical publication;

c) any other printed material (address register, name register, a publication containing graphics, drawings or photos, map; flyer; printed postcard, greeting or similar card; printed picture, sample, photo; printed calendar; printed business advertisement, catalogue, brochure, poster ad and similar items; other publication of a text) except for printed stickers, postal-, excise duty-, duty-, etc. stamp; stamped paper, cheque, bank note, share certificate, stamps, bonds, deeds and similar instruments;

d) any products of film-, video-, and television programme production (films intended for public showing on celluloid, on a video cassette, on a video disc, other physical medium; downloadable films, videos);

e) any sound recordings (intended for public showing, recorded tapes, discs, downloadable sound content);

f) any piece of music (printed pieces of music, pieces of music in an electronic format, downloadable pieces of music);

23. *Ancillary media services* shall mean all services involving content provision, which are transmitted through a broadcasting system and which neither qualify as a media service nor as an electronic news service. For example, electronic programme guides are ancillary media services.

24. *Small community media services* shall mean local linear radio community media services operating in a coverage area covering a geographical area, which equals to circle with a maximum radius of one kilometre from the radio station in the case of stereo reception.

25. *Regional media services* shall mean media services the coverage area of which exceeds that of the small community media services, but less than half of the population of the country resides within the bounds of its coverage area.

26. *Close relative* shall mean spouses and registered partners, relatives in direct line, adopted persons, stepchildren, foster children, adoptive parents, stepparents, foster parents, brothers, and sisters.

27. *Public service announcement* shall mean any announcement released without the payment of any consideration originating from an organization or a natural person fulfilling state or local governmental responsibilities, which conveys specific information of a public concern and serves to attract the attention of the viewers or the audience and does not qualify as a political advertisement.

28. *Audience share* shall mean the ratio expressed in percentage points of the total time spent on viewing the programmes of the linear audiovisual media services and listening to the programmes of the linear radio media services to the total time spent on viewing all the linear audiovisual media services programmes and listening to all the linear radio media services programmes. In the course of determining the audience share the market for linear audiovisual media services and linear radio media services shall be examined separately within the territory of the Republic of Hungary.

29. *Indirect ownership* shall mean the capital or the voting rights held by the owners of a company (hereinafter referred to as intermediate company) which has capital or voting rights in another company. If there is any proportional difference between the ownership share and the voting rights, the greater one shall apply. The extent of indirect control shall be determined by multiplying the capital or voting right held in the intermediate company by the capital or voting right held by the intermediate company in the original company. If the capital or voting right held by the company in the intermediate company is higher than fifty per cent, it shall be treated as a whole. In the case of natural persons, the ownership shares and voting rights held or exercised by close relatives shall be applied concurrently.

30. *Intermediary service provider* shall mean the service provider providing services in connection with the information society, which

a) is engaged in the transmission of the information supplied by the recipient of services through a telecommunications network or the provision access to the telecommunications network (mere conduit and network-access);

b) is engaged in the transmission of the information supplied by the recipient of services through a telecommunications network, for the sole purpose of making the information's onward transmission to other recipients of the service upon their request more efficient (caching);

c) is engaged in the storage of the information supplied by the recipient of the service (hosting);

d) engaged in providing tools to the recipient of the service for the location of information (search services).

31. *Public service broadcasting* shall mean media services extended by public service broadcaster.

32. *Public service broadcaster* shall mean a broadcaster established by law for the purpose of accomplishing the aims of public service broadcasting.

33. *Public service media assets* shall mean cinematographic and other audiovisual works, radio programmes, sound recordings and other documents ancillary to media services representing cultural values, copyrights and certain related rights of photographs or any other licenses of the aforementioned, and the physical media containing the aforementioned works (e.g. discs, tapes, cassettes, paper based documents, music notes) ordered by the public service media providers, their predecessors, the Media Service Support and Asset Management Fund, produced on any legal grounds, procured by way of a sale and purchase transaction, obtained or created in whole or in part by way of a licensing or any other agreement; public media assets shall also mean costumes, props, film sets and other copyright material, provided that the copyrights and certain related rights are owned or used to be owned by any of the public service media providers prior to the Act entering into force or by the Media Service Support and Asset Management Fund subsequent to the act entering into force; public media assets shall also mean costumes, props, film sets and other copyright material over which any of the public service media providers obtain rights subsequent to this Act entering into force.

34. *Publication* shall mean posting on the notice-board of the Authority or publishing on the website of the Authority. The effective date of the announcement shall be the day of posting on the notice-board.

35. *On-demand media services* shall mean any media service within the framework of which the user may view or listen to a given programme from the

programme offering assembled by the media service provider upon individual demand at a time of its choice.

36. *Linear media services* shall mean the media services which enable the simultaneous viewing or listening of the various programmes provided by the media service provider in accordance with the programme offering assembled by the media service provider.

37. *Hungarian works* shall mean:

- a) works originally produced in Hungarian in their entirety;
- b) works originally produced in several languages, but when considering their overall length, their parts originally produced in Hungarian are longer than any of their other parts produced in any other language;
- c) works originally produced in the languages of any of the national or ethnic minorities recognised by the Republic of Hungary provided their subject matter concerns the life or culture of the given minority in Hungary;
- d) works based on a Hungarian literary work or piece of music;
- e) a musical programme performed in Hungarian or performed in the language of any of the national or ethnic minorities recognised by the Republic of Hungary, provided its subject matter concerns the culture of the given minority in relation to Hungary;
- f) an instrumental musical programme, which, primarily because of its composer, forms part of Hungarian culture or the culture in relation to Hungary of any of the national or ethnic minorities recognised by the Republic of Hungary;
- g) a piece of music, one of the composers of which is Hungarian;
- h) musical programme, which was produced in cooperation with Hungarian performers; or
- i) a cinematographic work, which qualifies as Hungarian in accordance with the Act on motion pictures.

38. *Hungarian piece of music* shall mean a textual or instrumental piece of music, which qualifies as Hungarian.

39. *Rule concerning media governance* shall mean this Act and Act CIV of 2010 on the fundamental rules concerning the freedom of the press and media contents; and any legislation issued in respect of the implementation of the aforementioned acts; or any directly applicable legal instrument of the European Union concerning media governance; or any administrative agreement entered into by and between the Media

Council and the Agency; or the administrative resolution issued by the Media Council or the Agency.

40. *Media service* shall mean any service of a commercial character as defined in Articles 56 and 57 of the Treaty on the Functioning of the European Union, for which the media service provider bears editorial responsibility. The primary aim of a media service is the delivery of programmes to the general public for informational, entertainment or educational purposes through any electronic broadcasting network.

41. *Media service provider* shall mean the natural or legal person, or a business entity with no legal personality who or which has editorial responsibility over the composition of the media services and determines their contents. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the media service.

42. *Media content* shall mean any content offered in the course of media services and in media products.

43. *Media content provider* shall mean the media service provider or the provider of any media content.

44. *Broadcast* shall mean a series of radio or audiovisual programmes edited and publicly, continuously disseminated.

45. *Preview* shall mean any programme, which introduces, describes or promotes a programme or programmes the media service provider intends to transmit at a later time.

46. *Transmission time (air time)* shall mean the total time of the programmes continuously transmitted in the course of the media service during a specific period of time.

47. *Programme* shall mean the series of sounds or motion pictures with or without sound, which forms a separate unit in the order of programmes or offering of programmes assembled by the media service provider and the form and content of which is similar to that of radio or television media services.

48. *Products supplementing programmes* shall mean a product or service directly connected to the content of a programme, distributed by the media service provider, which makes the programme more enjoyable, for example by promoting interactivity from among viewers or listeners.

49. *Free-to-air broadcasting* shall mean a broadcasting in the course of which analogue or digital radio or television programmes are forwarded to the subscriber or user, by means of a terrestrial transmission system that uses radio frequencies – other

than frequencies allocated primarily for satellite service – and usually enabling one-way data transmission; free-to-air broadcasting shall also include broadcasting implemented using a digital broadcasting network or broadcasting transmitter.

50. *Broadcasting* shall mean an electronic communications service implemented using any type of transmission system, in the course of which the analogue or digital programme provision signals generated by the programme provider are forwarded from the programme provider to the receiving apparatus of the subscriber or user, independently of what transmission system or technology is applied. Broadcasting especially includes – though is not limited to – broadcasting, satellite broadcasting, broadcasting via a hybrid optical-coaxial transmission system and the forwarding of programmes using the Internet Protocol through some transmission system if the nature or circumstances of the service are identical to those of broadcasting or if it replaces broadcasting implemented in any other manner. Broadcasting shall also mean broadcasting to which the subscriber can access for a special fee or for a fee paid for a package that also contains some other electronic communications service. Signal forwarding through a transmission system suitable for the connection of less than ten receiver apparatuses shall not qualify as broadcasting.

51. *Broadcaster* shall mean the provider of broadcasting services, including the operator of a digital broadcasting network, if it provides broadcasting itself. If the transmission network is not operated by the broadcaster, the service provider that defines the conditions of service provision for the subscriber or user and/or concluding the contract with the subscriber shall qualify as broadcaster.

52. *National media service* shall mean the provision of media services the coverage area of which extends to at least 50% of the population of the Republic of Hungary.

53. *Split screen advertisement* shall mean an advertisement covering a particular portion of the screen displayed during a programme not qualifying as a commercial communication in the course of audiovisual media service.

54. *Composite programme* shall mean a combination of several programmes bearing a single main title or other distinctive attribute.

55. *Political advertisement* shall mean any programme transmitted in return of or without the payment of consideration, the purpose of which is to promote or advocate support for a party or political movement, or the government, or which promotes the name, objectives, activities, slogan, or emblem of such entities, which appears and which is transmitted in a manner similar to that of an advertisement.

56. *Political information programme* shall mean a programme which devotes at least ninety percent of its duration for the analysis, coverage and evaluation of Hungarian or international political or current public affairs and the exploration of the background of such affairs or events, which does not qualify as a news programme.

57. *Programme package* shall mean media services offered or provided by the media service provider to the subscriber in a group.

58. *Radio media services* shall mean media services which feature programmes composed of the sequence of sounds.

59. *Advertisement* shall mean any communication, information or method of appearance, which qualifies as a programme and aims at facilitating the sale or other use of a marketable tangible property (including money and securities as well as natural resources that can be utilized in the same way as things), a service, real property or property right; it shall also include any communication, information or method of appearance, which in connection with the above aim promotes the name, the brand or the activities of an undertaking, or increases awareness over goods or trademarks.

60. *Media product* shall mean individual issues of dailies or other periodical papers, internet newspapers or news portals, which are offered as a business service, for the contents of which a natural or legal person, or a business entity with no legal personality has editorial responsibility, and the primary purpose of which is to convey contents consisting of text or images to the general public with the aim of providing information, pleasure or education, in a printed format or through any electronic telecommunications network. Editorial responsibility shall mean the responsibility for the actual control over the selection and composition of the media content and shall not necessarily result in legal responsibility in connection with the media service.

61. *Sports programme* shall mean a programme broadcasting a sports event (simultaneously with the event, in a delayed or an edited format), excluding news reports over sports events and programmes containing discussions over a sports related topic.

62. *Member State* shall mean a member state of the European Economic Area.

63. *Sponsorship* shall mean any contribution extended by an undertaking (not engaged in the provision of audiovisual media services or the production of programmes or cinematographic works) in order to finance a media service provider or a programme with a view to promoting its name, trade mark, image, activities or products.

64. *Social advertisement* shall mean any communication or message with a public purpose, which does not qualify as a political advertisement, is not for profit and does not serve advertising purposes, transmitted in return for or without the payment of any consideration, and which aims at influencing the viewer or the listener of the media service to achieve a goal of public interest.

65. *Teleshopping* shall mean an advertisement, which contains direct offers broadcast to the public for the sale, purchase or rental of goods (including real property), rights and obligations, or for the provision of services in return for payment, by way of

establishing direct contact with the commercial distributor or service provider, including phone-ins operated as business undertakings advertised in the media service.

66. *Teleshopping window* shall mean a teleshopping facility the duration of which is at least fifteen minutes.

67. *Thematic media service* shall mean any media service, which, in the case of a linear media service broadcasts programmes of a similar theme in eighty percent of the daily transmission time and in the case of on-demand media service broadcasts programmes of a similar theme in eighty percent of the total time of all the programmes broadcasted. Programmes of a similar theme shall for example mean news or political information programmes, programmes for minors, sports programmes, musical programmes, educational programmes or programmes introducing a certain lifestyle.

68. *Product display* shall mean any form of commercial communication, which contains a product, a service, the trademark of such product or service or any reference to such, which appears in a programme in return for a payment or similar consideration.

69. *Election campaign period* shall mean the period of time as defined in the act on election procedure available for conducting an electoral campaign

70. *Undertaking* shall mean a natural person, business entity or other legal person falling under the scope of this Act.

71. *Coverage area* shall mean:

a) in the case of media services provided through transmission or broadcasting via satellites, accessible without the payment of a subscription fee, the number of the population residing in a geographically identifiable territory in which the level of the effective signals of the programme transmission service within the framework of broadcasting and the calculated level of interference protection reach the minimum values stipulated in the recommendations of the International Telecommunication Union;

b) in case of media services provided through another transmission diffusion system accessible without the payment of a subscription fee, the product of the number of households connected to the transmission system and the number of persons living in a single household on average as defined by the Hungarian Central Statistical Office; or

c) in the case of media services accessible in consideration of the payment of a subscription fee, the product of the number of households subscribed to the given media service or the number of households subscribed to the broadcasting service containing the given media service the number of persons living in a single household on average as defined by the Hungarian Central Statistical Office.

72. *Virtual advertisement* shall mean an advertisement inserted into the programme signal or the programme subsequently through a digital technology or by any other method.

## **PART SIX**

### **CLOSING PROVISIONS**

#### **CHAPTER I**

##### **ENTRY INTO FORCE**

###### **Article 204**

(1) This Act – with the exception defined in paragraph (2) – shall enter into force on 1 January 2011.

(2) Articles 222 and 228 (3) shall enter into force on 2 January 2011. Article 229 shall enter into force on the day when the provision of the Constitution granting regulatory rights to the President of the National Media and Infocommunications Authority enters into force. Articles 223 (6)–(8) and Annex No. 5 to this Act shall enter into force on 2 January 2011.

(3) Articles 220–228 of this Act shall be repealed on 3 January 2011.

#### **CHAPTER II**

##### **SHORT AND ABBREVIATED NAME OF THIS ACT**

###### **ARTICLE 205**

This Act shall be referred to in other legislation as the Media Act (Mttv.).

#### **CHAPTER III**

##### **AUTHORISATIONS**

###### **ARTICLE 206**

(1) The Government shall be authorised to establish in a decree

*a)* the frequency fees, the fees payable for the reservation and use of identifiers, as well as the fee for the supervision of telecommunications and postal service providers,

*b)* the administrative service fee of the authority procedure related to the classification of programmes and announcements,

c) the method and terms of the payment of the fees of the procedures conducted by the Authority and the Media Council as well as the extent and the rules of calculating the fees.

(2) Until the decrees defined under Paragraph (1) are adopted by the Government, the Ministerial decrees governing the relevant issues shall remain in force.

(3) The Government shall be authorised to regulate and define in a decree the suppliers of legal deposits, exemptions from the number of copies prescribed under this Act, the method and deadline for providing legal deposits, the rules of implementation, the list of organisations entitled to receiving legal deposits, the method of distribution, the rules of the storage-preservation and use of legal deposits, as well as the procedural rules to be followed in case of failure to provide legal deposits.

(4) The Minister for Culture shall be authorised to regulate the detailed rules governing the display of imprints of publications in a decree.

(5) The Minister for Audiovisual Policy shall be authorised to establish the detailed rules governing the administrative service fee payable for authority procedures defined in Article 171, as well as the management, registration and reimbursement of such fees in a decree.

## **CHAPTER IV**

### **TRANSITIONAL PROVISIONS**

#### **Articles 207–218**

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## **CHAPTER V**

### **REPEALED LEGISLATION**

#### **Article 219**

...

## **CHAPTER VI**

### **AMENDED LEGISLATION**

## **Articles 220–228**

...

### **Article 229**

(1) In Article 134 (5) and Article 206 (1)–(2), “Government” shall be replaced with “President of the National Media and Infocommunications Authority”.

(2) In article 67 (2) a) of Act XCIII of 1990 on Duties, “Government” shall be replaced with “President of the National Media and Infocommunications Authority”.

## **CHAPTER VII**

### **COMPLIANCE WITH THE LAW OF THE EUROPEAN UNION**

#### **Article 230**

(1) This Act serves the purpose of ensuring compliance with the following legal acts of the European Union:

a) Directive (EU) No. 2010/13 of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive),

b) Directive (EU) No. 2000/31 of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on electronic commerce”),

c) Directive (EC) No. 2002/21 of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive),

d) Directive (EC) No. 2009/140 of the European Parliament and of the Council of 25 November 2009 amending Directives (EC) No. 2002/21 on a common regulatory framework for electronic communications networks and services, (EC) No. 2002/19 on access to, and interconnection of, electronic communications networks and associated facilities, and (EC) No. 2002/20 on the authorisation of electronic communications networks and services,

e) Directive (EC) No. 98/27 of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests, Articles 2 (1) and 4 (1).

(2) This Act establishes the provisions within the scope of tasks and procedures of the National Media and Infocommunications Authority necessary for implementing the following legal acts of the European Union:

a) Regulation (EC) No. 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws,

b) Decision (EC) No. 2007/76 of the European Commission of 22 December 2006 implementing Regulation (EC) No. 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance,

c) Decision (EC) No. 2008/282 of the European Commission of 17 March 2008 amending Decision (EC) No. 2007/76 implementing Regulation (EC) No. 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws as regards mutual assistance.

**Dr. Pál SCHMITT**  
President of the Republic

**László KÖVÉR**  
Speaker of the National Assembly of  
Hungary

### **ANNEX NO. 1**

The Nominating Organisations listed below may delegate members to the Public Service Board as follows:

1. Nominating Organisations:
  - a) Hungarian Academy of Sciences
  - b) Hungarian Catholic Church
  - c) Hungarian Reformed Church
  - d) Hungarian Evangelical Church

- e) Alliance of the Jewish Communities of Hungary
- f) Hungarian Olympic Committee
- g) Hungarian Rectors' Conference
- h) The Hungarian Chamber of Commerce & Industry
- i) alliances and organisations of the local governments of the Republic of Hungary
- j) national local governments of national and ethnic minorities in Hungary
- k) Hungarian cultural organisations with over one hundred members registered in neighbouring countries of the Republic of Hungary
- l) advocacy groups registered in Hungary falling under the scope of the Act of the Right of Association protecting and representing the interests of families, the bylaws of which reflect the national scope of their operations
- m) advocacy groups registered in Hungary falling under the scope of the Act of the Right of Association protecting and representing the interests of persons living with disabilities, the bylaws of which reflect the national scope of their operations
- n) professional organisations active in the field of literature, theatre, film, performing arts, music, dance, fine or applied arts registered in Hungary falling under the scope of the Act on the Right of Association, the bylaws of which reflect the national scope of their operations, and the members of which are primarily persons and organisations active in the above listed fields.

2. The organisations listed under points a)–h) may delegate one member each.

3. The organisations listed under points i)–n) may participate in the delegation process if they register with the Authority at least thirty days prior to delegation. The Authority shall decide on registration in an authority decision, against which no appeal can be lodged, a judicial review thereof can be requested.

4. The organisations listed under points i)–n) may delegate one member each in a manner that the organisations listed under the same point may delegate only one member. The organisations listed and registered under the same point may come to an agreement regarding the delegated member. If no such agreement is reached, the Authority shall draw lots to determine the organisation entitled to delegate a member.

## ANNEX No. 2

The President and member of the Board of Trustees of the Public Service Public Foundation shall pronounce the following oath of office before the Speaker of the National Assembly of Hungary when taking up office:

“I, ....., do solemnly and sincerely promise and swear that, as member (President) of the Public Service Public Foundation, I will observe the Constitution and the laws, and, true to my office, endeavour to enforce the freedom of speech and the press. I will fulfil my duties impartially. (Depending on the conviction of the person taking the oath of office :) So help me God.”

### **ANNEX No. 3**

The President of the Media Council shall pronounce the following oath of office before the Speaker of the National Assembly of Hungary when taking up office:

“I, ....., do solemnly and sincerely promise and swear that, as member (president) of the Media Council, I will observe the Constitution and the laws, and, true to my office, endeavour to enforce the freedom of speech and the press. I will fulfil my duties impartially. (Depending on the conviction of the person taking the oath of office :) So help me God.”

### **ANNEX No. 4**

The amount of the public service contribution in 2012, based on a calculation taking into account four million Hungarian households each contributing a monthly amount of one thousand three hundred and fifty forints, will be HUF 64,800,000,000 that is sixty-four billion eight hundred million Hungarian forints. This amount shall be indexed annually as from 2013 by the Hungarian index of consumer prices of at least the year preceding the year under review.