

Hungarian Ministry of Public Administration and Justice

Criticisms and answers formulated on the subject of the proposed media act examined in a European context

Criticism 1: The proposed levying of high fines may create the opportunity for the government to exert pressure on Hungarian media. The proposed legislation would allow sanctioning of the heads of the outlets violating the law (head or editor-in-chief of the publisher) as well. The National Radio and Television Commission (ORTT) also applied the sanctions of fines and temporary suspension of broadcasting - it did not, however, terminate the broadcasting right of outlets. Why was this drastic step needed?

In the current market and economic environment, we must take into account that a broadcaster with annual revenue of several tens of millions or even hundreds of millions of forints will not be affected by a few hundred thousand forint fine, which will not prevent it from repeating its infringing behaviour and will not set a dissuasive example for other broadcasters. No minimum amount will be defined in advance, as the proposed legislation also takes into account actors with small budgets operating on the market besides those with high revenues, therefore fines as small as HUF 5-10,000 may also be imposed. The proposed legislation also lays down the fundamental principles of proportionality, progressiveness and equal treatment, applicable to the legal consequences imposed on the violating outlets.

The sanctioning of leading officers is not a novel legal institution in the domain of media administration and press regulation. The sanctioning of persons in leading positions is based on elaborate legal science fundamentals, and its basic principles are that the supervision of compliance with the breached obligation forms part of the responsibility of the leading officer and that the leading officer could have prevented the infringement or will, in future, have influence on the operation of the organisation and can ensure lawful behaviour. The maximum imposable fine defined in the proposed legislation is not excessive in comparison to other sectors. Deleting registration is not a novelty; the previous Media Act allowed deletion from the registry of broadcasters. It should be stressed that contrary to previous regulation, the proposed legislation defines the sanction of deleting the service and not the broadcaster, therefore the latter may continue broadcasting other media services even after the service at issue has been deleted.

In line with the current regulation, deletion from the registry is the final sanction allowed by the proposed legislation, and may only be employed by the Media Council in the event of repeated severe violation of the law, if other sanctions have proved unsuccessful and if it is necessary in order to achieve the protected social interest, the constitutional and the statutory objectives and is the only option for restoring the normal order. A review of sectoral norms reveals that most systems of sanctions include a final sanction similar to deletion, entailing the revocation or termination of rights (for instance, restaurant operating licenses may be revoked, and deletion from the registry is also allowed in the communications sector).

European examples:

The system of sanctions of media or news supervisory authorities in most European countries include termination, suspension or revocation of the contract concluded with the broadcaster or the permit issued to it as a last resort (e.g. the French CSA, the Portuguese ERC, the Estonian TJA, operating as a government agency, may submit a proposal to their competent ministers of culture

authorised to issue licenses, in which to recommend the suspension or revoking of a given license. Similar authority is bestowed upon Lithuania's LRTK, Poland's KRRIT and Slovakia's RVR.)

In Britain, cases of material breach may result in the pertaining license being revoked by OFCOM. Consisting of members appointed by the competent minister, Ofcom may sanction violations of the regulatory system by mandating the publication of a pertaining statement, imposing a fee or curtailing the validity period of a license. Cases of material breach may result in the revoking of said license. The law does not specify as to what breaches may justify the prescription of which types of sanctions, thereby leaving such matters to be decided by Ofcom.

Germany: When found in violation of a law, individual media authorities may call upon the concerned media outlet to cease such violations and warn that repeated violations may result in the license being revoked. This, however, may be resorted to as an ultimate measure only.

In Finland, material and repeated breaches of the provisions of the country's media act, as well as frequency usage disputes may be sanctioned by the FICORA media authority revoking a broadcaster's license.

For public service broadcasters, Denmark's Ministry of Culture is authorised to suspend or revoke licenses. Commercial media outlets fall under the jurisdiction of the country's media authority (RTB).

In Portugal, when found guilty of seriously violating the country's television act, provided that such violation is likely to be repeated or continue, the suspension of programme broadcasting and the revoking of the pertaining license may be ordered with immediate effect.

In Lithuania, after having assessed whether a given programming content has breached the country's media act, the National Radio and Television Council may utilise the following measures based on the gravity and frequency of breach: call upon the broadcaster to cease all infringing activities, impose a fee by way of an administrative resolution, revoke the broadcaster's license or suspend the right to broadcast, initiate, by means of judicial action, the termination of the broadcaster's operations or bring prosecutions against the given outlet.

In cases of severe violations of law, the Czech Republic's RRTV is authorised to revoke a broadcaster's license. Such event may constitute the breach of a regulation on analogue broadcasting, under which a given legal entity or natural person may only be the registered owner of one television channel or radio station that is licensed for nationwide coverage. A similarly severe breach is when a television channel or radio station violates the regulations on the protection of minors on a recurring basis.

APEK, Slovenia's regulatory body, may sanction in the form of issuing warnings, imposing fees, banning advertisements or suspending/revoking a broadcaster's license.

Criticism 2: A new registry will be created based on the new Media Act, but outlets and publishers could still be subject of comprehensive, continuous or individual data disclosure even after compulsory registration ? the Media Authority may even have access to their trade secrets.

It is vital to mention above all else that media content services (television, radio, press) can currently only be provided following registration. Ensuring the operation of the media system and market, economic, social, public service and human rights correlations is a priority task for the state, for which adequate enforcement of the law is vital. On the other hand, state intervention in the media system and the disclosure of facts severely restricts the constitutional principle and guarantee of freedom of opinion.

Based on these constitutional fundamentals, the tools used by the state to intervene in the operation of media is a central issue, continuously scrutinised by both the media market and society. It is normal practice for the state to disclose, assess and analyse certain facts in every administrative sector, but only the domain of media elicits such attention. In order to avoid criticism of media intervention and censorship, the proposed Media Act refers to the provisions of the codex on administrative procedures, which represent a set of basic rules and instruments applicable for all sectors and are in line with the principles of fair procedure applicable to the administrative procedure of the European Community.

The legality of the registry and of ordering data disclosure, and the protection of trade secrets are ensured by the execution of the authority's procedures according to the rules on administrative procedures, in the context of which judicial review (legal remedy) is ensured in all cases.

European example:

- In Italy, participants of the media market not complying with their obligations on documentation and on the provision of documents and data may be subjected to a fine by AGCOM (a tell-tale sign on the lack of updating is that fee amounts are still specified in Lira). Throughout its proceedings, the authority is entitled to request the submission of confidential business documents as well.

- Furthermore, under the prevailing legislation enacted in 2004, should said participants be found in breach of their obligations to inform, AGCOM may impose a fine to the tune of up to EUR 25,000. Those providing false information may be sanctioned with a fine up to EUR 50,000 (up to HUF 14 million).

- Denmark's RTB may also specify obligations on data provision to all broadcasters under its jurisdiction.

- Lithuania's media authority, the Radio and Television Committee (LRTK) may also request for submission confidential documents.

Criticism 3: The media authority that has emerged places the supervision of the Hungarian media in the hands of one sole political party

According to the text of the proposed legislation, the Media Council is a body of the NMIA with legal personality, with independent scope of authority under the supervision of the National Assembly. The Media Council and its members are only subordinated to the law – that is legislation created by the National Assembly –, and cannot be controlled in their activities. The president and four members of the Media Council are elected by the National Assembly based on a two-thirds vote of the MPs present – for a term of nine years with a simultaneous, list-based vote.

The above shows that only the National Assembly has some form of influence over the Media Council, which is the country's top body wielding state power and representing its people according the Constitution. Also based on the Constitution, the National Assembly exercises its rights stemming from the sovereignty of the people in order to ensure constitution order in society, to define the organisation, direction and conditions of governing.

In line with the Constitution, the rules defined in legislation soundly guarantee that the Media Council is mainly determined by constitutional expectations. In other words, the fact that the president and four members of the Media Council are elected by the National Assembly based on a two-thirds vote of the MPs present ensures that the basic pillar of European rule of law, the representation and sovereignty of the people are achieved.

Moreover, the Act clearly reveals that the Media Council operates within the framework of the rule of law, satisfying all of its conditions; it exercises its statutory competence in line with the guarantees of the administrative proceeding and legal remedy is possible regarding all of its decisions as per legislation

European example:

- The Austrian KommAustria authority has five members, including one president and one vice president; members are appointed by the head of state on the recommendation of the federal government for a term of six years; the Parliament's main committee has a right of consultation on the decision.

Criticism 4: The Media Council may repeatedly announce a tender for frequency application "until it receives the applicant suited to its tastes". Moreover, the Media Council may omit tendering altogether and grant the broadcasting right without a tender procedure, and may also revoke the tender procedure at will if it finds none of the applicants suitable.

The rules governing tendering stayed essentially the same in the proposed new Media Act. The only change is that the entire proposed legislation takes place within the procedural order governed by the Act CXL of 2004 on the general rules of public administrative proceedings and services. Certain

procedural steps and deadlines have been shortened or simplified. Guarantee elements have been added, thus the proposed legislation now lists the assessment criteria of applicants, in line with the objections raised in the decision of the Constitutional Court.

The criticism according to which the Media Council can freely announce tenders until it finds the suitable applicant cannot be interpreted, as the proposed legislation regulates in detail in what cases a procedure can be pronounced as unsuccessful:

"tender procedures shall be considered unsuccessful if all submitted applications are invalid from the perspective of form or contents." (Section 62 (2))

The proposed legislation also lists in an itemised manner the cases of invalidity due to form or content.

As the currently effective Act I of 1996 (Media Act) does not contain these elements, they are only referred to in the invitations to tender issued by the National Radio and Television Commission (ORTT). Therefore the regulation formulated in the proposed regulation in fact provides more protection to applicants than the current system.

Granting licences without conducting a tender procedure may only occur in certain, clearly-defined cases. In its guidelines, the Media Council must define the public tasks for which frequencies may be allocated for a definite period without a tender procedure. In other words, this form of media broadcasting license is not of equal status to that awarded through tendering to media broadcasting in corporate form.

Revocation of the tender or termination of the tender procedure may only take place in the clearly defined cases listed below:

61 (1) "The Media Council shall terminate the tender procedure with a ruling if

- a) no applications are received for the invitation to tender,
- b) due to a circumstance or condition occurring in the course of the tender procedure, the procedure loses its purpose, in particular if the domestic or international economic environment changes substantially, or the economic, legal, frequency management or media broadcasting market conditions change substantially,
- c) the media policy criteria according to the Media Council's assessment or the basic principles and objectives defined in this Act or the invitation to tender cannot be ensured by the tender procedure, or
- d) based on the applications submitted and the available information, the Media Council establishes that the application submitted by the winning applicant does not satisfy in part or in full the aims and basic principles set forth in this legislation, or would threaten the set of frequencies, i.e. responsible, proper and efficient use of state assets."

European example:

- In France, according to the Act on "freedom of communication of 1986", the CSA, the media authority may, in certain cases, renew a frequency without announcing a tender, up to two times. In such cases, when the media authority does not renew the frequency, it must provide a lawful justification thereof, and despite objections from the licensee, the media authority may announce a new tender for the frequency permit following (unsuccessful) negotiations of six months at most with the licensee.

Criticism 5: The Media Council fulfils the role of authority, regulator, sanctioning body and financier, and can thus arbitrarily make demands from any actor.

Placing the procedures of the Media Council under the subordination of administrative procedures specifically excludes "arbitrary" behaviour, laying the foundations for procedures ensuring transparent, objective, consistent and guaranteed customer rights. Due to the subordination of the procedures to administrative procedures, there is also judicial control. The Media Council will obviously not fulfil the role of "sanctioning body", even if it imposes a fine, as such cannot be construed as the exercise of the state's sanctioning power. The use of legal consequences is primarily aimed at obtaining termination of the infringement and at ensuring and obtaining lawful behaviour, rather than punishment (repression).

European example:

- In Germany, member state media authorities are authorised to issue directives (Richtlinie) on issues such as the detailed regulation of advertising and sponsorship, measures against media concentration and regarding the protection of children.

Criticism 6: Until now, journalists could only be obliged to reveal their information sources using criminal law procedures; from now on, the Media Council and the authority have the power to do this. According to the IPI, this may force investigative journalists to reveal their sources in order to ensure national security, public order or to reveal the perpetrators of criminal acts, which is contrary to normal democratic thinking

This statement is unfounded, as prior to the Media Constitution (Act CIV of 2010), journalists could be obliged to disclose their sources in criminal proceedings, the new legislation grants the right to the protection of sources of information for journalists, even in court or criminal proceedings. By ensuring the protection of persons acting as sources of information to the press, Act CIV of 2010 is trying to compensate for the earlier Hungarian legal system's deficiencies.

It is true that the Media Constitution includes some restrictions. The right to confidentiality, similarly to numerous other European countries, is not unlimited. Its scope does not include the protection of unauthorised sources of information transmitting qualified data, and media content broadcasters may be obliged to disclose information sources in the course of court or administrative procedures in exceptional, warranted cases "to ensure national security, public order or to reveal the perpetrators of, or prevent criminal acts".

Criticism 7: Having the same rules applicable to any and all media content is contrary to prevalent intentions of the EU.

In accordance with the Audiovisual Media Services Directive (AVMSD), the media constitution and the new Media Act promulgate differentiated rules for individual media services, while pinpointing certain basic criteria with which all provided media content must conform. These include the most general constitutional requirements, e.g. that media content must not constitute a criminal act, must not violate privacy rights, must not be capable of instigating hatred against particular groups of people, etc. The new Media Act promulgates differentiated rules depending on the nature of various media contents, for example when regulating market entry, depending on the new entrant's potential of influencing opinions, either by way of regulating content or in terms of the rights enforcement process.

- In Italy, AGCOM is the watchdog not only for the electronic, but also for the printed and the online press media, as well as for the telecommunications sector.

- The Portuguese media watchdog ERC (Entidade Reguladora para a Comunicação Social - Media Regulating Authority) is responsible for monitoring and regulating the radio, the television, the press media, and other areas of the media. ERC expresses its opinion on legislative initiatives regarding the media (whereby Parliament and/or the government have a statutory obligation to submit to ERC any new proposed legislation), makes recommendations for political and legislative measures, warrants the freedom of press and the right to information, makes sure that media pluralism is maintained, warrants the actual expression and confrontation of various opinions, and that the right of political response is respected, as well as monitors the concordance of media players with effective legislative provisions. Its scope of authority includes the issuing, renewal and revocation of broadcasting licences.

- France: starting from 2009 the scope of authority of the media authority (CSA) covers internet based and downloadable media services too, among others.

- In France ? while it is not compulsory for internet content providers to get registered ? they nevertheless have to make publicly accessible several details about themselves suitable for their identification as long as they provide content on a commercial basis, i.e. in pursuit of a sustainable livelihood (name, address, registered seat, editor in chief). If they are not professional content providers, then these data must be deposited with the internet service provider. Since 2009 the

scope of authority of the Supreme Audiovisual Council (CSA) covers also internet-based and downloadable services.

- In Sweden the Media authority is responsible for registering and authorising online newspapers. (By registering themselves with the Authority, entities gain exemption from initial censorship, on the other hand they must also name the person who carries legal liability.

- In Austria KommAustria has been responsible for the legal monitoring of ORF and for monitoring the online audiovisual contents of commercial service providers since 1 October, 2010.

- In Switzerland the scope of the Media Act is extended to cover also programmes broadcast on the internet or other telecommunications networks, thanks to defining 'broadcasting' in a technologically neutral way

- In Lithuania the scope of the Media Act ' and so the scope of authority of the media watchdog LRTK ' covers the entire media system, inclusive of the internet and the printed press.

- In Slovenia the scope of the Media Act covers not only television and radio channels, but also newspapers and periodicals, as well as electronic publications, the internet and even teletext.

Criticism 8: Centralisation of broadcast production, as a result of which the Hungarian Telegraphic Agency (MTI) is not the only entity to produce broadcasts. It is also a bad idea to make news broadcasting free of charge.

There are many European countries where broadcast production is centralised. Great Britain: BBC, Italy: RAI, Austria: ORF.

The Hungarian Telegraphic Agency (MTI) as public service news hub is offering to public service broadcasters a colourful menu full of continuously updated news releases, and to anyone who has a demand for this sort of thing. The creation of this news hub does not mean centralisation, rather it means polarisation.

It should be noted here that neither already promulgated laws, nor laws currently being reviewed by Parliament stipulate a requirement for public service media to put into live production exactly the same news, and exactly in the same form as these news are produced by the central newsroom, which had been otherwise created to improve economy of scale and to maximise savings potential.

European example:

- BBC News ' ever since its merger with BBC English Regions in 2009 ' is responsible for local, regional and web-based 'broadcast production' for public service TV, radio and news portal alike. BBC's news portal is accessible to anyone on the internet.

Criticism 9: Antidemocratic process of nominating candidates as public media heads . Parties of the governing coalition acquired majority in the Public Foundation for Public Services, and public media heads were selected without tendering.

Curatorium members of the Public Foundation for Public Services, the body monitoring public service institutions, are elected by Parliament. All Parliamentary parties are represented in the Curatorium, all parties being represented in the Curatorium on a proportionally equal basis. (In addition to members nominated and elected by the political parties, the Media Council also delegates an additional two members into the Curatorium.)

European example:

A similar election process prevails in many European countries:

- In Switzerland, for example, a nominating committee of 4 members ' with the involvement of a consultancy firm ' found 2 candidates to head the public service television and radio, of whom Roger de Weck was elected in May 2010 by way of a strictly confidential procedure

- The CEO of ORF in Austria (Alexander Wrabetz ever since 2008) is elected also by way of a nomination based procedure, without tendering; where party nominated members of ORF's Foundation Council have the authority to make a nomination.

- In the Czech Republic all 15 members of the Czech Television Council (which has similar functions to the Curatorium) are elected by the House of Representatives based on the nominations of NGOs, for a term of 6 years.

- The 'curatorium' of the Finnish public service media, i.e. the 21 members of the Administrative Council are also elected by the Finnish Parliament, from representatives of various non-governmental organisations

- In Austria, 6 members of the Stiftungsrat (Curatorium) are appointed by the Federal Government based on the recommendation of parliamentary parties, by taking into consideration power relations within Parliament, whereas 9 members are delegated by the federal states, 9 members are delegated by the Government, 6 members are delegated by the Viewers' Council (an NGOs delegated body of 35 members allocated to the country's public service media company), whereas 5 members are delegated by the Works Council. The Curatorium elects its own president and vice president from among its own members.

Having the CEOs of public service media elected and appointed by the Curatorium based on the Media Council's recommendation, is an appointment regime which is not unprecedented in Europe. In many countries CEOs are selected without tendering, by way of appointment:

- In France, out of the 12 members of the Board of Directors of France Télévision (and other public service media), 4 members were appointed by the media authority (CSA), and what is more, CSA also selects the Chairman of the Board of Directors from its own delegated members.

- In England a Government appointed Trust (possessing approximately the same scope of authority as the Hungarian Curatorium) appoints the Chairman of BBC's Board of Directors and Director General possessing executive powers.

- Criticism 10: The Media Act has created a centralised supervisory structure. The National Media and Communications Authority (NMHH) will be vested with powers unprecedented in Europe.

Almost full convergence has been attained in news broadcasting and media market and economic relations, as well as between various news broadcasting and media services and networks, thanks to digital technical development, the impact of which has 'globally' reached regulatory levels, as well as the level of public administration institutions and systems of authority. Regulation and public administration always follow socio-economic developments, which is particularly relevant to the telecommunications and media industries, both developing at a gigantic rate. The Media Act translated convergence resulting from the digital evolution of the media and telecommunications sectors not only in terms of responsibilities and authorities but also at the level of organisational structure.

The Media Act put in place guarantees both in terms of organisational and financial autonomy as well as autonomy from market players as were needed for ensuring the adequate functioning of a modern regulatory authority in the public interest. There are several international examples both for the existence of a convergent system of institutions alongside with a regulatory authority possessing a convergent legal status, so for example there is a convergent telecommunications and media administration authority in the United Kingdom, Switzerland and the USA. Their powers of authority cannot be challenged on constitutional grounds, as the rules governing public administration procedures are fully conform with the requirements of legal certainty and predictable law enforcement. The Media Act draft is creating a clear, transparent and predictably operating system of law enforcement, capable of implementing and enforcing the European and constitutional requirement of the subordination of public administration to Public Law

European example:

There is a convergent authority showing similarities with its Hungarian counterparty also in the United Kingdom (Ofcom), Italy (AGCOM) and Finland (Ficora).

Criticism 11: Having a common budget covering the telecommunications market, the allocation of frequencies and the public service media is not a good thing.

Financial autonomy is the number one guarantee safeguarding the autonomy of the system of regulatory institutions. The Authority has its integrated budget, which is promulgated by Parliament in a separate law. The independence of the Media Council is underpinned by even more financial autonomy.

This law enlists the Authority's revenues with a guarantee attached. The Authority's own revenues include frequency license fees, fees charged for the allocation and use of IDs, procedural fees and a supervisory authority fee, which must be spent on ensuring the Authority's efficient operations to the highest standards. Any part of frequency license fees that are not used up by the Authority in the manner defined by the relevant law must be paid into the Broadcasting Support and Asset Management Fund, and must be used by the latter to promote the objectives of public service media service.

So the Authority has an integrated budget, best capable of fulfilling the requirements of managing such an institution's finances in a rational, efficient and economical way. The Authority's budget is approved year after year by Parliament by way of a law, which is another way of guaranteeing that every aspect of the Authority's finances is managed with the public interest in mind.

Criticism 12: The notion of diversity is used in line with the relevant EU directive, but misinterpretation results from applying plurality not to the media as a whole, but rather just to the media program editing principles of individual media.

Similarly to EU directives, Act CIV of 2010 on the freedom of press and basic rules governing media contents enshrines diversity in relation to the media as a whole:

Article 4, paragraph (1) states "The laws of the Republic of Hungary acknowledge and safeguard the freedom of press, and ensure its diversity."

The proposed new Media Act reiterates the same principle for the entire media system:

Article 4: "The diversity of media services is a particularly valuable. The protection of diversity extends to preventing the formation of any monopolies of ownership or any unjustified restriction of market competition. The provisions of this Act must be construed by taking into account the aspect of protecting diversity."

The only requirement applicable to the program editing of individual media is the requirement of applying a balanced approach, and even that should be applied to a limited scope of players, namely strictly to news programmes and public affairs programmes shown within the framework of services with an information dissemination function (television, radio, and downloadable services similar to TV and radio programs)

Criticism 13: Public media are being successfully emptied and centralised: they could keep their pro-forma independence as they are called non-profit companies limited by shares, but they have to operate under the authority of an integrated media curatorium. It is unacceptable that public service TV channels, public service radio channels and the Hungarian Telegraphic Agency (MTI) are "fed from the regulators' palm". Whereas in the past these public service media were allocated public funding in accordance with the percentage rates defined by the relevant law, from now on the same funding will be allocated between them by the Public Service Budgetary Council at its own discretion. All this constitutes a breach of the principle of receiving diverse, balanced and objective information.

It is true that the four Curatoriums whose responsibility it is to supervise the public media have been amalgamated. In future a public foundation will be responsible for discharging the supervisory function, while retaining the autonomy of the share companies (MTV, Duna, MR, MTI) of course. The amalgamation boils down to making the public media more transparent and better controllable. Whereas in the past some 150 party delegates and 1 civilian monitored the 4 organisations, from now on the number of supervisors will be cut by 4/5 (curatorium, supervisory board, and civil organisation members). This will result in substantial savings.

This does not mean the emptying of the public media, the only thing that has changed is that instead of 4 curatoriums and 4 public foundations ownership rights in relation to public media entities operating as share companies will be exercised by one single entity. Whereas it is true that in the past funding for individual public media was allocated by the budgetary act under separate appropriation headings, in future there will be only one appropriation amount in the budgetary act, and the Public Service Budgetary Council made up of the CEOs of the public media organisations, the CEO of the Broadcasting Support and Asset Management Fund and 2 members delegated by the

Court of Auditors shall have the authority to decide how to allocate funds to these public media. This will give the public media more financing related independence, as via their CEOs they will have a say into what should be the relative share of individual public media from government funding (in percentage terms).

European example:

- In Finland Ficora, the convergent authority is responsible for operating the integrated State Television and Radio Fund, which was created to deal with financing for the public media.

Criticism 14: The Bill takes away the asset management function from the public media

The Bill does not take away the asset management function from the public media, as the latter continue to play an active part in deciding key financial issues. Funding available for public media financing and any questions of employment indirectly ensuing from the financing aspect are to be decided by the Curatorium and the Public Service Council.

The Curatorium shall decide what asset elements to keep within the public service share companies based on the asset transfer resolution adopted by the Parliament and which asset elements are to be transferred to the Fund. Also the Public Service Budgetary Council is responsible for determining how (at what percentage rates respectively) funds available to the Fund are to be shared out to individual public service media service providers. (The Public Service Budgetary Council's members consist of the CEOs of the public media, the Fund's CEO, and 2 members delegated by the Court of Auditors.) In other words, questions like asset sharing and employment will have to be decided in consultation between the following three organisations: the Fund, the Curatorium and the Public Service Budgetary Council.

European example:

-In Finland Ficora, the convergent authority is responsible for operating the integrated State Television and Radio Fund, which was created to deal with financing for the public media.

Criticism 15: Media outlets will now become ? on the basis of complaints and grievances filed by the public

- subject to continuous persecution by the Commissioner, the Media Council's newly established authority.

The Commissioner may not determine as to whether a given case constitutes a violation of law; therefore (s)he is unable to "persecute" or conduct authority procedures. His role is to represent the rights of the viewers, listeners and consumers as well as to act as a mediator between service providers and consumers. The proposal contains clearly outlined regulations specifying the cases in which the Commissioner may proceed or turn to media outlets, publishers of printed press products and electronic communications service providers, as well as the types and content of information (s)he may request for submission. Actions by the Commissioner are justified in cases that, although they do not constitute a violation of rights, may harm the interests, whether directly or implied by conduct, of the viewer, listener, user or subscriber. Such proceedings by the Commissioner may not be mistaken for authority procedures, for the former is focused on mitigation and on establishing a mutual agreement between the Commissioner and the service provider having caused harm to interests, as well as on the selection, based on an agreement, of a prevention method for such harms.

The fundamental purpose of the Commissioner is the enforcement of consumer rights and the improvement of consumer awareness; his/her actions are not "against" service providers, rather they are aimed at the development of effective, flexible and quick solutions in cooperation with service providers with regard to the given problem. Throughout the Commissioner's proceedings, the measures that may be employed while the complaint is under investigation (e.g. a request for data, for a statement or for information) is defined and regulated by the proposal in a guarantee format. Under the proposal, in the Commissioner's ? not in public administrative ? proceedings, the core principles of the Act on the general rules of public administrative proceedings, which include the right to fair treatment and the requirements of a simple proceeding and cooperation with the client, are employed. Accordingly, the Commissioner may not exercise his/her rights in connection with

the investigation of the complaint in such a manner as to have this experienced by broadcasters , media service providers or printed media publishers as a form of "persecution" under any law.

Examples from across Europe:

- A similar institution in Ireland is the Press Council and Ombudsman, an independent judicial panel elected to decide in privacy disputes pertaining to printed media.
- In Finland, the Ombudsman also participates in codifying the country's media act and in assessing violations of law. Compliance with the provisions set forth in the media act is overseen by FICORA or, in certain cases, the Ombudsman for Consumer Protection.
- In Lithuania, there are two different Commissioner's offices: Ethics Investigator: a quasi-ombudsman nominated by the Ethics Council of Lithuanian Journalists and Magazine Publishers and elected by the Parliament for a term of five years. Available to anyone having had their privacy violated by the media.

Ethics Commissioner: Supervises compliance with the Code of Ethics and assesses 150 to 170 cases per year without substantive sanctions.

Criticism 16: The scope of the proposed media act encompasses both printed and online press.

Media content cannot be distinguished on whether it is distributed via an electronic communications network, in printed form or otherwise. Press products can be characterised by the same features as, to use the old terminology, the radio and TV content. This means that a given person bound by editorial responsibility for such content, press products are offered as business services and are also part and means of mass communication while they have an information, entertaining and educational function for the wide public similar to other media content. Extending the scope of the proposed legislation to both online and printed press is justified and necessary by taking these into consideration.

Examples from across Europe:

- Italy: not only does AGCOM, the country's counterpart, supervise the electronic media it also oversees both printed and online press outlets, as well as the entire telecommunications sector.
- Portugal's ERC (Entidade Reguladora para a Comunicaç?o Social ? Media Regulation Authority) is entrusted with the supervision and regulation of radio, television, press and other media outlets. It forms opinions on media-related legislative initiatives (which are subject to mandatory submission by the Parliament or the Government to the ERC), establishes proposals regarding political or legislative measures, ensures the freedom of the press and the right of information, maintains media diversity, ensures the actual publication and contest of different opinions and the adherence to the right to address on a political level, as well as ascertains legislative compliance by the media. Its scope of authority also entails the issuance, renewal and revoking of broadcast licenses.
- France: From 2009 onwards, the media authority (CSA) is entrusted to oversee both online and on-demand media services as well.

Criticism 17: Under the proposal, an exceptionally wide scope of punitive and sanctioning power is granted to the Media Council, the supreme body of the National Media and Infocommunication Authority that was formed this past summer.

Any system of sanctions of a legislative provision cannot be judged on the basis of sanction types and fines but rather the system of sanctions at large must be looked at and assessed.

The draft of the new media law develops an objective system of modern sanctions adapted to a constitutional state and the principles of legal certainty and the peculiarities of media supervision. It also allows for the application of various types of sanctions including their combined use.

In the context of determining legal consequences, the three most important principles are scalability, proportionality, and the basic principle of equal treatment. The system of legal consequences listed in the proposal places the emphasis on the prevention of violations of law and the encouragement of voluntary legal compliance.

- In Germany, on the basis of an interstate agreement, a breach of child protection regulations may result in fines up to EUR 500,000, to be imposed on a given media outlet by the competent statewide media authority.

-Broadcasters in Italy found in violation of regulations on child protection or failing to comply with their obligations on the provision of information and data disclosure may encounter fines by AGCOM totalling EUR 25 to 300,000 (up to HUF 80 million). Notices relating to market dominance may entail a fine of at least 2 but no more than 5% of the outlet's annual turnover.

- Subject to a subsequent approval by the Parliament, Ireland's Broadcasting Authority (BAI) may obligate broadcasters to the payment of a fee in the form of a levy order, to ensure financing for its operational costs. Maximum penalty amount: EUR 250,000 (approx. HUF 70 million).

- Upon a proposal by Finland's FICORA, a separate court may impose fines on media services totalling up to EUR 1 million (HUF 275 million).

- Consisting of members appointed by the competent minister, the UK's Ofcom may sanction violations of the regulatory system by mandating the publication of a pertaining statement, imposing a fee or curtailing the validity period of a license. Cases of material breach may result in the revoking of said license. The law does not specify as to what breaches may justify the prescription of which types of sanctions, thereby leaving such matters to be decided by Ofcom.

- Unless a broadcaster complies with certain legislative obligations (e.g. ensuring that, on a quarterly level, 33% of all airtime is dedicated to Polish and 50% to other European programming content, or that commercial spots may be aired during a specific time frame etc.), the president of Poland's KRRIT may impose a fine on the concerned media outlet to the tune of up to 50% of its annual frequency usage fee.

Criticism 18: If a television channel or radio station found guilty of a material breach is considered a habitual offender, its registration may be deleted altogether and, since broadcasting in Hungary is subject to mandatory registration, this might be taken as pulling the plug on the given outlet. What constitutes a material breach is not specified within the proposed legislation but will be put forward to the Media Council to decide.

It must be stressed, that deleting a registration is not a novelty; for the previous Media Act allowed deletion from the registry of broadcasters in cases of severe and repeated violations of law, as well as termination of the broadcasting agreement containing the right to broadcast.

As opposed to the previous regulation, however, the proposed media act defines the sanction of deleting the service and not the broadcaster, therefore the latter may resume the offering other media services even after the service at hand has been deleted. Similarly to the media regulation of other EU countries, the Hungarian proposal only makes the revoking of a license possible upon repeated and severe violations of law, as a sort of ultimate measure.

If we consider the idiosyncrasies of the media sector, it becomes clear that services and service providers – each with differing characteristics – must comply with statutory requirements governing various subjects in order to ensure competition in the media sector and enforce pertaining constitutional principles, warranties and rights. For a sector encompassing such a wide spectrum, legislators cannot fully define in advance what qualifies as a severe infringement in an individual case; the Media Council and the Bureau have to establish the weighting of infringements based on its own practice. Although it is understood that certain infringements (such as the incitement to hatred) are of stressed importance; however, legislators cannot endeavour upon the itemised listing and advance weighing of these. Considering the legislation's text, an advance weighing of infringements would be a poor solution as it might lead to a system impossible to trace.

Examples from across Europe:

- In most European countries, the respective media or broadcasting authority's sanctioning framework specifies, as an ultimate measure, the termination of the agreement concluded with the given broadcaster or the suspension or revoking of its license (for instance, France's CSA, Portugal's ERC or Estonia's TJA – the latter also acting as a government agency – may submit a proposal to their competent ministers of culture authorised to issue licenses, in which to recommend the suspension or revoking of a given license. Similar authority is bestowed upon Lithuania's LRTK, Poland's KRRIT and Slovakia's RVR.)

- In Britain, cases of material breach may result in the pertaining license being revoked by Ofcom. Consisting of members appointed by the competent minister, Ofcom may sanction violations of the regulatory system by mandating the publication of a pertaining statement, imposing a fee or curtailing the validity period of a license. Cases of material breach may result in the revoking of said license. The law does not specify as to what breaches may justify the prescription of which types of sanctions, thereby leaving such matters to be decided by Ofcom.

- Germany: When found in violation of a law, individual media authorities may call upon the concerned media outlet to eliminate such violations and warn that repeated violations may result in the license being revoked. This, however, may be resorted to as an ultimate measure only.

- In Finland, material and repeated breaches of the provisions of the country's media act, as well as frequency usage disputes may be sanctioned with the revoking of a broadcaster's license.

- For public service broadcasters, Denmark's Ministry of Culture is authorised to suspend or revoke licenses. Commercial media outlets fall under the jurisdiction of the country's media authority (RTB).

- In Portugal, when found guilty of seriously violating the country's television act, provided that such violation is likely to be repeated or continue, the suspension of programme broadcasting and the revoking of the pertaining license may be ordered with immediate effect.

- In Latvia, after having assessed whether a given programming content has breached the country's media act, the National Radio and Television Council may utilise the following measures based on the gravity and frequency of breach: call upon the broadcaster to cease all infringing activities, impose a fee by way of an administrative resolution, revoke the broadcaster's license or suspend the right to broadcast, initiate, by means of judicial action, the termination of the broadcaster's operations or bring prosecutions against the given outlet.

- In cases of severe violations of law, the Czech Republic's RRTV is authorised to revoke a broadcaster's license. Such event may constitute the breach of a regulation on analogue broadcasting, under which a given legal entity or natural person may only be the registered owner of one television channel or radio station that is licensed for nationwide coverage. A similarly severe breach is when a television channel or radio station violates the regulations on the protection of minors on a recurring basis.

- APEK, Slovenia's regulatory body, may sanction in the form of issuing warnings, imposing fees, banning advertisements or suspending/revoking a broadcaster's license.

Criticism 19: According to certain "legal experts", the definition appearing in the media constitution ("a business service for which a media outlet is subject to editorial responsibility") suggests that the scope of the law encompasses not only news sites but websites of private use as well, thereby putting regularly edited blogs operating in near-newspaper fashion – such as Mandiner or Veleményvezér – at risk of being subjected to the authority's will, a measure they believe is unprecedented in Europe.

The proposed legislation clearly defines the essential features based on which online content is regulated. These main features are: provision of content provided as a business activity to the public, with its primary objective being information coverage, entertainment or education. Another key feature is editorial responsibility, which indicates liability for the actual control over the selection and compilation of media content.

The proposed legislation's scope does not cover blogs even if they serve as vehicles of mass media, for they are not considered business endeavours. It is worth noting that media regulations in other European countries also include obligations for online newspapers.

Examples from across Europe:

- In Sweden, all online newspapers are subject to registration and approval by the Media Authority. (Whoever registers at the Authority is granted exemption from prior censorship but must specify a person bearing legal responsibility.)

- Even though they are not subject to registration per se, if they wish to pursue content provision as their sole livelihood and in a profit-oriented manner, online content providers in France must disclose to the public a range of personal data (name, address, registered seat, editor in chief) suitable for identification purposes. Unless they are considered professional content providers, such information must be provided to their respective internet provider. From 2009 onwards, the Supreme Audio-Visual Council (CSA) is entrusted to oversee both online and on-demand media services as well.

- As of 1 October 2010, Austria's KommAustria is responsible for the legal monitoring of the ORF and the supervision of online media content by commercial outlets.

- By applying a technology-neutral definition for the term "broadcasting", Switzerland's media act is equally applicable to programming content distributed both online and in various other broadcasting methods.

- In Italy, not only does AGCOM supervise radio and television but both printed and online press outlets, as well as the entire telecommunications sector.

- In Lithuania, the scope of authority of the media act - and therefore that of the LRTK entrusted with overseeing the media - encompasses the entire media spectrum, including online and printed press as well.

- In Slovenia, not only does the media act cover television channels and radio stations, it is also applicable to newspapers and journals, electronic and online publications and even teletext.

Criticism 20: The media authority will become entitled to request for submission and make duplicates of all and any assets and documents relating to the publication of a given printed media product, even including documents containing confidential information or business secrets. Moreover, if the given outlet objects to the procedure, it may be sanctioned with a procedural fee up to HUF 25 million - or HUF 3 million in the case of the chief executive of the paper. On the basis of the media act currently under consideration, a new registry is being set up, but media outlets and publishers will remain, even after mandatory registration, subject to obligations on extensive, permanent and ad-hoc data provision - with the Media Council being entitled to look into their business secrets as well.

Authorities may only launch and conduct authority procedure in the interest of fulfilling its tasks stated in the legislation and according to the procedural code defined therein. The provision of interlinked conditions of the market, business, society, public service and human rights and the operation of the media system is a key task of the state, whereby appropriate legal enforcement is indispensable. However, any state intervention into the media system and exploration of facts is severely restricted by the constitutional principle and guarantees of the freedom to express opinions. On this constitutional basis it is a crucial issue, and one that is the subject of permanent critical assessment by the media market and the society, as to in what manner and by using what means can the state intervene in the domain of the media. As a rule of thumb, it holds true in every administration sector that in the interest of an appropriate exercise of rights the state should explore, assess, analyse certain facts, except that in the case of the media this is the subject of intense "interest". In order to avoid the criticism alleging media intervention and censorship, the proposed media act makes a reference to the proceedings set forth in the Public Supervisory Procedures Act, representing a system of basic rules and tools accepted for all sectors and are also in line with the principles of "fair proceedings" pertaining to authority procedure of the European Community.

It is generally acceptable for all administrative procedures that the authority may look into secrets otherwise protected by law, should this be necessary for the given procedure. At present, this is also allowed under the Public Supervisory Procedures Act as well as by other, industry-specific legislation (Electronic Communications Act and the Act on the Prohibition of Unfair Market Practices). For the purpose of protecting the business secrets of media outlets and publishers of printed products, the proposed legislation contains guarantee rules set to ensure the safeguarding of information during and after an authority procedure.

Examples from across Europe:

- In Italy, participants of the media market not complying with their obligations on documentation and on the provision of documents and data may be subjected to a fine by AGCOM (a tell-tale sign on the lack of updating is that fee amounts are still specified in Lira). Throughout its proceedings, the authority is entitled to request the submission of confidential business documents as well.
- Furthermore, under the prevailing legislation enacted in 2004, should said participants be found in breach of their obligations to inform, AGCOM may impose a fine to the tune of up to EUR 25,000. Those providing false information may be sanctioned with a fine up to EUR 50,000 (up to HUF 14 million).
- Denmark's RTB may also specify obligations on data provision to all broadcasters under its jurisdiction.
- As part of a supervisory procedure, Estonia's government agency entrusted with media supervisory functions (TJA) may seize all recordings of a programming content made by a given broadcaster.
- Lithuania's media authority may also request for submission confidential documents.

Criticism 21: The new media authority will oversee whether the press complies with their obligations set forth in the media constitution. Amongst others, this includes an obligation to inform viewers, readers or listeners in a sufficiently factual, balanced and diverse manner, as well as to respect human dignity and the healthy development of minors. What these obligations exactly refer to remains unclear.

The Hungarian legislation provides accurately defined content for all three obligations.

As far as the press is concerned, even the so-called media constitution (Act CIV of 2010 on the Freedom of the Press and the General Rules on Media Content) does not include any provisions on balanced coverage. This only applies to linear and on-demand media services involved in information activities. As for balanced coverage and the actual content thereof, a practical experience gained throughout 14 years of judicial jurisprudence, as well as resolutions by the Constitutional Court may provide guidance. The characteristics of and interpretation framework for balanced coverage have been specified by the Constitutional Court in its Resolution No 1/2007 (I. 28.).

The concept of human dignity has been used and defined by numerous international conventions (Protocol 13 of the European Convention on Human Rights that was established under the European Council in 1950, and the Universal Declaration of Human Rights adopted by the United Nations). In its Resolution No. 64/1991, the Hungarian Constitutional Court also followed suit, on the basis of international legal principles: "the right to human dignity means that, within the autonomy and self-governance of a person lies a core quality free of everyone else's disposition, by which man remains a person and can no longer become a tool or an object. This interpretation for the right to human dignity is what distinguishes man from legal entities...".

The obligation to respect the healthy development of minors has been accurately outlined by the current media act and the media constitution, as well as by the regulations set within the newly submitted proposal. Since this obligation and this concept - had already been mentioned in Act I of 1996, therefore, a thoroughly defined content is also available as a result of 14 years of judicial jurisprudence. One must note that the concept and the pertaining obligation have already been taken into consideration in Council Directive 89/552/EEC on the harmonisation of rules pertaining to television, as replaced by Council Directive 2010/13/EU on audio-visual media services. Moreover, as far as media services are concerned, the latter provides regulation with content identical to that of the media constitution.

Specific details of this obligation are also provided by the currently effective media act, the Act on the Freedom of the Press and the General Rules on Media Content (Smtv.), as well as the newly proposed legislation. Furthermore, it is important to highlight that the Media Act concept involves the "civil sphere" (associations, other self-regulatory organisations) related to media administration into the framework of enforcement and supervision of the constitutional obligations as mentioned in the article (e.g. the protection of human dignity, the prohibition to generate hatred etc.). Therefore,

primarily the self-regulatory organisations entering into a public administration contract with NMIA proceed in these matters. Therefore, the application of the law by the public sector and the authorities 'retreats' in these official matters and leaves room to private and self-administration. However, state control over self-regulation cannot be fully neglected, given that this is about sharing the execution of activities ? pertaining to the discharging of state duties and to the official authority of the Media Council ? with a self-regulatory organisation as part of the self-administration and self-regulatory activity.

Looking at other European countries, when defining the jurisdiction for a given media authority, their legislations also tend to employ terms considered general at first, whose real meaning only becomes amalgamated in the course of actual cases.

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