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on the situation of Fundamental Rights: standards and practices in Hungary
(pursuant to the EP resolution of 16 February 2012) - Media legislation

Committee on Civil Liberties, Justice and Home Affairs

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United in diversity

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I. Introduction

The legislative framework governing the Media in Hungary has significantly changed in the last two years. The Constitution of the Republic of Hungary was amended in 2010¹ and a new Fundamental Law that includes new regulations related to media law² has entered into force in 2012. Several acts regulating media entered into force in 2011 and were amended the same year and in 2012.

A number of provisions of the Media laws were subject to international and national criticism and were considered problematic in light of the EU treaties and the Charter of Fundamental Rights of the European Union (Charter), the international and European legal instruments and non-binding texts which protect the right to freedom of opinion, expression and information, and the relevant case law of the European Court of Human Rights (ECtHR).

This working document provides an overview of specific provisions raising concern that were in the meantime amended or could be further clarified and revised in order to address remaining shortcomings.

Various assessments prepared in the framework of exchanges with the Hungarian authorities by the European Commission, the Human Rights Commissioner of the Council of Europe, the Secretary General of the Council of Europe, the OSCE Representative on freedom of the Media, and the UN Special Rapporteur on the promotion of right to freedom of opinion and expression, are taken into account along with the analysis of 11 May 2012 by the Council of Europe experts on Hungarian media legislation³, the opinion on the new Constitution of Hungary adopted by the Venice Commission on 17-18 June 2011⁴ and the position of the government of Hungary thereon transmitted on 6 July 2011⁵.

In the constitutional provision, freedom of the press is not formulated as an individual's right, but as a state obligation⁶; the regulation of detailed rules for the freedom of the press and its

¹ By Act No. CLXIII of 2010, the Parliament amended the former Constitution of Hungary; the amendment entered into force on 2 January 2011. Article 7/A (2) provided: "Legislation shall include ... decrees of National Media and Telecommunication Authority (NMHH) ...". The amendment of the former Constitution also introduced Chapter VIII/B regulating the National Media and Telecommunication Authority (NMHH) in the Constitution in Article 40/D.

² Article T (2) states that "rule of law shall mean...decrees of the head of an autonomous regulatory organ." Article 9 (3) declares that "the detailed rules relating to the freedom of the press and to the organ supervising media services, press products and the info communications market shall be laid down in a cardinal Act". In accordance with Article 9 (3) "the President of the Republic shall appoint ... the heads of autonomous regulatory organs." Article 6 (1) and (2) provide special constitutional protection for accession to and dissemination of data of public interest.

Article 23 regulates the autonomous regulatory organs: "Parliament may establish autonomous regulatory organs by a cardinal Act for the performance of certain tasks and the exercise of certain competences belonging to the executive branch." However, the Parliament has not yet adopted any new cardinal laws on the Media Law or the autonomous regulatory body. (The Media Laws were enacted on 31 December 2010, before the Fundamental Law entered into force on 1 January 2012.)

³ "Expertise by Council of Europe experts on Hungarian media legislation: ACT CIV of 2010 on the freedom of the press and the fundamental rules on media content and ACT CLXXXV of 2010 on media services and mass media, 11 May 2012".

⁴ Opinion no. 621/2011. CDL-AD(2011)016.

⁵ CDL(2011)058.

⁶ Article IX of the Fundamental Law. "(1) Every person shall have the right to express his or her opinion. (2) Hungary shall recognise and defend the freedom and diversity of the press, and shall ensure the conditions for

supervision is explicitly left to a cardinal act (for the adoption of which a two-thirds majority is necessary) without any guidelines on the purposes, contents and limits of such a law¹. The Venice Commission recommended a clarification that constitutional guarantees contain individual rights².

Act LXXXII of 10 August 2010 on the modification of certain acts regulating the media and communications amended a number of media and communication laws³. The Act restructured the institutional setup of the regulatory system and established *inter alia* the new, centralized media regulatory authorities: the National Media and Telecommunication Authority (NMHH) and the Media Council.

Act CIV of 9 November 2010 on the freedom of the press and the fundamental rules on media content ("Media Constitution") defines the basic rules of media content, while Act CLXXXV of 31 December 2010 on media services and mass media, that replaced the 1996 law on Radio and Television Broadcasting, specifies new content regulations for all media platforms, the authorities of the new media regulatory bodies, and the sanctions and fines for breaches to the new legislation. Both acts came into force on 1 January 2011 and were amended in March 2011⁴ following negotiations with the European Commission.

Under its decision No. 165/2011, the Hungarian Constitutional Court evaluated the "constitutionality of regulations on the procedure in which the Act was passed, the official supervision of press media, the registration obligation of printed and online press products, the protection of information sources, the obligation of data provision, and the Media and Communications Commissioner."⁵

The Court declared some provisions of the Act CIV of 2010 unconstitutional and asked the Hungarian Parliament to amend the Act by 31 May 2012. These provisions concerned the content regulation of the printed press, the Media Authority's authority over print and online media, the protection of the sources of journalists' information, the office of the Media and Infocommunications Commissioner, and the Media Authority's ability to request legally protected information.

free dissemination of information necessary for the formation of democratic public opinion. (3) The detailed rules for the freedom of the press and the organ supervising media services, press products and the infocommunications market shall be regulated by a cardinal Act."

1 See Position of the Government of Hungary, p. 6: "The Constitution – in its Article IX – declares that every person has the right to express his or her opinion. Such a formulation of the freedom of expression is fully in line with the relevant Article of the ECHR (Article X). At the same time, Article IX makes it an obligation for the State to recognise and defend the freedom and diversity of the press, and to ensure the conditions for free dissemination of information necessary for the formation of democratic public opinion...There is no explicit formulation of an individual's right to freedom of the press in the ECHR either – such a right is to be drawn from the individual right to freedom of expression."

2 See Venice Commission Opinion, para 74.

3 Act No. C of 2003 on the electronic communication, Act No. I of 1996 on radio and television broadcasting and Act No. CXXVII of 1996 on the National News Agency.

4 Act XIX of 2011, on the modification of Act CIV of 2010 and Act CLXXXV of 2010. These changes were followed on 19 July 2011 by Act CVII of 2011 on the modification of certain acts regarding electronic communications, primarily the "Media Act" of 31 December 2010, the 2003 law on Electronic Communications, and Law 74 of 2007, which dealt with rules on the distribution and digitalisation of programmes.

⁵ Decision 165/2011 (XII. 20.) AB of the Hungarian Constitutional Court on the Media Regulation passed under Act No. XX of 1949 on the Constitution of the Republic of Hungary that regulated the competence of the Constitutional Court to examine the petitions filed by private individuals and organizations. Available at: <http://public.mkab.hu/dev/dontesek.nsf/0/F59C316F4F04C20AC1257A250047E8FD?OpenDocument>.

As a consequence of the Constitutional Court's decision, Act No. LXVI of 2012 amended Act CIV of 2010, Act CLXXXV of 2010 and various connected laws. The act amended relevant provisions on the protection of the source providing information to the media content provider¹. The amendment also lifted a number of obligations originally imposed on print and online media, introduced detailed rules for protecting journalistic sources, and re-regulated access to data by the Media Authority in its procedures.

The Act also amended and reduced the competences of the Media and Telecommunications Commissioner formerly based on Act CLXXXV of 2010. Chapter 4 and 5 regulating the amendments of Act CIV of 2010 and Act CLXXXV of 2010 are qualified as Cardinal Acts.

II. The EP and media freedom

International and European human rights law protects the freedom of opinion, expression and information. Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights are the main references in the field. The EU Charter of Fundamental Rights makes a step further by stating in its Article 11(2) that “the freedom and pluralism of the media shall be respected”, which is a novelty in comparison to previous human rights treaties. With the entry into force of the Lisbon Treaty, the Charter has become binding and the obligation in the EU of respecting media freedom and pluralism shall be looked at in a new perspective, notably in connection to Articles 2 (EU values and principles), Article 7 and Articles 9-12 TEU on democracy and citizenship.

It is first and foremost a duty of Member States to protect freedom of opinion, expression, information and media freedom, as these are principles also guaranteed in their Constitutions and laws. Having said this, shall a serious risk or violation of media freedom and pluralism take place in a Member State, the European Union should take initiative on the basis of the Treaties and of the Charter and intervene to protect the European democratic and pluralistic order and citizens' rights. The EP has constantly supported this interpretation of the Treaties and of the Charter, while the doctrine described this approach as “reversed Solange” aiming at protecting the essence of fundamental rights - and of European citizenship - enshrined in Article 2 TEU throughout the EU legal space against those EU Member States violating them at European and internal level.

The European Parliament has repeatedly expressed concern on media freedom and pluralism², and work is currently ongoing on the report on "The EU Charter: standard setting for media freedom across the EU".

1 Act No. III of 1952 on the Order of Civil Procedure, Act No. XIX of 1998 on Criminal Procedure, and Act No. CXL of 2004 on the general rules of procedure and service of public administrative authorities.

2 Resolutions of 20 November 2002 on media concentration, OJ C 25 E, 29.1.2004, p. 205, of 4 September 2003 on the situation of fundamental rights in the EU, OJ C 76 E, 25.3.2004, p.412, of 4 September 2003 on Television without frontiers, OJ C 76 E, 25.3.2004, p.453; of 6 September 2005 on the application of Articles 4 and 5 of Directive 89/552/EEC (“Television without Frontiers”), as amended by Directive 97/36/EC, for the period 2001-2002, OJ C 193 E, 17.8.2006, p. 117; of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights (Boogerd Quaak report), OJ 104 E , 30.4.2004, p. 1026; of 25 September 2008 on the concentration and pluralism in the media in the EU, OJ C 8 E, 14.1.2010, p.75; of 10 March 2011 on media in Hungary, P7_TA(2011)0094.

III. Overview of the assessment of the Hungarian Media legislation

At national and international level actors such as the European Commission, the European Parliament, the OSCE Representative on Freedom of the Media, the Council of Europe, the UN Special Rapporteur on the promotion of right to freedom of opinion and expression, as well as academic institutions, regional and international media professional organisations (the European Newspaper Publisher's Association, the World Association of Newspapers and News Publishers, the International Press Institute, the South and East Europe Media organisation, the European Federation of Journalists, the European Alliance of News Agencies, the Reporters without Borders), civil organisations such as Amnesty International, Freedom House¹, and the media themselves drew attention to the problematic provisions of the Media Acts.

Criticism related mainly to the adoption of the legislation under the parliamentary procedure of private member's bills that does not provide for consultation with opposition parties and civil society, the highly hierarchical structure of media supervision, the managerial authority of the Chairperson of the regulatory authority, the lack of provisions ensuring the independence of the authority, the extensive supervisory and sanctioning power of the authority, the considerable impact of certain provisions on the content of programming, the lack of media-specific regulation, the lack of transparency in the bidding process for licenses, the vagueness of norms potentially conducive to arbitrary application and enforcement.

The **European Commission** considered that the new legislation raised concerns regarding the respect for the fundamental media freedoms as enshrined in the European Treaties and in the EU Charter and regarding its compliance with the Audiovisual and Media Services Directive². The problematic provisions related to disproportionate application of rules on balanced information, application of fines to broadcasters legally established and authorised in other Member States, rules on registration and authorisation of media service providers and rules against offending individuals, minorities or majorities.

In its resolution of 10 March 2011 on media law in Hungary³, the European Parliament stated that the Hungarian media law "should (...) be suspended as a matter of urgency and reviewed on the basis of the Commission's, OSCE's and Council of Europe's comments and proposals (...)". It called on the Hungarian authorities to restore the independence of media supervision and to put an end to governmental interference with the freedom of expression and "balanced coverage", and on the Commission "to continue the close monitoring and assessment of the

¹In the 2012 report on Hungary it is stated that " Hungary declined from Free to Partly Free to reflect the general decline of the Hungarian media environment due to the establishment of the new National Agency for Data Protection; evidence of a politically motivated licensing procedure resulting in the loss of antigovernment station Klubrádió's frequencies; increased reports of censorship and self-censorship, especially in the public service channels; and worsening economic conditions for independent media entrepreneurship. (...) Hungary enjoys a broad array of print and broadcast media, with private news media identifying clearly with one or the other side of the political spectrum. Hungary's constitution protects freedom of speech and of the press, but the latest in a series of controversial media legislative measures adopted in 2010 came into effect on January 1, 2011, amid ongoing protests by journalists and pressure from international media freedom watchdogs", available at <http://www.freedomhouse.org/report/freedom-press/2012/hungary>

² OJ L 95, 15.4.2010, p. 1.

³ P7_TA(2011)0094, notably par. 1,2,4,5,7 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0094+0+DOC+XML+V0//EN>

conformity of Hungarian media law as amended in accordance with European legislation, particularly with the Charter on Fundamental Rights".

In an opinion of 25 February 2011 on Hungary's media legislation in light of Council of Europe standards on freedom of the media¹, the Human Rights Commissioner of the Council of Europe analysed the media laws and made proposals for amendments.

On the freedom of the media the following encroachments were identified: prescriptions on what information and coverage shall emanate from all media providers (Article 13 of the Press and Media Act 2010), imposition of sanctions on the media (Article 187 of the Mass Media Act 2010), pre-emptive restraints on press freedom in the form of registration requirements (Articles 45 and 46 of the Mass Media Act 2010), exceptions to the protection of journalists' sources (Articles 6 and 4 of the Press and Media Act 2010).

Regarding independence and pluralism of the media, the opinion outlined the following problems: weakened constitutional guarantees of pluralism (Article 61 of the Constitution of Hungary as amended in 2010), the lack of independence in media regulatory bodies (Article 14(2) of Amended Act C of 2003 on Electronic Communication, Articles 124 and 125 of the Mass Media Act 2010), the lack of safeguards for the independence of public service broadcasting (Article 102 of the Mass Media Act 2010), the absence of an effective domestic remedy for media actors subject to decisions of the Media Council (Articles 163, 164, 165 and 166 of the Mass Media Act 2010).

On these specific points, Commissioner Hammarberg received in June 2011 Annotations from the Hungarian authorities² that were aimed to provide further information, clarify any potential misunderstandings and confirm the interpretation by the Hungarian authorities of the norms in question.

The recommendations of the OSCE legal analysis sent to the Hungarian Government on 28 February 2011 included³: deleting the legal requirements on balanced coverage and other content prescriptions from the laws, safeguarding editorial independence, ensuring that different rules regulate different forms of media - print, broadcast and online, clarifying the vague notions in the legislation, deleting registration requirements deemed excessive, ensuring that the regulatory body is independent and competent, ensuring objectivity and plurality in the process of appointment of organs governing the media sector, refraining from placing print media under the jurisdiction of the regulatory body and effectively encourage self-regulation.

Following negotiations with the European Commission, in March 2011 the Hungarian Parliament amended the legislation on the following points: the obligation of balanced coverage, the country of origin principle, the registration requirements of print press products and the restrictions on offensive content.

In April 2011, the UN Special Rapporteur on the promotion and protection of the right to

¹ <https://wcd.coe.int/ViewDoc.jsp?id=1751289>

² <https://wcd.coe.int/ViewDoc.jsp?id=1821497&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

³ <http://www.osce.org/fom/75990>

See also, the analysis and assessment of September 2010 <http://www.osce.org/fom/71218>

freedom of opinion and expression, submitted an analysis¹ that was consistent with the views expressed by the independent experts of the Council of Europe and the OSCE. While welcoming the amendments adopted in March 2011, it highlighted the remaining concerns pertaining to: regulation of media content, insufficient guarantees to ensure the independence and impartiality of the Media Authority, excessive fines and other administrative sanctions, applicability of the media legislation to all types of media, including the press and the Internet, registration requirements, and lack of sufficient protection of journalistic sources.

A comparative study by the Center for Media and Communication Studies, of the Central European University (CEU), on the consistency of Hungary's media laws with European practices and norms has concluded that the current media regulation is inconsistent with the European practices and norms, noting that the Hungarian media authority has a concentration of powers unique across Europe². The study was presented at the second meeting of the independent High-level group on freedom and pluralism of the media.

IV. Remaining points of concern

Some of the above-mentioned issues should be further addressed despite the fact that the laws were amended in 2011 following negotiations with the European Commission and in May 2012 further to the decision of the Constitutional Court of December 2011.

After the adoption of the amendments in 2012, the OSCE Representative on freedom of the Media stated that several amendments were introduced and adopted on short notice without consulting stakeholders and that fundamental elements in the legislation have not been improved, notably the appointment of the president and members of the Media Authority and Media Council, their power over content in broadcast media, the imposition of high fines, the lack of safeguards for financial and editorial independence of public broadcasters.

By letter of 15 June 2012, Laszlo Kover, Speaker of the Hungarian Parliament, provided the OSCE with detailed information on the legislative changes and stated that, together with the amendments adopted by Parliament, the Media Act will ensure complete freedom of opinion and the press.

Similar concerns to the ones expressed by the OSCE were raised in an analysis of May 2012 by Council of Europe experts that assessed compliance of the Media Acts (as proposed to be amended in May 2012) with the European Convention on Human Rights (ECHR), the European Convention on Transfrontier Television (ECTT) and CoE recommendations and other standard-setting texts in the field of media and freedom of expression³. In the expertise it is recommended that specific provisions on registration and transparency, content regulation, obligations on news coverage, protection of sources, public service media, and regulatory bodies should be thoroughly revised, clarified or in some cases eliminated.

Registration requirements that apply to all kinds of media could result in restraints on press

¹ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10915&LangID=E>.

² <https://cmcs.ceu.hu/news/2012-01-05/new-study-hungarian-media-laws-in-europe-an-assessment-of-the-consistency-of-hungary>. The study contains expert analyses of the 56 media regulations from 20 European and EU Member States that were cited by the Hungarian government as precedents for its new media legislation.

³ For a comprehensive overview, please see "Expertise by Council of Europe experts on Hungarian media legislation: ACT CIV of 2010 on the freedom of the press and the fundamental rules on media content and ACT CLXXXV of 2010 on media services and mass media, 11 May 2012", pp. 7-10.

freedom.

In relation to Articles 41-46 of Act CLXXXV on registration procedures for media services, the Council of Europe expertise recommended that "Act CLXXXV (...) should clearly separate the general rules that apply to all kinds of media (including print media), to be enforced by ordinary courts, from those specific rules that only cover audiovisual media services and are primarily enforced by a specialised administrative regulatory body. (...) registration should not be required of printed and online press services by an administrative media authority ordinary business registration requirements should apply. To require registration is contrary to the principles of proportionality clearly established by the jurisprudence of the ECtHR (...)"¹.

Provisions on content requirements and the requirement of balanced coverage² could lead to arbitrary interpretations and restrict the free dissemination of information and opinions through media.

The analysis of the Council of Europe recalls that "Article 10 ECHR and the related ECtHR jurisprudence are clear that public authorities must refrain from undue interference in media content. The protection provided by Article 10 for freedom of expression and information requires that any restriction should be prescribed by law and necessary in a democratic society. Legal provisions cannot be vague or too broad, and must be interpreted narrowly, connected always to the aims, principles and rights that ultimately justify the imposition of such limits".

The expertise underlines that amendments were proposed to Act CIV in 2012 in accordance with the Constitutional Court ruling which provided that certain content requirements should not apply to the printed and online press services, however Act CLXXXV has not been amended in this regard. In order to address concerns relating to scope, excessive administrative intervention and legal uncertainty, it is recommended that "the Media Council should not retain administrative regulatory authority (whether in terms of content or licensing) over print (and online) media", and that criteria such as "proper", "authentic", "factual", "objective" and "balanced" "should be withdrawn from Act CIV and Act CLXXXV and be substituted with clearer and simpler requirements (for example accuracy and balance), in line with European standards and the legislation of other Council of Europe member states. The law must also provide its interpreters with a definition of such mandates, in order to eliminate possible margins of discretion which would be in breach of European law"³.

The obligation for media providers to provide adequate or proper news coverage is linked to

¹ See the Registration and transparency section of the Council of Europe expertise, pp 12-15.

² For example, article 10 of Act CIV establishes that all persons shall have the right "to receive proper information on public affairs..." and that the media system shall provide "authentic, rapid and accurate information on those affairs and events"; Article 13 states that linear media services which supply information shall provide "diverse, comprehensive, factual, up-to-date, objective and balanced coverage" on issues of interest for the general public; Article 16 of Act CIV states that media content "shall not violate the constitutional order"; Article 17 of Act CIV prohibits the exclusion of nations, communities, national, ethnic, linguistic and other minorities or any majority as well as any church or religious groups; Article 19 of Act CIV broadly regulates harmful content; Article 20 of Act CIV on commercial communications includes a prohibition on offending religious or ideological convictions; Article 28.1(a) of Act CLXXXV prohibits sponsorship of news and political programmes.

³ See recommendation, p. 17.

formal complaints procedures, as Article 181 of Act CLXXXV grants the administrative media regulatory the competence of handling requests regarding possible infringements through specific administrative proceedings.

In order to avoid having a negative impact on media freedom the governance of the regulatory system has to guarantee accountability and independence from political interference. Further changes are recommended to the Hungarian government in the matter of appointments of regulators. Regulatory authorities should also be transparent and accountable and enjoy a funding scheme that allows them to carry out their functions fully and independently.

Articles 109 of Act CLXXXV and the following provide the detailed rules on the regulatory authority for the media. The National Media and Infocommunications Authority (NMHH) is a convergent authority responsible for administering both the segments of telecommunications and media. It is formed by several bodies some of which have independent jurisdiction - the President, the Media Council and the Office. Tasks related to media regulation are performed by the Media Council (in principle, chaired by the President of the Authority) a collective body with relative autonomy within the organisation of the Authority. The Chairperson and the Media Council of NMHH are provided with broad regulatory power over all communication markets including audio-visual linear and on-demand media, public service media, printed and on-line press, and the electronic communication sector. The regulator is provided with the authority to adopt normative acts with respect to tendering, licensing, spectrum allocation, frequency management, surveillance, monitoring, investigation and issuing sanctions.

The existing appointment procedures¹ should be changed in order to effectively guarantee their independence against any interference, so that no instructions can be received and that dismissals are not used as a means of political pressure.

Three separate public broadcasters have been grouped into the Media Service Support and Asset Management Fund (set up by Article 136 of Act CLXXXV) which is responsible for administering the assets of the public service broadcasters and coordinating program production. The constitution of the Fund Supervisory Board and the selection of senior staff by the Chairman of the Media Council raise concern, as this is detrimental to pluralism and independence.

Article 101(4) of Act CLXXXV grants the Hungarian News Agency the exclusive right to produce news programmes for public media service providers, while all major private broadcasters are expected to have their own news service; the Council of Europe analysis shows that the obligation on public broadcasters to use the national news agency is unreasonable and an unfair restriction on the plurality of news provision, and should be eliminated.

The provisions governing the structure, management, and editorial oversight of Hungary's public broadcasters and their funding mechanism could also have a significant impact on pluralism and content.

¹ The President of the Authority could be elected to be the chairperson of the Media Council as well. The President is directly appointed by the Prime Minister for a term of nine years and may be re-elected beyond this term. The President is entitled to appoint two vice presidents for an indefinite term. This appointment is direct, with no prior formal selection procedure or public tender.

The three public broadcasters and the Hungarian News Agency are owned by the Public Service Foundation which is managed by one single board of trustees. Three members of the board are nominated by the governing parliamentary party or parties, and the other three by the opposition parties. Candidates are elected by a two-thirds majority of sitting MPs.

The Media Council nominates the chair of the Board of trustees and another member for nine years, and the members nominated by the parliamentary parties also have a nine-year term mandate (Article 86. Act CLXXXV of 2010).

The Board of Trustees of the Public Service Foundation has the overall responsibility for the public media as well as a major role in the appointment and dismissal of the managers of each public media provider. It appoints the Chairman and most of the members of the Supervisory Board of the public service broadcasters, which monitor how the broadcasters are managed. The Public Service Board assesses compliance with the public service remit. The Council of Europe analysis stresses that it should be explicitly provided that neither the Board of Trustees nor the Supervisory Board can have a role in determining programming or exercise any editorial influence.

The existing appointment system to the media regulatory bodies (the Media Council, the Board of Trustees of the Public Service Foundation, and the Public Service Board) should therefore be revised to ensure political neutrality. In this respect it is not sufficient to have the appointments depend on a particular majority, because the appointment rule is instrumental to a value that is that of a diverse, inclusive and pluralist – in cultural, political and other terms – composition. This is not respected when the voting rule is not conducive to such a pluralist, diverse and inclusive representation in the Council.

With a view to safeguarding editorial independence and institutional autonomy of public media service providers the Council of Europe recommends that "the media authority should not have decision-making powers regarding the process of elaboration and approval of the Public Service Code and to define the scope of public media services"¹.

The global amendment of the funding system of the Public Service Foundation is recommended in order to guarantee the transparency of the funding and spending of public service broadcasters and that they are managed according to the principle of financial autonomy.

Other recommendations refer to the institution of the Media and Communications Commissioner (Articles 139 and the following of Act CLXXXV) that should be possibly replaced by a statutory Ombudsman with fully appealable powers to deal with consumer complaints about electronic communication services.

The exception to the general regime of competitive tenders to provide certain linear services, provided in Article 48 (4) of Act CLXXXV stating that for a specific period of up to three years the media authority shall be entitled to authorise, without a tender procedure, a business entity to provide media services with a view to carrying public functions should be

¹ See Articles 95, 98 and 136 of Act CLXXXV regulating the powers of the media authority vis-à-vis the Public Service Foundation.

eliminated.

In order to guarantee real competition and fairness, as well as the protection of applicants' rights, regarding the provision on the tender notice that should be published by the media authority it is recommended that it could foresee the possibility for applicants to submit the tender notice to judicial review before it is used as a basis for the evaluation. The 15-day delay for requesting the judicial review of the media authority's resolution on the results of a tender should be prolonged. Paragraph (3) of Article 163 should be amended in order to introduce the possibility of suspending administrative orders and sanctions in cases of claims against the Media Council's resolutions.

Provisions on Media Authority's Office and the Media Council sanctioning powers over all media, including print and the online press, for any infringement of media regulation (Article 185 of Act CLXXXV and the following) were deemed to have a potential negative impact on vulnerable outlets that might close and a chilling effect on media independence. The Council of Europe experts recommend the amendment of these articles in order to guarantee proportionality between the severity of the infringement and severity of the sanction to be imposed and the deletion of paragraphs that refer to the maximum sanctions that can be applied to print and online service providers.

Other recommendations foresee that the Media the Council should not interfere in the operations of self-regulatory bodies and the need to reinforce in the law the encouragement of self-regulation. Article 66 of Act CLXXXV should be amended in order to introduce the transparent regulation of community media services, based on public interest requirements. In regard to statutory obligations placed on print media that are contrary to international best practice where the press is encouraged to regulate itself, provisions concerning the right to request corrections in the press under Article 12 of Act CIV, should be amended to enable self-regulatory bodies to set their own standards; the right should be limited to content which is materially misleading or unfair.